

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Beaufort County

MAR 23 2017

Honorable Brooks P. Goldsmith, Circuit Court Judge

S.C. SUPREME COURT

MATTHEW FRAZIER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001665

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) NINTH JUDICIAL CIRCUIT
INDICTMENT NO.: 2010-GS-07-2191

THE STATE OF SOUTH CAROLINA)
VS.)
MATTHEW FRAZIER,)
DEFENDANT.)

JURY TRIAL

VOLUME 1 OF 2

held before the Honorable Thomas A. Russo
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Beaufort County Courthouse
Beaufort, South Carolina
on May 25, 2011, Commencing at 9:32 a.m.

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PROCEEDINGS

1
2 MR. SHIPLEY: This is the matter of the State
3 vs. Matthew Frazier, Your Honor. This is indictment
4 numbers -- there's a list of them, Your Honor --
5 2010-GS-07-2189, 2190 2191, 2193, 2194, 2195, 2197
6 and 2198. That's trafficking cocaine, ten to twenty-
7 eight grams; possession with intent to distribute
8 marijuana; possession with intent to distribute
9 crack; and there's a proximity charge for each one of
10 those for half a mile from a school or a park;
11 possession of a weapon during a violent crime; and
12 possession of a stolen pistol.

13 We're here this morning for pretrial. I don't
14 know what motions the defense is going to make but I
15 assume it's going to be to validate my search
16 warrant. So I thought maybe it would be more
17 appropriate to address that first before we got to
18 our motions, because mine are like Denno motions and
19 my chain of -- mostly regarding my chain of custody.
20 They're more geared towards the trial.

21 THE COURT: The proceedings. Yeah.

22 Is it Dychak [phonetic]?

23 MR. DEYSACH: Ian Deysach, Your Honor.

24 THE COURT: Deysach. Okay.

25 - - -

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MOTION TO SUPPRESS

1
2 THE COURT: Mr. Deysach, why don't we --
3 you've got a motion to suppress; is that correct?

4 MR. DEYSACH: I do, Your Honor.

5 THE COURT: Why don't we deal with that first,
6 I mean, because that could be dispositive of the case
7 and it makes sense to deal with that one first.

8 MR. DEYSACH: Sure.

9 I would ask that during this motion to
10 suppress that you would consider sequestering the
11 witnesses, who aren't the lead investigator, just
12 like you would during a normal trial. I mean, the
13 police officers are really the only witnesses in the
14 case and I think it's best if they're not hearing
15 each other's witnesses -- each other's testimony,
16 even during the suppression hearing.

17 THE COURT: All right.

18 MR. DEYSACH: Thank you, Your Honor.

19 THE COURT: I can do that.

20 Are your officers -- do you have all the
21 officers you need?

22 MR. SHIPLEY: I have all the officers I
23 anticipate I need, which would be the filing of the
24 search warrant for this motion to suppress, and the
25 other officer would be here for my Denno hearing.

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1 THE COURT: Okay. Well, of course, your lead
2 investigator can remain if he or she is involved in
3 this at all.

4 But let's go ahead and sequester the --

5 MR. SHIPLEY: He will be seated at the table
6 with me during the trial, Your Honor. He's not here
7 at the moment.

8 THE COURT: Okay. That's fine.

9 All right. So let's have -- which one would
10 you call first?

11 MR. SHIPLEY: I would proffer testimony from
12 Corporal James Carmany from the Bluffton Police
13 Department.

14 THE COURT: Why don't we have the corporal
15 come up and then have the other officers sequestered
16 outside the courtroom.

17 [Off the record momentarily]

18 THE COURT: All right. If you would please
19 swear the witness.

20 THE CLERK OF COURT: Put your left hand on the
21 Bible and raise your right hand.

22 [Whereupon, Mr. Carmany is duly sworn by the
23 clerk of court as follows: do you solemnly swear or
24 affirm that the testimony you give in this matter
25 shall be the truth, so help you God]

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1 THE WITNESS: Yes, ma'am.

2 THE CLERK OF COURT: Thank you. Please be
3 seated.

4 [Whereupon, the witness takes the witness
5 stand]

6 - - - - -

7 JAMES CARMANY,

8 Having Been First Duly Sworn,
9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MR. SHIPLEY:

12 Q. Would you please give your name and rank for
13 the record and spell your last name, please.

14 A. I'm Corporal James Robert Carmany. That's
15 C-A-R-M-A-N-Y.

16 Q. And where are you employed?

17 A. Through the Town of Bluffton, the state of
18 South Carolina, Bluffton County.

19 Q. Back in October -- at the time period of
20 September/ October 2010, were you also working with the
21 drug task force?

22 A. Yes, I was.

23 I was with the Beaufort-Jasper multi-agency
24 drug task force.

25 Q. Were you involved in the case against Matthew

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1 Frazier?

2 A. Yes, I was.

3 Q. Did you, in fact, obtain a search warrant in
4 this case?

5 A. Yes, I did.

6 Q. Were you the swearing affidavit on -- the
7 affiant on it?

8 A. Yes, sir.

9 Q. What date did you swear the affidavit?

10 A. I believe it was ~~October 2nd, 2010.~~

11 Q. And what date did you get assigned by a judge?

12 A. I believe it was -- I think it was October
13 2nd.

14 Q. Do you know which judge signed it?

15 A. Judge Tupper.

16 Q. Is he a magistrate judge?

17 A. Yes.

18 He's -- I had him sign it after the bond
19 hearing.

20 Q. Is he a magistrate judge in Beaufort County?

21 A. Yes, he is.

22 Q. What was the object of this warrant? What
23 were y'all seeking to search

24 A. A vehicle.

25 Q. What vehicle is that? Can you describe it?

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1 A. Yeah.

2 It was a burgundy Dodge Intrepid. I have the
3 plate number here. Let me just refer to my records.

4 [Whereupon, the witness reviews documents]

5 A. It was a 1999 burgundy four-door Dodge
6 Intrepid with South Carolina registration [REDACTED].

7 Q. [Mr. Shipley] And where is that -- where was
8 that vehicle located?

9 A. It was located on Martha Brown Circle within
10 the town of Bluffton.

11 Q. Also in Beaufort County?

12 A. Yes, sir.

13 Q. When was this search warrant executed?

14 A. The search warrant was executed on I believe
15 it was -- was it the 10th?

16 [Whereupon, the witness reviews documents]

17 A. On October 11th, 2010.

18 Q. [Mr. Shipley] And where was this Burgundy
19 Dodge Intrepid with license plate [REDACTED] actually
20 located when you executed the warrant?

21 A. On Martha Brown Circle.

22 Q. Okay. Once it was all done, was there an
23 inventory made of the items seized?

24 A. Yes, there was.

25 Q. Was a copy of that -- of the inventory and a

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1 copy of the search warrant, you know, left at the scene
2 or given to the registered owner of the vehicle?

3 A. Yes.

4 It was left actually on the dashboard of the
5 vehicle by Corporal Rodriguez. He left it there. It
6 was -- and it was also given to Derrick Fields, which
7 was the registered owner of the vehicle, which he
8 retrieved it from the dashboard.

9 Q. Was a copy of the search warrant and the
10 inventory also returned to the judge?

11 A. Yes, it was.

12 Q. And on what date was that return made?

13 A. October 12th, 2010.

14 Q. Would you please give us just a brief factual
15 basis of what's in the affidavit, the supporting
16 probable cause for the search warrant?

17 A. ~~During the month of September, 2010,~~ I was
18 working with the Beaufort-Jasper County multi-agency
19 drug task force and I received information from a
20 confidential informant, reliable source, of drug
21 activity coming from Martha Brown Circle from within a
22 burgundy Dodge Intrepid.

23 Using that, we made ~~multiple control purchases~~
24 from ~~that vehicle, at which time the subject was~~
25 identified as the defendant. Using that information, I

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1 obtained a search warrant.

2 Q. How did these -- how did the -- you had
3 reports of drug activity -- is that what you testified
4 to -- and you had controlled purchases?

5 A. We --

6 Q. With whom were these control purchases made?
7 How did the informants and the tipsters or whatever
8 identify him?

9 A. They identified him by making controlled
10 purchases from the vehicle, from the defendant, at which
11 time he identified them through a picture that we
12 provided and who we believed that person was and he
13 identified him that way.

14 Q. Were these controlled purchases monitored by
15 law enforcement?

16 A. Yes, they were. Audio and video.

17 Q. And out of what vehicle were these control
18 purchases made out of?

19 A. A 1999 Dodge Intrepid, four door, bearing the
20 South Carolina registration I gave you earlier, [REDACTED].

21 Q. Was one of these control purchases done within
22 seventy-two hours of y'all obtaining the search warrant?

23 A. Yes, it was.

24 Q. What date was that on? Do you remember?

25 A. I believe that one was on October 2nd. I

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1 don't recall here. Let me see if it's in the search
2 warrant.

3 [Whereupon, the witness reviews documents]

4 A. I do know it was within the seventy-two hours.

5 Q. [Mr. Shipley] Was that one monitored by law
6 enforcement?

7 A. Yes, it was.

8 Q. Was there also surveillance of the area during
9 which -- was there also other surveillance of the area
10 other than the controlled purchases?

11 A. Yes, there was.

12 Prior to us executing the search warrant we
13 did pre-surveillance of the area, confirming.

14 Q. What did y'all witness there? Did y'all
15 witness --

16 A. We -- on multiple occasions we did video
17 surveillance of the area and I personally observed
18 multiple subjects going to that vehicle, getting in that
19 vehicle, making hand-to-hand motions consistent with
20 drug activity, and then immediately leaving the scene.

21 Q. And then the last purchase, the one within
22 seventy-two hours, was the informant also -- identified
23 a photograph of the defendant as the person from whom he
24 bought those controlled substances?

25 A. Yes, sir.

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1 MR. SHIPLEY: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes, sir.

4 Q. [Mr. Shipley] Show you a copy of a search
5 warrant. Is that the one that you signed? Is that a
6 copy of the one that you signed?

7 A. Yes, sir, it is.

8 Q. Is it a copy of the one you executed?

9 A. Yes, sir, it is.

10 Q. Is it also a copy of the one that you returned
11 with the inventory list and everything included?

12 A. The inventory list is included and it is the
13 one that was returned. Yes, sir.

14 MR. SHIPLEY: May I approach again, Your
15 Honor?

16 THE COURT: Yes, sir.

17 MR. SHIPLEY: I would like to enter this
18 search warrant as a Court's Exhibit.

19 THE COURT: Have you seen that?

20 MR. DEYSACH: I have, Your Honor.

21 THE COURT: Any objection?

22 MR. DEYSACH: No, Your Honor.

23 THE COURT: All right.

24 [Whereupon, Court's Exhibit Number 1 is marked
25 by the court reporter]

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1 MR. SHIPLEY: No further questions, Your
2 Honor.

3 THE COURT: All right.

4 MR. DEYSACH: Thank you, Your Honor.

5 Your Honor, do you mind if I just set up right
6 up here? Is this okay?

7 THE COURT: That or -- there was a podium in
8 here yesterday.

9 THE BAILIFF: They must have taken it back to
10 one, Judge.

11 THE COURT: But please go ahead and --

12 MR. DEYSACH: Is that okay?

13 THE COURT: -- and make yourself -- yeah.

14 MR. DEYSACH: Thank you, Your Honor.

15 Good morning. You know, I didn't hear your
16 rank.

17 THE WITNESS: It's corporal.

18 MR. DEYSACH: Corporal Carmany.

19 CROSS-EXAMINATION

20 BY MR. DEYSACH:

21 Q. Okay. You are the person who submitted the
22 affidavit to Judge Tucker for the signature -- for his
23 signature on a search warrant; correct?

24 A. Yes, sir.

25 Q. You testified that you did that on October

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1 2nd; is that correct?

2 A. I believe so, yes, sir.

3 Q. Did you say something about signing it --
4 having him sign it at a bond hearing? Is that what you
5 said?

6 A. Yeah. I was -- yes, I did say that.

7 Q. Okay. Can you explain? Whose bond hearing?

8 A. Sure.

9 It was another arrest that I made of somebody
10 else. I was at that bond hearing. That was the best
11 time to meet with the judge because he was already
12 conducting bond hearings.

13 Q. All right. But it was not a bond hearing that
14 had anything to do with this case?

15 A. Nothing to do with this case, no, sir.

16 Q. Okay. So that occurred in the morning, then?

17 A. Yes, it did.

18 Q. Because they have those bond hearings about
19 9:00 in the morning or so?

20 A. [Indicates affirmatively]

21 Q. Okay. Yes? Or no?

22 A. Yes. Yes.

23 Q. Okay. You testified a little bit about the
24 car that you got the search warrant for. When you were
25 surveilling the car, it was located at Martha Brown

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1 Circle -- I think it's ■ Martha Brown Circle -- is that
2 correct?

3 A. In that general area, yes.

4 I believe it was -- not a lot of addresses
5 used in there. They also use Martha Brown Circle and
6 Builty Road as the same address. It's actually on
7 Martha Brown Circle. But, yes, it's in the -- it's a
8 small dirt road in that area, yes.

9 Q. Are you saying that the -- let me ask you
10 this. When you were doing your surveillance, did you
11 ever see the car move?

12 A. No.

13 Q. Was the car always in the same place? Was the
14 car in the same place when you saw it before the search
15 warrant as it was when you saw it upon the service of
16 the search warrant?

17 A. When we did pre-surveillance of the day before
18 we served the search warrant, yes, it was in the same
19 spot.

20 Q. So you're saying that you did surveillance on
21 the vehicle before October 2nd, when the search warrant
22 is applied for --

23 A. Yes.

24 Q. -- correct?

25 And you do surveillance on the vehicle on

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1 October 10th, the day before the search warrant is
2 executed?

3 A. The day of.

4 Q. The day of the execution of the search
5 warrant.

6 Okay. So that would be October 11th?

7 A. Yes, sir.

8 Q. And those two times -- now, did you ever see
9 the car in between those two dates, October -- whatever
10 happened before October 2nd and October the 11th?

11 MR. SHIPLEY: Your Honor, I'm a little unclear
12 of where we're going because my understanding is
13 probable cause is what's presented to the magistrate
14 at the time of the issuing. He's testifying to the
15 probable cause and what -- what he swore to in front
16 of Judge Tupper to swear the warrant. So we kind of
17 feel like we're getting out of bounds.

18 THE COURT: Well, if I'm following his line of
19 questioning, it's dealing with that probable cause
20 from the time of the affidavit to the time of the
21 search warrant.

22 Now, having said that, I understand your
23 objection is the issue -- is the probable cause to
24 seek the warrant at that time on October the 2nd.

25 MR. SHIPLEY: That's correct, Your Honor.

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1 THE COURT: And so I guess you're -- again,
2 I'm trying to follow -- your objection is that has
3 nothing to do with the time frame from the time the
4 search warrant was received until it was executed for
5 this -- purposes of this hearing. Is that -- would
6 that be correct?

7 In other words, the purpose of this hearing is
8 to determine whether or not there was probable cause
9 for this warrant to be issued; correct?

10 MR. DEYSACH: That's one of the issues. I
11 think there's other issues that are in play here.

12 THE COURT: That go toward suppression?

13 MR. DEYSACH: Correct.

14 Your Honor, I think that whether there's
15 probable cause for the signature on the warrant is
16 one issue, whether or not there -- the search itself,
17 even with the warrant, was unreasonable.

18 And I think that when we're talking about a
19 car, not a residence, a moveable object, we're
20 talking about -- I'm trying to figure out the days
21 that they've seen it. I'm thinking ten days in
22 between signing, or nine days, or within ten days of
23 signing of the search warrant there is whether or not
24 that probable cause still would have existed on the
25 11th, nine days of a car after --

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1 You know, and so I'm trying to figure out
2 what's the probable cause that they're basing the
3 warrant on and how old is that information before
4 they get to the judge, then how much time passes
5 before they serve and execute the warrant and whether
6 or not -- you know, if we're talking about twelve
7 days or two weeks, whether or not probable cause
8 would still exist on a car.

9 THE COURT: Well, he testified that the
10 warrant was obtained on October the 2nd, the search
11 was executed on October the 11th. So we're talking
12 about nine days.

13 MR. DEYSACH: Right. Right.

14 But and he also said that the return came back
15 to --

16 THE COURT: The 12th.

17 MR. DEYSACH: -- the magistrate on the 12th.

18 THE COURT: Correct.

19 MR. DEYSACH: So that's ten days between
20 return and issuance.

21 THE COURT: Correct.

22 MR. DEYSACH: Now, we don't have -- I don't
23 think I've cleared up exactly when he -- he has said
24 within seventy-two hours that he does the
25 surveillance on the car, but he wasn't able to

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1 testify -- so far I haven't gotten to that point yet
2 -- when seventy-two hours before he actually did some
3 surveillance or when this buy was. We don't know if
4 it was one hour before or seventy-two hours before.
5 I actually think I do know when it was.

6 THE COURT: Well, I'll let you go down that
7 road.

8 MR. DEYSACH: All right. Thank you, Your
9 Honor.

10 All right. I think the question -- one
11 moment. And I do want to do it in an organized
12 fashion, Your Honor, so if I could just have a
13 moment.

14 Q. [Mr. Deysach] Okay. I think what I left off
15 with was that you told the judge that between whatever
16 surveillance you did that resulted in application of the
17 warrant and the pre-surveillance that you did on the car
18 the day of execution, that you hadn't seen that car at
19 all in that interim; is that correct?

20 A. We checked multiple times throughout the week.
21 That was the delay in serving the warrant.

22 Q. So you checked and the car was not there?

23 A. Yes. That's correct.

24 Q. Did you ever see anybody driving the car? I
25 think I may have asked that already.

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1 A. No, I have not.

2 Q. So you never saw the car in motion?

3 A. Never saw the car in motion, no, sir.

4 Q. You knew that the car was registered to
5 Derrick Fields when you applied for the warrant;
6 correct?

7 A. Yes, sir.

8 Q. All right. I was going to ask -- I indicated
9 to the judge I would ask the time and the nature of the
10 surveillance that you conducted. You said within the
11 last seventy-two hours before applying for the warrant.

12 Have you got a copy of the warrant up there?

13 A. Yes, sir, I do.

14 Q. I'm looking in number three: that within the
15 last seventy-two hours, the reliable and confidential
16 informant did conduct the control purchase of suspected
17 marijuana from B.J. within the burgundy Dodge Intrepid.

18 That's part of your affidavit; correct?

19 A. Yes.

20 Q. What was it about the informant that made him
21 reliable? Why did you -- why did you tell the judge
22 that he was reliable?

23 A. Because he cooperated with us; he --
24 everything that -- based on what he told us was true and
25 accurate; based on our own experiences and our own

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1 knowledge.

2 Q. What did he tell you that turned out to be --
3 that you were able to verify through an independent
4 source?

5 A. Reference his --

6 Q. Well, I guess anything that you know about him
7 that would make him reliable. You swore out that he's
8 reliable. I just want to make sure that he is. That's
9 really why I'm asking the question.

10 A. Well, this actually goes back -- I've actually
11 worked for the town of Bluffton for five years. Martha
12 Brown Circle -- I've made numerous arrests in those last
13 five years, all related to drug activity.

14 Q. Did they have to do with this particular CI,
15 confidential informant?

16 A. Not that particular CI, no, if that's what
17 you're asking me.

18 Q. Yeah. I'm asking about his reliability.

19 A. Yes, based on what he told us.

20 He was reliable on what I already -- had
21 already known.

22 Q. Okay. So you have information that you
23 already know?

24 A. Through my experience, yes.

25 Q. Right. And he verifies that information?

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1 A. Yes, he does.

2 Q. What information are you talking about?

3 A. Information regarding the defendant.

4 Q. Can you be specific?

5 A. That he's -- prior to meeting the CI, I had
6 already had knowledge of the defendant in possession of
7 a burgundy Dodge Intrepid selling narcotics.

8 Q. How did you -- how did you get that knowledge?
9 Is that personal knowledge, or knowledge that you got
10 from somebody else?

11 A. Through somebody else. Personal, through
12 somebody else, from other traffic stops where people
13 have -- where I've arrested them with drugs asking them
14 and they told me, yeah, I got it from --

15 Q. Were those people reliable?

16 A. I -- apparently.

17 Q. All right. So you told the judge about the
18 surveillance and the controlled buy and I want to make
19 sure that he understands exactly how that took place.

20 The -- you said that there is an audio and
21 video recording device; correct?

22 A. Yes.

23 Q. And I have a report that is from one of
24 your -- another member of the drug task force, from
25 September 29th, that says that that is when the CI was

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1 outfitted with the surveillance and is supposed to have
2 done the controlled buy. Do you think that's the date
3 that you're referencing as the seventy-two hours?

4 A. I believe that is, yes.

5 Q. All right. And so the audio that he has is on
6 his person; correct?

7 A. Correct.

8 Q. The video that he has is in his car; correct?

9 A. I believe so.

10 Q. And when he goes to do the controlled buy, the
11 controlled buy takes place outside of his car; correct?

12 A. Yes.

13 Q. And that the video that is in the car does not
14 capture the controlled buy at all; correct?

15 A. On that date I don't recall, but I don't
16 believe so.

17 Q. Okay. Do you know of any date where the
18 controlled buy is captured on the video?

19 A. The buy with the confidential informant, no.

20 Q. And then that leaves I guess an audio
21 recording device?

22 A. Yes.

23 Q. Now, are you or somebody else with the drug
24 task force monitoring that audio device in real time or
25 do you have to listen to it later?

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1 A. No. We monitor it in real times, yes, sir.

2 Q. And so you can hear a transaction taking
3 place; correct?

4 A. Yes.

5 Q. But you can't tell whether it's happening in
6 the Dodge Intrepid, or if it's with this defendant or
7 somebody else, because you don't have a visual
8 confirmation; correct?

9 A. Correct.

10 Q. And so you have to rely on what the
11 confidential informant tells you about the Dodge
12 Intrepid; correct? The only way you know that this
13 would have happened at the Dodge Intrepid is by what the
14 confidential informant tells you?

15 A. Yes. And there's -- yes.

16 Q. You know, I'm not trying to keep you from
17 answering a question.

18 It's true, also, that there were times when
19 you or somebody from the drug task force -- was it you
20 in the woods -- would sit in the woods and watch the
21 Dodge Intrepid?

22 A. Yes.

23 There was times I was actually on surveillance
24 in the woods, yes.

25 Q. And, in fact, that happened on September 29th?

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1 A. Yes, it did.

2 Q. But during that time that you are in the woods
3 is not the same time that the confidential informant
4 goes up to the car, is it?

5 A. It's prior to it.

6 Q. Okay. So you don't see the confidential
7 informant yourself, with your own eyes, go up to the
8 car?

9 A. On that date, no, I did not.

10 Q. And from that vantage point, you can't --
11 you're too far away to see the face of the person who's
12 sitting in the car; isn't that correct?

13 A. Yes.

14 Q. And the only way that you would know that the
15 -- the identity of the seller of the marijuana in that
16 case would be from what the informant tells you;
17 correct? The only way --

18 A. Yes. To -- yes.

19 Q. But the warrant itself is for the car, not for
20 the person; correct?

21 A. Yes.

22 Q. How many times did you check back to see
23 whether or not the car was located at Martha Brown
24 Circle before you actually served the search warrant?

25 A. I don't recall the exact number, but multiple

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- 1 times. Multiple times throughout that week.
- 2 Q. Separate days?
- 3 A. Yes.
- 4 Q. Okay. Now, the car is registered to an owner;
- 5 correct?
- 6 A. Yes.
- 7 Q. And it also has an address connected to that
- 8 owner? The registration has an address; correct?
- 9 A. Yes, it does.
- 10 Q. Did you ever check that address for the car?
- 11 A. Yes, I have.
- 12 Q. Okay. In the interim?
- 13 A. During that --
- 14 Q. Yes. While you had the --
- 15 A. During the --
- 16 Q. -- search warrant in hand and waiting to
- 17 execute it, did you check that address?
- 18 A. Yes, I did.
- 19 Q. Did you ever make a note of it?
- 20 A. No, I did not.
- 21 Q. Do you know what date you checked the address?
- 22 A. Sometime during that week. I don't --
- 23 Q. Do you know --
- 24 A. -- recall exactly.
- 25 Q. -- how many times?

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1 A. At least once. Maybe twice.

2 Q. Once or twice?

3 A. Yes.

4 Q. And I see that you -- you take the return back
5 to the magistrate on October 12th. Is that true? I
6 think the return is probably the back page.

7 A. [Whereupon, the witness reviews documents]

8 Q. [Mr. Deysach] Do you see the document I'm
9 referring to?

10 A. Yes, I do.

11 Q. And it's part of the search warrant that has
12 been -- that has been marked as State's Exhibit -- or
13 Court's Exhibit Number 1. And it's titled return. And
14 do you see that -- it says signature of officer
15 executing warrant. Is that your signature down there?

16 A. No, it's not. I did not return this warrant.

17 Q. Did you -- do you see the date of the
18 notarization there?

19 A. Yes.

20 Q. Do you know -- can you tell the judge what
21 date that is?

22 A. It looks like October 12th, 2010.

23 Q. Do you have any idea what time on October 12th
24 this would have gotten back to the judge?

25 A. I did not return the warrant, so I don't know.

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1 Q. But you know that when the judge signed the
2 warrant that it was in the morning of October 2nd?

3 A. Yes.

4 MR. DEYSACH: Begging the Court's indulgence.

5 THE COURT: Yes, sir.

6 [Whereupon, Mr. Deysach and Mr. Frazier
7 confer]

8 MR. DEYSACH: I don't have anymore questions
9 for this witness, Your Honor. If this is the only
10 witness --

11 I would have some argument, though.

12 THE COURT: Mr. Shipley, anything further for
13 this witness?

14 MR. SHIPLEY: Very, very briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SHIPLEY:

17 Q. You testified that through your experience you
18 learned of him dealing controlled substance out of his
19 vehicle. How many times do you think you heard that?

20 A. At this time I was with the Town of Bluffton
21 for five years. I heard it on at least a monthly basis.

22 Q. Were they all -- were they all describing a
23 Dodge Intrepid, a burgundy Dodge Intrepid?

24 A. Originally it started off with just the name.
25 And then towards then, getting to this, we learned that

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1 he -- it was a Dodge Intrepid, prior to me even going to
2 the drug task force.

3 Q. For these controlled purchases, was the CI --
4 when y'all were doing this, is the CI searched
5 beforehand?

6 A. Yes, he was.

7 Q. Were they searched to make sure they didn't
8 have any contraband on them?

9 A. Yes, they were.

10 Q. Were they issued funds with which to make the
11 purchase?

12 A. Yes, they were, and the funds were documented.

13 Q. Were they observed going to the location?

14 A. Yes.

15 Q. When they came back, were they also searched?

16 A. Yes, they were.

17 Q. At that time would the confidential informants
18 have narcotics on them --

19 A. Yes, they would, from what they purchases.

20 Q. Would there be an absence of some of the money
21 that you issued them?

22 A. Yes, there would.

23 Q. On these buys, where did the confidential
24 informant say that he bought the legal substances from
25 the defendant?

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1 A. He said he bought them from the defendant,
2 from a burgundy Dodge Intrepid, on Martha Brown Circle.

3 Q. Did the CI ever indicate to you that the drugs
4 were located themselves in the burgundy Dodge Intrepid?

5 A. Yes, he did.

6 MR. SHIPLEY: No further questions, Your
7 Honor.

8 THE COURT: All right. Thank you very much,
9 sir. You may step down.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Anything further, Mr. Shipley?

12 MR. SHIPLEY: Nothing from the State, Your
13 Honor.

14 THE COURT: All right. Mr. Deysach, I'll be
15 happy to hear from you, sir.

16 MR. DEYSACH: Thank you very much, Your Honor.

17 As we discussed while I was starting my
18 questioning, I would like to flesh out what I think
19 the issues are that are to be decided, before I start
20 arguing one way or the other, to be honest with you,
21 Your Honor.

22 I think there are more than one -- there is
23 more than one issue. Whether or not the search
24 warrant itself is based upon probable cause is one
25 issue. Whether or not it was properly executed and

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1 whether or not the search itself, even with the
2 warrant, was unreasonable for any reason I think is
3 an issue.

4 And that would be a constitutional -- a
5 federal and state constitutional unreasonableness
6 that could be I think analyzed for -- although I
7 think mainly I would be relying on the federal
8 constitution.

9 And so I think I will start with a discussion
10 of -- or an argument for why the search warrant
11 itself is not based upon probable cause. And while
12 the -- the problem with the search warrant, as I see
13 it, is that the information -- when the police
14 officer says that the confidential informant is
15 reliable, that that is not completely accurate to say
16 that somebody is reliable because they have told you
17 the same thing that somebody who is unreliable has
18 told you. And I believe that was what the testimony
19 was, that he told us something we already knew. The
20 officer said something to -- I'm paraphrasing.

21 THE COURT: Okay.

22 MR. DEYSACH: He told us something we already
23 knew so we believe that he was reliable. How did you
24 know. What was it that he told you. You know, that
25 somebody, or possibly Matthew Frazier, is selling

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1 drugs out of the Intrepid. How did you know that.
2 Because people we had pulled over before had told us.
3 But those people he admitted were not reliable.

4 So the only way that the reliability of this
5 confidential informant has been validated is by
6 unreliable people. And so there is not a quality to
7 the quantity of people telling -- unreliable people
8 can tell you a lot of the same things but it doesn't
9 make what they said reliable, that quantity does not
10 make -- just because two people have told you the
11 same thing, if neither one of them are really
12 reliable you haven't just made them both reliable.

13 And so the reliability of the person who makes
14 the purchase from the car is not -- it wasn't
15 testified to. And I see that if a magistrate is
16 signing the warrant, that he may not have gone
17 through the stern questioning or the type of back-
18 and-forth that I went through with Officer Carmany.
19 But he reads like, oh, well, Officer Carmany says
20 he's reliable, and goes ahead and signs the warrant.

21 That September 29th period where they see --
22 that September 29th period, that is really the only,
23 as I see it, non-stale information that is the basis
24 of the warrant. You know, during the redirect the
25 solicitor brought out, well, we kind of already knew,

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1 we've had information about the car in the past and
2 we kind of already knew. All that --

3 We don't have any time frame connected with
4 that and all of that information is stale. There's
5 nothing -- especially when we're talking about a car,
6 Your Honor, because cars are highly moveable, and
7 we're talking about drugs, and they're highly
8 consumable. And I have found case law that makes a
9 distinction between reasonableness of a search based
10 on what is being searched for. If it's something --
11 I think they make a distinction between evidence of
12 maybe an armed robbery, a gun, or clothing or
13 something like that, versus drugs which are highly
14 consumable and highly moveable. Which what they were
15 looking for was highly moveable.

16 And so for that reason, I don't believe that
17 the search warrant is based on probable cause, and
18 anything found as a result of the execution of that
19 search warrant should be suppressed.

20 I do have another argument that goes to the
21 execution of the search warrant but I don't know if I
22 want to start talking about that right now or -- I'll
23 let you direct me as to whether you want to handle
24 these arguments one at a time or if you want me to
25 continue consecutively.

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1 THE COURT: Well, let me go -- Mr. Shipley, if
2 you'll just listen carefully and take any notes you
3 need to take -- let me hear from the defense, let you
4 go through your arguments -- and then I'll let you
5 address them. All right?

6 MR. DEYSACH: So keep going, Your Honor?

7 THE COURT: Keep going.

8 MR. DEYSACH: All right. The question to be
9 answered, as I was saying, as far as the execution is
10 concerned, is not just whether or not there is a
11 search warrant in hand but still whether or not the
12 search is reasonable or unreasonable when it takes
13 place. Just because there is a search warrant does
14 not mean that a search is reasonable.

15 And the main problem with the search, as I see
16 it, is staleness; that they waited too long to serve
17 the warrant. Because we're not just talking about
18 the ten days. I mean, and they get -- you know, a
19 warrant says it must be served within ten days and an
20 inventory returned to the issuing magistrate.

21 Now, whether or not the return gets back to
22 the magistrate within ten days is not clear. And I
23 don't believe it actually was, because we know that
24 the warrant was applied for and signed on the morning
25 of the 2nd and that the --

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1 THE COURT: I'm going to stop you right there.

2 MR. DEYSACH: Okay.

3 THE COURT: You're not going to seriously sit
4 there and argue to me that the return was returned
5 later that afternoon so because it wasn't within the
6 morning time, it was outside the ten days?

7 MR. DEYSACH: I mean, I'm counting ten days as
8 on a calendar --

9 THE COURT: I'm counting ten days from October
10 the 2nd to October the 12th.

11 So if that's your position, it's noted. That
12 carries no weight with me.

13 MR. DEYSACH: All right.

14 I think that you can agree -- obviously -- I
15 think reasonable minds can differ on that --

16 THE COURT: Sure. I agree.

17 MR. DEYSACH: -- Your Honor, and I know that
18 you understood my argument on that.

19 But I think at the very least we can agree
20 that that return seems to get back, at best, under
21 the wire. And that's I think seeing it as you see
22 it, that it comes very close to the deadline. At
23 least -- I mean, because we don't know what time it
24 gets back on the 12th. You know what I mean? If it
25 came -- I think what you're saying, if it comes back

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1 midnight on the 12th, we're still within the ten days
2 and that it looks like it's under the wire.

3 THE COURT: If you could show me case law that
4 -- I don't think you're going to find any case law
5 that says if a return comes in outside that ten-day
6 period, the warrant is invalid. That ten-day period
7 is a guide. It's not etched in stone. I've seen
8 cases where the return came back thirteen, fourteen
9 days afterwards and it's upheld. So I think you
10 might be -- you might be mistaken. But you might
11 find some case law that would support that. I don't
12 know. But my understanding is is what I just shared
13 with you.

14 However, but I'm -- even going back and
15 looking at it in a more restrictive way, I don't know
16 that it means -- that ten days means ten days to the
17 minute so that if the warrant was issued at 11:58 and
18 you brought the warrant -- you brought the return
19 back at one o'clock in the afternoon, you've missed
20 it.

21 MR. DEYSACH: Right.

22 I think there's two issues. One is the one
23 that we've already covered about it being the day,
24 and the other is so what if it is a little bit late.
25 I don't know if I understand what you're saying. So

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1 what if it is a little bit past the ten days, what is
2 -- it doesn't matter.

3 THE COURT: No. No, no. Here's what I'm
4 saying. In this case we have a return that was
5 returned on the tenth day. I was hearing your
6 argument was that we know the warrant was issued in
7 the morning but we don't know when the return was and
8 the return could have been returned later that
9 evening so therefore it's outside the ten days.

10 Is that correct?

11 MR. DEYSACH: I am making that argument.

12 THE COURT: Okay.

13 MR. DEYSACH: And I think that I do want to go
14 ahead and maybe state my case. You know, you've
15 already told me which way you're ruling --

16 THE COURT: No, no. I --

17 MR. DEYSACH: -- but I need to say for the
18 record what --

19 THE COURT: Yeah. I don't want you to --

20 MR. DEYSACH: -- what the result -- what the
21 remedy would be if it were outside the ten days.

22 THE COURT: I don't -- what I just shared with
23 you -- I didn't intend to cut you off. I do want you
24 to go ahead and make your argument.

25 MR. DEYSACH: Thank you very much, Your Honor.

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1 And I appreciate that.

2 I think that we -- the discussion did veer to,
3 okay, so even if it were after ten days, is this --
4 it's not a constitutional ten days, there's nothing
5 in the constitution that says ten days and so would
6 the exclusionary rule apply, because even if the ten
7 days weren't complied with to the minute -- and I do
8 believe that if it were -- if it were to be seen my
9 way, that any type of presumption would tip in the
10 favor of my client that it did happen; if they can't
11 tell me what time of day it would have happened, that
12 that presumption would be in favor of my client. But
13 I don't want to spend too much time on that, Your
14 Honor.

15 But if it were outside the ten days, that it
16 is a ministerial duty that I would have to show some
17 prejudice to my client that resulted. And I think
18 there are -- I mean, there is prejudice because, you
19 know, we're talking about a car that -- because of
20 the -- because of the movability of the car, the
21 highly consumable nature of what's being searched
22 for, that --

23 And by the same token, Your Honor, I don't
24 think just because a warrant is served within ten
25 days that it's automatically reasonable.

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1 THE COURT: Yeah. Correct.

2 MR. DEYSACH: So, you know, the ten days is
3 the ten days. And, in fact, you know, I found case
4 law not within -- not mandatory case law, which at
5 least gives us the rule. And I have found --

6 Let me grab my file.

7 [Whereupon, Mr. Deysach reviews documents]

8 MR. DEYSACH: The way the -- the way the
9 research went was to find a South Carolina case that
10 cited a Fourth Circuit case that cited some other
11 cases from another circuit, not the Fourth and that
12 even a Fourth Circuit case would be mandatory upon
13 Your Honor. But that's really the only cases that I
14 had to really -- you know, there's not a lot of case
15 law to guide us and so that I did go outside of
16 mandatory case law.

17 And I found U.S. v. -- I put Lemons. I put
18 Lemon but I thought I remember it being Lemons, at
19 527 F2nd 662, which is a 6th circuit case from '75.
20 And that's basically the case that's cited -- a case
21 that's cited in South Carolina where there's a five-
22 day delay. Okay? There's a five-day delay and they
23 do allow the search -- the stuff to come in, the
24 items to come in. But it does say that: the Court
25 does not condone a delay in the magnitude of what

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1 occurred here and that the only reason they allowed
2 the delay in that case was because the police wanted
3 to conceal the identity of the CI.

4 And so I think what that case stands for is
5 the fact that five days is a long time between
6 getting probable cause and executing the warrant. I
7 think that we wouldn't have the ten-day rule if there
8 wasn't some acknowledgment by the people who make
9 that rule that ten days is a long time between
10 issuance of a warrant and execution of a warrant.
11 Because probable cause is time sensitive. And so the
12 argument, I've already kind of stated it, is that
13 this probable cause is particularly time sensitive
14 because it's a car and it is highly consumable
15 objects that are easily moved, you know, easily --
16 small, easily concealed, easily moved.

17 And so for that reason, I believe that the
18 execution of the warrant was stale, and without
19 probable cause, and unreasonable.

20 THE COURT: All right, sir. Thank you very
21 much.

22 Mr. Shipley.

23 MR. SHIPLEY: Just to address the ten-day
24 return, Your Honor, at first.

25 I mean, here could be a showing of prejudice

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1 for any delay to invalidate a warrant and there
2 hasn't been any showing that by being a few hours
3 late the defendant has been prejudiced in any way.
4 And even if he were, there's a good-faith exception
5 recognized in the Supreme Court, United States v.
6 Leon.

7 As to probable cause, Your Honor, I've got
8 several cases in my notes.

9 May I approach?

10 THE COURT: Yes.

11 [Whereupon, Mr. Shipley proffers documents to
12 the Court]

13 THE COURT: Thank you.

14 MR. SHIPLEY: But State v. Dupree appears more
15 than anything. That pretty much covers everything:
16 probable cause, addressing the reliability of the
17 confidential informant, on down. And the facts are
18 very similar to this case and the search warrant is
19 based on a controlled buy. You know, it goes through
20 standard probable cause that it's not -- that it
21 needs to be sufficient to support a conviction or a
22 verdict of guilty. It's just enough to induce an
23 officer, a prudent officer, that a crime has been
24 committed and that probable cause is not --
25 absolutely certainty, search warrant based on -- the

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1 search warrant is based on -- searches based on
2 warrants are given judicial deference where sometimes
3 a marginal search is -- meets a realistic standard of
4 probable cause will be justified.

5 Here we had -- in this case we had -- the
6 officer testified through the month of December there
7 were controlled buys done at this location and
8 observed by law enforcement. That's an ongoing
9 course of conduct that was independently verified by
10 the officers. You had a controlled buy done within
11 seventy-two hours of obtaining the search warrant,
12 same -- you know, the same facts. They had been
13 searched beforehand, he buys from the defendant, BJ,
14 out of a burgundy Dodge Intrepid.

15 And this case, Dupree, cites tons of other
16 cases, other jurisdictions, as well, where a
17 controlled buy observed by law enforcement alone is
18 enough probable cause for a search warrant.

19 You know, a controlled buy is independent
20 verification of facts and evidence, credibility and
21 trustworthiness of the informant. An informant's buy
22 of drugs alone can constitute probable cause
23 sufficient for a magistrate to issue a search
24 warrant. And anywhere ever there's some physical
25 proximity and active participation by a law

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1 enforcement in the buy, then the police corroboration
2 is -- it's part of the informer's operation and the
3 risk of any falsehood has been sufficiently
4 diminished.

5 And another case that I did not hand up to you
6 is State v. Rutledge. It says only when a search
7 warrant is based solely on information provided by a
8 confidential informant may a search warrant be found
9 invalid. And that's not the case here. He testified
10 he had tips from random people he had met throughout
11 his experience as an officer that had been buying
12 from him.

13 They had multiple controlled buys from him
14 throughout the month of September. One was seventy-
15 two hours. He said that these were observed by law
16 enforcement, that they were in the bushes watching
17 them do these hand-to-hand transactions. These are
18 all things that the confidential informant had told
19 them. It was also independently verified by law
20 enforcement.

21 And I would just rest on the fact that this --
22 the Court of Appeals of South Carolina said in this
23 case that a controlled buy, which is the purchase of
24 drugs observed and controlled by law enforcement
25 alone, can cause -- can constitute probable cause.

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1 And we have more than that in this case. We have
2 independent observations of the defendant doing hand-
3 to-hand transactions and we also have tips from
4 citizens in the area also saying that he's dealing
5 drugs out of his vehicle.

6 THE COURT: All right.

7 MR. DEYSACH: Just briefly, Your Honor, if I
8 might.

9 THE COURT: All right.

10 MR. DEYSACH: I would disagree with some of
11 the characterizations of what the evidence before
12 Your Honor is, that the solicitor just made, as far
13 as I feel that I heard the solicitor indicate that
14 these controlled buys were controlled to a greater
15 degree than what the officer testified to; you know,
16 that they send a guy in there, he comes back out
17 with the marijuana and with the money gone.

18 But whether -- you know, I think the solicitor
19 indicated that the police were watching this take
20 place as it occurred. I don't think there is any
21 testimony of that. In fact, on the 29th that we're
22 talking about they said, we don't actually see the CI
23 go up to the car. I think the officer said, I don't
24 see the face of the person who's supposed to be
25 sitting in the car on that day of the 29th that we're

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1 basing that surveillance on. And while they see what
2 they call hand-to-hand transaction, they don't see
3 any drugs or any money from that vantage point.

4 And so the idea that you could -- it almost
5 sounds as though the solicitor was arguing that --

6 THE COURT: Well, correct me if I'm wrong.
7 We're talking about probable cause here, now. We're
8 not talking about proof beyond a reasonable doubt.
9 And from what I gathered from the testimony, the
10 officers observed folks going into the vehicle, there
11 being some motion and movement of exchange; correct?
12 Didn't see drugs, didn't see money, but numerous
13 times of people going in, there being some exchange
14 going on, and leaving, and based on their information
15 and based on their experience as law enforcement
16 officers and dealing with drugs and stuff.

17 You know, again, we're talking probable cause.
18 They're not -- the standard for them is not to prove
19 beyond a reasonable doubt that a transaction
20 occurred. This is probable cause.

21 So I'm going to deny your motion to suppress.
22 I believe there has been substantial evidence shown
23 -- or substantial testimony to support probable
24 cause. From what I gathered, that law enforcement
25 had information that drugs were being distributed out

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1 of this particular vehicle. But that -- they didn't
2 seek a warrant based on that. Based on that type of
3 information, they began their investigation. And
4 part of that was to set up through a confidential
5 informant to make buys to determine whether or not
6 there were, in fact, dealings occurring out of that
7 vehicle.

8 There were several buys. And I agree with
9 you, Mr. Deysach, regarding the -- I don't think the
10 officer's testimony was that they actually saw
11 visually the transactions hand-to-hand between their
12 informant and the defendant. But they did send them
13 in there. And the information gathered from that
14 informant matched the information, the intelligence,
15 they had been gathering, that the last buy that they
16 made was done within seventy-two hours of going to
17 seek the warrant.

18 The warrant was based on the affidavit of the
19 officer who was actually involved in the
20 transactions. This wasn't a situation where the
21 officer involved got another officer to go to the
22 magistrate and get a warrant. The officer that was
23 involved in these transactions was actually the one
24 who prepared the affidavit, went to the magistrate,
25 got the signature from the magistrate based on the

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1 probable cause that I believe was appropriate, and
2 then they set up on the area to find an opportunity
3 to execute the warrant.

4 They executed the warrant within ten days.
5 They executed the warrant on the ninth day after the
6 issuance of the warrant, found whatever it was that
7 they found, did an inventory, did a return, and the
8 next day, which would have been the tenth day, then
9 that return was returned to the magistrate.

10 And it just -- it does appear that all of that
11 was done properly within the scope of the -- and I'm
12 going to respectfully deny the motion to suppress.

13 All right. And certainly would note any
14 exception that the defense would have to that ruling,
15 obviously.

16 All right. What else do we need to take up,
17 then, before?

18 Let me ask y'all this. Other matters -- I
19 know we've got things we've got to take up. But is
20 it anything that needs to be done prior to jury
21 selection?

22 MR. DEYSACH: I did have one thing. I think
23 the Jackson v. Denno is probably something that
24 doesn't need to be done before then.

25 THE COURT: Right.

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1 MR. DEYSACH: I did have one issue that I
2 wanted to bring up before jury selection, which
3 includes the reading out of the indictments that the
4 defendant is charged with. And I do have a little
5 question in my mind about the ripeness of this
6 motion, but I do want to bring it up, Your Honor.

7 Mr. Frazier is charged with possession of a
8 stolen pistol. And as I look at the witness list
9 that was been -- that has been provided to me from
10 the solicitor, I do not see anybody who would really
11 be able to testify as to whether or not the pistol
12 was stolen. And so if this indictment is read out to
13 the jury and they hear that he's accused of
14 possession of a stolen pistol it's not something I
15 would like them to hear, if there really isn't a way
16 at all that the solicitor has planned on being able
17 to show that the weapon is stolen at all. And that
18 is just a concern I had before jury selection.

19 THE COURT: Are y'all proceeding on that
20 charge, solicitor?

21 MR. SHIPLEY: Yes, Your Honor.

22 My plan was to elicit that testimony through
23 the case officer, Corporal Rodriguez, who was
24 informed by dispatch, the day of, that it was
25 reported -- it came back stolen. And I intended

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1 hopefully to introduce a document showing that it
2 was, in fact, that serial number that comes back as
3 the pistol being stolen.

4 MR. DEYSACH: Your Honor, I haven't received
5 this document, I don't believe, and it would be part
6 of what's discoverable, obviously, and so I would
7 object to it on that ground.

8 THE COURT: Well, here's -- let me say this.
9 They're proceeding on that indictment. I have to
10 inform the jury of the charges that the defendant is
11 facing. If the State doesn't present any evidence to
12 support that, that just really bodes well for the
13 defense where you can argue to the jury that they
14 have sought conviction on charges that they have no
15 proof of, based on how the trial goes.

16 So I think for purposes of jury selection,
17 whatever charges the State is proceeding on, I have
18 to inform the jury of those charges. So I don't know
19 that I quite -- I'm guessing your motion was that for
20 me not to read out the possession of a stolen pistol
21 charge.

22 MR. DEYSACH: Yes.

23 Like I said, you know, I think it's something
24 that would typically come up at a directed verdict
25 motion. And I would bring it up at a directed

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1 verdict motion. But when I saw this witness list I
2 said, well, how in the world are they going to be
3 able to tell that this was stolen from the woman in
4 Savannah, who reported it to the police as stolen,
5 who then puts it in NCIC, and then dispatch tells
6 Rodriguez that it's stolen, seem like hearsay on
7 hearsay on hearsay with, you know, a document relied
8 upon that hasn't been turned over.

9 And so my preference would be not to have it
10 read out. If it's not a ripe issue, I understand
11 that, Your Honor. But that's my preference.

12 THE COURT: Let me -- but let me say this
13 while we're on that issue.

14 Solicitor, if you intend to admit any
15 information into this case that has not been turned
16 over, that's an issue so you had better turn over to
17 the defense everything that you've got. If that
18 hasn't been done, that needs to be done.

19 My reason for asking about things that need to
20 be taken up is that I don't want -- the jury is out
21 there waiting to come in. I would like to at least
22 get this jury empaneled so we can excuse those that
23 aren't selected, and then we can take up motions and
24 things like that.

25 So are we at a stage that we can at least draw

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1 a jury? And I realize there are still matters that
2 we need to take up.

3 MR. SHIPLEY: I can't think of anything on the
4 State's behalf, Your Honor.

5 MR. DEYSACH: That was my only issue, Your
6 Honor.

7 [Whereupon, the Court and the clerk of court
8 confer]

9 [Off the record momentarily]

10 [Whereupon, a recess is taken from 10:28 a.m.
11 to 10:38 a.m.]

12 [Whereupon, the jury panel enters the
13 courtroom at 10:39 a.m.]

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1 JURY VOIR DIRE

2 [Whereupon, the jury panel is duly sworn by
3 the clerk of court]

4 THE COURT: I want to welcome y'all back. We
5 -- the trial that I selected yesterday we finished
6 that and we have another matter, so I want to welcome
7 you back today and at this time would recognize the
8 solicitor for the next case that the State wishes to
9 try.

10 MR. SHIPLEY: Thank you, Your Honor. May it
11 please the Court.

12 THE COURT: Yes, sir.

13 MR. SHIPLEY: The State calls the State of
14 South Carolina vs. Matthew Frazier. This is
15 indictment numbers 2011-GS-07-2189, 2190, 2191, 2193,
16 2194, 2195, and 2197.

17 THE COURT: Thank you, sir.

18 All right. Ladies and gentlemen, you've heard
19 the solicitor call the case of the State of South
20 Carolina vs. Matthew Frazier. Very similar to what
21 we did on Monday, I'm going to go over these
22 indictments with you. But before I do that I want to
23 impress upon you again, as I did on Monday, that to
24 these charges Mr. Frazier has pled not guilty. And
25 that plea of not guilty does two things: it places

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1 the presumption of innocence upon him; and it also
2 places the burden of proof on the State.

3 Now, I'm going to go over these indictments
4 with you. What you need to understand, as I said on
5 Monday, is that these indictments are simply the
6 pieces of paper that bring this case into court. The
7 allegations that are contained in these indictments
8 which I'm going to review with you, that there's
9 nothing in these indictments that would be evidence
10 of the allegations that are contained here. This is
11 merely the allegations or the charges that the State
12 has brought against Mr. Frazier to which he has pled
13 not guilty.

14 Indictment 2010-GS-07-2189 is a charge of
15 trafficking in cocaine in an amount of over ten grams
16 but less than twenty-eight grams. And the
17 allegations of that indictment are that in Beaufort
18 County, South Carolina, on or about October the 11th
19 of 2010, that the defendant, Matthew Frazier,
20 unlawfully and knowingly did sell, manufacture,
21 cultivate, deliver, purchase, or bring into this
22 state, or did provide financial assistance, or
23 otherwise aid, abet, attempt, or conspire to sell,
24 manufacture, cultivate, deliver, purchase, or bring
25 into this state, or did possess or attempt to posses,

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1 a controlled substance or a controlled substance
2 analog, to wit, cocaine in excess of ten grams, in
3 violation of section 44-53-370 of the South Carolina
4 Code of Laws as amended.

5 Indictment 2010-GS-07-2190 charges Mr. Frazier
6 with the offense of possession with intent to
7 distribute marijuana. And that allegation is that in
8 Beaufort County, South Carolina, on or about October
9 the 11th, 2010, the defendant, Matthew Frazier,
10 unlawfully did possess with intent to dispense,
11 distribute or deliver a quantity of marijuana, which
12 is a controlled substance under the provisions of
13 section 44-53-110 et seq of the South Carolina Code
14 of Laws as amended, or did otherwise aid, abet,
15 attempt, or conspire to manufacture, distribute,
16 dispense, or deliver marijuana, all in violation of
17 section 44-53-370 of the South Carolina Code of Laws
18 as amended.

19 Indictment 2010-GS-07-2191 charges Mr. Frazier
20 with possession with intent to distribute cocaine
21 base, or what is commonly referred to as crack
22 cocaine. And that allegation is that in Beaufort
23 County, South Carolina, on or about October the 11th,
24 the defendant, Matthew Frazier, did manufacture,
25 distribute, dispense, deliver, purchase, or did aid,

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1 abet, attempt, or conspire to manufacture,
2 distribute, dispense, deliver, or purchase, or did
3 possess with the intent to distribute, dispense,
4 deliver, a controlled substance or a controlled
5 substance analog, to wit, cocaine base, or crack
6 cocaine, in violation of section 44-53-375 of the
7 South Carolina Code of Laws as amended.

8 Indictment 2010-GS-07-2193, 2194 and 2195 --
9 I'm going to do those as a group, ladies and
10 gentlemen, because each of those indictments is a
11 charge of possession with intent to distribute a
12 controlled substance within the proximity of a
13 school, park, or a playground. And the reason I'm
14 going to do these as a group is because you've heard
15 me in relating to you these allegations, the
16 trafficking in cocaine, the possession with intent to
17 distribute marijuana, and the possession with intent
18 to distribute crack cocaine, each of these
19 indictments relating -- the proximity charge relate
20 to those charges, and rather than go through all
21 three of those separately -- because they allege the
22 same thing.

23 And essentially what these indictments allege
24 is that with regard to each of those controlled
25 substances that I've already read to you, these

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1 indictments allege that in Beaufort County, South
2 Carolina, on or about October the 11th, 2010, the
3 defendant, Matthew Frazier, unlawfully did
4 distribute, sell, purchase, manufacture, or possess
5 with intent to distribute crack cocaine, cocaine, and
6 marijuana, all which are controlled substances and
7 that that was done within a half-mile radius of the
8 grounds of Oscar Frazier Park, all which are in
9 violation of Section 44-53-445 of the South Carolina
10 Code of Laws as amended.

11 And the final charge or allegation is that on
12 2010-GS-07-2197, and that is a charge of possession
13 of a weapon during the commission of a violent crime.
14 And that allegation is that in Beaufort County, South
15 Carolina, on or about October the 11th of 2010, the
16 defendant, Matthew Frazier, did possess a firearm or
17 visibly display what appeared to be a firearm during
18 the commission or attempted commission of trafficking
19 in cocaine, which is a violent crime under the South
20 Carolina code, which is in violation of Section 16-
21 23-490 of the South Carolina Code of Laws as amended.

22 Now, I read those allegations to you, ladies
23 and gentlemen, and I remind you that to each of those
24 charges, the defendant, Mr. Frazier, has pled not
25 guilty to those charges and that places the burden of

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1 proof on the State to prove the elements of these
2 charges.

3 But I read those to you so that I can ask you
4 this question. Is there any member of the jury panel
5 who knows anything about this case or about these
6 charges that I have just read to you? If so, please
7 stand.

8 [Whereupon, there is no response]

9 THE COURT: Thank you. There are none.

10 Now, ladies and gentlemen, I'm going to get
11 the attorneys to introduce themselves to you.

12 Mr. Shipley, if you would, please.

13 MR. SHIPLEY: Thank you, Your Honor.

14 My name is Bill Shipley. I'm with the
15 solicitor's officer here in Beaufort County. I'm a
16 prosecutor with criminal cases. Sitting with me is
17 Meredith Bannon. She's also with the solicitor's
18 office. And this is Jason Rodriguez. He's the case
19 officer on this case, with the Beaufort County
20 Sheriff's Department.

21 THE COURT: Thank you very much, sir.

22 Is there any member of the jury panel who is
23 related by blood, connected by marriage, or who has
24 any close business or personal relationship with or
25 who has been represented by or prosecuted by Mr.

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1 Shipley or any member of the solicitor's office? If
2 so, please stand.

3 [Whereupon, there is no response]

4 THE COURT: Thank you. There are none.

5 Mr. Deysach, if you would. And after you
6 introduce yourself, introduce your client, please.

7 MR. DEYSACH: Yes, Your Honor. Thank you very
8 much.

9 My name is Ian Deysach and this is my client,
10 Matthew Frazier.

11 Matthew, stand up.

12 [Whereupon, Mr. Frazier complies]

13 THE COURT: All right. Thank you very much,
14 gentlemen.

15 Ladies and gentlemen, is there any member of
16 the jury panel who is related by blood, connected by
17 marriage, or who has any close business or personal
18 relationship or who has been represented by Mr.
19 Deysach? If so, please stand.

20 [Whereupon, there is no response]

21 THE COURT: Thank you. There are none.

22 Is there any member of the jury panel who is
23 related by blood, connected by marriage, or who has
24 any close business or personal relationship with Mr.
25 Matthew Frazier? If so, please stand.

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1 [Whereupon, there is no response]

2 THE COURT: Thank you. There are none.

3 Let me see. I need a list of possible
4 witnesses.

5 MR. SHIPLEY: I have an extra one, Your Honor.

6 [Whereupon, Mr. Shipley proffers documents to
7 the Court]

8 THE COURT: Thank you very much, sir.

9 Ladies and gentlemen, I'm going to call out
10 these names, as you recall from Monday. The question
11 that I just asked you about Mr. Frazier is the
12 question that I would ask you regarding any of these
13 possible witnesses, and that is if you are related by
14 blood, connected by, marriage, or have any close
15 business or personal relationship with any of these
16 folks.

17 There are several names here and I would ask
18 that you -- if that question applies, if you would
19 please stand. But as I said earlier, continue to
20 listen because it may be that you know more than one
21 of the individuals.

22 These are possible or potential witnesses who
23 may testify during the course of this trial: Lance
24 Corporal William Squires, Corporal James -- is it --

25 MR. SHIPLEY: Carmany, Your Honor.

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1 THE COURT: -- Carmany, Corporal Jason
2 Rodriguez, Corporal Rich Menendez, Corporal Deputy
3 James Padgett, Eileen Rios, Lieutenant Renita Berry.

4 Any member of the jury panel related by blood,
5 connected by marriage, or have any close business or
6 personal relationship with any of those folks?

7 [Whereupon, there is no response]

8 THE COURT: Thank you. There are none.

9 Ladies and gentlemen, is there any member of
10 the jury panel or member of your immediate family who
11 is now or in the past been a member of or worked for
12 a law enforcement agency, whether it be state,
13 federal or military? If so, please stand.

14 All right. And I'll start on this end over
15 here.

16 Ma'am, your name, please.

17 MS. PIPAS: Barbara Pipas.

18 THE COURT: All right.

19 MS. PIPAS: 175.

20 THE COURT: All right. Ms. Pipas, a member of
21 your family, ma'am?

22 MS. PIPAS: My brother, who's a deputy sheriff
23 in Illinois.

24 THE COURT: All right, ma'am. The fact that
25 you have that relationship in your family, would that

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1 in any way affect your ability to be fair and
2 impartial, ma'am?

3 MS. PIPAS: No.

4 THE COURT: Thank you very much. You may have
5 a seat.

6 Sir, your name, please.

7 MR. SALEMI: George Salemi, number 195.

8 THE COURT: All right. Yes, sir.

9 MR. SALEMI: My son was an assistant state's
10 attorney and an assistant attorney general in
11 Illinois.

12 THE COURT: All right, sir. The fact that
13 your son has held that position, sir, would that in
14 any way affect your ability to be fair and impartial,
15 giving both the State and the defense a fair trial?

16 MR. SALEMI: No.

17 THE COURT: Thank you very much. You may have
18 a seat, sir.

19 Yes, sir, please?

20 MR. PROSSER: Dennis Prosser, 178.

21 THE COURT: All right, sir.

22 MR. PROSSER: My daughter was a -- formerly a
23 member of the Beaufort County Sheriff's Department.
24 She's now an active-duty police officer with
25 Charleston Police Department.

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1 My son-in-law was a reserve officer with
2 Charleston Police Department.

3 I do have some information about my daughter.
4 May I approach a minute?

5 THE COURT: Yes, sir. Sure.

6 [Whereupon, the Court, Mr. Prosser, and
7 counsel confer]

8 THE COURT: Well, let's go ahead and err on
9 the side of caution. I'm going to excuse you from
10 this trial. Okay?

11 MR. PROSSER: Thank you.

12 THE COURT: Thank you. Thank you very much,
13 sir.

14 Juror 178.

15 MS. PIPAS: May I ask you something?

16 THE COURT: Yes, ma'am.

17 MS. PIPAS: Barbara Pipas. I don't know if I
18 misunderstood the question. But my daughter was a
19 former public defender, as was her fiancé, and I
20 didn't know if --

21 THE COURT: Well, and, you know, you did not
22 misunderstand. And that's the -- because some people
23 don't always relate lawyers to law enforcement but
24 lawyers that practice criminal law are in that.

25 But would that in any way affect your ability?

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1 MS. PIPAS: No, it would not.

2 THE COURT: Thank you very much, Ms. Pipas.

3 MR. DEYSACH: I'm sorry, Your Honor. I didn't
4 get her juror number.

5 THE COURT: I'm sorry. It's juror number 175.

6 MR. DEYSACH: Thank you.

7 THE COURT: And your daughter and son-in-law
8 are public defenders in --

9 MS. PIPAS: Were public defenders --

10 THE COURT: Or were public defenders --

11 MS. PIPAS: -- in the state of Florida.

12 THE COURT: In Florida. Okay. Thank you very
13 much, ma'am.

14 If we start here. Yes, sir, your name,
15 please?

16 MR. ZIMMERMAN: David Zimmerman, juror number
17 249.

18 THE COURT: All right, sir.

19 MR. ZIMMERMAN: I work for Beaufort County
20 facility management and this court building, along
21 with the law enforcement center, detention center.
22 Those are my travels as the day of a normal workweek.
23 I know, you know, several of people who --

24 THE COURT: Several of the officers in the
25 area?

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1 MR. ZIMMERMAN: Yes, sir.

2 THE COURT: Well, Mr. Zimmerman, would that in
3 any way affect your ability to be fair and impartial
4 if you were selected on this panel?

5 MR. ZIMMERMAN: Absolutely not.

6 THE COURT: Thank you very much, sir.

7 Yes, ma'am. Your name, please.

8 MS. HAIR: Wendy Hair, number 86.

9 THE COURT: All right, Ms. Hair.

10 MS. HAIR: I worked for the Hilton Head
11 Magistrate Office for eleven years, and I also have
12 dispatched for Hardeeville Police Department.

13 THE COURT: All right. Ms. Hair, the fact
14 that you've had those experiences with law
15 enforcement, would that in any way affect your
16 ability to be fair and impartial if you were selected
17 on this panel?

18 MS. HAIR: No, sir.

19 THE COURT: Thank you, ma'am. You may have a
20 seat.

21 Yes, ma'am?

22 MS. FRIPP: Dalphine Fripp, juror 65.

23 My husband is a deputy sheriff in Beaufort
24 County.

25 THE COURT: All right. And, Ms. Fripp, the

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1 fact that your husband has that employment, would
2 that in any way affect your ability to be fair and
3 impartial, ma'am?

4 MS. FRIPP: No.

5 THE COURT: Thank you, ma'am. You may have a
6 seat.

7 Sir?

8 MR. TATUM: John Tatum, 211.

9 For two years I clerked with the Attorney
10 General's Office in law school.

11 THE COURT: All right, sir. And, Mr. Tatum,
12 would that experience in any way affect your ability
13 to be fair and impartial if you were selected?

14 MR. TATUM: No, it would not.

15 THE COURT: Thank you, sir.

16 Yes, ma'am?

17 MS. ROBERTS: Mary Roberts, 189.

18 My brother-in-law and his wife were both
19 police officers and detectives in New Haven,
20 Connecticut, before they moved to Beaufort.

21 THE COURT: All right. Ms. Roberts, would
22 that in any way affect your ability to be fair and
23 impartial, giving both the State and the defense a
24 fair trial?

25 MS. ROBERTS: No, sir.

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1 THE COURT: Thank you very much, ma'am. You
2 may have a seat.

3 Yes, sir?

4 MR. COKER: My best friend is a police officer
5 in Greenville, South Carolina, as well as my uncle is
6 a retired police officer in Hartsville, South
7 Carolina.

8 THE COURT: All right. And, sir, your name?

9 MR. COKER: Richard Coker, juror number 40.

10 THE COURT: All right, Mr. Coker. And would
11 those relationships in any way affect your ability to
12 be fair and impartial?

13 MR. COKER: No, sir.

14 THE COURT: Thank you, sir. You may have a
15 seat.

16 Yes, sir?

17 MR. EVANS: Daniel Evans, juror 56.

18 THE COURT: All right, Mr. Evans.

19 MR. EVANS: I have a prior history of acting
20 as drug-court coordinator in New York State and for a
21 short time here in Beaufort County operating --

22 THE COURT: All right, sir. And would that in
23 any way affect your ability to be fair and impartial,
24 giving both the State and the defense a fair trial?

25 MR. EVANS: Absolutely not, sir.

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1 THE COURT: Thank you very much, sir.

2 Ma'am, your name?

3 MS. CAMPBELL: My name is Cheryl Campbell,
4 juror number 26.

5 My sister-in-law, Traci Campbell, works for
6 the public defender's office.

7 THE COURT: All right. And, Ms. Campbell, the
8 fact that your sister-in-law is employed with the
9 public defender's office, would that in any way
10 affect your ability to be fair and impartial?

11 MS. CAMPBELL: No.

12 THE COURT: Thank you very much, ma'am. You
13 may have a seat.

14 Is there any member of the jury panel related
15 by blood or connected by marriage or has any close
16 family member who is employed either by the Attorney
17 General's Office or by any other solicitor's office,
18 whether it be this circuit or any circuit? If so,
19 please stand.

20 [Whereupon, there is no response]

21 THE COURT: Thank you. There are none.

22 Is there any member of the jury panel who is a
23 financial contributor or a volunteer contributor,
24 whether it be through finances or whether it be
25 through your time, that you are a contributor to any

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1 group that has as its primary concern the promotion
2 of law enforcement or victims' rights? Some of these
3 groups may include like for example the Fraternal
4 Order of Police, the South Carolina Trooper's
5 Association, MADD, Mothers Against Drunk Driving,
6 CAVC, Victims Against Violent Crimes. Any of those
7 types of organizations: are you either a contributor
8 either financially or through volunteer of your time?
9 If so, please stand.

10 [Whereupon, there is no response]

11 THE COURT: Thank you. There are none.

12 Is there any member of the jury panel who has
13 ever appeared as a witness in a criminal trial,
14 whether it be a witness for the State or a witness
15 for the defense? If so, please stand.

16 [Whereupon, there is no response]

17 THE COURT: Thank you. There are none.

18 Is there any member of the jury panel or a
19 member of your immediate family who has been a victim
20 of a violent crime? If so, please stand.

21 All right. And I think this is Ms. Hair; is
22 that correct? It's juror number 86.

23 Ms. Hair, yourself or a member of your family?

24 MS. HAIR: Myself.

25 THE COURT: The fact that you've had that

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1 experience, would that in any way affect your ability
2 to be fair and impartial if you were selected as a
3 member of this panel?

4 MS. HAIR: No, sir.

5 THE COURT: Thank you, Ms. Hair. You may have
6 a seat.

7 Is there any member of the jury panel -- and I
8 kind of asked you this on the front end but this will
9 -- I asked you earlier if there's anyone who knows
10 anything about this case. Has any member of the jury
11 panel heard anything about this case, whether you've
12 heard it through the media or through another
13 individual, or who knows anything about this case?
14 If so, please stand.

15 [Whereupon, there is no response]

16 THE COURT: Thank you. There are none.

17 Is there any member of the jury panel who has
18 a family member who either has suffered or suffers
19 from some level of drug addiction or some type of
20 addiction? If so, please stand.

21 All right. And I think -- Mr. Coker; is that
22 correct?

23 MR. COKER: Yes, sir.

24 THE COURT: That's juror number 40. And
25 you've got that in your family, Mr. Coker?

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1 MR. COKER: Yes, sir.

2 THE COURT: All right. The fact that you have
3 that situation in your family, would that in any way
4 affect your ability to be fair and impartial if you
5 were selected on this panel?

6 MR. COKER: No, sir.

7 THE COURT: Thank you, sir. You may have a
8 seat.

9 Yes, ma'am. Your name, please.

10 MS. WEARY: Alexandra Weary, number 232.

11 THE COURT: All right, Ms. Weary. And, ma'am,
12 the fact that you have that situation in your family,
13 would that in any way affect your ability to be fair
14 and impartial, giving both the State and the defense
15 a fair trial?

16 MS. WEARY: No, sir.

17 THE COURT: Thank you, Ms. Weary. You may
18 have a seat.

19 And I think Mr. Evans; is that correct?

20 MR. EVANS: Mr. Evans. Yes, sir.

21 THE COURT: Juror number 56.

22 Mr. Evans, the fact that you have that
23 experience in your family, would that in any way
24 affect your ability to be fair and impartial?

25 MR. EVANS: I could be fair and impartial.

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1 THE COURT: All right. Thank you very much,
2 sir.

3 And then Ms. Pipas, who is number 175. Ms.
4 Pipas, would that -- the fact that you have that
5 experience in your family, would that in any way
6 affect your ability to seat and be fair and
7 impartial?

8 MS. PIPAS: No, Your Honor.

9 THE COURT: Thank you, ma'am.

10 Sir, your name, please.

11 MR. JUDE: Keith Jude, 115.

12 THE COURT: All right. Mr. Jude, number 115.

13 Sir, the fact that you have that experience in
14 your family, would that in any way affect your
15 ability to be fair and impartial?

16 MR. JUDE: No. No, it wouldn't.

17 THE COURT: Thank you very much, Mr. Jude.

18 Ladies and gentlemen, let me -- I'm going to
19 ask my catch-all question that I asked you on Monday
20 because -- and you know, because you've been through
21 this process several times with myself and with Judge
22 Mullen. You know that our purpose is to try to
23 empanel a jury that is unbiased, that can decide this
24 case based solely on the evidence that is presented
25 during the course of the trial, setting aside any

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1 personal matters or anything outside of the evidence.

2 Is there any member of the jury panel who
3 knows of any reason that you would not be able to
4 serve and be fair and impartial and base your
5 decision solely on the evidence that is presented
6 during the course of this trial? If you believe that
7 you would not be able to do that, I ask that you
8 please stand.

9 [Whereupon, there is no response]

10 THE COURT: Thank you. There are none.

11 Are there any further questions regarding jury
12 voir dire from the State?

13 MR. SHIPLEY: None from the State, Your Honor.

14 THE COURT: Anything further from the defense?

15 MR. DEYSACH: No, Your Honor.

16 THE COURT: All right. If you would prepare
17 us a strike sheet.

18 THE CLERK OF COURT: Yes, sir.

19 THE COURT: Ladies and gentlemen, we will go
20 through the same procedure that we went through with
21 the other trials, as you went through that on Monday,
22 I think it was. If your name is called, if you would
23 just come through the middle door there and come --
24 just come to the front of the bench here and then
25 face the back of the courtroom and Madam Clerk will

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1 go through the questions with both the State and the
2 defense. If you're excused, you'll go back and have
3 a seat. If you are seated, then of course you'll
4 have a seat over here. So it may be that when your
5 name is called, you won't be returning to your seat
6 so please bring with you anything that you brought to
7 court with you this morning.

8 [Off the record momentarily]

9 THE COURT: While we're waiting to get that
10 strike sheet -- this has nothing to do with this
11 case. I just want you to understand. I want to
12 thank you for being here and for taking your role as
13 jurors seriously. We have -- as you look around your
14 numbers here, you may see that there are some people
15 that are missing. Well, everyone was informed to be
16 back here this morning at ten o'clock and we had some
17 jurors that decided they weren't going to come back,
18 but I just want you to know that they haven't gotten
19 away with anything.

20 Madam Clerk has their addresses and their
21 phone numbers and I'm ordering the sheriff's
22 department to send deputies out to get them and we're
23 going to bring them here. And if they have to go to
24 their jobs and get them, we'll take them off their
25 jobs, but they're going to come to court. And then I

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1 have to decide whether or not I'm going to lock them
2 up for ignoring their jury duty.

3 And so I want you to know that we very much
4 appreciate the fact that you did take it seriously
5 and you did show up here today.

6 We sometimes have a problem with folks.
7 Because there are a lot of you, sometimes folks
8 think, well, if I don't show up, that's one person
9 out of a big group, they won't know. Well, we do
10 know. And we're going to have the sheriff go pick
11 them up and we'll find out why they didn't come.

12 [Off the record momentarily]

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STRIKING OF THE JURY

1
2 THE COURT: All right. If I could have your
3 attention, please.

4 Is the State ready to proceed with jury
5 selection?

6 MR. SHIPLEY: The State is ready, Your Honor.

7 THE COURT: Is the defense ready to proceed?

8 MR. DEYSACH: We are, Your Honor.

9 THE COURT: All right. Madam Clerk.

10 THE CLERK OF COURT: Juror number 211, John
11 Tatum.

12 [Whereupon, Mr. Tatum comes forward]

13 THE CLERK OF COURT: What says the State?

14 MR. SHIPLEY: Please excuse this juror.

15 [Whereupon, Mr. Tatum returns to the audience]

16 THE CLERK OF COURT: Juror number 83, Rosena
17 Griffin.

18 [Whereupon, Ms. Griffin comes forward]

19 THE CLERK OF COURT: What says the State?

20 MR. SHIPLEY: Please present this juror.

21 THE CLERK OF COURT: What says the defense?

22 MR. DEYSACH: Please seat the juror.

23 [Whereupon, Ms. Griffin is seated in the jury
24 box as a juror]

25 THE CLERK OF COURT: Juror number 103, Linda

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1 Hunter.

2 [Whereupon, Ms. Hunter comes forward]

3 THE CLERK OF COURT: What says the State?

4 MR. SHIPLEY: Please present this juror.

5 THE CLERK OF COURT: What says the defense?

6 MR. DEYSACH: Please excuse this juror.

7 [Whereupon, Ms. Hunter returns to the

8 audience]

9 THE CLERK OF COURT: Juror number 203, Earnest
10 Singleton.

11 [Whereupon, Mr. Singleton comes forward]

12 THE CLERK OF COURT: What says the State?

13 MR. SHIPLEY: Please present this juror.

14 THE CLERK OF COURT: What says the defense?

15 MR. DEYSACH: Please seat the juror.

16 [Whereupon, Mr. Singleton is seated in the
17 jury box as a juror]

18 THE CLERK OF COURT: Juror number 244, Tamara
19 Woodard.

20 [Whereupon, Ms. Woodard comes forward]

21 THE CLERK OF COURT: What says the State?

22 MR. SHIPLEY: Please present this juror.

23 THE CLERK OF COURT: What says the defense?

24 MR. DEYSACH: Please seat the juror.

25 [Whereupon, Ms. Woodard is seated in the jury

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1 box as a juror]
2 THE CLERK OF COURT: Juror number 233, Karli
3 Weiss.
4 [Whereupon, Ms. Weiss comes forward]
5 THE CLERK OF COURT: What says the State?
6 MR. SHIPLEY: Please present this juror.
7 THE CLERK OF COURT: What says the defense?
8 MR. DEYSACH: Please seat the juror.
9 [Whereupon, Ms. Weiss is seated in the jury
10 box as a juror]
11 THE CLERK OF COURT: Juror number 234, Eamon
12 Welch.
13 [Whereupon, Mr. Welch comes forward]
14 THE CLERK OF COURT: What says the State?
15 MR. SHIPLEY: Please present this juror.
16 THE CLERK OF COURT: What says the defense?
17 MR. DEYSACH: Please seat the juror.
18 [Whereupon, Mr. Welch is seated in the jury
19 box as a juror]
20 THE CLERK OF COURT: Juror number 21, Edward
21 Brown.
22 [Whereupon, Mr. Brown comes forward]
23 THE CLERK OF COURT: What says the State?
24 MR. SHIPLEY: Please present this juror.
25 THE CLERK OF COURT: What says the defense?

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1 MR. DEYSACH: Please excuse this juror.

2 [Whereupon, Mr. Brown returns to the audience]

3 THE CLERK OF COURT: Juror number 53, Lyn
4 Drake.

5 [Whereupon, Ms. Drake comes forward]

6 THE CLERK OF COURT: What says the State?

7 MR. SHIPLEY: Please present this juror.

8 THE CLERK OF COURT: What says the defense?

9 MR. DEYSACH: Please seat the juror.

10 [Whereupon, Ms. Drake is seated in the jury
11 box as a juror]

12 THE CLERK OF COURT: Juror number 7, Alena
13 Bailey.

14 [Whereupon, Ms. Bailey comes forward]

15 THE CLERK OF COURT: What says the State?

16 MR. SHIPLEY: Please present this juror.

17 THE CLERK OF COURT: What says the defense?

18 MR. DEYSACH: Please seat the juror.

19 [Whereupon, Ms. Bailey is seated in the jury
20 box as a juror]

21 THE CLERK OF COURT: Juror number 115, Keith
22 Jude.

23 [Whereupon, Mr. Jude comes forward]

24 THE CLERK OF COURT: What says the State?

25 MR. SHIPLEY: Please present this juror.

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1 THE CLERK OF COURT: What says the defense?
2 MR. DEYSACH: Please excuse this juror.
3 [Whereupon, Mr. Jude returns to the audience]
4 THE CLERK OF COURT: Juror number 99, Owen
5 Hoover.
6 [Whereupon, Mr. Hoover comes forward]
7 THE CLERK OF COURT: What says the State?
8 MR. SHIPLEY: Please present this juror.
9 THE CLERK OF COURT: What says the defense?
10 MR. DEYSACH: Please seat the juror.
11 [Whereupon, Mr. Hoover is seated in the jury
12 box as a juror]
13 THE CLERK OF COURT: Juror number 221,
14 Patricia Vanburen.
15 [Whereupon, Ms. Vanburen comes forward]
16 THE CLERK OF COURT: What says the State?
17 MR. SHIPLEY: Please present this juror.
18 THE CLERK OF COURT: What says the defense?
19 MR. DEYSACH: Please excuse the juror.
20 [Whereupon, Ms. Vanburen returns to the
21 audience]
22 THE CLERK OF COURT: Juror number 226, James
23 Walker.
24 [Whereupon, Mr. Walker comes forward]
25 THE CLERK OF COURT: What says the State?

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1 MR. SHIPLEY: Please present this juror.

2 THE CLERK OF COURT: What says the defense?

3 MR. DEYSACH: Please seat the juror.

4 [Whereupon, Mr. Walker is seated in the jury
5 box as a juror]

6 THE CLERK OF COURT: Juror number 189, Mary
7 Roberts.

8 [Whereupon, Ms. Roberts comes forward]

9 THE CLERK OF COURT: What says the State?

10 MR. SHIPLEY: Please present this juror.

11 THE CLERK OF COURT: What says the defense?

12 MR. DEYSACH: Please excuse this juror.

13 [Whereupon, Ms. Roberts returns to the
14 audience]

15 THE CLERK OF COURT: Juror number 92, William
16 Helms.

17 [Whereupon, Mr. Helms comes forward]

18 THE CLERK OF COURT: What says the State?

19 MR. SHIPLEY: Please present this juror.

20 THE CLERK OF COURT: Any challenge for cause?

21 MR. DEYSACH: I do not, Your Honor -- Madam
22 Clerk.

23 THE CLERK OF COURT: Okay. You can be seated.

24 [Whereupon, Mr. Helms is seated in the jury
25 box as a juror]

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1 THE CLERK OF COURT: Juror number 65, Dalphine
2 Fripp.

3 [Whereupon, Ms. Fripp comes forward]

4 THE CLERK OF COURT: What says the State?

5 MR. SHIPLEY: Please present this juror.

6 THE CLERK OF COURT: And for the defense?

7 MR. DEYSACH: I do have a matter I would like
8 to bring up to Your Honor.

9 THE COURT: All right. Why don't y'all
10 approach.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 THE COURT: I'm going to excuse Ms. Fripp for
14 cause.

15 [Whereupon, Ms. Fripp returns to the audience]

16 THE CLERK OF COURT: Juror number 69,
17 Christopher Garnmiewiez.

18 [Whereupon, Mr. Garnmiewiez comes forward]

19 THE CLERK OF COURT: What says the State?

20 MR. SHIPLEY: Please present this juror.

21 THE CLERK OF COURT: And for the defense,
22 challenge for cause?

23 MR. DEYSACH: No, Your Honor.

24 THE CLERK OF COURT: You can be seated.

25 [Whereupon, Mr. Garnmiewiez is seated in the

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1 jury box as a juror]

2 THE CLERK OF COURT: Juror number 175, Barbara
3 Pipas.

4 [Whereupon, Ms. Pipas comes forward]

5 THE CLERK OF COURT: What says the State?

6 MR. SHIPLEY: Please excuse this juror.

7 [Whereupon, Ms. Pipas returns to the audience]

8 THE CLERK OF COURT: Juror number 150,

9 Tratesha Mulligan.

10 [Whereupon, Ms. Mulligan comes forward]

11 THE CLERK OF COURT: What says the State?

12 MR. SHIPLEY: Please seat this juror.

13 THE CLERK OF COURT: Challenge for cause from
14 the defense?

15 MR. DEYSACH: No, Your Honor. No, Madam
16 Clerk.

17 [Whereupon, Ms. Mulligan is seated in the jury
18 box as a juror]

19 THE COURT: All right. And we'll do one
20 alternate, one and two on the strikes.

21 THE CLERK OF COURT: All right. Juror number
22 131, Marianne Lee.

23 [Whereupon, Ms. Lee comes forward]

24 THE CLERK OF COURT: What says the State?

25 MR. SHIPLEY: Please present this juror.

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1 THE CLERK OF COURT: What says the defense?

2 MR. DEYSACH: Please excuse this juror.

3 [Whereupon, Ms. Lee returns to the audience]

4 THE CLERK OF COURT: Juror number 112,

5 Margaret Johnson.

6 [Whereupon, Ms. Johnson comes forward]

7 THE CLERK OF COURT: What says the State?

8 MR. SHIPLEY: Please present this juror.

9 THE CLERK OF COURT: What says the defense?

10 MR. DEYSACH: Please seat this juror.

11 [Whereupon, Ms. Johnson is seated in the jury

12 box as a juror]

13 THE COURT: All right. Does the State have
14 any motions regarding jury selection?

15 MR. SHIPLEY: No, Your Honor.

16 THE COURT: Anything from the defense
17 regarding jury selection?

18 MR. DEYSACH: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen,
20 I'm going to ask you, if you would, to follow the
21 bailiff to your jury room and I'll get back with you
22 in just a minute and we'll get ready to get started
23 on the case.

24 Let me send you back there with this
25 instruction, and that is to have no conversation

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1 about the case. You can get to know each other, but
2 don't talk about the case at all. And we'll get
3 started in just a little bit. Okay?

4 So if you would please follow the bailiff to
5 the jury room.

6 [Whereupon, the jury exits the courtroom at
7 11:28 a.m.]

8 THE COURT: Ladies and gentlemen, I'm so sorry
9 that y'all didn't get selected and you're going to
10 have to be excused for the rest of the week. We're
11 done.

12 Before you do leave, though: Ms. Fripp, I
13 wanted you to know you didn't do anything wrong and
14 you would be an outstanding juror. The concern was
15 simply this case that is before the Court today is a
16 sheriff's department case and we just didn't feel it
17 was fair to you to put you in a position to have to
18 decide either to rule for or against your husband's
19 place of employment. So that was the only reason
20 that you were excused. I didn't want you to think
21 that we didn't think you would be a good juror. But
22 we just didn't want to put you in that difficult
23 position.

24 Ladies and gentlemen, thank you for your
25 service this week. I hope -- listen, I know that

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1 jury service is not convenient for anybody and I know
2 every one of you had somewhere else you would either
3 rather be or needed to be. So please understand
4 that's not lost on the Court. We understand that,
5 but we also hope you understand that we just can't
6 function without you.

7 And we do have one of the best -- not one of,
8 we have the best system of justice in the world and
9 it's because folks like you are willing to come
10 forward and give of your time. And I know you're
11 sitting there thinking, well, what choice did we
12 have, you know, you're sending the deputy sheriff
13 after us. But you did have a choice, because those
14 folks that didn't come this morning, they made a
15 choice. It was the wrong one, but they made a
16 choice. But thank you.

17 When you get your checks in the mail for your
18 service, please don't look at that and think that's
19 what we think of your time. Okay? It's not. We
20 know your time is much more valuable than what you
21 get paid to be here. Jury service is just not a paid
22 gig. It's a service that you give to your community.
23 And so we want to thank you so much for your time
24 this week.

25 You have earned an exemption, as you heard

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1 when Judge Mullen first talked to you this -- on
2 Monday morning. State law doesn't require you to
3 serve on jury duty more than once every three
4 calendar years. So you've earned an exemption for
5 the balance of this year and for all of 2012 and
6 2013. But let me say to you: it's just an
7 exemption. It doesn't mean you're not qualified to
8 serve. If you receive another jury summons and you
9 want to serve, I would encourage you to do it.
10 You're not selected very often for jury service. Or
11 most of you aren't. I'm fifty-six years old and I
12 have never been even summoned for jury duty until
13 about four years ago, and then it was for a term of
14 court that I was presiding over. So I was there but
15 not as a juror. And I regret that I've never had
16 that opportunity. I would absolutely love to have
17 had the opportunity to be a part of the system on
18 your end.

19 But thank you again. If there's no -- if you
20 don't have any questions or anything, I'm not going
21 to keep you any longer.

22 They're going to send the checks out probably
23 Friday, so you can look to get those early next week.
24 There will be a work excuse in there. If you need a
25 work excuse, that will be coming. You can let your

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1 employer know that. Okay?

2 So thank you again. And if everyone else will
3 remain seated.

4 Ladies and gentlemen, you're done for the
5 week.

6 [Whereupon, the jury panel exits the courtroom
7 at 11:32 a.m.]

8 THE COURT: We're going to be in recess for a
9 minute. Judge Mullen needs to talk to me about
10 something so we'll just be in recess for just a few
11 minutes.

12 [Whereupon, a recess is taken from 11:34 a.m.
13 to 11:42 a.m.]

14 THE COURT: Okay. Do you want to let's do the
15 Jackson v. Denno now?

16 MR. DEYSACH: We can. I don't know if we
17 wanted to say a few words -- I mean, we talked about
18 saying a few words about the juror who was dismissed
19 for cause. I don't know if you want me to do
20 something about it?

21 THE COURT: No. Thank you very much. And we
22 -- yeah.

23 Just for the record -- and I think it's
24 already been on the record when I addressed the jury
25 panel. But juror number 65 was Dalphine Fripp. Ms.

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1 Fripp -- the defense had used all of their strikes
2 and when Ms. Fripp came up, she was the lady who had
3 stood up earlier and had indicated earlier that -- in
4 response to a voir dire question, that her husband
5 was a deputy with the Beaufort County Sheriff's
6 Department but that she could be fair and impartial.

7 When she came up, the defense made a motion to
8 have her stricken for cause because her husband was a
9 deputy sheriff with the Beaufort County Sheriff's
10 Department. I granted that motion, even though she
11 said she could be fair and impartial --

12 And let me say this for the record: I would
13 not have granted that motion if it was simply that
14 her husband was a police officer, say with the police
15 department or with SLED. But the reason I granted
16 that and felt it was appropriate was that this is a
17 sheriff's department case and even though her husband
18 was not on this case, he is an employee of the
19 sheriff's department. I just didn't think it was
20 appropriate to put her in a position to decide
21 whether or not her husband's office or department had
22 proven their case and so I granted that motion with
23 regards to Ms. Fripp.

24 All right. Now, we've got a Jackson v. Denno
25 that we need to take care of. And just so that I'll

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1 get an idea of where we're at, anything other than
2 the Jackson v. Denno? Are there any other motions?

3 MR. SHIPLEY: Yes, Your Honor.

4 [A], regarding my chain of custody, and [2], I
5 was just going to bring up the fact that we've got
6 twenty-seven photographs we're going to introduce
7 through Mr. Rodriguez and maybe if we stipulate to
8 the foundation or if --

9 THE COURT: Well, let me --

10 MR. SHIPLEY: -- as a group.

11 THE COURT: Let me toss this thought out to
12 you guys and tell me what you think.

13 It's about twelve minutes to 12:00. How about
14 I bring this jury out and send them to lunch. And
15 I'll give them a little bit of an extended lunch --
16 let us take up the matters we need to take up and
17 then we can start back -- like maybe have them come
18 back at 2:00, which gives us time to finish what we
19 need to do and then us still get lunch.

20 What do you think?

21 MR. DEYSACH: It sounds like a fabulous idea,
22 Your Honor.

23 I was maybe going to let you know what all I
24 thought we would maybe cover before we were ready to
25 start with the openings, just to give you some

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1 guidance as to what you thought would be an
2 appropriate time to bring them back.

3 THE COURT: Okay. All right.

4 MR. DEYSACH: Would you like to hear that now?

5 THE COURT: Yes, please.

6 MR. DEYSACH: The Jackson v. Denno. And we
7 talked about it in your chambers. I feel like that
8 we need to --

9 I would like to have a discussion -- and of
10 course you run the show, Your Honor -- about how the
11 prior sales or sales bad acts, as I've written them
12 down -- how deep or what the State is going to be
13 allowed to discuss in that regard in this case so
14 that we know we're all on the same page before we get
15 started.

16 THE COURT: Okay.

17 MR. DEYSACH: And we said something about I
18 think the State had said, well, I'm not going to
19 introduce pictures of the so-called legal ecstasy,
20 these pills that were found there. I would -- I
21 would probably be asking that they not introduce the
22 picture or talk about it, either, in the testimony.
23 And so those are the things that --

24 THE COURT: Okay. Well, I think we should,
25 then, go ahead and let this jury go because if we

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1 take up several of these matters, they're going to be
2 sitting back there a while and they might as well go
3 ahead and go to lunch. So let's bring the jury in.
4 I'll give them instruction and then send them to
5 lunch.

6 MR. SHIPLEY: Your Honor, while they're on the
7 way --

8 THE COURT: Yes, sir.

9 MR. SHIPLEY: -- I was going to put this nol-
10 pros on the record of the --

11 THE COURT: Okay. All right. Go ahead.
12 Yeah.

13 MR. SHIPLEY: This is indictment number 2010-
14 GS-07-2198, possession of a stolen handgun. I am
15 nol-prossing it.

16 THE COURT: All right. And that's -- that was
17 one of the original indictments in this case. The
18 State has decided not to go forward on that and so
19 that case has been nol-prossed. And Madam Clerk can
20 take care of that.

21 [Whereupon, the jury enters the courtroom at
22 11:45 a.m.]

23 THE BAILIFF: The jury is present.

24 THE COURT: Thank you, ma'am.

25 Ladies and gentlemen, I'm trying to be very

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1 aware of your time and use your time as wisely as we
2 can. We have some matters that I need to take up
3 with the attorneys, just pretrial matters, and what
4 they are is they are matters that will help us. If
5 we can take care of those, then once the trial gets
6 started, we'll be able to flow through the trial much
7 smoother and much quicker.

8 So rather than have you sit back there while
9 we do that, I just noticed it's almost twelve
10 o'clock. Usually we wait until about 1:00 to break
11 for lunch but I think it's probably best use of your
12 time to let you go ahead and go to lunch and maybe
13 take a little bit of an extended lunch while we take
14 up these pretrial matters and then when you get back,
15 then we'll be able to start the trial and we'll just
16 rock and roll from there. Okay?

17 So I'm going to go ahead and excuse you for
18 lunch at this time and ask that you -- and this is an
19 instruction that I'll give you any time you're not in
20 the courtroom. And it's simply this: you have
21 little to no knowledge about this case, other than
22 what I've shared with you already. What's important
23 is that when you come back from lunch, you don't know
24 any more about this case than you know right now.
25 Don't talk to anybody about the case, don't let

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1 anyone talk to you about the case.

2 If someone tries to ask you about the case,
3 you just let them know you're a juror and you can't
4 talk about it. And that should do it. If they
5 persist, if they continue to try to talk with you,
6 let me know who it is and I'll make sure that that
7 stops.

8 Enjoy your lunch. Just put this out of your
9 mind until you come back. I'm going to ask, if you
10 would, to be back at 2:15. If y'all will be back
11 at 2:15, we'll get everything done that we need to
12 get done and then it will give me time to get the
13 staff -- let them go to lunch, and then we'll be
14 ready to go.

15 Please try to be here at 2:15. Keep in mind
16 the fact that maybe parking isn't as abundant as it
17 needs to be. So don't wait until right before 2:15
18 to head back over here because it may be that you get
19 delayed by looking for a parking space or whatever.
20 Try to plan your time so that you're in your jury
21 room at 2:15 and we'll get started once we get
22 everybody else -- get everybody reassembled.

23 Anytime you're out of the courtroom, that's
24 the instruction you need to follow, and that is to
25 have no conversation about the case. And that

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1 includes amongst yourselves. Sometimes jurors will
2 look at me a little funny when I say that because
3 most people think, well, I thought that was our job,
4 we're supposed to discuss the case. Well, you are,
5 but not until all of the evidence is in and you've
6 got the charge that I'm going to give you on the law.
7 That's when you're -- try to think of it in terms of
8 baking a cake. You know, you don't put a cake in the
9 oven until you have all the ingredients in. It's not
10 until all the ingredients are in that pan that you
11 put that pan in the oven.

12 Well, deliberations are like being in the
13 oven. A case isn't ready for you to start cooking
14 until all of the ingredients are there. So you're
15 not to have any conversation, even amongst
16 yourselves, about what goes on during the course of
17 this trial until you have everything, and then you'll
18 be free to deliberate. Okay?

19 So if you would, enjoy your lunch and we'll
20 see you back here in your jury room at 2:15.

21 Everyone else remain seated while the jury is
22 excused.

23 [Whereupon, the jury exits the courtroom at
24 11:53 a.m.]

25 - - -

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JACKSON V. DENNO HEARING

1
2 THE COURT: All right. Ready to proceed,
3 then, with the Jackson v. Denno?

4 MR. SHIPLEY: Thank you, Your Honor.

5 The State calls William Squires.

6 [Whereupon, Mr. Squires comes forward]

7 THE CLERK OF COURT: Please place your left
8 hand on the Bible and raise your right hand.

9 [Whereupon, Mr. Squires is duly sworn by the
10 clerk of court as follows: do you solemnly swear or
11 affirm that the testimony you give in this matter
12 shall be the truth, so help you God]

13 THE WITNESS: Yes, ma'am, I do.

14 THE CLERK OF COURT: Thank you.

15 [Whereupon, the witness takes the witness
16 stand]

17 MR. SHIPLEY: Good morning, Lance Corporal.
18
19
20
21
22
23 - - -
24 - - -
25 - - -

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1 WILLIAM SQUIRES,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. SHIPLEY:

6 Q. Could you please give your name, spell your
7 last name for the record, and tell us where you work.

8 A. Yeah.

9 My name is Lance Corporal William P. Squires,
10 S-Q-U-I-R-E-S. I work for the Beaufort County Sheriff's
11 Office and currently assigned to the drug task force.

12 Q. Were you working for the drug task force back
13 in February of 2010?

14 A. Yes, sir.

15 Q. And were you working on October 11th, 2010, as
16 it relates to this case?

17 A. Yes, sir.

18 Q. Were you present for the service -- the
19 execution of the search warrant?

20 A. Yes, sir.

21 Q. Did you make contact with the defendant while
22 you were there?

23 A. Yes, sir, I did.

24 Q. And did you have a chance to interview him, to
25 ask him questions?

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1 A. Yes, sir.

2 Q. I'm going to ask you about that conversation
3 and the circumstances surrounding it.

4 A. Okay.

5 Q. Why don't you start by telling us what were
6 the circumstances of y'all meeting. Where were you?
7 Where were you and what were y'all doing?

8 A. The circumstances were to execute a search
9 warrant on the vehicle located inside Martha Brown. I
10 was in one of our trucks with other members outside the
11 area. Then once we gave notice, we went down to Martha
12 Brown in a truck, with other members on the task force,
13 to execute the search warrant on the vehicle.

14 Once we showed up -- there was several other
15 subjects in the area, and once we got --

16 Q. Where was the defendant?

17 A. When I approached the vehicle, the defendant
18 was sitting in the driver's seat of the vehicle.

19 Q. Okay. When you made contact with him, what
20 did you do?

21 A. Well, when I made contact with him, I asked
22 him to show me his hands. At that time he did not move.
23 So a very short period of time went through [phonetic].
24 I asked him to get out of the vehicle and lay on the
25 ground, which he did.

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1 Q. Was he placed in handcuffs?

2 A. Yes, sir.

3 Q. Was he free to leave?

4 A. No.

5 Q. Who else was present? Was he in this location
6 and that condition when that --

7 A. I'm sorry. I couldn't hear you.

8 Q. Was he in that location and in that condition,
9 handcuffed, when the questioning took place?

10 A. When the questioning took place we moved him
11 away from the vehicle maybe twenty, twenty-five yards,
12 because we were still trying to secure that scene, and
13 that's where I interviewed him at.

14 Q. Okay. When the interview was taking place,
15 who else was present for the interview?

16 A. When I read him his rights, Staff Sargent
17 Florencio was there and I -- there was other members
18 that were standing around in the whole area.

19 Q. Was he under the influence of drugs or
20 alcohol, that you could tell, to the extent that it
21 would have impaired his ability to understand what was
22 going on?

23 A. No, sir.

24 Q. Did you notice if he had any physical
25 disability or mental disability that maybe would have

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1 impaired his ability to understand what was going on
2 while you were asking?

3 A. Not that I was aware of.

4 Q. About how long did the questioning take place?

5 A. It was very brief. Maybe a couple of minutes.

6 Q. So it was brief. Did y'all take any breaks?

7 A. No, sir.

8 Q. Were any breaks requested?

9 A. No.

10 Q. Were there any threats made to him or any
11 promises made to him in exchange for something he might
12 say?

13 A. No, sir.

14 Q. Was he under arrest at the time?

15 A. Under the time he was being detained -- I
16 think we did have arrest warrants for him during the
17 time of execution, but I think at the time of the
18 interview he was just being detained.

19 Q. What was the nature of the questioning? Was
20 it like an interrogation or -- what was the nature of
21 the investigation?

22 A. To ask him about the evidence that I saw in
23 his lap. And I was asking him about the car he was
24 sitting in and just about letting him know we were
25 securing the scene and why we were there.

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1 Q. So was he informed of the nature of the
2 investigation?

3 A. Yes, sir.

4 Q. Was he advised of his Miranda Rights?

5 A. Yes, sir, he was.

6 Q. How was that done?

7 A. I used a card that was issued to me, and I
8 read him his rights, and as I advised -- Staff Sargent
9 Florencio was right there when I read him his rights,
10 and he told me he understood his rights and wished to
11 talked to him.

12 Q. Do you happen to have that card with you
13 today?

14 A. Yeah, I sure do.

15 Q. Would you mind reading it for the Court as you
16 read it that day?

17 A. Yep. Will do.

18 All right. The card says: [reading] you have
19 the right to remain silent. Anything you say can and
20 will be used against you in a court of law. You have
21 the right to talk with an attorney and have them present
22 with you while you're being questioned. If you cannot
23 afford an attorney, one will be appointed to represent
24 you before any questions, if you wish. You can decide
25 at any time to exercise these rights, not answer any

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1 questions or make any statements. Do you understand
2 these rights I have explained to you. Having these
3 rights in mind, do you wish to talk with us now.

4 And after I read that I asked him if he wished
5 to make a statement or talk to me, and that's when he
6 said he would.

7 Q. Did he appear to have trouble understanding
8 these rights?

9 A. No, sir.

10 Q. Were his answers -- did he appear to you,
11 anyway, to be rational and responsive to the questions
12 that he was being asked?

13 A. Yes, sir.

14 Q. And, again, did anybody threaten him or coerce
15 him in any way for any hopes of reward or anything like
16 that?

17 A. No, sir.

18 Q. How did he respond when you asked him whether
19 or not he wanted to speak to an attorney before speaking
20 to you?

21 A. He didn't really give any response.

22 Q. But did he -- did he agree to answer your
23 questions?

24 A. Oh. Yes, sir.

25 Q. To the best of your knowledge, were his

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1 statements freely and voluntarily given?

2 A. Yes, sir.

3 Q. All right. What were his statements? What
4 did you ask and what did he say?

5 A. The first things I asked him was what his name
6 was. He replied to me Matthew.

7 Then when we got into -- I approached him, on
8 his lap -- I saw he had money, a cell phone, and a pill
9 bottle on his lap. When I took him out of the car, all
10 that stuff fell right there next to him. So I asked him
11 about what was inside the pill bottle and he responded,
12 you know what's inside that. And I asked him, well --
13 or he said it's -- he said, it's medicine. And I said,
14 well, what kind of medicine. And he said, you know what
15 kind of medicine.

16 Then I asked him if there was any illegal
17 drugs inside the vehicle and he said there might be a
18 dime bag, I believe it was. Then we got into I said,
19 well, who owns all that stuff that was on your lap and
20 on the ground and inside the vehicle, and he said
21 everything in the vehicle and on his person was his.

22 I asked him about the -- I asked him about the
23 vehicle, which I believe he said it belonged to his
24 uncle or his --

25 Let me try to find it.

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1 Q. Was it his -- was it his cousin?

2 A. Yes, sir. Yep. And he said that his cousin
3 let him use it for a couple of days to take a girl out.

4 Q. Did he give you the name of that cousin?

5 A. I believe I got -- Derrick. I can't see the
6 last name right here on me.

7 [Whereupon, the witness reviews documents]

8 Q. [Mr. Shipley] Did you ask him if there were
9 any other drugs in the area, other than --

10 A. My question was about if there was -- I asked
11 him if there was any drugs in the area. He said, no,
12 just maybe a little dime bag inside the car.

13 Q. Did you ask him about something that might be
14 near this location? A park, for instance?

15 A. Oh. Yes, sir. Yes, sir.

16 I did ask him about the park that was located
17 down the road and the defendant stated that he knew
18 about the park because he used to play ball at the park.
19 And I believe the park is Oscar Frazier Park and that's
20 located right down the road.

21 MR. SHIPLEY: No further questions, Your
22 Honor.

23 THE COURT: Mr. Deysach.

24 MR. DEYSACH: Thank you very much, Your Honor.
25 I'm going to take my same spot, if that's

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1 okay.

2 THE COURT: Sure.

3 MR. DEYSACH: Good afternoon, Lance Corporal
4 Squires.

5 THE WITNESS: Hey. How are you doing today?

6 MR. DEYSACH: Good.

7 CROSS-EXAMINATION

8 BY MR. DEYSACH:

9 Q. You were part of the team that executed the
10 search warrant on October 11th; correct?

11 A. Yes, sir.

12 Q. You said that you were in a police truck when
13 you approached the area where the Dodge Intrepid was?

14 A. Yes, sir, we were in a truck.

15 Q. How many of you guys was there -- were there?

16 A. I believe there was two in the back and two in
17 the front.

18 Q. So four in all?

19 A. Yes, sir. Sounds about right.

20 Q. And when you're serving the search warrant,
21 the Dodge Intrepid is the subject of the search warrant.
22 So do you guys go straight to the Dodge?

23 A. To secure that scene, who's ever in the Dodge
24 or around that vehicle. Our job is to secure the scene
25 at that time.

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1 Q. When you do that, are your badges displayed?

2 A. Yes, sir.

3 We had our vest on which says sheriff in
4 yellow on the front and back.

5 Q. Right.

6 Is there a badge? Like a necklace badge or
7 anything?

8 A. We do have a badge but usually we just wear
9 the vest that has sheriff. Some people wear the badge
10 or not.

11 Q. I got you. Are your guns drawn?

12 A. No.

13 At the time, they're in the holster. I mean,
14 they only get drawn unless they're necessary.

15 Q. Okay. Were they ever drawn?

16 A. Mine was on the vehicle, yes, sir.

17 Q. Okay. So you approach the vehicle. And you
18 said there's a number of other people standing around?
19 Is that what you said?

20 A. Yes, sir, there was people standing around the
21 vehicle when we showed up.

22 Q. Did those people leave or stay?

23 A. A couple of them ran on foot. And I think two
24 might have stayed there and I think two ran. I'm not
25 exactly sure of the number of how many people ran.

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1 Q. And Mr. Frazier did not run?

2 A. No, sir. He remained in the vehicle.

3 Q. Now, when you came up to the vehicle, was
4 there anybody else in the vehicle?

5 A. No, sir.

6 Q. Was the door to the vehicle open or closed?

7 A. The driver's-side door was open. I believe
8 all other doors were closed.

9 Q. Was -- were the -- okay.

10 So were Mr. Frazier's legs in the car or out
11 of the car?

12 A. I don't really recall if he had one in and one
13 out. I'm not exactly sure if both legs were in.

14 Q. All right. Your -- is this around the time,
15 when you're approaching, that you drew your weapon?

16 A. Well, what we did is we got out of the truck
17 and we went toward the vehicle and, as I advised, two
18 subjects, or three, ran on foot so all other officers
19 made pursuant to them. While we're coming to the
20 vehicle, I happened to look and there was somebody
21 inside the vehicle. So at that time we're trying to
22 secure the scene and detain all subjects so I drew my
23 gun because I didn't know exactly at that time Matthew
24 was in the vehicle. And I asked him to show me his
25 hands, which he didn't.

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1 Q. Was it his -- was it him not showing you his
2 hands that precipitated the drawing of the --

3 A. Yes, sir.

4 Q. And then when you draw your weapon, you get
5 compliance at that time?

6 A. No.

7 He really didn't move at all, so I put my
8 weapon away and I dragged him out of the car and laid
9 him on the ground.

10 Q. And so it was when you were doing that
11 dragging that you were able to observe the items that
12 you talked about?

13 A. Yes, sir. Right in his lap.

14 Q. And when you took him out of the vehicle,
15 where did you lay him on the ground?

16 A. Right there next to the driver's side of the
17 area of the vehicle. Maybe a foot from the car.

18 Q. So he's parallel to the car?

19 A. Yes, sir.

20 Q. Lying on his face?

21 A. Yes, sir.

22 Q. On his front prone, I --

23 At what point is he handcuffed?

24 A. Shortly after I asked him to put his hands
25 behind his back, and then I handcuffed him.

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1 Q. Did the handcuffs ever come off?

2 A. I don't -- I don't believe so, no, sir.

3 Q. Where -- okay. The next thing -- how long is
4 Matthew lying on the ground?

5 A. Maybe two minutes, if that.

6 Q. Then where is he placed?

7 A. We sat him up on his side, and then he was
8 standing up near the vehicle, and then we walked him
9 over for the interview.

10 Q. Okay. So you interview him before the car is
11 searched?

12 A. It was probably during the time of the whole
13 execution of the search warrant. I don't know if it was
14 before, during or --

15 Q. When you interview him, where do you interview
16 him?

17 A. Where the car -- there was a small dirt
18 driveway --

19 Q. Uh-huh.

20 A. -- that went through Martha Brown. We were
21 just on the other side of that.

22 Q. Were you making sure to interview him outside
23 of earshot of the other defendants or --

24 A. Yes, sir. I --

25 Q. -- or other subjects?

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1 A. -- actually interviewed them one at a time.

2 Q. Who did you interview first?

3 A. Him, sir. Matthew, the defendant.

4 Q. When did you give the rights --

5 A. When he was --

6 Q. -- while he was on his front or after you took
7 him off to the side?

8 A. When I handcuffed him when he was actually
9 laying down is when I read him his rights.

10 Q. How much time elapsed between the time when
11 you read him his rights and our interview?

12 A. Very short period of time. It was one of
13 those after I read him his rights. Staff Sargent
14 Florencio asked me to walk him over and go ahead and
15 start the interview on him.

16 Q. Okay. So you started the interview?

17 A. Yes, sir, I interviewed him.

18 Q. Okay. Because your -- did -- okay.

19 So you read him his rights and you read that
20 card. And on that card it's -- the last line is
21 something about if you wish to waive your rights and
22 speak with us or something like that?

23 A. You want me to read --

24 Q. Yeah, read those, the --

25 A. -- that last line?

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1 Q. -- part again.

2 A. Will do.

3 [Reading] Having these rights in mind, do you
4 wish to talk with us now.

5 Q. Okay. And so you read that to him while he is
6 still over next to the car?

7 A. Yes, sir.

8 Q. All right. And you're reading them to all of
9 the subjects at one time?

10 A. Yes, sir.

11 Q. And then you direct Matthew over some area
12 away, correct, like some -- like we said, out of earshot
13 up the roadway; correct?

14 A. Yes, sir.

15 Q. And you start the interview with Matthew;
16 correct?

17 A. Yes, sir.

18 Q. At what point did he say he wished to speak
19 with you?

20 A. When I was -- when he was laying on the
21 ground.

22 Q. Okay.

23 A. I read him his rights and he said yes.

24 Q. Okay. So he's sitting there --

25 A. Or he said yeah, or yep, or something like

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1 that.

2 Q. And all of the -- did all of the subjects say
3 yep or yeah at that time?

4 A. When I read them -- I believe there was five
5 subjects in total. All of them gave a little statement.

6 Q. Okay. So they're all being told, hey, if you
7 want -- do you want to talk to us now. And you're
8 getting --

9 A. They all acknowledged that they will -- will
10 talk.

11 Q. At that time?

12 A. At which time, sir? When I --

13 Q. Like right after you read --

14 A. -- read the card?

15 Q. -- the sentence.

16 A. Yes, sir.

17 Q. Now, when you guys execute these warrants, you
18 do have video recording and audio recording
19 capabilities; right?

20 A. I'm not aware. I wasn't -- you're talking
21 about when we're reading their arrest warrants or --

22 Q. Well, just when you're executing a search
23 warrant.

24 A. There's a video before the search warrant and
25 there's a video taken after the search warrant.

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1 Q. And that video also captures audio; correct?

2 A. Yes, sir.

3 Q. And you guys had that with you during this --
4 during this time? You have a video camera with you;
5 right?

6 A. During the time --

7 Q. Yeah.

8 A. -- during the time of the search warrant?

9 Q. Correct.

10 A. Yes, sir.

11 Q. You never used the camera to record any of the
12 statement or the Miranda; correct?

13 A. No, sir.

14 Q. You never got a Miranda form filled out by the
15 subject, did you?

16 A. No, sir.

17 Q. You never asked him to give you a written
18 statement, did you?

19 A. No, sir.

20 Q. Did you take notes of what was said?

21 A. Yes, sir.

22 Q. What did you do with those notes?

23 A. I just read from the notes and I put what I
24 wrote down and what I remembered into the report.

25 Q. So when you're done with those notes, what did

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1 you do with them?

2 A. They get filed away or they get thrown away.
3 I'm not exactly sure where they're at at this time.

4 MR. DEYSACH: Court's indulgence.

5 [Whereupon, Mr. Deysach and Mr. Frazier
6 confer]

7 MR. DEYSACH: Just briefly.

8 Q. [Mr. Deysach] The reading of the Miranda to
9 the multiple subjects, the other officers that were
10 there for that, was that Florencio that was there?

11 A. Yeah, Staff Sargent Florencio.

12 And like I said, there was officers that were
13 walking around. I believe Master Sargent Sancowski was
14 there during one of the times. And, I mean, there was
15 officers coming and going.

16 Q. Was there anybody else with you for the -- I
17 guess the interview with the content? I mean, just --
18 when you took him off to the side, was it just you and
19 him?

20 A. No. There was -- I believe Staff Sargent
21 Sancowski was there. And like I said, Staff Sargent was
22 walking around. So there's officers always there. I
23 wasn't there one-on-one --

24 Q. Where they --

25 A. -- if that's what you're asking.

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1 Q. I'm wondering if they were participating in or
2 listening to the conversation that you were having with
3 Mr. Frazier.

4 A. They -- I mean, they might have been.

5 Q. Okay. Not sure?

6 A. Yes. Yes, sir.

7 MR. DEYSACH: That's all I have, as far as
8 questioning, Your Honor.

9 THE COURT: All right. Anything further from
10 the State?

11 MR. SHIPLEY: Nothing from the State, Your
12 Honor.

13 THE COURT: Thank you, sir. You may step
14 down.

15 THE WITNESS: Thank you.

16 [Whereupon, the witness is excused and exits
17 the witness stand]

18 THE COURT: Anything further from the State?

19 MR. SHIPLEY: No, Your Honor.

20 MR. DEYSACH: I'm ready for argument.

21 THE COURT: Mr. Deysach?

22 MR. DEYSACH: I don't have any witnesses I
23 wish to call, Your Honor.

24 THE COURT: All right, sir.

25 MR. DEYSACH: The defendant's definitely in

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1 custody. I think that that's not an issue in
2 dispute. I think Miranda warnings are required.
3 There was testimony that they were read. There is a
4 requirement of waiver of those Miranda warnings. And
5 what -- where there was I thought -- in the officer's
6 testimony, where it was difficult to understand
7 exactly what he was trying to say was that he's
8 trying to tell us that while all subjects -- I think
9 he said there was about four, possibly, are laying on
10 the ground and he reads that, do you wish to speak to
11 officers now, he's telling us that they're all --
12 while face down he hears a yes, you know, and that he
13 hears this acknowledgment at that time and that it's
14 sometime later that he pulls Mr. Frazier up and takes
15 him off for the interview.

16 You know, in this day and age when they do
17 have the recording device, that it's there at the
18 time, it sure would be nice to actually see that
19 waiver.

20 So that's what I'm talking about, whether or
21 not there's a waiver. You know, when he asked that
22 question, he's looking for a waiver of the Miranda
23 rights, and he's saying that he gets it while they're
24 all laying face down in a group.

25 I think that the idea that they're all

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1 listening and -- almost as if, you know, that they're
2 listening to that question and all answering at one
3 time. I think that that scenario is somewhat strange
4 for duality. I wish there was a video of it. And
5 then it's sometime later that he comes over and Mr.
6 Squires initiates the interview. And I would argue
7 that that does not constitute a valid waiver. A
8 situation that could have been fixed with one of the
9 waiver forms -- you know, you see them in almost
10 every case where there is a statement, a waiver form
11 that's filled out and checked. Even sometimes
12 they'll do it after the fact and then -- you know,
13 where I would have something to say about it after
14 the fact. They at least at some times go over with
15 initials from the defendants in order to get that
16 valid waiver.

17 And here the waiver portion is where the weak
18 spot is. I think that they have the burden of
19 showing that there was a waiver. I think without the
20 waiver, the Miranda waiver form or any type of
21 written or video or audio documentation of it, I
22 think they've failed in that regard.

23 THE COURT: All right. Mr. Shipley?

24 MR. SHIPLEY: Your Honor, I think the
25 officer's testimony clearly establishes that it was

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1 freely and voluntarily given.

2 I mean, yes, he was in custody. The Miranda
3 rights were given. He did waive those rights. He
4 did not wish to speak to an attorney before answering
5 of these questions; that he did, in fact, answer the
6 questions that were asked of him.

7 I take issue with one of the recitations of
8 the facts by the defense. He testified that the
9 defendant was placed face down when he was pulled out
10 of the car, not that anybody else was. I think the
11 officer testified that he was taken somewhere else
12 away to the interview.

13 And, you know, the -- you know, it not being
14 on the video, not having a written form, this could
15 be any number of factors for why it's not perfect.
16 It doesn't have to be perfect. Perhaps they didn't
17 uncuff him, for officer's safety, to sign a written
18 waiver. Perhaps the video camera is not for
19 documenting everything, just to document the
20 condition of a vehicle before they search it and
21 documenting the condition of the vehicle after they
22 search it in case somebody were to say they damaged
23 it.

24 The fact that it's not documented doesn't mean
25 it -- you know, it's not freely and voluntarily a

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1 waiver of his Miranda rights and freely and voluntary
2 statements made to the police.

3 THE COURT: Based on the testimony, it does
4 appear that the --

5 And, again, I don't think it's -- I mean, I
6 think it's uncontradicted that Mr. Frazier was in
7 custody and the officer did -- my understanding of
8 the testimony is that he did -- he gave the Miranda
9 warnings as he read them from the card, which were
10 appropriate, and that he gave those to Mr. Frazier.
11 I didn't get the understanding that the -- from the
12 testimony that that was done to a group of folks; but
13 that he did, in fact, inform Mr. Frazier of his
14 Miranda rights.

15 It's true there's no written waiver, there was
16 no videotape waiver, but I don't think the law
17 requires that. You do see a written waiver
18 oftentimes but usually that's a situation where
19 you're at the law enforcement office or somewhere.
20 This was out on the scene.

21 But the officer did testify that he gave the
22 Miranda warnings. His believe, based on his
23 observations, that those warnings were understood and
24 that it was a voluntary and a knowing waiver. I
25 don't -- there was no testimony that caused the Court

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1 concern that these -- that the waiver of those rights
2 was forced or coerced in any way. And so I'm going
3 to respectfully -- well, I'm going to allow the
4 statement in and would note any exception to that
5 that the defense may have.

6 MR. SHIPLEY: Thank you, Your Honor.

7 THE COURT: What have we got next?

8 MR. SHIPLEY: I was going to address our chain
9 of custody argument, Your Honor, relying on State v.
10 Hatcher, the Supreme Court of South Carolina case.
11 Hand a copy to the defense.

12 [Whereupon, Mr. Shipley proffers documents to
13 Mr. Deysach]

14 MR. SHIPLEY: And may I approach, Your Honor?

15 I'm also going to hand up a copy of the chain
16 of custody report.

17 [Whereupon, Mr. Shipley proffers documents to
18 the Court]

19 MR. SHIPLEY: Basically, Your Honor, I've got
20 on my witness list right now Corporal Rodriguez, who
21 seized the evidence and also got a Padgett, a Rios,
22 and then the chemist, Berry. The testimony I believe
23 will be that he submits this evidence, you know, in a
24 best bag, to a secured storage area where I believe
25 Padgett takes custody of it, brings it up to

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1 Beaufort, turns it into evidence at Ms. Rios, Ms.
2 Rios turns it over to the chemist in a sealed --
3 still in the same sealed best bag, where the tests
4 are performed.

5 And what Hatcher is saying is that not
6 everybody in the chain of custody needs to be
7 identified as long as there is some information that
8 the manner of the handling is reasonably demonstrated
9 and, you know, it's not abuse of the discretion judge
10 to admit evidence in the absence of any proof of
11 tampering or bad faith.

12 And what we have here is we have the drugs
13 submitted, sealed, and eventually arriving at Eileen
14 Rios' desk still sealed in the -- I believe will
15 testify in substantially the same condition as it was
16 when Mr. Rodriguez submitted it.

17 The other two are just mere custodians. We
18 have documentation now -- that I submitted to the
19 Court -- who had it, their identities, who they
20 worked for, and what they did with it, and what dates
21 they received it on. So it's unnecessary, I believe,
22 for the State to require those two individuals,
23 Eileen Rios and Deputy Padgett, to come into court to
24 testify for the chain of custody.

25 A chain of custody doesn't have to be

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1 absolutely complete. It just has to be, you know,
2 sufficient for admissibility. And the Supreme Court
3 of South Carolina says, prove the chain of custody
4 need only negate all possibility of tampering. You
5 know, they only found evidence inadmissible when
6 there was a missing link in the chain because the
7 identity of someone in the chain is unknown. Here we
8 know who was in the chain of custody. We have it
9 documented that Padgett and Eileen Rios brought it to
10 Lieutenant Berry. So we know their identities. And
11 we also have the testimony that it's substantially
12 the same condition when it was turned in by Rodriguez
13 as it was picked up by Berry.

14 So the State argues that it would just be
15 unnecessary for us to require those two people to
16 come to court and testify when the chain of custody,
17 without calling them, is sufficient.

18 MR. DEYSACH: Thank you, Your Honor. I don't
19 -- I don't want to spend too much time on this issue.

20 As I understand what he's saying is he's got
21 two witnesses in evidence with Beaufort County who
22 are in the chain of custody between the officer who
23 turns it in, who will be here, and the chemist who
24 tests it and that we know those witnesses and we know
25 when it -- the goods changed hands. I think that's

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1 what I'm understanding him to say. Not that there's
2 an unidentified person in the chain?

3 THE COURT: Right. Right.

4 MR. DEYSACH: One place where I disagree with
5 what he's saying is, you know, what I see the rule is
6 is, you know, the law provides -- you know, South
7 Carolina law provides that the chain of custody need
8 be established as far as is reasonably practicable.
9 And so I think what is required is not a reason why
10 we've got the chain anyway, but he's got to explain
11 to Your Honor and show Your Honor why it's
12 impracticable -- impracticable, I'm not sure -- why
13 it's impracticable for those people to testify.

14 And so that's the question that needs to be
15 answered. Not whether or not they've got names and
16 date and everything like that, but why is it
17 impracticable.

18 MR. SHIPLEY: I disagree, Your Honor.

19 I don't think it's whether it's impracticable
20 to make somebody come to court. It's proving the
21 chain of custody sufficiently. And it is sufficient
22 to have the end and the beginning, with no evidence
23 of tampering, and the identity of those in between
24 accounted for.

25 In fact, the Court even says in another

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1 opinion, in Cochran: this Court found the chain of
2 custody was sufficient even though one of the
3 couriers who transported the samples was not
4 identified where the samples at the testing facility
5 remain sealed and intact.

6 Now, there's a case where they don't even know
7 who the guy is or, you know, what he did, how he --
8 how it got there. In that case they found it
9 sufficient and that it just arrived in the same
10 condition as the submitting --

11 THE COURT: So who have you got? You've got
12 the officer who prepared the best evidence bags,
13 placed the items in there, sealed them up -- marked
14 them and sealed up, and got it ready for transport?

15 MR. SHIPLEY: That's what I expect his
16 testimony to be, Your Honor. Yes, sir.

17 THE COURT: All right. And he put them in the
18 secured facility?

19 MR. SHIPLEY: That's correct, Your Honor.

20 THE COURT: Then they were sent to the
21 chemist. And then you've got the chemist, who would
22 testify that she received -- is it a she? Renita
23 Berry? Is that the chemist?

24 MR. SHIPLEY: That's correct, Your Honor.

25 THE COURT: -- that she received the items.

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1 And I'm just assuming things here. That you're --
2 your position is she would testify that she received
3 them, that the best evidence bag was intact, nothing
4 had been breached, it was fine, she removed the
5 items, tested them, put them back into a secured
6 sealed evidence thing, and returned them to Beaufort
7 County?

8 MR. SHIPLEY: That's correct, Your Honor.
9 That's what I expect them to testify to.

10 THE COURT: And that they're here today.
11 That's my understanding of what you intend to
12 present.

13 MR. SHIPLEY: That's correct, Your Honor.

14 MR. DEYSACH: You know, I understand what he
15 intends to present.

16 I still think that we just need a reason --
17 you know, if he could just give us a reason why it's
18 impracticable for them to come, other than just
19 coming to court or something, I -- you know, I don't
20 know why it's impracticable. You know what I mean?
21 I think the one thing that --

22 THE COURT: Well, who we don't have here is
23 the guy or gal that drove to SLED? Is it SLED?

24 MR. SHIPLEY: No, Your Honor.

25 MR. DEYSACH: It's in -- it's in Beaufort.

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1 THE COURT: It's here in Beaufort.

2 -- who took the items, drove them over to the
3 chemist, and then picked them up from the chemist and
4 drove them back here. Right?

5 MR. DEYSACH: I mean, I'm not saying -- I
6 mean, I just want to make -- you know, if he had a --
7 if he was able to come with a reason why it was
8 impracticable for that person not to come, that would
9 probably shut me up. But I haven't heard that yet.

10 The only thing I can add is that, you know, as
11 sometimes happens, there is a difference in what the
12 estimated weight is out in the field and what the
13 weight is that the chemist comes up with.

14 THE COURT: Always.

15 MR. DEYSACH: And so there is something that
16 kind of makes you think, well, why is there -- you
17 know, why is there that difference. And so that's a
18 fact I can point to.

19 THE COURT: But you know the answer to that.

20 MR. DEYSACH: I think I do.

21 THE COURT: You do.

22 MR. DEYSACH: But if those witnesses were
23 here, I would know the answer.

24 THE COURT: Well, but you wouldn't know that
25 answer from the witnesses who they're not calling,

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1 because those witnesses were simply couriers.

2 MR. DEYSACH: That's what we expect them to
3 say, but you know how it is.

4 THE COURT: I do.

5 MR. DEYSACH: You know, I'm not trying to -- I
6 don't want to beat a dead horse, but I just -- I just
7 want him to tell me why it's impracticable and then,
8 like I said, I wouldn't have anything to say.

9 THE COURT: Well, as a preliminary matter, it
10 appears that -- assuming it fleshes out as you have
11 indicated to the Court, I would -- the Court would be
12 satisfied is that you've got a sufficient chain. I
13 can't make any final ruling on that because I haven't
14 heard the testimony and obviously it's subject to
15 that.

16 But assuming it is presented as you've
17 indicated, Mr. Shipley, I would -- that would be a
18 sufficient chain.

19 MR. SHIPLEY: Yes, Your Honor. Thank you.

20 THE COURT: There were some -- there are other
21 matters.

22 MR. DEYSACH: We wanted -- mainly --

23 THE COURT: Oh. He prior --

24 MR. DEYSACH: Prior bad acts.

25 THE COURT: -- information regarding the --

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1 yeah.

2 MR. DEYSACH: I think --

3 THE COURT: Mr. Shipley, what is your -- and,
4 again, I guess we're trying to head things off before
5 -- we're trying to -- we don't want the bell to ring
6 and we can't unring it, so we're trying to get some
7 preventative stuff here. Obviously, things are going
8 to be subject to the testimony as it flows. But what
9 --

10 How far does the State intend to go into prior
11 -- I mean, I've already ruled that the search warrant
12 was appropriate and would be admissible and the
13 search was valid. What do you intend, before the
14 jury here -- do you intend to go into any of those
15 prior sales or whatever?

16 MR. SHIPLEY: No, Your Honor.

17 On my case I wasn't going to elicit any of
18 that. I would just elicit there was a search warrant
19 for that vehicle occupied by this defendant and that
20 they executed that search warrant at that location.
21 And then I was going to elicit what happened, what
22 they saw, at that time on October 11th, 2010.

23 I mean, if he were to take the stand in his
24 defense, that would be a different story.

25 THE COURT: That's a whole different thing.

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1 And I don't know. Again, and we can talk about that
2 when the time comes, whether or not he has a prior
3 history. So --

4 MR. DEYSACH: Right.

5 And I think he was referencing an opening-the-
6 door scenario --

7 THE COURT: Right.

8 MR. DEYSACH: -- that's probably a little too
9 potential to actually get into. It wouldn't make
10 sense to get into that.

11 THE COURT: Yeah, we can't get into that at
12 this point.

13 My understanding, then, is -- and, again, I'm
14 not trying to read into anything that the State is
15 going to do, and we'll see when it happens, but it
16 sounds like what you're telling me is that you're
17 basically going to have officers, who are identified
18 as drug enforcement officers, that based on
19 information and investigation they sought and
20 received a warrant, search warrant, and then the
21 execution of that warrant and the activities
22 surrounding that.

23 MR. SHIPLEY: That's correct, Your Honor.
24 That's what I intend to elicit.

25 THE COURT: Okay.

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1 MR. DEYSACH: And I think that sounds like
2 what I would be asking for.

3 Kind of the way I see it is that, you know,
4 for them to describe the description of what is to be
5 searched makes sense because that's what the warrant
6 is for. We've already had our time together to
7 decide whether it was appropriate. But all this
8 stuff about, well, people who -- you know, there's a
9 lot of things that were testified to in that hearing
10 that --

11 THE COURT: Correct.

12 MR. DEYSACH: -- would be obviously
13 inadmissible --

14 THE COURT: Correct.

15 MR. DEYSACH: -- and we're attempting to draw
16 the line, I think in a fairly narrow way, probably in
17 an abundance of caution. And --

18 THE COURT: Let me --

19 MR. DEYSACH: -- that is to say that we have
20 probable cause to search this car.

21 THE COURT: Right. And I think what would be
22 appropriate without violating, you know, any of those
23 Lyle issues, would be that an officer could testify
24 that they can identify themselves as a narcotics
25 officer and they're working in that capacity; that

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1 based on their investigations, that they sought a
2 search warrant for this vehicle, and that that search
3 warrant was, in fact, issued and then they proceeded
4 with the execution of that warrant and what they
5 found as a result of that search and all of that.

6 MR. DEYSACH: I think we settled that issue,
7 then.

8 THE COURT: So that should be sufficient.

9 MR. DEYSACH: Yes.

10 The only other thing I brought up was about
11 the talk -- you know, just we should take two seconds
12 maybe about the legal ecstasy, my position being that
13 these kind of colored-looking homemade pills --

14 THE COURT: Bill, are you going down that road
15 with those things?

16 MR. SHIPLEY: I already threw away the
17 photograph I was going to use and I deleted the
18 visual image from my computer.

19 MR. DEYSACH: And then just ask that nobody
20 testify to those. And I can give a basis: just that
21 I think it would be, 403, confusing to the jury. And
22 I don't think it's relevant, either. So those are
23 just kind of the legal bases for --

24 THE COURT: I think the relevance -- and, of
25 course, for your purposes, the charges are crack

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1 cocaine and marijuana. Those items were found, those
2 -- as a result of the search?

3 MR. SHIPLEY: Yes, Your Honor.

4 THE COURT: Yeah. Okay.

5 MR. DEYSACH: I think we're settled there,
6 too.

7 THE COURT: Now, if y'all would do me a favor.
8 And I don't want to -- I think it would help things
9 go quicker, and we don't necessarily need to hold
10 anybody up to do it.

11 Well, before I go down that road, is there
12 anything else that we need to take up?

13 MR. SHIPLEY: It sounds like you were going
14 there, Your Honor, but I was just going to ask
15 that --

16 THE COURT: Yeah.

17 MR. SHIPLEY: -- maybe the defense would
18 stipulate to these twenty-six photographs I have.

19 THE COURT: That's what I was going to get
20 y'all to do. During the lunch break -- and y'all can
21 do it however you want to. You can do it now or you
22 can go to lunch and come back a little bit early, but
23 y'all get together and look at those. If there's
24 things you can stipulate to, great. If there's not,
25 you know, that's fine. But let's -- if there are,

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1 let's get that done.

2 But in any case, what I would like you to do
3 is once we're back from lunch and before we bring the
4 jury in, to get with the court reporter and at least
5 pre-mark everything at least for identification
6 purposes so that we don't have to stop with a witness
7 and go, Judge, may we approach; we want to mark this
8 as State's Exhibit whatever. Let's go ahead and pre-
9 mark everything and then if it doesn't come in,
10 that's not a problem because it's only being marked
11 for identification purposes at this time.

12 If you can stipulate to any of that stuff,
13 great, we'll put that on the record. But y'all can
14 talk about that during the lunch break. All right?

15 MR. DEYSACH: Thank you, Your Honor.

16 MR. SHIPLEY: Thank you, Your Honor.

17 THE COURT: All right. I told the jury 2:15;
18 is that right?

19 THE BAILIFF: Yes, sir.

20 THE COURT: Well, court, then, will be in
21 recess until 2:15. We'll start back then.

22 [Whereupon, a recess is taken from 1:00 to
23 2:13 p.m.]

24 [Whereupon, State's Exhibit Numbers 1 through
25 26 are marked by the court reporter]

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1 THE COURT: During the hearing earlier, Bill,
2 you had passed up this copy of the report from the
3 sheriff's department. Do you need this back?

4 MR. SHIPLEY: No, sir, Your Honor.

5 THE COURT: Okay.

6 MR. SHIPLEY: It can be a Court's Exhibit, if
7 you would like it --

8 THE COURT: All right. Is there anything we
9 need to take up, then, before we get started? From
10 the State?

11 MR. SHIPLEY: On this issue of the
12 photographs, there are twenty-four of them. I
13 narrowed it down a little bit. I think Ian may have
14 concerns about one of them.

15 THE COURT: All right.

16 MR. DEYSACH: There is one -- you know, I
17 think the way we'll handle it -- you know, I do want
18 to make sure that, you know, there is the foundation
19 that somebody took the pictures while doing the
20 execution of the search warrant.

21 But as far as objections to the photos, there
22 was one photo -- and I don't know what the exhibit
23 number is, but I would like to maybe show it to Your
24 Honor and then explain to you what my objection is.

25 THE COURT: Okay.

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1 MR. DEYSACH: Okay. Your Honor, it is State's
2 Exhibit 15. And if I might hand it up to you --

3 THE COURT: All right, sir.

4 MR. DEYSACH: -- so you may look at it?

5 THE COURT: Yeah.

6 MR. DEYSACH: That is a picture that is of
7 some of dietary supplement, inositol. You can see it
8 written there on the --

9 THE COURT: Yeah.

10 MR. DEYSACH: -- on the bottle.

11 I do not know what the picture of the dietary
12 supplement is probative of, to be honest with you. I
13 don't know if there's some sort of an expert that
14 they have that would say it's part of a cut or
15 something like that. That's about the only thing I
16 can maybe think of. But I don't know what it has to
17 do with the case, to be honest with you.

18 In the corner of that -- and this is a picture
19 obviously that comes from inside the car. In the
20 corner, I think it's the lower left if not the right,
21 I see the tip of a baby's bottle --

22 THE COURT: Uh-huh.

23 MR. DEYSACH: -- that the idea that --

24 First of all, I don't know what this is
25 probative of that they would show the baby's bottle

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1 in the car that they're alleging is, you know, filled
2 with drugs and guns and I guess cash, also, that --
3 to show that to the jury is a lot more prejudicial
4 than it is probative of anything.

5 Like I said, I don't know that it is probative
6 of anything because I don't know what -- it doesn't
7 show a picture of drugs. Makes it appear as though
8 children are being exposed to this kind of behavior.
9 Not that there's any children there at the time. But
10 you see a little baby's bottle there and what -- you
11 know, it makes you think of babies, and so I don't --
12 I don't see where it's -- I don't see why --

13 That's my objection. It's a 403 objection,
14 Rule 403.

15 MR. SHIPLEY: Your Honor, if I had a photo of
16 the inositol without the baby's bottle, I would use
17 that instead.

18 THE COURT: What is the deal with that? Is
19 that what they use to cut?

20 MR. SHIPLEY: I didn't even know it was there
21 until this morning when Ian pointed it out to me.
22 But inositol is commonly used as a cutting agent to a
23 step-on the coke or crack, and Menendez is going to
24 testify about its use in that regard.

25 THE COURT: All right.

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1 MR. SHIPLEY: And as far as the baby bottle
2 being there --

3 THE COURT: I'm not -- I certainly will note
4 your exception to that, Mr. Deysach. I don't -- and,
5 again, I don't know that -- it's just apparently kind
6 of a trashy car. It's got a bag of Cheetos over
7 there, it's got a Coke laying there, it's got some
8 lottery tickets or something that looks like a
9 lottery ticket laying in -- I mean, it's just kind of
10 a -- it looks a lot like my car. It's just that it's
11 got a lot of trashy stuff in it. And I don't think
12 anyone's going to testify about babies or baby
13 bottles or children being in the car --

14 MR. DEYSACH: Well, they don't have to now, if
15 that picture gets in.

16 THE COURT: Okay. I'm going to note your
17 exception, but I'm going to overrule the objection.
18 I think it's fine.

19 [Whereupon, State's Exhibit Number 1 through
20 State's Exhibit Number 26 is admitted into evidence
21 by the Court]

22 MR. DEYSACH: The last thing I wanted to say
23 is I think they do have that bottle actually in
24 evidence so, I mean, it's not like they need this
25 picture --

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1 THE COURT: What's the --

2 MR. DEYSACH: -- -- in order to prove --

3 THE COURT: What's the bottle for, solicitor?

4 MR. SHIPLEY: We have the inositol bottle,

5 Your Honor, not the --

6 THE COURT: Oh, the bottle. Right.

7 MR. SHIPLEY: -- not the baby bottle.

8 MR. DEYSACH: Right. Not the baby bottle.

9 THE COURT: Oh. I thought you meant the baby
10 bottle.

11 MR. DEYSACH: You know, if they have that, if
12 they're going to introduce that, it seems a little
13 redundant.

14 THE COURT: Well, yeah. What -- solicitor,
15 you've got the bottle. You'll have the officer
16 testify that this was taken from the vehicle.

17 MR. SHIPLEY: Well, you know, in this vehicle,
18 strewn about it there's various articles related to
19 the drug trade. You've got drugs themselves of
20 various kinds, there's a scale, you've got blunts;
21 you know, the cigar blunts; you've got plastic
22 baggies where you tear the corners off to put the --
23 you know, to sell the coke in.

24 It just paints the picture, all these things
25 being strewn around this car painting the picture for

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1 the jury that this is a place of business, this is
2 where he's operating out of.

3 THE COURT: I certainly -- yeah. And I
4 understand your theory there.

5 Again, and I've ruled. I'm not going to --
6 but, you know, it would seem -- can you not get the
7 same effect by showing the bottle, this bottle, was
8 in the car and we took it out of there? I'm going to
9 leave that up to you. If you decide to use it, I
10 find that the -- I don't find it to be inadmissible
11 based on that. I'm going to allow it. I wouldn't
12 use it.

13 All right. Now, everything has been marked at
14 least for identification purposes, is that right?

15 MR. SHIPLEY: Everything except we've got some
16 sealed bags here. For example, State's Exhibit 27,
17 it's got multiple items in there and I didn't want to
18 open it.

19 THE COURT: No. And I agree. But has the
20 outside of the bag been marked?

21 MR. SHIPLEY: Yes, Your Honor.

22 Every bag and photograph has been marked. The
23 only thing left to be done is when these sealed bags
24 are opened, individually label the bags inside.

25 THE COURT: All right. Now, let's talk about

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1 that for just a second as a matter of just logistics,
2 because I've seen it done several ways.

3 Is it going to be necessary -- first of all,
4 the bags were sent back from the chemist sealed;
5 right? The best bag, I guess?

6 MR. SHIPLEY: Sent to the chemist sealed?

7 THE COURT: Sent back from the chemist.

8 MR. SHIPLEY: Yes, Your Honor.

9 THE COURT: Do you intend to open those up,
10 unlock them and open them up?

11 MR. SHIPLEY: Yes, Your Honor.

12 THE COURT: What's the purpose for doing that?

13 MR. SHIPLEY: Of the opening up these sealed
14 bags here?

15 THE COURT: Yeah. And it may be that you have
16 to because --

17 MR. SHIPLEY: If I could manipulate it into
18 view in the bag, I would, Your Honor, but these
19 things aren't always lumped into one best bag. We've
20 got, you know, marijuana in here, the coke and the
21 crack.

22 THE COURT: the bags that are inside that big
23 bag, are they sealed? Are they --

24 MR. SHIPLEY: I believe so, Your Honor. I
25 would have to, you know, open it up to check.

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1 THE COURT: Well, maybe check with -- this is
2 my thought process. Okay? If you can do what you
3 need to do, if the jury can see what you need them to
4 see, without beaching that seal, then I've got no
5 problem with sending that back to the jury as -- you
6 know, assuming it comes into evidence, you know,
7 during their deliberations. If it's opened and they
8 can actually get access to the drugs, obviously I'm
9 not going to send that back into the jury room.

10 MR. SHIPLEY: I think --

11 THE COURT: But I'm not going to preclude you
12 from opening it, if you really need to. Do you see
13 what I'm saying?

14 MR. SHIPLEY: Yes, Your Honor.

15 THE COURT: I'm not -- I want you to try your
16 case and I don't want to interfere with that.

17 MR. SHIPLEY: The last drug case I did, Your
18 Honor, the individual bags within this sealed bag
19 were also sealed. I just don't know for sure at this
20 time.

21 THE COURT: Well, we'll -- yeah, that's fine.
22 You can check on that.

23 Anything else before we bring the jury out?

24 MR. SHIPLEY: Not from the State, Your Honor.

25 THE COURT: Mr. Deysach?

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1 MR. DEYSACH: No, Your Honor.

2 THE COURT: All right. Let's go ahead and
3 bring the jury in, please.

4 [Off the record momentarily]

5 THE BAILIFF: The jury is entering.

6 [Whereupon, the jury enters the courtroom at
7 2:22 p.m.]

8 THE BAILIFF: The jury is present.

9 THE COURT: Thank you, ma'am.

10 All right. Ladies and gentlemen, I hope
11 everyone had a good lunch and you're ready to go to
12 work here today.

13 Before we begin, I want to mention to you that
14 if at any time during the course of this trial -- and
15 it doesn't matter whether there's a witness on the
16 stand in the middle of testimony or what, if anyone
17 needs to be excused for any reason, if you need to
18 use the restroom or whatever, if you'll get my
19 attention, let me know, then we'll stop wherever
20 we're at -- there's not really ever going to be a
21 time that we can't stop right where we're at -- and
22 we'll excuse you and let you go to the restroom or
23 whatever you need to do, and then we can start back
24 where we left off. It's just important to me, it's
25 important to the attorneys, and to the parties, that

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1 you're comfortable and you're not having to sit there
2 concerned about anything. So, please, if at any
3 point you need a break or need -- or, you know, we're
4 into the testimony and you need a break, just let me
5 know and we'll do that.

6 Ladies and gentlemen, we're about to begin
7 this case. And as you know from this morning when we
8 selected you as a jury, this is the State of South
9 Carolina vs. Matthew Frazier.

10 Before we begin, I want to tell you that more
11 than likely, those of you who have never actually sat
12 in on a jury trial, this trial will probably be very
13 different from what you might expect. Most folks
14 don't have an opportunity to sit in on an actual jury
15 trial such as you're doing this week and their only
16 exposure to jury trials comes from what they've seen
17 on television or what they've read in books or what
18 they've seen in the movies. And of course those
19 trials are always full of high drama, intense action,
20 and riveting circumstances. That's Hollywood.
21 They're trying to capture your attention and
22 entertain you.

23 Now, during the course of this trial -- while
24 any number of those things may occur during the
25 course of this trial, what's important for you to

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1 understand and keep in mind is that this trial is not
2 for your entertainment. This trial is a fundamental
3 part of our democracy. It is a search for the truth,
4 in an effort to make sure that justice is done
5 between the parties that are before the Court.

6 Searching for the truth and making sure that
7 justice is done oftentimes can be slow, deliberate,
8 maybe even repetitive at times; in other words, very
9 much the opposite of what you've seen in books -- or
10 read in books, seen on television, or seen in the
11 movies.

12 This courtroom, and the folks that appear here
13 before you, is a place of honor that is dedicated to
14 the protection and the preservation of citizens'
15 rights through what many people have called the
16 greatest justice system ever created.

17 The attorneys that appear before you, they are
18 advocates for the parties that they represent, but
19 first and foremost they are officers of the Court,
20 sworn to uphold the integrity and the fairness of our
21 judicial system and to help you in your search for
22 the truth. You should expect them to be ethical,
23 professional, and competent in the exercise of their
24 duties.

25 Now, in just a moment I'm going to ask you to

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1 give your attention to Madam Clerk and she is going
2 to place you under oath. And under that oath you are
3 going to swear to try this case and to reach a fair
4 and a just verdict so it's important that you also
5 are to be professional, reasonable, and ethical in
6 the performance of your duties, which I have no doubt
7 you will do.

8 I want to thank you again for your
9 participation in our justice system here in Beaufort
10 County and in South Carolina.

11 Now, before we go any further, as I said, I'm
12 going to ask you to give Madam Clerk your attention
13 and she is going to place you under your oath for
14 your role as jurors in this case.

15 THE CLERK OF COURT: Please stand and raise
16 your right hand.

17 [Whereupon, the clerk of court swears the jury
18 as follows: do you solemnly swear or affirm that you
19 shall well and truly try and a true deliverance make
20 between the State of South Carolina and the accused
21 at the bar and a true verdict give, according to the
22 evidence, so help you God]

23 THE CLERK OF COURT: Thank you.

24 THE COURT: Ladies and gentlemen, what I'm
25 going to tell you now is meant to serve as an

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1 introduction to the trial of the case. This is not a
2 charge on the law. I will instruct you on the law
3 that is applicable to this case at the end of this
4 trial before you retire to deliberate and decide this
5 case.

6 What I'm going to do now is just merely go
7 through the procedures that we're going to follow so
8 that you can better follow along with the trial as it
9 goes along.

10 Now, the defendant in this case, Mr. Frazier,
11 is charged by these indictments which have been filed
12 with the Court. And as you recall -- I'm not going
13 to go through and read them all again but I am going
14 to cover that the charges that Mr. Frazier has been
15 charged with are trafficking in cocaine, possession
16 with intent to distribute marijuana, possession with
17 intent to distribute cocaine base or what is commonly
18 referred to as crack cocaine, a charge of possession
19 with intent to distribute within proximity of a
20 school. On each of those earlier charges -- as well
21 as possession of a weapon during the commission of a
22 violent crime. Now, the elements of these charges,
23 of these crimes, I will explain to you later when I
24 give you a charge on the law.

25 These indictments, as I told you earlier,

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1 ladies and gentlemen, are simply the charges by which
2 this case is brought into court and they are not in
3 any sense evidence of any of the allegations which
4 they contain. Mr. Frazier has pled not guilty to
5 these indictments and the State therefore has the
6 burden of proving each of the elements of these
7 indictments beyond a reasonable doubt. It will be
8 your duty, ladies and gentlemen, to decide whether or
9 not the State has met that burden.

10 Your purpose as jurors is to find and to
11 determine the facts in this case. Ladies and
12 gentlemen, you are the sole judges of the facts in
13 this case. If at any time I make any comment
14 regarding the facts, you must disregard those
15 comments because only you, the jury, can decide what
16 the facts are in this case. You determine those
17 facts from the testimony that you hear and from any
18 other evidence that may come in during the course of
19 this trial. It is up to you to determine what
20 inferences you feel may be properly drawn from that
21 evidence. It is especially important that you
22 perform your duty of determining the facts diligently
23 and conscientiously because ordinarily there is no
24 way for us to correct an erroneous determination of
25 facts by a jury.

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1 Now, on the other hand, but with equal
2 emphasis, the same law that makes you the judges of
3 the facts makes me the judge of the law. The law as
4 given by the Court is the only law that you may
5 consider. You must accept and follow it, even though
6 you may disagree with it. I'm not allowed, ladies
7 and gentlemen, to tell you anything about the facts
8 or what I think about the facts, and, on the other
9 hand, you're not allowed to disagree with me about
10 what the law is or what you think the law should be.
11 Your job is to take the law as I give it to you and
12 apply it to the facts as you find the facts to be
13 from the testimony of witnesses and any exhibits
14 which come in during the course of this trial. After
15 doing that, you will render a verdict in this case,
16 which will be a true and a just verdict, based on the
17 solemn oath that you've just taken as jurors.

18 Now, it's important that you do not begin any
19 deliberations until I advise you that it's time to
20 begin your deliberations. And then once you do have
21 the case for your consideration, you're only to
22 discuss it within the confines of the jury room and
23 amongst yourselves.

24 Now, during the course of this trial, ladies
25 and gentlemen, I don't know -- I don't know what the

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1 State intends to produce by way of evidence but I'm
2 just guessing, based on our time frame and stuff,
3 that more than likely we will not conclude this case
4 today. We might, but I don't know -- I don't know
5 that we will. If we do, that's fine. If we don't,
6 then obviously you'll go home this evening. It is
7 important that while this case is pending that you
8 have no conversation with anyone about this case and
9 that you do no independent investigation. You're not
10 to read anything about this case. And I don't know
11 that there would be. I don't see any reporters here
12 in the courtroom and I don't know that there is any
13 media interest. But if you do happen to see an
14 article in the paper or if you see something on TV,
15 turn off the TV, divert your attention from it, don't
16 read any newspaper articles, because, as I told you,
17 you need to protect your ability to decide this case
18 based solely on the evidence that is presented during
19 the course of this trial.

20 Now, it is important that you keep an open
21 mind and that you do not decide any issue in this
22 case until all of the evidence has been presented,
23 the parties have had an opportunity to address you
24 with their closing remarks, and that I've given you
25 the law that is applicable to this case.

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1 It is your solemn responsibility to determine
2 the guilt or innocence of the defendant and your
3 verdict must be based solely on the evidence as is
4 presented to you during the course of this trial and
5 on the law as I instruct it to you.

6 Now, in just a moment the solicitor will have
7 an opportunity to address you with what we call an
8 opening statement and in that statement he'll
9 basically explain to you what the issues are in this
10 case, or at least what he believes the issues are.
11 Once he's completed his opening remarks, then Mr.
12 Deysach will have an opportunity to address you with
13 opening remarks if he chooses to do so, although he's
14 not required to do that. What is important for you
15 to understand is this: what the lawyers tell you in
16 their opening statements is not evidence. It is
17 merely their contention as to what they believe the
18 evidence will be or what the evidence will show. The
19 evidence in this case, the evidence that you'll
20 decide this case on, will be presented to you through
21 the testimony of witnesses who are placed under oath
22 when they take the witness stand, and then any
23 exhibits which may be introduced during the course of
24 this trial.

25 Now, during the course of the trial, from time

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1 to time you may hear one of the lawyers say something
2 like this: Judge, we have a matter of law we need to
3 take up with the Court, or, Your Honor, may we
4 approach the bench. I may find it necessary during
5 those times -- if I can handle the matter with you
6 here, I will do that, but I may find it necessary to
7 ask you to step back into the jury room for a moment.
8 And if I do that, I want you to understand that the
9 reason I would do that is because, as I told you
10 earlier, I'm not to have any influence over you
11 regarding the facts in the case. Sometimes when I'm
12 dealing with a matter of law or I'm having to make a
13 decision regarding a matter of law, it might be
14 necessary for me to make a comment about the facts in
15 relation to that ruling so in an effort to protect
16 you from those comments, I may ask you to step into
17 your jury room so that I can deal with that matter of
18 law and not invade your space; that is, the fact-
19 finding role.

20 In determining what the true facts are in this
21 case, ladies and gentlemen, you must decide whether
22 or not the testimony of a witness is believable.
23 It's going to be my job to rule as a matter of law
24 whether certain testimony is admissible at all or
25 not. But once testimony is admitted into this trial,

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1 whether or not you believe it is going to be solely
2 up for you to decide.

3 In deciding whether to believe a witness, you
4 have the right to consider the interest of a witness,
5 the bias of any witness, the opportunity for the
6 witness to have seen the matters and the things that
7 that witness testifies about, the way a witness acts
8 on the witness stand. Ladies and gentlemen, you have
9 the right to consider anything that is in this record
10 in helping you to evaluate the testimony of a
11 witness. That means it is your duty to pay close
12 attention to the witnesses, observe them, listen
13 closely to the witnesses as they testify, pay close
14 attention to the attorneys and to the Court. Please
15 do not let your thoughts wander but give strict
16 attention to all of the testimony in this case so
17 that at the end of the case, after all of the
18 evidence is in, the lawyers have had a chance to
19 address you, and I've given you the law, you'll then
20 be in a position to go back into your jury room,
21 deliberate, and to reach a decision in this case.

22 Now, before I turn it over to the attorneys,
23 please let me ask the attorneys first: with regards
24 to the Court's opening remarks to the jury, are there
25 any objections or exceptions from the State regarding

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1 those remarks?

2 MR. SHIPLEY: No, Your Honor.

3 THE COURT: Anything from the defense?

4 MR. DEYSACH: None, Your Honor.

5 THE COURT: Okay. Thank you, gentlemen.

6 And, ladies and gentlemen, now if you would
7 please give the attorneys your undivided attention as
8 they address you with their opening remarks.

9 Mr. Shipley.

10 MR. SHIPLEY: Thank you, Your Honor. May it
11 please the Court.

12 THE COURT: Yes, sir.

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OPENING STATEMENT

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2 MR. SHIPLEY: Leading up to today, I was
3 reminded of back when I was in highschool. A couple
4 of summers I worked construction. That was one of
5 those big neighborhoods that was just starting up.
6 It was booming, you know, like fifteen cul-de-sacs,
7 brand new houses going up everywhere. They had me
8 doing like odd jobs in this one particular cul-de-
9 sac. The company I was working for was building like
10 five or six homes in this one little thing.

11 And there was this team of these vendors that
12 would come into the neighborhood. One, in
13 particular, would come to our cul-de-sac and just
14 park itself there from like 11:00 until 2:00. People
15 go there and eat lunch. You know, I don't think it
16 was his particular vehicle because there were usually
17 a whole bunch of them throughout the whole
18 neighborhood. This one particular guy came in this
19 company van and sold burritos and tacos, sandwiches,
20 anything you wanted. Coke, Sprite, anything. And it
21 was a cash-run business. You know, you go over
22 there, you pay cash. He's got -- you want a hotdog
23 that day? He's got that. You want a burrito with
24 extra sauce? He's got that, too. Anything you want,
25 he's got it. And he's operating there every day in

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1 this cul-de-sac. And the workers would come over
2 there and buy what they wanted and he would go and
3 fix it for them, pay cash or whatever.

4 And I was reminded of this because this case
5 is similar to that, except that Matthew Frazier
6 wasn't operating a burrito stand. He wasn't selling
7 tacos. He was selling cocaine, he was -- in his van
8 was not burritos or tacos or sandwiches. And he
9 didn't have a van. It was a Dodge Intrepid, a 1999
10 burgundy Dodge Intrepid. And in that Dodge Intrepid
11 he had cocaine, crack, marijuana. He had all the
12 fixings. Same kind of thing.

13 And you'll hear from officers in this case
14 today who went to the incident location, went to
15 where the defendant was, you know, in his Dodge
16 Intrepid. They went in there, they searched through
17 it, and they find basically everything you would find
18 -- you would expect to see in a guy's vehicle who's
19 operating a drug enterprise out of his car.

20 You're going to hear about how they found
21 cocaine in there, how they found crack cocaine,
22 otherwise known as cocaine base, in there, and
23 marijuana. You know, all the fixings for someone to
24 deal drugs found in his -- in this vehicle that he
25 was found in, this Dodge Intrepid.

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1 And I want y'all to pay attention. I
2 appreciate y'all being here. I know you've got
3 better things you would like to do. But this is
4 real-life testimony you're going to hear. Listen to
5 it carefully, and at the end of the day I want you to
6 consider what you've heard, what the officers
7 testified to, what they say they found in that car,
8 and I expect -- I expect once you hear all that, you
9 will not have a problem reaching a guilty verdict on
10 trafficking, possession with intent -- trafficking
11 cocaine, possession with intent to distribute crack,
12 possession with intent to distribute marijuana.

13 And another thing I forgot to mention. All
14 this occurred within a half a mile of a park, so
15 you've got three different charges for that, too:
16 possession with intent to distribute cocaine within a
17 half a mile of a park, possession with intent to
18 distribute marijuana within a half mile of a park,
19 possession with intent to distribute crack within a
20 half a mile of a park.

21 You'll also hear the officers say that they
22 found a gun in there. That's the other charge,
23 possession of a weapon during the commission of a
24 violent crime. As you heard the judge say earlier,
25 trafficking is classified as a violent crime.

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1 Appreciate your patience being here today.
2 Probably won't keep you here too long; no longer than
3 necessary, that's for sure. My name, again, is Bill
4 Shipley. I work for the solicitor's office. And,
5 again, this is Meredith Bannon sitting with me, and
6 this is Deputy Rodriguez from the Beaufort County
7 Sheriff's Department. Thanks for being here.

8 THE COURT: Thank you, Mr. Shipley. Mr.
9 Deysach?

10 MR. DEYSACH: Thank you very much, Your Honor.
11 May it please the Court.

12 THE COURT: Yes, sir.

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OPENING STATEMENT

MR. DEYSACH: Nice to be with you today.

Whenever I stand up to do an opening statement, sometimes I feel like I get fired out of my seat because I've been waiting this whole time to get a chance to talk to you and when I finally do so, I usually want to make sure that I don't talk real fast, start talking too loud or shouting at you or being something that's unpleasant to listen to.

After listening to the solicitor, I do want to say that I think that -- you know, the judge says what we say is not evidence. And I'm not going to spend much time talking about what the evidence is because you're going to hear it yourself, but I will spend a lot more time talking about the evidence and what the inferences are at the end of the case.

But I don't want to talk a ton about that right now. But that in kind of his comfortable way, I thought, you know -- not unlikeable, but in his comfortable way of explaining the evidence in the case, I do think that he didn't state the evidence exactly as it's going to come out. And so I do want you to pay attention to what the exhibits tell, what the police say when they're testifying, because, you know, a couple of little things I would take issue

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1 with. But now isn't the time for me to jump in. I
2 mean, certainly the thing I'm taking issue with is
3 that Matthew Frazier is a drug trafficker and a drug
4 dealer and all those things.

5 And so I really want to talk to you a little
6 bit about the things that I think any defense
7 attorney would worry about in this situation and
8 really kind of flesh out what I see the ground rules
9 are -- really, the rules that the judge tells you --
10 but what I think the ground rules are and why they
11 are.

12 First of all, to me and to Matthew, you guys
13 are twelve strangers here and so with -- not knowing
14 anything about you, other than the questions that
15 were asked earlier, we have no idea what experiences
16 or what attitudes or what kind of preconceptions you
17 bring to the courtroom today. And so the fear is
18 that you have some idea about what's supposed to
19 happen today that isn't going to jive with what the
20 judge says and that you might make your decision on
21 the wrong basis. And so I want to explain to you
22 what the decision that you're about to make is about
23 and, really, the basis that you should use to make
24 that decision.

25 I guess what I'm saying -- it kind of sounds

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1 boring coming out of my mouth. I guess what I want
2 to say is that this is the most important day of
3 Matthew's life, today and tomorrow or however long
4 the case takes. This is most important day of his
5 life. The decisions that you make at the end of this
6 case will have a permanent effect.

7 Certainly, any label or a conviction that
8 would ever come out of this room, for Matthew or
9 anyone, has a permanent effect. There is permanence
10 here. And it's going to -- any conviction -- and I
11 don't think I have to tell anybody that the
12 consequence of being labeled a drug dealer or a drug
13 trafficker is extremely dire, not just as a permanent
14 record but also as it would affect somebody's freedom
15 going forward.

16 So there's no going back. You know, when I
17 make mistakes or when the judge makes mistakes or
18 even the solicitor's office makes mistakes, we're
19 doing it in front of a court reporter who hears our
20 words, and everything we do can be checked over.
21 There's not -- she's not going to be with you in the
22 deliberation room and so if you guys make the
23 decision on an improper basis, really nobody would
24 know. Nobody would know. Unless you guys came out
25 and told everybody, nobody would know.

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1 Sometimes after a case we'll hear -- we'll
2 talk to a jury. I haven't done it in a long time.
3 But we'll talk to a juror and the juror might say
4 that the defense attorney in a case like this, you
5 guys just didn't prove your case. And that's
6 something that makes us really want to tear our hair
7 out because the judge just says, well, hey, we don't
8 have to prove anything, and it makes it sounds as
9 though a jury didn't quite understand what the rule
10 is.

11 And, you know, it sounds really boring to say,
12 oh, well, the State must prove their case, every
13 element of their case, beyond a reasonable doubt.
14 And but it's only when you understand why that rule
15 is in place that I think you can truly apply it in
16 the jury room. Okay?

17 There -- the worst thing that could ever
18 happen in this room is a wrongful conviction. There
19 is no reversing that. Like I said, if it's a
20 wrongful conviction because of a mistake I made,
21 that's one thing. But if it's a wrongful conviction
22 because of a mistake that the jury makes, that cannot
23 be -- there's really not a mechanism to reverse that.

24 And so you're really the ones without a safety
25 net in this process. You guys have all the pressure.

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1 Because I'll tell you this: everyone that I've ever
2 talked to, that has had jury duty, remembers it maybe
3 not forever but for a long time and will be telling
4 the story about what the case was about that they did
5 jury duty for. And the last thing anybody would want
6 to do is look back on that experience with some level
7 of regret because they weren't sure whether or not --
8 if they convicted somebody, they weren't sure whether
9 that was a wrongful conviction or not. You wouldn't
10 want to carry that around for the rest of your life.

11 I mean, I'm saying it because, you know, I
12 want to make sure that Matthew gets a fair trial,
13 and so what I'm doing is I'm pointing to the reason
14 why -- pointing out the reason why you jurors --
15 you're not going to want to leave this case without
16 knowing that you did exactly right because, like I
17 said, everybody remembers the time they were on jury
18 duty.

19 And, I mean, this is not a car-wreck case or
20 something kind of boring, which sometimes happen. I
21 mean, this is the regular, you know, kind of a cops-
22 and-drugs type of subject matter, so it's definitely
23 a story that you're going to tell going forward.

24 And so really what that proof beyond a
25 reasonable doubt -- I call it the roadmap, the

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1 roadmap to avoiding the wrongful convictions. And if
2 shortcuts are taken, the wrongful conviction is that
3 is exactly the location where you'll end up, because
4 that's really the -- you know, if you want to know
5 why we have this rule, you know, why it's not just,
6 well, what do I think is going to happen, you know,
7 oh, is it more likely this, more likely that, it's
8 because if we take -- fair and impartial, we take
9 that approach, wrongful convictions will occur.

10 And there's another reason, also. I mean, if
11 you look at the courtroom, you know, you've got the
12 police; you know, we've got a drug task force that
13 encompasses more than one agency in this case;
14 they've got a lot of resources, they're bringing in
15 the bear; the lab; the scientists who are involved;
16 there is, you know, possibly experts that they're
17 going to call in to testify to you. And with
18 Matthew, it's just me and him. And Matthew Walker is
19 the other attorney who's working with me, but he
20 hasn't been working with Matthew as much as I have
21 and so it's just me and him.

22 So in some ways, the courtroom isn't weighted
23 equally. And so for that reason, understanding that
24 the resources that the police have, understanding
25 that in some ways it's not a fair fight, unless you

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1 really honor and respect that burden of proof that
2 the judge is talking about. And so, I mean, really
3 what it means is is there a reasonable possibility
4 that what the State is alleging isn't true. And
5 because if the reasonable possibility exists and a
6 conviction were to occur, then how would we look,
7 looking back, know that a wrongful conviction was a
8 result.

9 A couple of other things. You know, I wrote
10 it down. I think that, you know, I kind of maybe
11 jumped ahead. You know, I think everybody who's ever
12 been in my position always worries that just because
13 somebody was arrested, that people would
14 automatically think that they're guilty. And that is
15 exactly the opposite I think of what the judge is
16 going to tell you.

17 And I think as far as what I was saying about
18 the proof beyond a reasonable doubt thing, that that
19 is -- you know, those two things aren't consistent,
20 that really it's when somebody who is arrested, you
21 assume that they're not guilty and then the State has
22 to do the rest of the work to try and prove them
23 guilty. And like I said, for those same reasons.

24 But, you know, you read the paper. You say,
25 so-and-so got arrested for such-and-such and you

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1 automatically think, oh, good, they got the guy, they
2 got the guy. And so what I -- what I'm afraid of is
3 that a jury or a juror might think, oh, well, the
4 police probably did good work, I'll just defer to
5 them, you know. Well, meanwhile, the police might
6 be making an arrest and say, oh, well, we'll let
7 the jury figure it out. And in between you wouldn't
8 have --

9 You know, a person like Matthew is exactly who
10 would slip through the cracks in a situation like
11 that. And so that's why what you do is so important.
12 It really is. It's like -- it is work, you know.
13 You're matching up facts to the elements of the
14 offense. And it's not particularly fun. And I think
15 I recognize that, that it's -- it's something that
16 you'll be tired after you do.

17 After you look at each -- I think they said
18 there's -- there are. I don't think -- there are
19 seven charges, and each one has a certain amount of
20 elements that have to be satisfied, all of these --
21 each one by a reasonable doubt. And each one of you
22 will have to do all of that work, and you're all
23 going to have to agree. So it's not easy, and I
24 recognize that.

25 But I think that anytime somebody hears the

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1 word trafficking in one of these accusations, or
2 possession of a pistol during a violent crime, that
3 the stakes really -- the stakes are very high. I
4 think that's -- I won't say how high they are, but
5 they're really high. They're obviously high. And,
6 you know, we've got the twelve strangers that we've
7 kind of picked out of a hat, in a way, the lucky
8 ones, to make the final decision.

9 One last thing that I want to point out: that
10 in a drug case, different than say police who are
11 walking the beat or just taking calls, that I want
12 you to be on the lookout for an element of
13 competitiveness within the police force. And I'm not
14 saying it's a bad things, to be honest with you. I
15 just want you to be on the lookout for it. Because
16 it's different when somebody's just waiting for a
17 call or a police officer is walking the beat and they
18 see a crime and they make the arrest. Or maybe they
19 don't see a crime and there's no crime to arrest for.

20 But with drug cases there is kind of more of a
21 competitive cat-and-mouse aspect to it. And so in
22 order for a police officer who works in the field of
23 drugs, many times they can evaluate their own
24 performance based on arrests and convictions, not
25 necessarily based on -- you know, it's human nature

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1 is what it is. And so I don't want you to think that
2 I'm lobbying, you know, jabs at folks who are doing
3 what their bosses are asking them to do. But I'm
4 just pointing out to you that it's human nature to --
5 when you're in the highly competitive endeavor of
6 ferreting out crime, that you're going to measure
7 yourself based on these arrests. And so they have --
8 they have a little dog in the fight, I guess is what
9 I'm saying. There is a dog in the fight. And so I
10 want you to be on the lookout for that when you hear
11 them testify.

12 And that's the only thing I want to say. You
13 know, the rest -- the facts come from the witnesses,
14 the testimony, the exhibits. And I'll come back and
15 I'll ask you not to deliver a wrongful conviction,
16 because that's what a conviction would be in this
17 case. And so I think that after you hear the facts,
18 you'll know that there is the reasonable possibility
19 that Matthew Frazier didn't do this and that by
20 convicting him we would be doing possibly the wrong
21 thing -- or not possibly -- doing the wrong thing.

22 And so thank you for your attention. I know
23 it's going to be hard work but I'm not going to take
24 up any more time. So thank you.

25 THE COURT: Thank you, sir.

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1 Mr. Shipley, you may call your first witness,
2 sir.

3 MR. SHIPLEY: Thank you, Your Honor.

4 The State calls Lance Corporal William
5 Squires.

6 [Whereupon, Mr. Squires comes forward]

7 THE CLERK OF COURT: Put your left hand on the
8 Bible and raise your right hand.

9 [Whereupon, Mr. Squires is duly sworn by the
10 clerk of court as follows: do you solemnly swear or
11 affirm that the testimony you give in this trial
12 shall be the truth, so help you God]

13 THE WITNESS: Yes, ma'am, I do.

14 THE CLERK OF COURT: Thank you.

15 MR. SHIPLEY: Good afternoon, Lance Corporal.

16 - - - - -

17 WILLIAM P. SQUIRES,

18 Having Been First Duly Sworn,

19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MR. SHIPLEY:

22 Q. Would you please state your name again for the
23 record and spell it for the court reporter.

24 A. Yes, sir.

25 My name is Lance Corporal William P. Squires.

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1 Last name is S-Q-U-I-R-E-S. Currently assigned to the
2 Beaufort County Sheriff's Office and the drug task
3 force.

4 Q. How long have you been working for the
5 sheriff's department?

6 A. Going on five years now.

7 Q. How long have you been working with the drug
8 task force?

9 A. Probably a year and a couple of months.

10 Q. What kind of training have you received in
11 that regard as far as the drug task force?

12 A. We go to some classes. We read articles on
13 line. We go through an F-shield process, which another
14 senior officer trains us in narcotic investigations and
15 stuff like that.

16 Q. So what are your typical duties?

17 A. Go out, we do drug investigations, short term,
18 long term. Sometimes we do interdiction.

19 Q. I want to ask you about October 11th, 2010.
20 Were you working that day and were you working in the
21 capacity with the drug task force?

22 A. Yes, sir.

23 Q. Were you involved in this case with the
24 defendant, Matthew Frazier?

25 A. Yes, sir.

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1 Q. Was there -- did you obtain a search warrant
2 prior to October the 10th?

3 A. There was a search warrant obtained, yes, sir.

4 Q. What was the search warrant for? What was the
5 location sought to be searched?

6 A. The suspected vehicle, which I believe was a
7 Dodge Intrepid, maybe burgundy in color.

8 Q. Okay. And did -- were you involved in the
9 execution of the search warrant?

10 A. Yes, sir, I was.

11 Q. Where did that take place?

12 A. The execution of the search warrant, the
13 vehicle was parked down near Martha Brown Circle.

14 Q. Where is Martha Brown Circle?

15 A. That's going to be in Bluffton, South
16 Carolina.

17 Q. Is that in Beaufort County?

18 A. Yes, sir, it is.

19 Q. Would you describe for us what y'all did when
20 you executed the search warrant? What did you do
21 personally leading up to it and then moving into
22 actually serving the search warrant?

23 A. Yes, sir.

24 I was actually in a truck with -- I was with
25 three other members. Our job was to drive down Martha

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1 Brown Circle and actually -- when I mean execute a
2 search warrant, we were to secure the scene first before
3 we executed the search warrant. So we drove down Martha
4 Brown Circle and we saw the suspected vehicle parked on
5 the side of the road.

6 When we got to the vehicle, we had our
7 sheriff's office vest on, which has the yellow sheriff
8 on front and in back. I believe two or three suspects
9 ran on foot. When I personally got to the vehicle, I
10 looked to my left, which was the driver's side of the
11 vehicle and at that time I saw the defendant, Matthew,
12 sitting inside the driver's side of the vehicle.

13 Q. Let me stop you there.

14 A. Sure. Go ahead, sir.

15 Q. When you pull up in the car and you're just
16 getting out, describe the scene there. Where is the car
17 located, who's in the area, if anybody, around the car
18 maybe, and where the defendant was located.

19 A. Okay. The vehicle was kind of backed in near
20 an oak that was off the side of the dirt road in Martha
21 Brown Circle. There were several subjects standing
22 around the vehicle. And like I said, when we pulled up,
23 some people immediately ran, some people stayed by the
24 car.

25 Q. And where was the defendant --

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1 A. He was sitting inside the driver's seat of the
2 vehicle.

3 Q. How was he in the car? Was he behind the
4 wheel with the door closed or --

5 A. The door was open.

6 I'm not sure if he had one leg in, two legs
7 in, but he was sitting in the seat.

8 Q. What were these -- what were these people
9 doing, before y'all rolled up, to the best of your
10 knowledge?

11 A. After talking to them, probably just hanging
12 out. I'm not exactly sure.

13 Q. So you come down here, you approach the -- you
14 come down there to Martha Brown Circle, you approach
15 this vehicle with the search warrant. When you made
16 contact with the defendant sitting in the driver's seat,
17 what did you observe?

18 A. I observed -- well, first I observed he had
19 U.S. currency in his lap, with a cell phone and a pill
20 bottle.

21 When I went up there, I drew out my handgun,
22 asked him to show me his hands. He was not moving. I
23 couldn't see where his hands were at so I put my handgun
24 away and grabbed him out of the vehicle and laid him
25 right there on the ground near the vehicle.

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1 Q. What did you do next? Was he detained at that
2 time?

3 A. Yeah.

4 I made him put his hands behind his back and
5 handcuffed him. And the stuff that was sitting in his
6 lap fell right down near his head, like right there
7 where he actually laid down at.

8 Q. What were -- the other people you said were
9 around the car, what was going on with them?

10 A. Like I advised, two or three of them ran on
11 foot and there was two other ones -- we had other
12 members in the truck, so they eventually -- everybody
13 around the vehicle was detained. I don't know exactly
14 how many ran but --

15 Q. At this time were you dealing exclusively with
16 the defendant?

17 A. Yes, sir, I was.

18 MR. SHIPLEY: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, sir.

21 Q. [Mr. Shipley] Lance Corporal --

22 MR. SHIPLEY: Do we have a pair of scissors?
23 Just going to get this bag opened.

24 A. You just want me to open it up?

25 Q. [Mr. Shipley] Just open it, please. Yes,

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1 sir.

2 A. [Witness complies]

3 MR. SHIPLEY: Mr. Deysach, I'm just going to
4 remove these items and have them labeled for the --
5 as State's Exhibits.

6 Madam Court Reporter, this is coming out of a
7 bag labeled State's Exhibit 27. We have individual
8 bags in here. 27-A.

9 [Whereupon, State's Exhibit Number 27-A is
10 marked by the court reporter]

11 MR. SHIPLEY: Beg the Court's indulgence, Your
12 Honor.

13 THE COURT: Yes, sir.

14 Q. [Mr. Shipley] Show you what's been marked for
15 identification purposes as State's Exhibit 27-A. Could
16 you -- can you identify that?

17 A. Yes, sir, I can.

18 Q. What is it?

19 A. It looks -- there's no label. It's going to
20 be a orange pill bottle with it looks like a white rock-
21 like substance inside of it.

22 Q. Do you recognize that pill bottle?

23 A. Yes, sir, I do.

24 Q. How is that?

25 A. This is the pill bottle that looks like was

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1 sitting on his lap when I -- when I approached the
2 defendant.

3 Q. Now that you've pulled the defendant out of
4 the vehicle -- was anybody else in the vehicle?

5 A. No, sir.

6 Q. Okay. So once you got him detained, what did
7 you do next?

8 A. When I got him -- when I got him laying on the
9 ground, handcuffed, I read him his Miranda rights.
10 There were some other subjects around the vehicle that
11 were also standing there. When I read him his rights,
12 Staff Sargent, my supervisor, was there on scene,
13 witnessed me read him his rights. And I asked him who
14 his name was and at that time he told me his name was a
15 Matthew.

16 Q. Do you see this individual in the courtroom
17 today?

18 A. Yes, sir, I do.

19 Q. Would you point him out for us, please.

20 A. He's sitting right over there.

21 Q. Would you describe what he's wearing.

22 A. He's wearing a blue shirt with a blue tie and
23 some long pants.

24 MR. SHIPLEY: Let the record show that the
25 witness has identified the defendant.

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1 Q. [Mr. Shipley] One thing I kind of -- other
2 than the pill bottle and the cash, was there anything
3 else that you found on the -- in the defendant's lap and
4 in his area when you detained him?

5 A. Yes.

6 He had a telephone with him that was also in
7 his lap.

8 Q. Anything else?

9 A. Telephone, U.S. currency, and a pill bottle,
10 is all I can recall.

11 Q. Did you write a report about what you did this
12 day?

13 A. Yes, sir, I did.

14 Q. If I showed you a copy of it, would that
15 perhaps refresh your memory?

16 A. Yes, sir, it will.

17 MR. SHIPLEY: May I approach the witness, Your
18 Honor?

19 THE COURT: Yes, sir.

20 Q. [Mr. Shipley] If you'll -- is that your
21 report?

22 A. Yes, sir.

23 Q. Do you mind just looking over it for a second
24 and see if there's anything else?

25 [Whereupon, the witness reviews documents]

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1 A. Okay.

2 Q. [Mr. Shipley] Was there any other item found
3 on this person?

4 A. Like I advised, I could see U.S. currency,
5 pill bottle, and a telephone was in his possession.

6 Q. Let me ask you: were the keys to the vehicle
7 in the ignition?

8 MR. DEYSACH: I would object to the leading.

9 THE COURT: Sustained.

10 Q. [Mr. Shipley] Were the keys to the vehicle
11 found?

12 A. With my testimony, I'm not aware of that
13 answer. I --

14 Q. All right. Let's back up to where you've got
15 the defendant detained. What did you do. You testified
16 that you read his Miranda rights?

17 A. Yes, sir, I did.

18 Q. How did you read those to him?

19 A. Read them to him with an issued Miranda card
20 that I have.

21 Q. Would you mind reading that to the Court --

22 A. Sure.

23 Q. -- just as you read them that day?

24 A. Yes, sir, I will.

25 This is a card I keep with me every time I run

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1 into somebody that I start asking them questions. The
2 card reads you have the right to remain silent.
3 Anything you say can and will be used against you in a
4 court of law. You have the right to talk to with an
5 attorney and have them present with you while you're
6 being questioned. If you cannot afford an attorney, one
7 will be appointed to represent you before any
8 questioning, if you wish. You can decide at any time to
9 exercise these rights, not answer any questions or make
10 any statements. Do you understand these rights I have
11 explained to you. Having these rights in mind, do you
12 wish to talk with us now.

13 Q. After you read him those, did he waive them
14 and agree to talk to you?

15 A. He did agree to talk to us.

16 Q. What did he say?

17 A. He said something like, yup, or yeah. I don't
18 think it was exactly yes, but he did acknowledge that I
19 read him the card and did acknowledge to say something
20 to him [phonetic].

21 Q. Did you ask him about the items you found in
22 his lap?

23 A. Yes, sir, I did.

24 I asked him about -- I asked him about
25 what was inside the pill bottle. He replied it was

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1 medicine --

2 MR. DEYSACH: Your Honor, I think it's
3 appropriate to renew my pretrial objection.

4 THE COURT: All right, sir. That certainly is
5 noted. Overruled.

6 Q. [Mr. Shipley] When he said it was medicine,
7 what did you -- what did you ask him next?

8 A. I asked him exactly what kind of medicine and
9 he said, you know what kind of medicine it is.

10 Then I asked him about if there was any drugs
11 inside the car and he said there might be only a dime
12 bag. Then I asked him who -- all the items that were in
13 his lap that fell out, and the items inside the car, I
14 asked him whose they are and he said everything on his
15 person was his and everything in the car was his.

16 Q. Did he say -- did you ask him or did he say
17 anything about the car, whose car it was, or --

18 A. He said the car belonged to his cousin Derrick
19 and he said that he let him use the car for a couple of
20 days to take a girl out.

21 Q. Did you ask him anything else?

22 A. Yes.

23 I asked him about -- I asked him about the
24 park that was down the road. The defendant said he knew
25 about the park because he used to play ball at the park.

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1 And it was Oscar Frazier Park.

2 Q. Did you have the opportunity to interview the
3 other people there?

4 A. Yes, sir, I did.

5 Q. Did any of them -- did any of them claim
6 ownership of anything in the vehicle or anything else?

7 A. No, sir, they didn't.

8 Q. This vehicle that you found him in -- you may
9 have done this already. Was it -- what was it? What
10 kind of car was it?

11 A. It was a burgundy Dodge Intrepid.

12 Q. Is this the vehicle that you had the search
13 warrant for?

14 A. Yes, sir, it is.

15 MR. SHIPLEY: I have no further questions.

16 Answer anything that Mr. Deysach has.

17 THE WITNESS: Okay. Yes, sir.

18 THE COURT: Mr. Deysach.

19 MR. DEYSACH: Thank you, Your Honor.

20 I think without the podium, Your Honor, I was
21 going to --

22 THE COURT: Sure.

23 MR. DEYSACH: -- set up right here.

24 Hopefully, all the jurors can hear me.

25 Good afternoon, Lance Corporal Squires.

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1 THE WITNESS: Good afternoon. How are you?

2 MR. DEYSACH: Good.

3 CROSS-EXAMINATION

4 BY MR. DEYSACH:

5 Q. You generated a report after this execution of
6 the search warrant; correct?

7 A. I wrote a supplement to the report, yes.

8 Q. Okay. Are you referring to that right now?
9 Do you have that in front of you right now?

10 A. Yes, sir, I have a copy of it right here.

11 Q. So when the solicitor handed you up his copy
12 of the report to refresh your memory, that was just the
13 same report that you have --

14 A. Yes, sir, it is.

15 Q. -- right there?

16 All right. When you arrived to -- this is ■
17 Martha Brown Circle; correct?

18 A. Yes, sir, it's in the area of ■ Martha Brown
19 Circle.

20 Q. You're in a truck --

21 A. Yes, sir.

22 Q. -- that is owned by the police department?

23 A. Yes, sir.

24 Q. And you're there with three other people --

25 A. Yes, sir, I am.

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1 Q. -- in the truck?

2 And when you jump out of the truck, how far
3 are you away from the Intrepid?

4 A. Probably from me to a little bit -- a little
5 bit past the TV, maybe.

6 Q. Okay.

7 A. Not too far.

8 Q. Okay. Not too far.

9 And all the police in the truck jump out at
10 the same time; correct?

11 A. Yes, sir.

12 Q. And you're all wearing outfits that identify
13 you guys as the police?

14 A. Sheriff's office, yes, sir.

15 Q. Sheriff's office. And you yell that you're
16 the sheriff's office?

17 A. Yes, sir.

18 Q. And when that happens, there are two or three
19 people that run?

20 A. Yes, sir.

21 Q. All right. And when you're approaching the
22 Intrepid, it's actually a group of people gathered
23 around the driver's side of the Intrepid, isn't it?

24 A. Yes, sir, on the driver's side.

25 Q. Okay. So there's a group of people. There

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1 are two or three who run; correct?

2 A. Yes, sir.

3 Q. There is maybe one of those people who runs
4 who is caught?

5 A. I believe so. I'm not exactly sure, sir.

6 Q. But there's possibly two people who ran that
7 day that you have no idea who they are?

8 A. At this time I do not know their names.

9 Q. And you can't tell this jury whether or not
10 any one of those people was Derrick Fields, the owner of
11 the Intrepid?

12 A. Correct.

13 Q. Did you-all have a dog with you?

14 A. A K-9 officer -- the K-9 officer did arrive.

15 Q. Okay. Did you know before you arrived that
16 the Intrepid was registered to Derrick Fields?

17 A. Personally, I was not aware of it. I did not
18 sign the search warrant out.

19 Q. Okay. When you approach the car, the door is
20 standing open?

21 A. Yes, sir, the door is open.

22 Q. And what time of night is it?

23 A. It's approximately 1919 hours, 7:19 p.m.

24 Q. Okay. And it's October the 11th?

25 A. 2010. Yes, sir.

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1 Q. And so it is somewhat dark?

2 A. It's a little dark, yes, sir.

3 Q. It's 7:00 in October?

4 A. Yes, sir.

5 Q. Okay. And like I was -- I was referencing
6 that report. I was making sure that the same report you
7 had before you was one that I was familiar with. But
8 that's the report that you use to memorialize all the
9 important information that you gather on that day;
10 correct?

11 A. I don't understand what you mean.

12 Q. This report. The purpose for keeping this
13 report is to help remind you of what happened on the day
14 in question? October 10th.

15 A. Oh. The report that I wrote?

16 Q. Yeah.

17 A. Yes, sir.

18 Q. Thank you.

19 And even though you do the work, you go and do
20 this on October the 11th, you don't write the report
21 until October 12th; correct?

22 A. Correct.

23 That's when I turned the report in, it looks
24 like.

25 Q. And in order to complete the report, you used

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1 notes that you had taken on October 11th; correct?

2 A. Correct.

3 When I do interviews, I have a little notepad.
4 I write maybe some little notes down and that I
5 remember.

6 Q. Okay. And right now you can't tell this jury
7 where those notes are?

8 A. No, sir, I cannot.

9 Q. You can't tell them if you lost them or if you
10 destroyed them or if you threw them away?

11 A. That is correct.

12 Q. When you guys arrived at Martha Brown Circle,
13 you had a video camera; correct?

14 A. Yes, sir, there was one.

15 Q. But that video camera was not used to record
16 you giving Matthew Frazier his Miranda rights; correct?

17 A. Correct.

18 Q. And it was not used to record what you say he
19 said to you; correct?

20 A. Correct.

21 Q. There is no written statement that was
22 collected from Matthew Frazier --

23 A. No --

24 Q. -- correct?

25 A. -- he did not give a written statement.

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1 Q. So there's no recorded statement, no written
2 statement, and we don't know where your notes are?

3 A. We only use the video camera to shoot before
4 the execution of a search warrant and after the search
5 warrants. It's not used for interviews.

6 Q. Whose rule is that?

7 A. That's just a rule that we got --

8 Q. That's a rule that your boss gave you?

9 A. It's not my rule.

10 We just don't -- we don't videotape our
11 interviews on the side of the road.

12 Q. So you're saying that your supervisor gave you
13 a directive not to use -- not to record the statement
14 from Matthew Frazier?

15 A. No, sir, that's not what I'm saying.

16 I'm saying we just don't videotape our
17 interviews during the execution of a search warrant.

18 Q. Well, I'm not trying to go around in a circle.
19 But, I mean, that's obviously --

20 A. Okay.

21 Q. -- obviously a rule that's set by somebody who
22 is a supervisor to you; correct?

23 A. It's not necessarily a rule. It's just
24 something that we don't do.

25 Q. Okay. You are not able to give this jury a

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1 good reason why you don't do that, are you?

2 A. That's just something we don't do, sir.

3 Q. Approaching Matthew Frazier, the door is open.
4 And you're not sure if he has one leg outside or not;
5 correct?

6 A. Correct.

7 Q. So he could either have one leg outside, two
8 legs outside, or no legs outside; correct?

9 A. What I am sure of, he was sitting on the
10 driver's seat.

11 Q. Okay. In the driver's seat.

12 But whether he's turned to the side, or
13 whether he's turned forward, you cannot tell this jury?

14 A. That he was sitting in the driver's seat is
15 what I can tell the jury.

16 Q. Okay. But you can't tell them where his legs
17 were?

18 A. At this time I don't know how many legs he had
19 in the car or outside the car.

20 Q. Okay. You testified about his lap. You did
21 not see a beer in his lap, did you?

22 A. No, sir. I was not focused on a beer.

23 Q. Okay. If there was a thirty-two ounce beer in
24 his lap, you would have seen it; correct?

25 A. As I advised, I did not observe a can of beer.

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1 I don't know if he had one or not.

2 Q. Or a bottle of beer?

3 A. Correct.

4 All I saw was what I -- what I testified to.

5 Q. Got you.

6 Okay. When you were there you didn't just
7 talk to Matthew Frazier, did you?

8 A. No, sir, I didn't.

9 Q. You talked to four other guys that night,
10 didn't you?

11 A. Yes, sir, I did.

12 Q. And as far as your notes, what those other
13 guys told you the same story, any notes you would have
14 taken that night are either lost, destroyed, or
15 misplaced?

16 A. More than likely I didn't write notes down.
17 They all provided pretty much the same concept.

18 Q. So you took no notes with them, and you don't
19 turn the report in until the next day?

20 A. As I advised, the report's turned in on
21 10/12/2010.

22 Q. Which is the day after?

23 A. Yes, sir.

24 MR. DEYSACH: Begging the Court's indulgence.

25 THE COURT: Yes, sir.

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1 [Whereupon, Mr. Deysach and Mr. Walker confer]

2 Q. [Mr. Deysach] Just briefly regarding the
3 conversation that you were testifying to about that you
4 had with Matthew Frazier that there is -- everything
5 that you're remembering that he said, that's relevant,
6 you've already told the jury; correct?

7 A. Yes, sir, I am.

8 Q. Okay. Didn't leave anything out?

9 A. Like I said, not that I can recall.

10 MR. DEYSACH: That's all I have, Your Honor.

11 THE COURT: Anything on redirect?

12 MR. SHIPLEY: Very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SHIPLEY:

15 Q. He was asking you about these notes that you
16 made the day of. When you wrote your report the next
17 day, did you incorporate those notes into your report?

18 A. Yes, sir.

19 I would have had them on my desk.

20 Q. And this deal about the camera, do y'all walk
21 around with helmets on top of them recording everything
22 you do?

23 A. No, sir, we don't.

24 Q. Why did y'all have a camera that day?

25 A. A camera that day, we use it to -- we use it

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1 to videotape at that time the car before we search it,
2 and we use it to videotape the car after we search it,
3 so people can see if we caused any damage to the car or
4 exactly what we did to the car. That's why we shoot a
5 video before and after.

6 Q. Is the idea to have proof of the condition
7 that it was in beforehand, before you went into it, and
8 then --

9 A. Yes, sir.

10 Q. -- evidence of the condition that it was in
11 afterwards?

12 A. Yes, sir.

13 Q. When you're -- when you're running up to the
14 defendant, how many people did you say were around
15 again?

16 A. As I advised, maybe two or three ran and I
17 think two might have stayed right there near the car.

18 Q. At the time you approached the defendant, were
19 these individuals detained?

20 A. At the time, we were trying to detain all
21 individuals. I'm not sure, when I was detaining him, if
22 other ones were already detained or not.

23 Q. Was this a hectic situation or are you just
24 casually going about it?

25 A. No. A lot of people are running. It was a

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1 little -- yes, sir, it was a little hectic.

2 Q. Okay. I mean, it wasn't stay right there,
3 sir? It was more of a excitable moment?

4 A. Loud verbal commands, yes, sir.

5 Q. Okay. When you -- he also asked you about the
6 lack of a written statement. Why would you have not
7 have asked him to do a written statement?

8 A. Probably at that time there was a lot going
9 on. And as I advised, we had to secure the whole scene,
10 search teams had to start searching the vehicle, people
11 were coming out of their houses, a lot of questions. We
12 just didn't have a table that we could have brought out,
13 sit him down, have an interview on a table, and give him
14 a sheet of paper to write it down. I mean, it just
15 wasn't --

16 Q. Wouldn't it also require you to uncuff him?

17 A. Yes, sir, it would have.

18 Q. At that time was it safe, as an officer, for
19 you to uncuff this defendant?

20 A. No, sir.

21 MR. SHIPLEY: I have no further questions,
22 Your Honor.

23 MR. DEYSACH: I have just a couple of
24 questions, Your Honor.

25 THE COURT: All right, sir.

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RECROSS-EXAMINATION

BY MR. DEYSACH:

Q. You know, I don't want to beat dead horses too much but as far as the video camera, it's true that all uniformed patrol officers have a video camera in their car and a microphone on their uniform; correct?

A. Not true.

Q. Not true?

A. Most do.

The marked patrol cars do. The unmarked cars, one might have it or not, I'm not sure. I know all our cars that we have on the drug task force do not have video in them or a microphone.

Q. Okay. So if a car is used by the drug task force, it will not have a microphone or a video camera in it?

A. Installed in the vehicle, no, sir, it won't.

Q. And are you trying to tell them that if you guys take over a car that had that, you would take it out?

A. No, sir, I'm not.

MR. SHIPLEY: Objection, Your Honor. It calls for speculation.

MR. DEYSACH: That's a kind of a stupid question.

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1 THE COURT: Sustained.

2 Q. [Mr. Deysach] All right. Now, we talked
3 about the number of people that were detained. Now,
4 counting -- you know, when you look at your report, you
5 have subject one, subject two, subject three, subject
6 four and subject five; correct?

7 A. Yes, sir, I do.

8 Q. And that represents all the people who are
9 around the car; correct?

10 A. That looks like everybody that was detained on
11 scene.

12 Q. Right.

13 And that's who was detainable; correct?
14 People who were near the car?

15 A. Some of them might have been the ones that
16 ran. I don't have that answer for you.

17 Q. Okay. So one of these people might have
18 actually been the -- been a runner?

19 A. Yes, sir.

20 Q. Okay. But it's still -- you're not changing
21 the fact that at least one person got away?

22 A. Again, I don't have that answer.

23 I don't know how many got away. All I can
24 tell you is the five subjects I've got in my report were
25 the ones that were detained.

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1 MR. DEYSACH: Okay. Thank you, Your Honor.

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

4 THE WITNESS: Thank you.

5 [Whereupon, the witness is excused and exits
6 the witness stand]

7 MR. SHIPLEY: The State's next witness will be
8 Corporal Jason Rodriguez, Your Honor.

9 THE COURT: All right. Corporal Rodriguez.

10 [Whereupon, Mr. Rodriguez comes forward]

11 [Whereupon, Mr. Rodriguez is duly sworn by the
12 clerk of court as follows: do you solemnly swear or
13 affirm that the testimony you give to the Court in
14 this trial shall be the truth, so help you God]

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you. Please be seated.

17 [Whereupon, the witness takes the witness
18 stand]

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JASON RODRIGUEZ,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. SHIPLEY:

Q. Would you please state your name again and spell your last name for the record.

A. My name is Jason Mehaus Rodriguez. R-O-D-R-I-G-U-E-Z.

Q. And where do you work?

A. I work for the Beaufort County Sheriff's Office.

Q. How long have you worked there?

A. I've worked with the sheriff's office for seven years and seven months.

Q. In what capacity do you work there now?

A. As of yesterday, I worked for the Beaufort-Jasper multi-agency drug task force. I was reassigned to a different task force today.

Q. How long were you working for the sheriff's office in the capacity of the drug task force?

A. I've worked for two years and nine months with the drug task force.

Q. Are you involved in this case?

A. Yes, I am. I'm a case officer in this case.

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1 Q. And what does that mean, case officer?

2 A. Case officer means in this case, which is a
3 search warrant -- execution of a search warrant, it just
4 means that obviously the report's going to be up to me
5 to conduct, to complete. Also, the collection of all
6 evidence that's seized during this execution of the
7 search warrant, that's my responsibility and I process
8 it and do what I have to do with it.

9 Q. Have you been involved, other than in this
10 case, in other executions of search warrants?

11 A. Yes. Very many.

12 Q. What's the typical procedure?

13 A. Typical procedure: in this case it was on a
14 vehicle. We commonly do them -- you know, nine times
15 out of ten we do them on a residence. In this case on a
16 vehicle. Once officers arrive on scene, we secure the
17 scene. The first thing we do is detain anybody that's
18 there on scene. That's authorized by the search
19 warrant. The first initial thing after the scene is
20 secured, we -- I assign a person that records the area,
21 in this case the vehicle. We record it prior to the
22 search of the vehicle and we record it again at the end
23 of the -- at the end of the search warrant. The reason
24 for that is in the past people have claimed that law
25 enforcement have broken things, ruined things, the

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1 property, and this is to try to take that speculation
2 out of it.

3 After that's done, a search of the area is
4 conducted. The people that are present on scene, in
5 this case the vehicle -- a search was conducted of the
6 vehicle. All items -- all evidence in this case was
7 seized by my self.

8 All the items are photographed prior to the
9 seizure by whoever I assign to do that. In this case it
10 was Officer Carmany.

11 Once all items are seized and collected, at
12 the conclusion of the search warrant whoever we're going
13 to charge with whatever charges we have, and those
14 subjects are charged, interviews are taken, and then
15 they're taken, whoever needs to go to jail. If no
16 charges are on any certain persons, then they're
17 released.

18 Q. Describe for us what happens if an officer is
19 searching the vehicle and finds something of interest.
20 What's the procedure there?

21 A. We have a procedure that if specifically
22 drugs, large amounts of money, are located inside the
23 vehicle or a residence, that officer stops immediately.
24 He notifies me about the discovery, then I go ahead and
25 actually do -- secure the evidence into an -- and I

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1 place it in a Beaufort County evidence bag.

2 Q. Do you typically take photographs of the items
3 where they're found?

4 A. The photographs are taken prior to the actual
5 seizure that I conduct and then just as the items that's
6 being seized is sitting, where ever it's sitting.

7 Q. On October 11th, 2010, were you involved in he
8 execution of this search warrant?

9 A. Yes.

10 We responded -- we responded to the area of
11 Martha Brown. We were doing a drug investigation in
12 reference to the defendant in this case possibly selling
13 and distributing --

14 MR. DEYSACH: Objection, Your Honor. May we
15 approach?

16 THE COURT: Yes.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 THE COURT: Ladies and gentlemen, I have a
20 matter of law I need to take up with the attorneys so
21 I'm going to get you to step back into the jury room.
22 While you're back there I'm going to get you to do
23 something for me, if you would. I need you to --
24 while you're back there, I want you to elect a
25 foreperson to serve for this jury.

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1 Let me tell you a little bit about that role.
2 Ladies and gentlemen, the foreperson of a jury is
3 just the individual who is the person that
4 communicates between the jury panel and the Court.
5 There's thirteen of you, total, and obviously you
6 can't -- it would be chaos to have to deal with
7 everybody individually. So the foreperson is
8 basically the spokesperson for the jury.

9 If the jury has a question about anything, the
10 foreperson would take a sheet of paper, write that
11 question out, pass it out to me, and based on the
12 question I'll respond either to the foreperson or
13 I'll respond to the jury as a whole. That's one of
14 the main roles of the foreperson.

15 The other role is that any time you have a
16 group of folks that are going to get together and
17 discuss a matter, you need to have one person who
18 starts and stops the proceedings. So the foreperson
19 would begin the deliberations. He or she would
20 basically say, okay, let's go ahead and start our
21 deliberations.

22 I will tell you now that all of you must be
23 present while the deliberations are going on. So
24 that if one of -- one of you have to excuse yourself
25 to use the restroom, the foreperson would then say,

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1 okay, let's stop conversation, have no talking about
2 the case until that person returns, and then when
3 they return we'll start back.

4 And so that's essentially the role of the
5 foreperson.

6 I will tell you this: that your verdict in
7 this case must be unanimous. So having said that,
8 the foreperson's vote, the foreperson's opinion,
9 carries no more weight than anyone else's. You are
10 all equal in the jury room. So the fact that someone
11 is the foreperson doesn't mean that they run the
12 show, so to speak. Their opinion is important, just
13 as all of your opinions are important. And you're
14 all equal in the jury room. It's just that when you
15 have a group of folks, you need somebody to be the
16 front person to deal with the Court and those things.

17 So if you would, I'm going to ask you to go
18 back and select a foreperson. The only one that
19 isn't eligible for that role would be the alternate.
20 Other than that, everyone else is eligible for that
21 position.

22 Please have no conversation about the case.

23 [Whereupon, the jury exits the courtroom at
24 3:37 p.m.]

25 THE BAILIFF: The jury is clear.

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1 THE COURT: All right. Now, before we take up
2 anything, let's go ahead and just take a short break
3 and we'll start back in just a few minutes.

4 [Whereupon, a recess is taken from 3:37 p.m.
5 to 3:50 p.m.]

6 [Whereupon, State's Exhibit Numbers 27-B
7 through State's Exhibit Number 27-H are marked by the
8 court reporter]

9 THE COURT: Please have a seat.

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MOTION FOR A MISTRIAL

1
2 THE COURT: Mr. Deysach, be happy to hear from
3 you regarding your motion.

4 MR. DEYSACH: Thank you very much, Your Honor.

5 I think it might be important to hear exactly
6 what the sentence was, Your Honor, because I think
7 even in the colloquy we had at sidebar that the
8 sentence that drew the objection, there were already
9 a couple of different versions. I think if it's
10 possible, I would like to hear what that last
11 sentence was, in order to --

12 THE COURT: Can you replay that last sentence?

13 THE COURT REPORTER: I can. Give me one
14 second.

15 [Whereupon, the last question is played back
16 for the Court]

17 THE COURT REPORTER: I need one quick second.

18 [Off the record momentarily]

19 THE COURT REPORTER: Okay.

20 MR. DEYSACH: Okay. Ready to hear from me,
21 Your Honor?

22 THE COURT: Yes, sir.

23 MR. DEYSACH: Okay. We heard just now that
24 response to Martha Brown, reference an investigation
25 to -- into this defendant for I think he said maybe

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1 buying and selling was the last words that I heard
2 before standing up and objecting.

3 It seems to me -- also, I guess I want to add
4 that prior to getting to the part that we heard, the
5 witness testified that he was at the time a member of
6 drug task force, what drug task force does as far as
7 investigating and interdicting drugs and drugs only,
8 basically; that we had a discussion and I think Your
9 Honor said when we had the discussion before lunch
10 about the prior -- what are we -- how are we going to
11 handle the prior bad acts, that we have reached in
12 accord, while the witness was actually in the
13 courtroom.

14 He's the case officer and so has not been
15 sequestered and was here for all that discussion that
16 we were going to say that they were there to execute
17 a search warrant on the car and that discussion of
18 prior buying and selling would be off limits. And so
19 we had that agreement with the solicitor.

20 And I think that the case law is fairly clear
21 that prior testimony of drug sales in a drug case --
22 you know, when I was kind of -- you know, I think I
23 see State vs. Carter, 323 S.C. 465, and State vs.
24 Humphries, 346 S.C. 435, both court of appeals cases,
25 Carter from '96 and Humphries from 2001, that are

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1 case, and, three, you know, prior bad-character
2 evidence: he's already a drug dealer, we're already
3 investigating him, so he must --

4 THE COURT: Mr. Deysach, I hear what you're
5 telling me, but maybe I don't see prior bad acts the
6 way you do.

7 This is a case against an individual who is
8 charged with several drug offenses. The officer's
9 testimony is, we were conducting an investigation
10 into the individual possibly buying and selling or
11 whatever. That's not a -- that's not a prior bad
12 act. A prior bad act is, we caught him selling on
13 this occasion, or we had information that he was
14 dealing on this occasion, or we made a buy off of him
15 a month earlier. Those are prior bad acts. The fact
16 we're investigating this individual, I'm not -- I
17 don't know that that's a prior bad act.

18 MR. DEYSACH: Well, it's also -- I think it
19 goes into the character evidence, also. I think what
20 -- the distinction I hear being drawn from you is
21 that if he were to say -- if the witness were to say,
22 we're investigating him for -- it would have to be
23 prior buying and selling. It wouldn't really be
24 future buying and selling. But we're investigating
25 him for prior buying and selling, that if a specific

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1 time isn't attached to that, that it wouldn't qualify
2 as prior bad act evidence.

3 THE COURT: It's obvious to everybody who
4 stands on two feet and walks upright that if a person
5 is in court on these drug charges, that there was an
6 investigation into drugs.

7 So you're saying the prior bad acts, the fact
8 that the officer said, we were investigating possible
9 buying or selling, and that is a prior bad act?

10 MR. DEYSACH: Right.

11 THE COURT: Okay.

12 MR. DEYSACH: That and it's character -- bad
13 character evidence I think is probably reputation.
14 You know, it's character evidence also, as well as
15 just prior bad acts.

16 But that they weren't saying they were
17 investigating drugs or were investigating drug sales
18 in this car, which is kind of what we had -- I mean,
19 yeah, it's obvious that if somebody has been charged
20 it's because, you know, the police did police work.
21 But what's not obvious is that the reason that
22 they're going to that car is because of prior buying
23 and selling by Matthew Frazier. And that's what I
24 think the jury just got told.

25 THE COURT: That's what they were doing.

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1 MR. DEYSACH: But it's not appropriate for the
2 jury to hear.

3 THE COURT: And so what you want to do is you
4 want to be able to tell the jury -- see, this is
5 where the mischaracterization starts coming in.

6 MR. DEYSACH: Okay.

7 THE COURT: You want to be able to tell the
8 jury that they weren't investigating Mr. Frazier,
9 they were investigating this car and, oh, guess what,
10 ladies and gentlemen, he doesn't own this car.

11 MR. DEYSACH: I mean, I -- sure.

12 THE COURT: Yeah.

13 MR. DEYSACH: Sure. I mean --

14 THE COURT: Sure.

15 MR. DEYSACH: -- it's --

16 THE COURT: Which is a mischaracterization of
17 the whole case.

18 MR. DEYSACH: Well, I will disagree with you
19 on one point, is that if I were to get up there and
20 say they weren't investigating Mr. Frazier -- I would
21 never do that. I'm telling you, I could never -- you
22 know, as an officer of the Court I would never get up
23 during an argument -- I mean, maybe you say there's
24 no evidence of this -- get up and say something that
25 I know is not true. But I'm certainly not going to

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1 get up there and tell them that there was this prior
2 investigation into Mr. Frazier. I'm going to tell
3 them that they got a search warrant for this car ten
4 days before they actually serve it and when they
5 serve it, yeah, Mr. Frazier is sitting there but it's
6 not his car. You know, something along those lines.

7 THE COURT: That's exactly what I just said.

8 MR. DEYSACH: But I wouldn't say there was
9 never an investigation into him or they weren't
10 investigating him.

11 THE COURT: You say it by not saying it.
12 That's your inference to the jury is they're not
13 investigating this guy, they're investigating a car.
14 You have the right to do that.

15 MR. DEYSACH: Right.

16 THE COURT: Okay? I have to decide whether
17 what was done here rises to the level of declaring a
18 mistrial, which is what you're asking for.

19 MR. DEYSACH: It is, Your Honor.

20 And I think that -- you know, I gave the
21 reasons. I think it is error to admit it. And, you
22 know, obviously there's many things that are true
23 that have occurred in the real world that the jury is
24 not allowed to hear about, and this is just one of
25 them.

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1 You know, that's what the rules of evidence
2 are really all about, all the things that a jury
3 shouldn't hear that they might want to hear and that
4 might also be true. And there's many of those things
5 in there and they're prejudicial and they're not the
6 type -- they're not the proper basis for a decision.
7 And so when one of those pieces of evidence goes to
8 the jury and they hear it, that's when the problem
9 arises.

10 Like I said, I mean, you know, that's why the
11 mistrial. You can't unring the bell. And I tried so
12 hard to get the Court to get the solicitor's officer
13 -- me to have the Court -- or get a ruling ahead of
14 time so that we wouldn't run into this problem. And
15 now that we have, you know, I feel like that that
16 testimony violated what you -- what we -- I mean, we
17 had agreed on, but you had also ruled earlier. And
18 now that we've gotten into, well, it's a search
19 warrant for the car to it's a search warrant as a
20 result of an investigation into Matthew Frazier, now
21 we've got a problem and there's really --

22 I mean, I hate doing it, too. I know there's
23 so much work that goes into a trial. But I know that
24 it's better to do things slow and know that they're
25 right instead of just to try to press on. And I

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1 don't think that this -- I don't think that this jury
2 should be, you know, asked to decide this after
3 testimony that I would characterize it as violating
4 Your Honor's earlier ruling from before lunch.

5 THE COURT: My earlier ruling was that they
6 could say that they were -- pursuant to their
7 investigations, they sought a warrant.

8 MR. DEYSACH: And then I think the distinction
9 is obviously when you add investigations into
10 Matthew. I think that the into Matthew Frazier, into
11 this defendant, that's a big difference. It's a big
12 difference. And I think that the way you just
13 characterized it versus what he said -- characterize
14 your ruling versus what he said, you know, this is a
15 violation.

16 And, I mean, you know, obviously, you know,
17 everything -- luckily, like I told the jury, you
18 know, everything is -- I mean, it is recorded so we
19 do know what the earlier -- we should be able to
20 figure out what the earlier ruling is.

21 But my position is that if the earlier ruling
22 was to say we could get -- say that we were there
23 serving a search warrant as a result of a drug
24 investigation, and the testimony is that we got --
25 we're there as a result of a search warrant for a

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1 drug investigation into Matthew Frazier for buying
2 and selling, that that violates the order.

3 THE COURT: Solicitor?

4 MR. SHIPLEY: To elaborate on what Your Honor
5 has already said: Your Honor, I just have to make
6 clear that the line hasn't been crossed yet. He just
7 said that there was an investigation involving Mr.
8 Frazier. And of course being the drug task force,
9 their investigations are going to be into the buying
10 and selling of drugs. I mean, that's what they do.

11 So I don't think any harm has been done yet,
12 certainly not warranting a mistrial. And it could be
13 cured just by stopping. I think if we went any
14 deeper than that, we might run into a problem. I
15 think what is said so far has not crossed the line
16 and we could proceed from here, not go any further.

17 Also, I would just like to reiterate what Your
18 Honor said earlier. This -- an investigation into
19 Mr. Frazier is not bringing up prior bad acts. That
20 would be mentioning the sales that led up to the
21 search warrant, to the multiple tips from people in
22 the community about this individual selling drugs.
23 Those are all prior bad acts. This is just the res
24 geste of the case, a drug investigation involving the
25 defendant, a search warrant on this vehicle.

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1 THE COURT: I think that's what, in fact, came
2 out.

3 I think -- I don't believe that the testimony
4 that was received into evidence did rise to the level
5 of prior bad acts. I don't get -- and it's just the
6 Court's opinion, based on -- because obviously I
7 understand your position, Mr. Deysach, regarding our
8 earlier discussions. And maybe I lent to that
9 confusion.

10 I don't believe what the officer testified to
11 was a blatant violation of the Court's ruling. I
12 don't think he intended to violate my ruling. I
13 probably could have made it clearer. But I don't
14 think it -- I don't think it's an issue or a
15 violation of anyone's rights, the defendant's rights,
16 to say that this was an investigation into the
17 defendant, because that's what it was. This wasn't
18 an investigation into a car; this was an
19 investigation into Mr. Frazier.

20 Now, you keep giving me a face but --

21 MR. DEYSACH: Well, I don't --

22 THE COURT: -- that's exactly the testimony
23 that I got in the process of the search warrant when
24 we went through the suppression hearing: that they
25 had information. And, again, this was outside the

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1 jury's presence, what I heard, that they had
2 information that this fellow was selling drugs out of
3 a car and this was an investigation into that.

4 MR. DEYSACH: Well, I do want to respond. I
5 don't want to talk over you.

6 THE COURT: Well, go ahead.

7 MR. DEYSACH: I think that it is extremely
8 fair for my file, which includes, you know, the
9 investigations of other charged marijuana sales on
10 Mr. Frazier that have been since nol-prossed. I
11 suppose that when a solicitor nol-proses an
12 indictment he can bring it back or it could be
13 brought back to life through the indictment process.
14 I recognize that.

15 But I would characterize this as the police
16 knowing that drugs were being sold out of this car
17 and wanting to find out who. That's why they sent
18 the CI --

19 THE COURT: That wasn't the testimony today.

20 MR. DEYSACH: Well, we were trying to figure
21 out whether -- you know, I wasn't trying to prove to
22 you that score. You know, I was trying --

23 The issue was whether or not the search
24 warrant was valid, not whether or not the
25 investigation initiated as an investigation of

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1 Matthew Frazier or an investigation of this car. The
2 car -- they set up and they look at the car out of
3 the woods. And I asked them, could you ever see the
4 face of the person who, with all the hand-to-hand
5 drug transactions, were --

6 You know, we were saying, well, common sense,
7 they must be drug transactions. No actual money or
8 drugs could be seen, nor could the face of the person
9 be seen. And I was saying, you know, this informant,
10 what makes him so reliable that it's Matthew Frazier
11 that's sitting in this car.

12 So I think it's very clear to me that the
13 police knew that this car was where -- I mean, you
14 could look at it from across the street and know that
15 drugs are being sold out of this car but you couldn't
16 tell who and so they send the CI in. And, you know,
17 he -- you know, was it Matthew Frazier and they put
18 the thing in front of him. Say, yeah, it's Matthew
19 Frazier.

20 But those cases have not been litigated and
21 those really rely on the hearsay of the CI, who's not
22 even here and I don't get to confront. But they come
23 and they serve the search warrant of the car. And,
24 sure, you know, Matthew Frazier is sitting there.
25 And they want to say, yeah, we knew it all along.

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1 And that's not appropriate and that's why I asked for
2 the ruling before lunch.

3 But I think that in all fairness that the car
4 was indeed a subject of the investigation and that's
5 why where they talk about the property to be
6 searched, it was the car and it doesn't say -- you
7 know, you could make a search warrant for a person.
8 You know, it says on the form, you know, person,
9 place or premises or whatever to be searched, but it
10 doesn't put Matthew Frazier there.

11 I mean, so I think it is -- it is more who's
12 selling drugs out of this car, not whether or not
13 drugs are being sold out of the car.

14 THE COURT: All right. I don't find the
15 testimony that has been admitted into the trial at
16 this point rises to the level of a mistrial. I think
17 the solicitor stopped it before it got to that level.
18 I think it could have gotten there, but it did not.
19 I don't think the testimony that was entered in would
20 take us to that level.

21 I'm going to deny the motion for a mistrial
22 but will certainly note your exception to that
23 ruling.

24 Now, solicitor, you know, I think we -- I
25 think we could have headed down a wrong path had it

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1 not been stopped.

2 Officer, I want to make it clear that there is
3 to be no testimony and no comments as to the facts
4 and the circumstances leading up to the search
5 warrant. And I think we can take it from there.
6 Okay?

7 MR. SHIPLEY: Yes, Your Honor.

8 THE COURT: All right. Bring the jury back
9 in.

10 MR. SHIPLEY: Your Honor, for this witness I
11 was going to publish to the jury some photographs, if
12 we got to that point, using this smart board here.
13 Your Honor, I was planning on sitting up right here
14 in front of the defense table where these water jugs
15 are, so they wouldn't have to move and so you would
16 have a good view and the jury would have a good view
17 and get -- okay with you, Your Honor.

18 THE COURT: It's fine with me.

19 Let me say this to either side. Whoever
20 presents any -- if you ever are presenting stuff for
21 the jury, I appreciate being thought of but it's
22 really the jury or the fact-finders. It's really
23 more important to me that they can see what you want
24 them to see. So don't concern me. Put it wherever
25 you think the jury has the best look at it. And of

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1 course I'll let counsel, whoever is showing the stuff
2 -- if opposing counsel needs to move into a better
3 position to see it, feel free to do that.

4 So you put it wherever you want the jury to
5 see it and I'll allow counsel to move around so that
6 everybody can see it and not -- don't worry about me.
7 Okay?

8 MR. SHIPLEY: Thank you, Your Honor.

9 THE COURT: And keep in mind, now, you now
10 have looked -- I don't think there's been any
11 stipulation to photographs, so remember to not put
12 any on a board before the jury until it's actually
13 moved into evidence.

14 MR. SHIPLEY: Yes, Your Honor.

15 [Off the record momentarily]

16 [Whereupon, the jury enters the courtroom at
17 4:13 p.m.]

18 THE BAILIFF: The jury is present.

19 THE COURT: All right.
20
21
22
23
24
25

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CONTINUED DIRECT EXAMINATION

BY MR. SHIPLEY:

Q. On October 11th, 2010, were you involved in the execution of a search warrant?

A. Yes, I was.

Q. What, again, was the object of that search warrant? What was the location to be searched?

A. The location to be searched was a 1999 Dodge Intrepid, four-door, maroon in color, and it had a South Carolina license plate of [REDACTED] [REDACTED]

Q. Would you describe for us the -- want you to go through the process of you executing the search warrant on October the 10th beginning with what you started doing and arriving on the scene.

A. I drove my Beaufort County issued vehicle, which at the time was a 2008 Ford F150 truck. I drove it, along with three other members of the drug task force, into Martha Brown Circle. The purpose was to reach this vehicle that was in a back area of Martha Brown Circle.

At the time I pulled up to that vehicle, I observed a group of people standing outside of the vehicle. When we opened the doors, I observed two subjects run and flee on foot of the area of the

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1 vehicle. I observed also several subjects had just
2 stood there, didn't run.

3 I conducted a foot pursuit of the two
4 subjects. I was able to catch and apprehend one of the
5 subjects. The other -- obviously, while I was detaining
6 the subject that I caught, codefendant, one other
7 subject, a black male, fled the scene and he was not --
8 he was not apprehended.

9 Once my -- the codefendant was detained, he
10 was -- I walked him back I would say from this wall to
11 that wall. I was able to catch him. I walked him back
12 to where the other groups of subjects were located that
13 were standing outside the vehicle. I noticed another
14 officer, Deputy Squires in this case, had the defendant
15 in custody, also, right outside of the vehicle in
16 question in the search warrant.

17 Q. You testified earlier about the procedure done
18 in executing a search warrant. You said -- you were the
19 case officer on this case?

20 A. Yes, I am.

21 Q. Was it your duty to seize all of the evidence
22 that was located at the scene?

23 A. Yes, sir.

24 Q. Was everything that was found showed to you
25 before it was seized?

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1 A. Yes, it was.

2 Q. Were photographs taken of them before they
3 were seized? Where they were located?

4 A. Yes, photographs were taken.

5 Q. What were the first things that were pointed
6 out to you?

7 A. The first items I collected as evidence were
8 three items. The first one was an orange medicine
9 bottle that did not have a tag on it. In addition to
10 that, there was a cellular phone and a small amount of
11 U.S. currency. That was located on the floor at the
12 driver's side door of this vehicle that we had the
13 search warrant on and I was -- it was pointed out to me
14 that there's where the defendant --

15 MR. DEYSACH: Object to the hearsay.

16 THE COURT: Sustained.

17 Q. [Mr. Shipley] Could you describe for us how
18 the -- were you personally going through the vehicle and
19 searching everything and finding it, or were some other
20 officers doing this?

21 A. Other officers were.

22 Q. With every item seized were you first
23 notified, shown its location?

24 A. Yes.

25 MR. SHIPLEY: May I approach the witness, Your

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1 Honor.

2 THE COURT: Yes, sir.

3 Q. [Mr. Shipley] Handing the defendant -- the
4 witness what has been marked for identification purposes
5 as State's Exhibit 27-A. Could you identify that?

6 A. This is the medicine bottle, with no label,
7 that contained -- after I opened it, contained a yellow
8 rock-like substance that I, through my training and
9 experience, know to be crack cocaine.

10 Q. Did you -- is there a way to determine what it
11 is in the field?

12 A. There is a field-test kit that we have.

13 It's just a -- what I could paint a picture to
14 you, it's just like a wet nap that you would use to
15 clean your hands. This is commonly used to -- in the
16 field to test any suspected crack cocaine, any suspected
17 cocaine, by applying a small sample of the seizure, in
18 this case the crack cocaine, onto that and then it
19 reacts. The pad itself is pink in color. It reacts --
20 a positive reaction is by indicating a bluish color. It
21 turns to blue. That gives a positive reaction for a
22 cocaine base.

23 Q. Did you do that in this case?

24 A. Yes, I did.

25 Q. What was the result?

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1 A. It was a positive reaction for this as being a
2 cocaine base.

3 Q. What is cocaine base also known as?

4 A. Controlled substance.

5 Q. Is there another word for cocaine base?

6 A. Cocaine base in this case is crack cocaine.

7 Obviously, powdered cocaine would also give a
8 positive reaction.

9 Q. Is that in substantially the same condition it
10 was as when you found it --

11 A. Yes, it is.

12 Q. -- seized it?

13 A. This is the same condition when I seized it
14 off the ground next to the vehicle.

15 Q. What did you do with it once you seized it?
16 What is the procedure then?

17 A. Once I seize it, I place it into this Beaufort
18 County evidence bag and I secure it -- secure it in a --
19 usually a crate. And that's what we do with all the
20 evidence. I kind of consolidate it all into a crate.

21 Q. Did you happen to determine the approximate
22 weight on -- of that --

23 A. Yes.

24 Q. -- in the field?

25 A. When I was able to weigh it for this item, I

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1 had an approximate weight of 7.2 grams.

2 Q. I'm now handing the witness what has been
3 marked as State's Exhibit 27-B. Can you identify that
4 for us, please?

5 A. Yes.

6 This is a clear plastic bag containing a white
7 powdered substance and suspected -- at the time
8 suspected to be powder cocaine.

9 Q. Where was that located?

10 A. This was located on the -- I'm sorry. This
11 was located on the gear shifter. And when I say the
12 gear shifter, obviously it was an automatic car with the
13 shifter down next to your right leg. It was sitting on
14 the letters, the D and the 1 and the 2 for shifting the
15 gears. It was sitting right on top of the shift -- or
16 those letters. So in plain view.

17 Q. And were those field-tested?

18 A. Yes.

19 I also field-tested this, took a small sample
20 with a nick kit that we commonly use. It also gave a
21 positive reaction for a cocaine base.

22 Q. And what was your -- the approximate weight
23 done in the field?

24 A. I also weighed this and in the field they gave
25 an approximate weight of 29.2 grams.

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1 Q. And once you seized that, what did you do with
2 it?

3 A. Once I seized this, any items that I need to
4 get -- once we get back to the office, any items I need
5 to get examined [phonetic] by our laboratory, all
6 those items are put into what we call Beaufort County
7 Sheriff's Office best bag. It's secured into a best
8 bag, along with any other evidence, and either gets
9 submitted into the lab -- I did that.

10 This, along with other items, were submitted
11 in the best bag. And at the conclusion of the
12 investigation, I submitted all evidence that I seized on
13 this case into our Beaufort County evidence temporary
14 storage locker.

15 And I say all evidence. There's a quantity
16 of -- not all evidence. Except a quantity of currency,
17 U.S. currency, that was also seized during this case and
18 we have different procedures that we do with that
19 currency.

20 Q. I'm now showing the witness what has been
21 marked as State's Exhibit 27-C. Can you identify that
22 for us, please.

23 A. This is a what we call a corner bag.

24 Your -- a torn plastic bag, had a white-
25 powdered residue inside the bag, kind of hard to see,

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1 but also has a corner you can see torn off.

2 Q. What's a corner bag?

3 A. A corner bag is -- this looks like the remains
4 of the corner baggie.

5 Commonly, in my line -- in the drug world,
6 corner bag, a small amount of cocaine is placed into the
7 corner of the bag and then it is ripped off and then
8 tied. And that's what is used to -- or to contain
9 the -- you know, powdered cocaine, crack cocaine,
10 whatever. This looks like the leftovers of that, the
11 corner bag. The corner, actual corner, is missing on
12 this.

13 Q. Were you able to -- was there enough there for
14 you to test on the field?

15 A. Yes.

16 I conducted a field test on this using a NIC
17 cocaine wipe. And also that white powdered substance
18 that's still in there, that tested positive for cocaine
19 base.

20 Q. What did you do with that piece of evidence
21 once it was seized.

22 A. This was also secured in a -- the Beaufort
23 County Sheriff's Office best bag and submitted for
24 analysis.

25 Q. Handing the witness what has been marked as

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1 State's Exhibit 27-D. Can you identify that for us,
2 please.

3 A. This is a -- this is a lottery ticket and
4 inside of that lottery ticket -- you couldn't see it,
5 but when I secured it as evidence it contained a small
6 amount of green, leafy substance that I know to be
7 marijuana.

8 Q. Where was that found?

9 A. This was located in the front --

10 MR. DEYSACH: Your Honor, I think this is --
11 unless he's the one who found it, I think that -- or
12 he saw it being located, I think that it would be
13 hearsay if it's something that somebody else found
14 and then told him where they found it.

15 A. The search of the -- of the defendant's person
16 was conducted, at which time this was pulled out and I
17 was present at the time and I actually seized this
18 lottery ticket that contains marijuana. It was found in
19 the pocket. I'm trying to find the exact pocket. But
20 it was in a front pocket of the defendant, and it was
21 contained in a -- in the lottery ticket.

22 [Whereupon, the witness reviews documents]

23 A. Front-right pocket, it says. I marked it on
24 the back.

25 Q. [Mr. Shipley] Now I'm showing the witness

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1 State's Exhibit 27-E. Can you identify that, please?

2 A. This is another small amount of suspected
3 marijuana and also a small baggie of marijuana seeds.

4 Q. Can you tell us where that was found?

5 A. Yes.

6 This was located inside of the vehicle that we
7 conducted the search warrant on, inside the center
8 console. It had an elbow rest, you can open it up, it
9 had the center console inside. This was concealed in
10 there.

11 Q. After you seized it, did you put it in that
12 bag?

13 A. Yes.

14 I contained it into this evidence bag, which
15 then was submitted into the best bag, Beaufort County
16 best bag.

17 Q. Now handing the witness State's Exhibit 27-F.
18 Identify that for us, please.

19 A. This is a green, leafy substance. Also has
20 some white powder substance in there. Suspected to be
21 marijuana and suspected to be, you know, rock cocaine or
22 crack cocaine.

23 Q. Do you know where you found that?

24 A. Yes.

25 This was found on the passenger seat. It was

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1 just remnants all over the passenger seat and we were
2 able to scoop up and collect as much as we could. Also,
3 this did -- this was field-tested, the white powder. It
4 tested positive.

5 Q. After you seized it, did you place it in this
6 bag?

7 A. Yes.

8 I secured it in this bag, which then I secured
9 into the Beaufort County best bag.

10 Q. Do you field-test marijuana?

11 A. No, we do not.

12 Q. Now showing the witness what's been marked as
13 27 -- State's Exhibit 27-G. Can you identify that for
14 us?

15 A. This is a -- I don't know the appropriate
16 name, but a marijuana blunt for a marijuana cigarette,
17 or a roach. It has numerous street names. But this is
18 commonly just a cigar wrapper that contains marijuana
19 and this is usually the end result after the cigarette
20 is smoked completely.

21 Q. Where did you find that?

22 A. I located this on the passenger-side
23 floorboard of the vehicle that we conducted a search
24 warrant on.

25 Q. Once you seized it, did you place it into that

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1 -- into a bag?

2 A. Yes.

3 I sealed -- I submitted it in this evidence
4 bag, which then was submitted into a best bag.

5 Q. Now showing the witness State's Exhibit 27-H.
6 Can you identify that for us, please.

7 A. This is a Beaufort County best bag.

8 This is commonly -- or in this case obviously
9 is used for the -- for anything that's needed -- needs
10 to get submitted into a laboratory, into our laboratory,
11 to be tested.

12 In this case I secured all those items into
13 this one, which I then turned into the evidence locker,
14 which then was tested. And we -- each best bag is
15 issued its own number, which in this case is C008547,
16 and that number is never used again.

17 Q. Did you place all of these items into the best
18 bag?

19 A. Yes.

20 Q. Once you -- did you seal it?

21 A. Yes.

22 The red up top is a gel that gels together and
23 then it will not be -- you cannot reopen it. And if
24 it's manipulated in any way, these lines will then show
25 some sort of, you know, tampering with. And then it's

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1 still sealed until today. I think the lab uses the
2 bottom part to access the bag -- or the contents.

3 Q. What did you do with the -- with that best
4 bag?

5 A. This best bag, after all of the evidence was
6 secured inside of it, I went ahead and turned it into
7 the Beaufort County temporary storage evidence locker
8 that we have located at the Hilton Head office. I did
9 that the -- the same day, October 11, 2010, at
10 approximately 2355 or 11:55 at night.

11 [Whereupon, State's Exhibit Number 28 is
12 marked by the court reporter]

13 [Whereupon, State's Exhibit Number 28-A is
14 marked by the court reporter]

15 MR. SHIPLEY: May I approach the witness
16 again, Your Honor?

17 THE COURT: Yes, sir.

18 Q. [Mr. Shipley] Showing the witness State's
19 Exhibit 28. Could you open that bag for us, please.

20 A. [Witness complies]

21 Q. Can you identify the contents of that bag?

22 A. Yes.

23 This is a pistol that I secured inside of the
24 -- inside of the vehicle at the time that we conducted
25 the search warrant. The pistol is a -- it's a black

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1 Highpoint .9mm pistol. Has a serial number of papa,
2 189182 and it --

3 Q. Where did you find this?

4 A. This was located on the passenger-side
5 floorboard of the vehicle that we did the search warrant
6 on. In addition to this, this black bag right here is
7 also -- is a holster, obviously the pistol.

8 In addition to this, I had a --

9 MR. SHIPLEY: I want to mark this bag
10 containing the pistol as State's Exhibit --

11 Q. [Mr. Shipley] What is the exhibit number on
12 the outer bag?

13 A. 28.

14 MR. SHIPLEY: 28-A.

15 Q. [Mr. Shipley] And the second bag, what are
16 the contents of it?

17 A. The magazine that belong -- that was in the
18 Highpoint that contained three .9mm rounds.

19 MR. SHIPLEY: I would like to mark that as
20 State's Exhibit 28-B.

21 [Whereupon, State's Exhibit Number 28-B is
22 marked by the court reporter]

23 Q. [Mr. Shipley] Where did you say these were
24 located?

25 A. These were located on the passenger-side

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1 floorboard of the vehicle, of the Dodge Intrepid.

2 Q. Did you seize those items from the location?

3 A. Yes.

4 Q. And what did you do with them after that?

5 A. This stays in the -- I secured it obviously in
6 this evidence bag, and it's submitted into the temporary
7 storage -- the temporary storage at our office.

8 Q. Is it in substantially the same condition as
9 it was that day?

10 A. Yes, it is.

11 MR. SHIPLEY: Your Honor, at this time I move
12 State's Exhibit 28, containing 28-A and B, into
13 evidence.

14 THE COURT: Any objection?

15 MR. DEYSACH: No, Your Honor.

16 THE COURT: Without objection.

17 [Whereupon, State's Exhibit Number 28 is
18 admitted into evidence by the Court]

19 [Whereupon, State's Exhibit Number 28-A is
20 admitted into evidence by the Court]

21 [Whereupon, State's Exhibit Number 28-B is
22 admitted into evidence by the Court]

23 MR. SHIPLEY: Permission to publish this to
24 the jury, Your Honor.

25 THE COURT: Not until we put a gun lock on it.

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1 It's not that I don't trust you guys. But
2 we'll figure out -- get a gun lock on it and let the
3 jury see it.

4 [Whereupon, State's Exhibit Number 30 is
5 marked by the court reporter]

6 Q. [Mr. Shipley] I'm going to show the witness
7 State's Exhibit 30. Can you identify the contents of
8 that bag?

9 A. This is a bottle of GNT inositol powder. It's
10 a dietary supplement.

11 Q. Where was it located?

12 A. This was located on the -- also on the
13 passenger-side floorboard of the vehicle.

14 Q. Was it pointed out to you at that location and
15 did you seize it?

16 A. Yes.

17 Q. What did you do with it once you seized it?

18 A. I secured it into this evidence bag and turned
19 it and --

20 Q. Did you submit it into evidence?

21 A. -- turned it into evidence. I submitted it
22 into evidence.

23 Q. Is it in substantially the same condition as
24 it was that day?

25 A. Yes, it is.

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1 MR. SHIPLEY: Your Honor, I would like to move
2 State's Exhibit 30 into evidence.

3 MR. DEYSACH: No objection, Your Honor.

4 THE COURT: Without objection.

5 [Whereupon, State's Exhibit Number 30 is
6 admitted into evidence by the Court]

7 MR. SHIPLEY: May I publish this to the jury,
8 Your Honor?

9 THE COURT: Yes, sir.

10 [Whereupon, the jury views evidence]

11 THE COURT: And, solicitor, let me -- earlier
12 when you mentioned publishing the other exhibit, I
13 didn't know if you were going to actually hand it to
14 them and let them pass it around.

15 MR. SHIPLEY: No, sir.

16 THE COURT: If you yourself want to publish it
17 to them, you can take it out and show it to them.
18 That's fine. I've got no problem with that. Okay?

19 MR. SHIPLEY: Thank you, Your Honor.

20 [Whereupon, State's Exhibit Number 29 is
21 marked by the court reporter]

22 Q. [Mr. Shipley] Showing the witness State's
23 Exhibit 29. Identify that for me, please.

24 A. This is a purple Crown Royal bag. Commonly,
25 when you purchase a bottle of Crown Royal liquor it

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1 comes in this bag.

2 Q. Where was that found?

3 A. This was located under the -- I'll try to draw
4 a picture for you -- at the feet of the driver's side of
5 the vehicle, where a normal -- where the gas pedal is
6 and the brake pedal, there's plastic under the steering
7 wheel that's used to conceal all the wiring of the
8 vehicle.

9 That plastic kind of forms a shelf. If you go
10 all the way deep in there, you can sit things on top of
11 that -- that area is kind of a natural void in this
12 vehicle. This was found, with its contents, in that
13 area of the vehicle kind of concealed. Well, it was
14 definitely concealed. But we had to actually go up in
15 there and find it.

16 Q. Was it pointed out to you at that location?

17 A. Yes, it was.

18 Q. Did you remove it from that location?

19 A. I did.

20 Q. What were the contents of that Crown Royal
21 bag?

22 A. This Crown Royal bag contained \$11,040 of U.S.
23 currency.

24 Q. Did you seize that item and place it into
25 evidence?

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1 A. Yes, I seized this item.

2 I removed the contents, the U.S. currency, and
3 that was submitted or turned over to Master Sargent
4 Sancowski, which is he -- he deals with the forfeitures
5 when it comes to money and deposits it into an account.
6 But the actual bag I submitted into evidence.

7 Q. Is it in substantially the same condition as
8 it was that day?

9 A. It was a lot thicker when we seized it.

10 Q. Minus the money?

11 A. Yes.

12 MR. SHIPLEY: Your Honor, the State moves
13 State's Exhibit 29 into evidence.

14 THE COURT: Any objection?

15 MR. SHIPLEY: No, Your Honor.

16 THE COURT: Without objection.

17 [Whereupon, State's Exhibit Number 29 is
18 admitted into evidence by the Court]

19 [Whereupon, State's Exhibit Number 31 is
20 marked by the court reporter]

21 [Whereupon, State's Exhibit Number 32 is
22 marked by the court reporter]

23 Q. [Mr. Shipley] Now showing the witness what's
24 been marked as State's Exhibit 31. Can you identify the
25 contents of that bag, please.

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1 A. Yes. This is a black cellular phone.

2 Q. Do you know where that was located?

3 A. Yes.

4 This was located outside of the driver's-side
5 door, of the vehicle in question, on the floor.

6 Q. Did you seize it at that location and place it
7 into evidence?

8 A. Yes.

9 Photographs were taken. I seized it, secured
10 it in this evidence bag, and submitted it into evidence.

11 Q. I'm showing you State's Exhibit 32. Could you
12 identify the contents of that bag.

13 A. Yes.

14 There is two cell phones, cellular phones.

15 Q. Where were they located?

16 A. They were located in the driver's-side door
17 panel, kind of the map pocket on the driver's side of
18 the vehicle.

19 Q. Were all three of these cell phones seized by
20 you and submitted into evidence by you?

21 A. Yes, they were.

22 Q. Are they in substantially the same condition
23 that they were that day?

24 A. Yes, they are.

25 MR. SHIPLEY: The State moves State's Exhibit

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1 31 and 32 into evidence, Your Honor.

2 MR. DEYSACH: No objection.

3 THE COURT: Without objection.

4 [Whereupon, State's Exhibit Number 31 is
5 admitted into evidence by the Court]

6 [Whereupon, State's Exhibit Number 32 is
7 admitted into evidence by the Court]

8 Q. [Mr. Shipley] I'm showing you State's Exhibit
9 33.

10 [Whereupon, State's Exhibit Number 33 is
11 marked by the court reporter]

12 Q. [Mr. Shipley] Can you identify the contents
13 of that bag?

14 A. This is a black-and-silver digital scale.
15 That's the back side of it; and the front side. It also
16 has a green substance on it -- or a residue on it.

17 Q. In your experience in drug investigations,
18 what does -- what is that commonly used for?

19 A. It's commonly used for the weighing of illegal
20 drugs.

21 Q. And where was that located?

22 A. This was located sitting on the center console
23 of the vehicle where you would sit your elbow. It was
24 sitting right on top of the lid that would open.

25 Q. Did you seize it from that location and --

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1 A. Yeah. Pictures were taken --

2 Q. -- submit it into evidence?

3 A. -- I seized it and submitted it into evidence
4 through -- contained in this evidence bag.

5 Q. Is it in substantially the same condition as
6 it was that day?

7 A. Yes, it is.

8 MR. SHIPLEY: The State moves Exhibit 33 into
9 evidence.

10 MR. DEYSACH: No objection, Your Honor.

11 THE COURT: Without objection.

12 [Whereupon, State's Exhibit Number 33 is
13 admitted into evidence by the Court]

14 MR. SHIPLEY: If it please Your Honor, I could
15 do these all at one time.

16 THE COURT: All right, sir.

17 [Whereupon, State's Exhibit Number 34 is
18 marked by the court reporter]

19 [Whereupon, State's Exhibit Number 35 is
20 marked by the court reporter]

21 [Whereupon, State's Exhibit Number 36 is
22 marked by the court reporter]

23 [Whereupon, State's Exhibit Number 37 is
24 marked by the court reporter]

25 Q. [Mr. Shipley] Handing the witness State's

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1 Exhibit 34. Can you identify the contents in that bag?

2 A. This is a plastic bag. They have a little bit
3 of residue and is multiple plastic bags inside of this.
4 One of them is a ZipLock bag. This was located on the
5 passenger-side floorboard of this vehicle.

6 Q. Handing you State's Exhibit 35. Can you
7 identify the contents of that bag.

8 A. This is a black plastic bag that's all torn
9 up, corner is missing. This was located actually on the
10 outside floor of the vehicle. It was on the -- actually
11 on the ground, not inside the car.

12 Q. Is that a corner bag like you were talking
13 about earlier?

14 A. Yes.

15 It appears that the -- see right here? The
16 corner bags are missing -- or the corner of the bag is
17 missing.

18 Q. I'm showing you State's Exhibit 36. Can you
19 identify the contents of that bag?

20 A. This is a silver -- couldn't tell you the
21 appropriate name for it, but it's used as a little
22 container. It's commonly used on key chains. You can
23 open that up and put pills. I think it's sold for pills
24 inside that people can use to take their pills when they
25 need to. It was empty at the time when we found it.

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1 Q. Where did you find it?

2 A. This was found --

3 [Whereupon, the witness reviews documents]

4 A. It was located on the ground, I'm sorry,
5 outside of the vehicle.

6 Q. [Mr. Shipley] And State's Exhibit 38. Can
7 you identify the contents of that bag?

8 A. This is a Suburban Lodge hotel key.

9 Q. Where was that located?

10 A. Found this inside the center console, inside
11 of the center console, of the vehicle.

12 I secured all of these items and secured them
13 into these evidence bags and I submitted them into
14 evidence.

15 Q. All right. Are State's Exhibit 34, 35, 36,
16 and 38 in substantially the same condition as they were
17 that day?

18 A. Yes, they are.

19 MR. SHIPLEY: The State moves State's Exhibit
20 34, 35, 36 and 38 into evidence.

21 THE COURT: Any objection?

22 MR. DEYSACH: No objection, Your Honor.

23 THE COURT: Without objection. They're in
24 evidence.

25 [Whereupon, State's Exhibit Number 34 is

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1 admitted into evidence by the Court]

2 [Whereupon, State's Exhibit Number 35 is
3 admitted into evidence by the Court]

4 [Whereupon, State's Exhibit Number 36 is
5 admitted into evidence by the Court]

6 [Whereupon, State's Exhibit Number 38 is
7 admitted into evidence by the Court]

8 Q. [Mr. Shipley] Where is the Suburban Lodge
9 located?

10 A. The one that I'm familiar with is located in
11 Bluffton. I don't -- couldn't tell you the exact
12 address but it's --

13 Q. Is it on Martha Brown Circle?

14 A. No, it's not.

15 Q. I'm now handing the witness what has been
16 marked photographs, what have been marked State's
17 Exhibit 1 through 24. If you wouldn't mind flipping
18 through those. And can you identify what is depicted in
19 those photographs, each one of those?

20 Don't publish to the jury just yet. Just --

21 A. Okay.

22 Q. -- if you can identify what's in there.

23 A. The first one is --

24 THE COURT: All right. Let's do this. Let
25 him go through the photographs. I'm assuming this

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1 officer took those photographs?

2 MR. SHIPLEY: No, Your Honor. I was --

3 THE COURT: Okay. He's going to identify that
4 it depicts the scene.

5 All right. Go ahead, sir.

6 A. Just look at them myself and tell you?

7 Q. [Mr. Shipley] Just look through them and tell
8 me if you can identify what's pictured in each one.

9 A. Okay. The first picture is a picture of the
10 vehicle in question that we had the search warrant on.
11 There's a picture of the license plate which matched
12 that of -- indicated on the search warrant. A maroon-
13 in-color Dodge Intrepid.

14 Q. How about, just for time's sake right now, we
15 just -- you flip through them, each exhibit, and answer
16 if you can identify what's in each one of them. Not --

17 A. Okay. Not what's in --

18 Q. -- identify --

19 A. -- in there? Not what's in the picture?

20 Q. If you could -- if you can identify what's in
21 each one.

22 A. Okay. So like a yes or no.

23 Yes, I can; like, yes, I can; the third one I
24 can; the fourth one I can; the fifth I can; sixth I can;
25 seventh, eighth, ninth I can; tenth, eleventh, the

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1 twelfth I can; thirteen, fourteen, fifteen, the
2 sixteenth one I can; seventeen I can; eighteen,
3 nineteen, twentieth, twenty-first, twenty-second, and
4 twenty-third, yes, I can.

5 Q. Are all of those fair and accurate
6 representations of the items depicted in those
7 photographs --

8 A. Yes.

9 Q. -- that day?

10 A. Yes, they are.

11 MR. SHIPLEY: Your Honor, the State would move
12 Exhibits 1 through 24 into evidence.

13 MR. DEYSACH: Your Honor, I have previously
14 viewed these. I did have an objection to one of them
15 and I'm not sure if it's included, to be honest with
16 you.

17 THE COURT: I think it was Number 15.

18 MR. DEYSACH: I think it was, too, but I see a
19 gap at 15.

20 THE COURT: It may not be in there.

21 MR. DEYSACH: It may not be included.

22 MR. SHIPLEY: Right.

23 MR. DEYSACH: Okay.

24 THE COURT: Any objection to the ones that the
25 solicitor just went through?

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1 MR. DEYSACH: I do not.

2 THE COURT: All right. Without objection,
3 those are in evidence.

4 [Whereupon, State's Exhibit Numbers 1 through
5 14 are admitted into evidence by the Court]

6 [Whereupon, State's Exhibit Numbers 16 through
7 24 are admitted into evidence by the Court]

8 MR. SHIPLEY: Your Honor, permission to
9 publish these to the jury.

10 THE COURT: Yes, sir.

11 MR. SHIPLEY: I was going to use the Smart
12 Board. It'll take me a moment to set up.

13 THE COURT: All right. That's fine.

14 [Off the record momentarily]

15 MR. SHIPLEY: May I request that the witness
16 step down from the stand, come over here, and explain
17 these photographs to us?

18 THE COURT: Yes. Sure.

19 Officer, it's fine to go down there. Just
20 please be aware that everything that is testified to
21 has to be recorded by the court reporter so please
22 keep your voice up. Okay?

23 THE WITNESS: Yes, sir.

24 THE COURT: Thank you.

25 Q. [Mr. Shipley] I believe this is State's

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1 Exhibit 1. Can you tell the jury what is depicted here?

2 A. This is a picture of the rear-end of the Dodge
3 Intrepid where we conducted the search warrant on.

4 Q. Could you tell us what the license plate is
5 and if that's the same license plate referenced in the
6 search warrant?

7 A. It's a South Carolina license plate [REDACTED]
8 [REDACTED] and that is the same vehicle
9 indicated on the search warrant.

10 Q. Can you tell us what is pictured here?

11 A. This is a picture of the outside driver's-side
12 area of the vehicle. On there is the cell phone that I
13 seized from the floorboard. In addition to that, there
14 is a set of car keys, an Icehouse bottle of alcohol, and
15 the medicine bottle that contained the yellow rock-like
16 substance. Up here also you see a black torn plastic
17 bag.

18 Q. What's this item here?

19 A. That right there is the key and the key fob to
20 the vehicle.

21 Q. And is the placement of these items basically
22 where they were that day?

23 A. Yes, they are.

24 Q. That was State's Exhibit 2.

25 Now we're going to 3. What have we got here?

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1 A. Same picture, just a little bit closer.
2 Currency found behind the bottle of alcohol, in addition
3 to the vehicle's keys which I did verify by turning the
4 vehicle on. Medicine bottle containing the crack
5 cocaine. And U.S. currency.

6 Q. And this is State's Exhibit 4.

7 A. That's a blurry picture of -- a blurry picture
8 of the inside, the contents, of the medicine bottle. In
9 the background you can see the alcohol, car keys, and
10 currency.

11 Q. And 5?

12 A. That's a little bit closer to the driver's-
13 side door, which is a black plastic bag with a torn-off
14 corner.

15 Q. 6?

16 A. That's just a picture of the inside of the
17 vehicle prior to us going into it and making the search.

18 Q. And 7?

19 A. That's a picture of the lottery ticket that
20 contained the -- the lottery ticket containing an amount
21 of suspected marijuana.

22 Q. And 8?

23 A. That's the contents of the lottery ticket.

24 Q. And 9?

25 A. Those are more lottery tickets in the map

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1 pocket of the vehicle driver's-side door. More lottery
2 stubs. These pictures were taken since it's -- it
3 appears that that's what's being used in order to
4 distribute the marijuana.

5 Q. State's Exhibit 10. What have we got here?

6 A. This is the interior, a little bit closer view
7 of the interior, of the Dodge Intrepid.

8 Here you can see the digital scale, a Philly
9 blunt that's commonly used to smoke marijuana. They
10 empty out the Philly blunt, use the outside to -- they
11 put marijuana in it, replace it with marijuana, and they
12 make -- they smoke it, marijuana smoking.

13 Q. What have we got here?

14 A. That right there is a ball of powder cocaine
15 which was sitting on the gearshift there, obviously in
16 plain view.

17 Q. And is this how it was when y'all got there?

18 A. Yes, it is.

19 Q. And what is this?

20 A. This is a closer look at the digital scale.
21 You can see the residue still on it. Also, Swisher
22 Sweets, cigars that are used to smoke marijuana.

23 Q. That was State's Exhibit 11. Now we're moving
24 on to 12.

25 A. That's once we opened the center console of

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1 the vehicle you can see a large amount of currency, U.S.
2 currency, in there in small plastic bags that are torn,
3 torn baggies.

4 Q. 13?

5 A. A little closer look. You see a plastic --
6 clear plastic bag containing a quantity of marijuana,
7 U.S. currency, and also another torn black bag. Also
8 another lottery ticket.

9 Q. Is that what you were referring to earlier as
10 a corner bag?

11 A. Yes, that's the remainder of a corner bag.
12 That's a really close look at the cocaine that
13 was seized on the center gearshift.

14 Q. 16?

15 A. It's just the bottle of inositol.

16 This is the passenger's side of the
17 floorboard, bottle of inositol, plastic bags, as you can
18 see, everywhere, corners missing. Another plastic
19 baggie there. Also, we secured a sandwich bag, a box,
20 empty. Sandwich bags are usually used to package
21 illegal drugs that are being sold. And in the
22 background you see another lottery stub.

23 Q. 17?

24 A. 17 is -- this plastic bag here, it contained a
25 powder -- the white-powdered residue. And this is the

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1 floorboard of the vehicle. You can see green remnants,
2 residue, throughout the vehicle.

3 Q. 18?

4 A. Two cell phones that were secured from the arm
5 rest of the driver's side door. And the lottery tickets
6 in the driver's side in the map pocket.

7 Q. And what do we see in Number 19?

8 A. Passenger-side floorboard, ZipLock bag. And
9 inside the ZipLock bag there was a holster and that --
10 the Highpoint .9mm pistol was found.

11 Q. 20?

12 A. We went ahead and removed the contents of that
13 ZipLock bag. And that's a closer look of the pistol and
14 the holster that was secured from inside the bag.

15 Q. What's this item here?

16 A. That's the magazine that was inside of the
17 pistol.

18 Q. And the contents of the magazine?

19 A. Three .9mm bullets.

20 Q. 21?

21 A. That's a look of obviously the gas pedal, the
22 brake pedal, a close look of the Crown Royal bag that
23 was kind of protruding from the -- call them the kick
24 panels of the driver's side of the vehicle. And inside,
25 once that was removed, found a large amount of U.S.

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1 currency.

2 Q. 22?

3 A. Once I removed it, I placed it on the driver's
4 seat of the vehicle, took a picture -- a picture of it
5 prior to opening it.

6 Q. 23?

7 A. That's what I -- as soon as we opened it, we
8 finally knew there at that point that was U.S. currency
9 that was concealed in there.

10 Q. 24?

11 A. That's just a shot of the money that was in
12 there. \$11,040 total.

13 MR. SHIPLEY: Thank you. That's all. You can
14 return to the witness stand. Thank you.

15 [Whereupon, the witness complies]

16 Q. [Mr. Shipley] All right. After everything
17 was seized and put into evidence bags and the scene was
18 secure, what happened next?

19 A. In reference to the currency that I seized, it
20 was, like I said, \$11,040 that were located inside that
21 Crown Royal bag. There was another \$210 that was
22 located on the ground when the defendant was removed
23 from the vehicle. In addition to that currency, there
24 was another \$181 that was located in the center console.
25 Collected all of that money. That money was turned over

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1 to Master Sargent Socowski for drug-seizure proceedings.

2 After all of the evidence was collected by my
3 self, all the interviews were conducted by Lance
4 Corporal Squires, the person that was in charge that I
5 had put in charge of recording the scene, which was
6 Detective Carmany, he did a video search -- I'm sorry.
7 He recorded the exterior of the vehicle again to ensure
8 that we didn't damage the vehicle. And at that time the
9 subjects that were detained, they had been released a
10 little bit prior to the -- to the end because we were on
11 scene several hours. They were released if they didn't
12 have any charges, and the defendant was charged with
13 these charges and transported to the Beaufort County
14 Detention Center.

15 Q. Was the defendant arrested at this time?

16 A. Yes, he was.

17 Q. Was he transported to the detention center, as
18 well?

19 A. Yes.

20 He was -- yes, the defendant was transported.
21 There was a codefendant that was also transported for
22 the fleeing incident, fleeing to evade, when he ran.
23 And this defendant was transported by a member of the
24 Bluffton Police Department.

25 Q. The person you arrested, do you see him in the

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1 courtroom today?

2 A. Yes, I do.

3 Q. Could you point him out and describe what he's
4 wearing.

5 A. It's Matthew Frazier. He has a light-blue
6 long-sleeve shirt, a dark-blue tie, and khaki pants.

7 Q. Is he seated at the defense table?

8 A. Yes, he is.

9 MR. SHIPLEY: Beg the Court's indulgence, Your
10 Honor.

11 THE COURT: Yes, sir.

12 [Whereupon, Mr. Shipley and Ms. Bannon confer]

13 MR. SHIPLEY: I have no further questions,
14 Your Honor.

15 THE COURT: All right. Mr. Deysach?

16 MR. DEYSACH: Thank you very much, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. DEYSACH:

19 Q. Okay. On October 11th is the date this
20 occurred; correct?

21 A. Yes, it is.

22 Q. You were the case officer and you were in
23 charge of the execution of this search warrant; correct?

24 A. Yes, sir.

25 Q. This search warrant was for the burgundy Dodge

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1 Intrepid that belonged to Derrick Fields; correct?

2 A. I could say the registered owner of the
3 vehicle was Derrick Fields.

4 Q. Okay.

5 A. Yes.

6 Q. Because when you have the VIN number and the
7 license plate number, you can find that out through
8 public records; correct?

9 A. Yes. Through the DMV.

10 Q. The warrant for the car that you served on
11 October 11th was issued on October 2nd; correct?

12 A. Yes.

13 I have a copy of the search warrant. I didn't
14 swear the search warrant out.

15 Q. Right. But I'm just asking the day that it
16 was --

17 A. Was signed?

18 Q. -- signed.

19 A. It was signed October 2nd, 2010.

20 Q. So you were the driver of the F150 with the
21 four police officers in it?

22 A. Yes, sir.

23 Q. And you guys pulled up and all jumped out of
24 the car at the same time?

25 A. Yes, sir.

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- 1 Q. It's fair to say it was a chaotic scene at
2 first?
- 3 A. Yes, it was.
- 4 Q. There were you said only two people running?
- 5 A. Yes.
- 6 Q. Okay. Was there possibly three people
7 running?
- 8 A. No.
- 9 Q. Definitely two people?
- 10 A. Yes.
- 11 Q. And of those (two people who are running, one
12 of them got caught; correct?
- 13 A. Yes.
- 14 Q. And, in fact, one of them that got caught
15 ended up getting charged with possession of marijuana in
16 his pocket; correct?
- 17 A. Yes.
- 18 Q. And the other person got away?
- 19 A. Yes.
- 20 Q. And to this day, you have no idea who that
21 person is?
- 22 A. No. I've seen him, but I've never seen him
23 again.
- 24 Q. You don't know his name?
- 25 A. No.

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1 Q. And, in fact, I think you put in your report
2 first name unknown, last name unknown?

3 A. FNU, LNU.

4 Q. And there were I guess six subjects that you
5 detained in all; correct?

6 A. That we detained? Yes. There were seven
7 total. We detained six --

8 Q. Right.

9 A. -- one got away.

10 Q. Right.

11 When you pulled up, the people who you
12 detained and the person who ran away were standing next
13 to the Dodge Intrepid; correct?

14 A. Yes.

15 Q. And so when you're off chasing the subjects,
16 you don't know what's going on back at the Dodge
17 Intrepid; is that right?

18 A. That's right, yes.

19 Q. All right. When you get back to the Dodge
20 Intrepid, it has been secured but not searched; is that
21 correct?

22 A. Yes.

23 Q. All right. So what you do first is open the
24 doors, basically?

25 A. No.

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1 Q. Okay. After you secure the subjects, what do
2 you do with the car?

3 A. We record the car with a video recorder.

4 Q. While the door is -- while it's in the exact
5 condition that it is when you find it?

6 A. Yes.

7 Q. And not you but somebody else operated the
8 video recorder?

9 A. Yes.

10 Q. And that video exists?

11 A. Yes.

12 Q. And there's a video from before the search and
13 a video after the search?

14 A. Yes, there is.

15 Q. So that video -- okay. When that video was
16 taken, the driver-side door was open; correct?

17 A. Yes.

18 Q. Because that's the way the door was when you
19 guys pulled up; correct?

20 A. I didn't see. It would be hearsay.

21 Q. Okay.

22 A. I didn't -- I was off running.

23 Q. So when you pulled up, you didn't have a --
24 you didn't know how the door was; correct?

25 A. Uh-huh.

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1 Q. And you really didn't know who was sitting in
2 the front seat, if anybody?

3 A. I did see somebody in the vehicle --

4 Q. Right.

5 A. -- but I didn't --

6 Q. You didn't see who.

7 A. -- I didn't see whom, no.

8 Q. All right. So when you get back to the car,
9 everybody who is around the car has been detained;
10 correct?

11 A. Yes.

12 Q. Right.

13 And the first thing that you guys do is start
14 filming?

15 A. Yes.

16 Q. And then the next thing that you start doing
17 is taking the pictures?

18 A. No.

19 We start searching. We take a picture after
20 we find something that we're going to seize.

21 Q. All right. So these -- there's really not a
22 picture in here that represents the state of the car
23 before the search occurs; is that right?

24 A. I think there's a picture in there with the
25 driver's-side door open. I don't recall.

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1 Q. I'm going to show you a picture of State's
2 Exhibit 6. And it's already been entered into evidence.
3 All right. Talking about a picture of the driver's side
4 with the door open, that is -- that's what that's a
5 picture of; correct?

6 A. Yes.

7 Q. Okay. And you would agree that it looks like
8 the back door is open, also?

9 A. Yes, it is.

10 Q. Were you able to tell whether or not the back
11 door was open, also, when you arrived?

12 A. No, I wasn't -- I wasn't able to.

13 Q. You couldn't tell if the front door was opened
14 or closed or the back door was open or closed?

15 A. No.

16 Q. But this picture is taken before the search
17 occurs; correct?

18 A. No.

19 Q. No.

20 Okay. So what has taken place before this, as
21 far as a search goes, before this picture is taken?

22 A. I can see it's nighttime in those pictures.

23 Q. Uh-huh.

24 A. When we got there, it was light out still.

25 Q. At 7:20 --

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1 A. Yes.

2 Q. -- it was still light out?

3 A. Yes, it was still light out. We --

4 Q. 7:20 on October 10th?

5 A. Yes, it was -- it was light out.

6 Q. And so when the video that you guys took of
7 the car, then it must have been light when that was
8 taken also; correct?

9 A. There should be -- it should be right before
10 sunset.

11 Q. Okay. So would you call -- are you calling it
12 twilight or dusk?

13 A. Yes.

14 Q. All right. So I guess what you're trying to
15 say is that it's actually -- this represents a darker
16 nighttime than what -- when you first arrived? That's
17 what you're saying?

18 A. Most definitely. It was still light out.

19 Q. All right. But as far as the condition of the
20 car, it has -- the interior has or has not been
21 searched?

22 A. That has not.

23 The purpose of that picture is to show you --
24 it's taken --

25 Q. A before picture?

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1 A. A back picture to kind of show what's inside
2 that vehicle, and then we go -- we start conducting a
3 search, and then we get closer.

4 Q. Okay. So after this picture is taken, then
5 you start kind of --

6 A. We start moving it.

7 Q. -- looking in nooks and crannies and whatnot?

8 A. Yes, sir.

9 Q. Do you know where Matthew Frazier is when this
10 picture is taken? Do you know if he's with Lance
11 Corporal Squires?

12 A. Yes, he was.

13 Q. Okay. Let me ask you this. All this evidence
14 that you collected -- with the cell phones, did you ever
15 do any research to find out who those cell phones might
16 come back to?

17 A. No.

18 Q. Did you ever try and take any fingerprints off
19 of the pill bottle? The pill bottle found outside on
20 the ground.

21 A. Of the medicine bottle?

22 Q. Correct. Not the inositol bottle, but the
23 other bottle.

24 A. No.

25 Q. Okay. I mean, never took any fingerprints off

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1 of the key of the car?

2 A. No, we didn't.

3 Q. Never any off of the bag of cocaine; correct?

4 A. No.

5 Q. Never any off of the pistol; correct?

6 A. No.

7 Q. Never any off of the bag that the pistol was
8 in; correct?

9 A. Correct.

10 Q. In fact, the car itself was never -- there was
11 no fingerprints taken of anything? I could do each list
12 but, I mean, the fact of the matter is --

13 A. There's no fingerprints taken off of anything
14 in this case.

15 Q. The money that you're talking about cannot be
16 seen from this picture; is that correct?

17 A. [No response]

18 Q. The Crown Royal bag?

19 A. No, it cannot.

20 Q. Okay. And --

21 A. This was before we located it.

22 Q. Right.

23 The point I guess I was going to make is that
24 the Crown Royal bag was not in plain view?

25 A. No, it was not.

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1 Q. Somebody had to reach up under there to find
2 it?

3 A. Or squat down.

4 Q. Right.

5 A. They actually had a visual on it first.

6 Q. Okay. But nobody would have known it was
7 there unless you do that squatting; correct?

8 A. Correct.

9 Q. All right. From this picture you cannot see
10 the gun or the bag that the gun is in, can you?

11 A. Not that picture, no.

12 Q. And, in fact, according to the search warrant
13 inventory, the search began at 1933; correct? Or do you
14 know?

15 A. I have a copy of it.

16 Q. Okay.

17 [Whereupon, the witness reviews documents]

18 A. I have here at 1919 I put the begin time.

19 Q. [Mr. Deysach] Okay. 1919 is the beginning of
20 the search.

21 A. Which is 7:19 p.m.

22 Q. And the gun itself is not found until 2020 --
23 I'm sorry -- 2024; correct?

24 A. That is correct.

25 Q. So it is 1919. That's 7:20. It was 7:19.

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1 And the gun isn't found for more than an hour after the
2 search begins?

3 A. Correct.

4 Q. And really the next thing -- the money is
5 found at 2030; correct?

6 A. Yes.

7 Q. And -- all right.

8 MR. DEYSACH: Begging the Court's indulgence.

9 THE COURT: Yes, sir.

10 [Whereupon, Mr. Deysach and Mr. Walker confer]

11 MR. DEYSACH: Begging your indulgence, Your
12 Honor.

13 Q. [Mr. Deysach] This is State's Exhibit 3 I'm
14 showing you; right?

15 A. [No response]

16 Q. And that is the picture of the beer, the key,
17 cell phone, currency, and a pill bottle; correct?

18 A. Yes, it is.

19 Q. And they're all grouped together; correct?

20 A. Yes.

21 Q. And that hadn't been moved when you took the
22 picture or when the picture was taken; correct?

23 A. No, it has not.

24 Q. And I'm showing you State's Exhibit 2. All
25 right. That is a different view of the same thing;

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1 correct?

2 A. Yes, it is.

3 Q. The beer, the key, and the same things appear
4 in it; correct?

5 A. Yes.

6 The purpose of this picture is to show the
7 proximity of the vehicle.

8 Q. To show where that is in relation to the car;
9 right?

10 A. Yes.

11 Q. All right. And it's pretty clear that these
12 items are closer to the back seat than they are to the
13 driver's seat. In fact, it's the remnant corner bag
14 that's right there by the front seat; correct?

15 A. Yes.

16 MR. DEYSACH: I don't have anything further,
17 Your Honor.

18 THE COURT: Anything on redirect?

19 MR. SHIPLEY: No, Your Honor.

20 THE COURT: All right. Thank you very much,
21 sir. You may step down.

22 [Whereupon, the witness is excused and exits
23 the witness stand]

24 THE COURT: All right. We're going to adjourn
25 for the evening, ladies and gentlemen.

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1 You've heard me say often about not having
2 conversation about the case and that's been fairly
3 easy since this morning because pretty much other
4 than going to lunch, you've been here at the
5 courthouse. But now you're about to go home and
6 you're going to have family members and friends and
7 loved ones who are going to be curious as to what
8 you've been doing all day. They're going to want to
9 know if you've been selected on a panel. And you can
10 tell them that you have been and that you are sitting
11 on a case but that's where it needs to end. You're
12 not allowed to tell them anything, even something as
13 innocent as, well, it's a drug case, or it's this or
14 that, because anything at all could possibly result
15 in a comment by that person that could jeopardize
16 your ability to be fair and impartial.

17 So if you would, please tell your family
18 member -- be sure to tell your family members, or
19 whoever's asking, say, listen, I am on a case, I'm
20 not allowed to talk about it, please be patient
21 because when the case is over I'll tell you
22 everything you want to know. But until that point
23 you really need to guard your ability to remain fair
24 and impartial.

25 Keep in mind what I said about not reading

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1 anything about the case or listening to anything
2 about the case. You are the fact-finders in this
3 case and it is important that you restrict your
4 consideration to the facts that are presented during
5 the course of this trial and not on any rumors or
6 innuendos or anything that may float around town.
7 Not that there would be any, but if there are any
8 that's what you need to protect yourself from.

9 So do yourself a favor. As you've seen --
10 maybe seen from today, jury service is not physically
11 taxing from a muscular standpoint but it can be from
12 a mental standpoint. So please try to get a good
13 night's sleep this evening as you get -- as you go
14 about your business tonight and then when you return
15 in the morning hopefully you'll be well-rested and
16 ready to go back to work.

17 I would ask, if you would, to please be in
18 your jury room at 9:30 and we'll get started as soon
19 as we get everybody reassembled. Okay? So if
20 everyone else --

21 Let me say this. Mr. Walker, thank you for
22 your willingness to serve as the foreperson of the
23 jury. I appreciate that, sir.

24 THE FOREPERSON: No problem.

25 THE COURT: Everyone else remain seated.

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1 Ladies and gentlemen, we'll see you back here
2 at 9:30 in the morning.

3 [Whereupon, the jury exits the courtroom at
4 5:16 p.m.]

5 THE COURT: Anything we need to take up?

6 Remember, I did mention to you that -- I don't
7 know how much more the State has, but I would
8 anticipate that this case would go to the jury at
9 some point tomorrow so any requests to charge that
10 you might have, how about make sure you get those to
11 us first thing in the morning. Okay?

12 But other than that, is there anything else
13 that we need to take up before we adjourn?

14 MR. SHIPLEY: No, Your Honor. If you would
15 like for me to describe the rest of my witnesses for
16 you and get a picture of a time frame.

17 THE COURT: Okay. All right.

18 MR. SHIPLEY: We've got Office Carmany, who
19 should be brief, and then Menendez, also brief. He's
20 the expert on drugs. And then we have -- I was going
21 to call the chemist, Anita Berry. And if my chain is
22 sufficient, I wasn't going to call anybody else. If
23 it's lacking, then I will call those two, James
24 Padgett, and Eileen Rios.

25 THE COURT: All right. And then of course,

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1 Mr. Deysach, if you would take this evening -- I'm
2 sure you've begun discussions with Mr. Frazier, but
3 continue to talk with him about the defense's
4 position and what you intend to do, and you can let
5 us know at the appropriate time tomorrow. Okay?

6 MR. DEYSACH: Yes, Your Honor.

7 THE COURT: Anything from the defense side?

8 MR. DEYSACH: No, Your Honor.

9 THE COURT: All right. Well, we will then be
10 in recess until 9:30 in the morning.

11 [JURY TRIAL ADJOURNS AT 5:15 P.M.]
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial heard before the Honorable Thomas A. Russo, on May 25th, 2011.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 9th day of October, 2011.

Mia Perron
Mia Perron, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM

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STATE OF SOUTH CAROLINA
VS.
MATTHEW FRAZIER,
DEFENDANT.

VOLUME 2 OF 2

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PROCEEDINGS

1
2 THE COURT: All right. Is there anything we
3 need to take up before we bring the jury out?

4 MR. SHIPLEY: I believe so, Your Honor.

5 THE COURT: All right.

6 MR. SHIPLEY: One of my next witnesses I'm going
7 to introduce a video, the video we've heard about of
8 the search, and there are several -- there might be a
9 couple of issues the defense has with that video.

10 THE COURT: All right. Mr. Deysach?

11 MR. DEYSACH: Yes. And Mr. Shipley and I
12 discussed it before you came out to the bench.

13 The video contains off-camera statements which I
14 think would be hearsay for the jury to hear. I think
15 that it is possible for the volume to be turned down on
16 the video, and that's something that we had discussed.
17 And also, at one point after the search of the vehicle
18 there are some closeups of this defendant, as well as
19 other detainees at the time -- which I don't think --
20 it paints him in a negative light. I don't think
21 anybody looks their best at a time like this and then
22 kind of an extreme closeup.

23 And I think that it's not probative of anything
24 or I don't think it's an issue whether or not Matthew
25 Frazier was there or anything like that, so -- I think

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1 we also talked about cutting off the video before it
2 got to that point because the search of the car
3 precedes that part.

4 And so if that's how the tape is presented to
5 the jury, I don't see any objection to that.

6 THE COURT: Let me ask you this, Bill. Is there
7 any reason why the volume would need to be -- is there
8 anything the jury needs to hear, or is it just showing
9 where the items are located and the condition of the
10 vehicle?

11 MR. SHIPLEY: The only thing -- the only other
12 stuff on the audio, Your Honor, would be that Officer
13 Carmany, the director of the camera, saying what date
14 it is, what time it is, and what he's doing as he's
15 doing it.

16 THE COURT: And I'm assuming you're going to put
17 this in through him?

18 MR. SHIPLEY: That's correct, Your Honor.

19 THE COURT: So he could testify to that --

20 MR. SHIPLEY: That's correct.

21 THE COURT: -- that this footage was taken this
22 day, this time, and under this situation.

23 Because I'm just assuming -- there's just no way
24 to redact those extraneous comments from the video so
25 more than likely, the best way to do it would just be

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1 to have the sound off and let the video just run and
2 then cut it off before we get to that part where it
3 does the closeup on Mr. Frazier.

4 MR. DEYSACH: I think that's what -- the
5 agreement that we came to --

6 THE COURT: Okay.

7 MR. DEYSACH: -- and I think that sounds
8 reasonable.

9 THE COURT: All right. Well, we'll do that.
10 And is it -- you're playing it on here; is that
11 correct?

12 MR. SHIPLEY: That's correct, Your Honor.

13 THE COURT: Is the volume control on there or on
14 your computer?

15 MR. SHIPLEY: It will be playing through my
16 laptop so I can just turn the volume --

17 THE COURT: You just mute that. Okay.

18 MR. DEYSACH: I have one other comment I wanted
19 to make, issue to briefly bring up, before Officer
20 Carmany were to testify.

21 I know yesterday we spent a lot of time about
22 drug investigation into Matthew Frazier or just a drug
23 investigation, that whole issue, and I don't want that
24 to come up again through Carmany since he's the person
25 who applies for the search warrant. And so I would

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1 hope that the solicitor would let the officer know that
2 -- as I understand what is appropriate for him to say,
3 if he even wanted to say it, was -- I mean, obviously,
4 anytime you get a search warrant it's from an
5 investigation. But not to say that the investigation
6 was into Matthew Frazier himself when he's testifying
7 about getting the search warrant, and just making sure
8 that that doesn't come out and we have the same problem
9 that we had yesterday.

10 THE COURT: I think that it would be appropriate
11 for him to discuss that basically, you know, pursuant
12 to our investigations, we went to the magistrate to
13 obtain a search warrant for this vehicle and we
14 obtained that warrant and we will then --

15 MR. SHIPLEY: I feel like I've already covered
16 that with Rodriguez and Squires, so I wouldn't --

17 THE COURT: Even go down that road?

18 MR. SHIPLEY: I'm not going to go down that road
19 with Carmany --

20 THE COURT: Is Officer Carmany -- is the gist of
21 what you want to do with him is get in the video and
22 what he observed?

23 MR. SHIPLEY: That's correct. Get in the video,
24 since he is a Bluffton police officer, talk about the
25 area. And also I plan to introduce a --

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1 THE COURT: Was he the one who -- was he the one
2 who Mirandized Mr. Frazier and took --

3 MR. DEYSACH: No, Your Honor --

4 THE COURT: -- that was already -- somebody
5 testified to that.

6 MR. DEYSACH: -- that's already come in.

7 THE COURT: Yeah. Okay.

8 Well, and I think you have a good grasp on our
9 limitations there.

10 MR. SHIPLEY: Just out of an abundance of
11 caution, Your Honor: the jury is walking down the
12 hallway. If I could run out there, maybe?

13 THE COURT: Yeah. Go ahead and take care of
14 that.

15 Before you do that, though, is there anything
16 else before he runs and talks to Officer Carmany?

17 MR. DEYSACH: No, Your Honor.

18 THE COURT: All right. Go ahead and do that,
19 and we'll bring the jury in once he returns.

20 [Off the record momentarily]

21 THE COURT: All right. Let's bring the jury in.

22 Did any -- if you guys have any requests to
23 charge to --

24 MR. SHIPLEY: I don't have any, Your Honor.

25 MR. DEYSACH: I have a couple that I was going

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1 to bring up.

2 THE COURT: All right. I mean, do you have them
3 written up or you're just --

4 MR. DEYSACH: I have them in the book. I have
5 them flagged in the book if we --

6 THE COURT: Okay. Well, we'll get to that in a
7 little bit, then.

8 MR. DEYSACH: I was going to make a photocopy
9 but then I --

10 THE COURT: No. That's fine. We can get that.

11 THE BAILIFF: The jury is entering.

12 [Whereupon, the jury enters the courtroom at
13 9:49 a.m.]

14 THE BAILIFF: The jury is present.

15 THE COURT: Thank you, ma'am.

16 Welcome back, ladies and gentlemen. I hope
17 everyone had a good evening and you're well-rested,
18 ready to go back to work here.

19 If you recall from yesterday, the State -- Mr.
20 Shipley, on behalf of the State, was presenting the
21 State's case and we had finished that last witness.
22 But we are still on the State's case so we'll pick up
23 at that point.

24 Mr. Shipley, you may call your next witness,
25 sir.

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1 MR. SHIPLEY: Thank you, Your Honor.

2 The State calls Corporal Rich Menendez.

3 [Whereupon, Mr. Menendez comes forward]

4 THE CLERK OF COURT: Put your left hand on the
5 Bible, raise your right hand.

6 [Whereupon, Mr. Menendez is duly sworn by the
7 clerk of court as follows: do you solemnly swear or
8 affirm that the testimony you give to the Court in this
9 trial shall be the truth, so help you God]

10 THE WITNESS: So held me God. Yes.

11 THE CLERK OF COURT: Thank you. Please be
12 seated.

13 MR. SHIPLEY: Good morning, Corporal.

14 - - - - -

15 RICHARD MENENDEZ,

16 Having Been First Duly Sworn,

17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MR. SHIPLEY:

20 Q. Would you please state your name for the record
21 and spell it for the court reporter.

22 A. My name is Richard Menendez. My last name is
23 spelled M-E-N-E-N-D-E-Z.

24 Q. Where are you employed?

25 A. I'm employed with Beaufort County Sheriff's

MIA PERRON, CVR-CM

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1 Office.

2 Q. In what capacity do you work for the sheriff's
3 office?

4 A. At this time I work with the drug task force as
5 a technical surveillance officer.

6 Q. How long have you been doing that?

7 A. I have been working for the sheriff's office
8 since 2006. I have been doing technical surveillance now
9 for about a year and a half.

10 Q. How much of that last six years has been
11 involved in drug investigations?

12 A. I've been with the drug task force for the
13 majority of that six years. Matter of fact, all of that
14 six years.

15 Q. Where did you work before the sheriff's
16 department? Were you with law enforcement?

17 A. I was marine corp criminal investigation
18 division, assigned as a special agent with the Naval
19 Criminal Investigative Service here in Beaufort, and I
20 worked with the drug task force as a representative from
21 NCIS on the drug task force.

22 Q. And what did you do for the NCIS and navy?

23 A. I worked as a special agent, worked general
24 crimes to include narcotics investigation --

25 Q. What were your typical duties while you were

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1 working there?

2 A. General crime. Anything from property crimes,
3 crimes against persons, and drug crimes.

4 Q. How many -- so do you have a lot of experience
5 in investigating drug cases?

6 A. I -- since 1993, when I first moved in with the
7 marine corp CID, I began experience with drug cases.

8 Q. How many -- if you had to give a ballpark
9 estimate, how many drug cases do you think you've worked?

10 A. I would not give an estimate.

11 Q. Is it a lot?

12 A. A number of cases.

13 Q. What about here in Beaufort County?

14 A. Again, I wouldn't be able to put a number on it.
15 I don't count those things.

16 Q. Would you say -- through all these years of
17 experience working drug cases, are you familiar with the
18 drug trade and drug trafficking or selling or buying?

19 A. I've seen it at a number of different areas and
20 I've seen it in a number of different levels, yes, sir.

21 Q. Are you familiar with the various quantities of
22 drugs involved in the drug trade?

23 A. Yes, sir.

24 Q. When some of us think of drug trafficking we
25 think about what we see in Hollywood, you know, kilos and

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1 kilos of cocaine and maybe a briefcase of money. Is that
2 what you see through your experience as a drug trafficker?

3 A. Drug -- the term trafficking drugs, by South
4 Carolina law, would be the exchange of anything in excess
5 of ten grams, ten grams or more, which is not a very
6 significant amount. It's -- a kilo is 1,000 kilograms per
7 1,000 grams, and that is -- one-tenth of that would
8 violate the law, as far as trafficking goes.

9 Q. So in your experience, what is an individual
10 user amount of a drug? Say cocaine.

11 A. By law, and typically what we find with people,
12 half gram to -- up to just shy of a gram. By state law, a
13 gram or more is considered distribution amount.

14 Q. What does a -- what does a gram of cocaine look
15 like? How big is that?

16 A. I have -- if I may, I have some items for
17 demonstration.

18 A gram -- to put it in something that you would
19 be familiar with every day, a packet of Equal is
20 approximately a gram of the powdered substance. I have a
21 simulated gram of what would be considered a gram of
22 cocaine, packaged in a manner in which we do see from time
23 to time on the street.

24 Q. And how much would you see -- you testified ten
25 grams was trafficking. How -- what does that look like?

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1 A. I don't have one, per se, for ten grams. I have
2 a packaging for what would be one-quarter of an ounce,
3 which is seven grams, and then another that would be
4 approximately three-and-a-half grams, which would be
5 approximately what they would call an eight-ball on the
6 street, and those together would be approximately ten
7 grams.

8 Q. So when you're doing these drug cases, what
9 amounts do you expect to see when you're -- when it's a
10 possession with intent to distribute?

11 A. A gram or more packaged individually for sale,
12 again, packaged in gram or half-gram packages.

13 Q. Would you explain to us, please, what -- what is
14 cutting? What is stepping on a drug, cutting a drug. Can
15 you explain to us what that's all about?

16 A. Cutting or stepping on would be diluting it, so
17 to say, to make it go farther. If I had a gram of pure
18 cocaine, I would mix it with some type of cutting agent,
19 which would be an inert -- inositol, baby formula, baby
20 laxatives, things like that, and they'll add -- if I'm
21 cutting it at fifty percent, which it depends. That would
22 be up to the dealer themselves -- and that would give me
23 two grams, so now I can sell two grams versus one gram.

24 Q. What's the purpose of that?

25 A. Diluting it --

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1 Q. Diluting --

2 A. -- from its strength, and also I'm going to make
3 more money.

4 Q. What would you say a gram of cocaine would go
5 for?

6 A. Values on street drugs would be speculative
7 because it's negotiable with the person buying it and the
8 drug dealer. It would be a hagggle.

9 Q. How many -- how would -- how are drugs typically
10 packaged, in your experience?

11 A. I've seen it packaged in corner baggies, small
12 ZipLock baggies, paper bindels. Any number of ways.

13 Q. Have you ever been on a drug bust serving a
14 search warrant and that kind of thing?

15 A. Yes, sir.

16 Q. How many, do you think?

17 A. Numerous.

18 Q. Are there typical things you look for on these
19 busts as an indication of an intent to distribute?

20 A. Some of the things that you would see, you would
21 find corner baggies; you would find baggies with the
22 corners cut out; you would find ZipLock baggies; scales;
23 you would find implements with residue on them, be it
24 spoons, sifters; a location to where it was spread out and
25 broke down or chopped up; wrappings from the containers or

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1 packaging.

2 Q. Would you look for cash as an indication of
3 intent to distribute?

4 A. Drug dealers, being it's an illegal trade,
5 typically maintain large amounts of cash.

6 Q. Were you involved in this case, the service of a
7 search warrant on October 10th -- October 11, sorry, of
8 2011?

9 A. I was involved as surveillance on this case,
10 yes, sir.

11 MR. SHIPLEY: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes, sir.

14 Q. [Mr. Shipley] Show you what's been admitted
15 into evidence as State's Exhibit 35. Can you identify
16 that for the jury?

17 A. It looks like a torn plastic baggie.

18 Q. Would this be indicative of the drug trade or
19 the intent to distribute?

20 A. If it contained residue or was in the area of
21 other packaging, yes, sir.

22 Q. Showing you now State's Exhibit 33. Can you
23 identify that?

24 A. A set of digital scales.

25 Q. Would this be indicative of someone involved in

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1 the drug trade?

2 A. Yes. Again, if -- with the residue and any
3 other item.

4 Q. Showing the witness State's Exhibit 32 and 31.
5 Can you identify what's in these two bags.

6 A. Cell phone. Cell phones. Multiple cell phones.

7 Q. Are multiple cell phones indicative of the drug
8 trade and intent to distribute?

9 MR. DEYSACH: Your Honor, I have an objection.
10 I think he's invading the province of the jury. I
11 think that's a decision for them to make whether or not
12 any particular piece of evidence is a -- indicative of
13 drug --

14 THE COURT: As a witness he can testify based on
15 his experience, what are things that are indicia of
16 drug sales. Not -- I mean, he can't say that, you
17 know, obviously, these multiple cell phones indicate --
18 he can say that that is a thing that he sees often. I
19 mean --

20 MR. DEYSACH: I think he's already testified to
21 things that he sees often that would be indicative.
22 When the solicitor brings up the specific pieces of
23 evidence and asks him if those are, I think that's when
24 he is --

25 MR. SHIPLEY: May we approach, Your Honor?

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1 THE COURT: Yeah.

2 [Whereupon, an off-the-record bench conference
3 is held]

4 Q. [Mr. Shipley] Obviously, inositol powder can be
5 bought at a GNC store. But if you saw inositol powder
6 amongst these other items, would that be indicative of the
7 drug trade?

8 A. It would -- each piece of the evidence together
9 would indicate to me that the individual was using the
10 inositol to cut cocaine.

11 Q. Now, what about approximately like a ball --
12 approximately twenty-five grams of cocaine? Would that be
13 indicative of an intent to distribute?

14 A. By a mountain by the wall, yes, sir.

15 Q. What about approximately six grams of crack
16 cocaine in a pill bottle? What that be indicative of the
17 drug trade and intent to distribute?

18 A. From what I have seen, yes.

19 Q. What about a small amount of marijuana, not
20 much, less than an ounce, but with these other items?
21 Would that be indicative of intent to distribute that, as
22 well?

23 A. Broke down in packaging, or packaged as a whole?

24 MR. SHIPLEY: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

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1 [Whereupon, Mr. Shipley and Ms. Bannon confer]

2 Q. [Mr. Shipley] If you found large sums of cash,
3 say, over \$10,000, would that be indicative of the drug
4 trade and intent to distribute?

5 A. Again, collective with all of the other evidence
6 there, yes.

7 Q. What about a firearm?

8 A. Again, collectively with the other evidence,
9 yes, sir.

10 Q. I mean, individually none of those things really
11 do it. But together does that indicate an intent to
12 distribute?

13 A. [Indicates affirmatively]

14 MR. SHIPLEY: I have no further questions, Your
15 Honor.

16 THE COURT: Mr. Deysach.

17 MR. DEYSACH: The Court's indulgence just
18 briefly, Your Honor.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. DEYSACH:

22 Q. I'm just going to follow up on one of the things
23 that Mr. Shipley said. When he asked you about packaging
24 of marijuana and you made the -- your response was, was it
25 packaged separately or all together. That was how you

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1 responded to that question. Do you remember that?

2 A. The question was there was an undetermined
3 amount --

4 Q. Uh-huh. He said a smaller amount, under an
5 ounce, say, that -- and when he brought that up, your
6 response was to ask him whether it was packaged separately
7 or together; correct?

8 A. Yes.

9 Q. I mean, it was just a few second ago.
10 Because whether or not it is packaged separately
11 or together would make a difference in the conclusion that
12 you would draw. That's why you asked that question;
13 correct?

14 A. The amount -- the conclusion that I would draw,
15 with the other information, and it makes a difference on
16 the --

17 Q. Whether it's packaged --

18 A. -- amount because of the law --

19 Q. Right. But the amount --

20 A. -- the packaging.

21 Q. But I think I was kind of aiming at the
22 packaging aspect. And I think what you pointed out to the
23 jury is that when you're looking at something, you're
24 deciding is it packaged separately or is it packaged
25 together; correct?

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1 A. Well, or does he have the materials to break it
2 down and package it, the scales, the small -- are they
3 laid out where he's breaking it down. So collectively,
4 yes, sir.

5 MR. DEYSACH: That's all I have.

6 THE COURT: All right. Anything further?

7 MR. SHIPLEY: Nothing from the State, Your
8 Honor.

9 THE COURT: Thank you very much, sir. You may
10 step down.

11 THE WITNESS: Thank you.

12 [Whereupon, the witness is excused and exits the
13 witness stand]

14 MR. SHIPLEY: The State calls Officer James
15 Carmany.

16 [Whereupon, Mr. Carmany comes forward]

17 MR. SHIPLEY: Go over there and be sworn in.

18 [Whereupon, Mr. Carmany is duly sworn by the
19 clerk of court as follows: do you solemnly swear or
20 affirm that the testimony you give to the Court in this
21 trial shall be the truth, so help you God]

22 THE WITNESS: Yes, ma'am.

23 THE CLERK OF COURT: Thank you. Please be
24 seated.

25 [Whereupon, the witness takes the witness stand]

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1 MR. SHIPLEY: Good morning.

2 - - - - -

3 JAMES R. CARMANY,

4 Having Been First Duly Sworn,

5 was Examined and Testified as Follows:

6 DIRECT EXAMINATION

7 BY MR. SHIPLEY:

8 Q. Would you please state your name, spelling your
9 last name for the court reporter, and give us your rank
10 and where you're employed.

11 A. Corporal James Robert Carmany. That's C-A-R-M-
12 A-N-Y. I work with the Town of Bluffton, Beaufort County,
13 South Carolina.

14 Q. How long have you been working in the Bluffton
15 police department?

16 A. Bluffton police department, I've been there a
17 little over five years. Law enforcement, twelve years
18 total.

19 Q. What have your typical duties been with the
20 Bluffton police department?

21 A. Just basically road patrol. And I'm currently
22 assigned to the neighborhood services unit, community
23 policing.

24 Q. Were you -- October 11th, 2010, in what capacity
25 were you working that day?

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1 A. I was working -- we were working with the
2 County. I was assigned to the drug task force through
3 Beaufort County, Beaufort-Jasper County, at that time.

4 Q. Were you involved in the execution of a search
5 warrant on that day?

6 A. Yes, I was.

7 Q. Where was that location?

8 A. That was on Martha Brown Circle.

9 Q. Is that within the town of Bluffton?

10 A. Within the town of Bluffton, yes, sir.

11 Q. What were your duties that day in the execution
12 of that search warrant?

13 A. Prior to the execution of the search warrant, I
14 conducted pre-surveillance. I was in the wood-line
15 observing it. And then after we conducted the search
16 warrant, I videotaped the vehicle prior to conducting the
17 search. And then after the search, I videotaped it again.

18 Q. Was that video recorded in some manner and then
19 later turned into evidence?

20 A. Yes, it was.

21 MR. SHIPLEY: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes, sir.

24 MR. SHIPLEY: Would you mind marking this as an
25 exhibit.

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1 [Whereupon, State's Exhibit Number 39 is marked
2 by the court reporter]

3 Q. [Mr. Shipley] I'm handing the witness what's
4 been marked for identification purposes as State's Exhibit
5 39. Can you identify what the contents of that --

6 A. This would be the original video that I took of
7 the vehicle prior to the search warrant and after the
8 search warrant that night. And I signed my initials on
9 it. That's how I was able to identify it.

10 Q. Did you watch the recording on that CD at the
11 direction of me or my office?

12 A. Yes, I have.

13 Q. Was it -- when you watched it, was it a complete
14 and accurate recording of the one you submitted into
15 evidence?

16 A. Yes, it was.

17 Q. And did you sign your name on the CD to indicate
18 that?

19 A. I didn't actually sign my name but I did put my
20 initials on it, yes. Those are my initials.

21 MR. SHIPLEY: The State moves State's Exhibit 39
22 into evidence, Your Honor.

23 THE COURT: Any objection?

24 MR. DEYSACH: No objection. Just subject to the
25 conditions that we talked about.

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1 THE COURT: Sure.

2 [Whereupon, State's Exhibit Number 39 is
3 admitted into evidence by the Court]

4 MR. SHIPLEY: Permission to publish this to the
5 jury?

6 THE COURT: Right.

7 MR. SHIPLEY: Officer, I would ask that you come
8 down here and stand down here and talk to us, tell us
9 what's going on in this video as we watch it.

10 THE WITNESS: Sure.

11 THE COURT: Officer, please just remember to
12 keep your voice up so that the court reporter can take
13 down everything. Okay?

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you.

16 MR. SHIPLEY: Beg the Court's indulgence, Your
17 Honor. It's being uncooperative.

18 THE COURT: All right.

19 [Off the record momentarily]

20 MR. SHIPLEY: Plan B, Your Honor. I'm just
21 going to sit my laptop over there so the jury can see.

22 THE COURT: Why don't we do this. I'm going to
23 send the jury to their jury room, give you an
24 opportunity to work on that for a little bit. If you
25 can't get it working, we'll do that.

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1 MR. SHIPLEY: Okay.

2 THE COURT: Ladies and gentlemen, if you'll
3 please retire to your jury room. Please have no
4 conversation about the case. And as soon as we get
5 this operational, we'll bring you back.

6 [Whereupon, the jury exits the courtroom at
7 10:10 a.m.]

8 [Off the record momentarily]

9 [Whereupon, a recess is taken from 10:12 a.m. to
10 10:24 a.m.]

11 MR. SHIPLEY: Your Honor, I believe we're ready.

12 THE COURT: Let's bring the jury back in,
13 please.

14 [Off the record momentarily]

15 THE BAILIFF: The jury is entering.

16 [Whereupon, the jury enters the courtroom at
17 10:26 a.m.]

18 THE BAILIFF: The jury is present.

19 THE COURT: All right. Ladies and gentlemen, I
20 think we're worked out with our technical difficulties
21 so we'll proceed with the evidence.

22 MR. SHIPLEY: Thank you, Your Honor.

23 Q. [Mr. Shipley] If you would, Officer, please
24 just describe what we're watching as we're watching it and
25 what you're doing.

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1 A. Sure. No problem.

2 [Whereupon, video plays for the jury with
3 questions from Mr. Shipley]

4 A. This is the video taken prior to actually
5 searching the vehicle. That is the 1999 Dodge Intrepid
6 that will be searched.

7 And when I eventually had gone around the whole
8 vehicle with the camera. It's just the front and the side
9 -- passenger side now.

10 Q. [Mr. Shipley] What is the purpose of this
11 video?

12 A. To document before and after, and look at the
13 images where -- that we did seize from the vehicle.

14 Q. What's being pointed out there?

15 A. That is the license plate, [REDACTED] I believe it was
16 [REDACTED] along -- which returned to a '99 Dodge Intrepid,
17 which is the same one on the search warrant.

18 Q. And what are we looking at here?

19 A. That is the area where the defendant was removed
20 from the vehicle, and that was what was found directly
21 underneath him or beside him at the time.

22 Q. What are we looking at here?

23 A. That's the back seat of the vehicle. The best
24 that I can recall is that is just miscellaneous items --

25 Q. And that --

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1 A. -- bags.

2 That's a baggie. Those are cigars right there.

3 Q. What's in the driver's seat? What have we got
4 here?

5 A. All right. Right here you have large amounts
6 which was later identified as cocaine.

7 More miscellaneous baggies. And then right --
8 that is a scale used to weigh narcotics, along with
9 another cigar.

10 More baggies.

11 This is the passenger-side floorboard. There
12 was numerous baggies.

13 Q. Is that all of the inventory you did on the car?

14 A. Yes.

15 Q. And I believe we're in the second video here.
16 What is this?

17 A. The second video is after we've already searched
18 the vehicle. This is after we removed everything from the
19 vehicle that we did seize in the inventory list.

20 Q. And what was the purpose of filming it after?

21 A. To show the vehicle what the present state --
22 how we left the vehicle and returned it to the owner.

23 Q. Anything of interest here or are you just
24 walking around showing it?

25 A. Basically, we're just walking around just

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1 documenting on video how we left the vehicle to return it
2 in its condition.

3 Q. Is that pretty much it?

4 A. That's -- yes. There's not much more to that
5 video.

6 [Whereupon, the video concludes]

7 MR. SHIPLEY: All right. Return to the witness
8 stand, please.

9 [Whereupon, the witness complies]

10 [Off the record momentarily]

11 MR. SHIPLEY: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes, sir.

14 Q. [Mr. Shipley] Show you what's been marked as
15 State's Exhibit 25. Can you identify that for us?

16 A. This would be an ariel photograph of the area of
17 Martha Brown Circle and the surrounding area.

18 Q. Although it's from above, is that a fair and
19 accurate depiction of the area surrounding Martha Brown
20 Circle?

21 A. Yes, it is.

22 Q. Is there a dot somewhere on that map?

23 A. Yes. There is a blue dot in the center of the
24 map.

25 Q. Does that fairly represent the location of the

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1 incident location, Martha Brown Circle?

2 A. Yes, it does.

3 Q. Is there another shape on there? Is there a
4 pentagon shape on that map somewhere?

5 MR. DEYSACH: Your Honor --

6 A. There is --

7 MR. DEYSACH: Your Honor --

8 A. -- a green pentagon --

9 MR. DEYSACH: -- we have an objection.

10 THE COURT: All right.

11 MR. DEYSACH: I don't think that there's any
12 testimony that he's the one who prepared this map and
13 so I think what he's testifying to, as far as what the
14 blue dot represents, I think that represents hearsay
15 from the person that actually prepared the map.

16 I don't think that -- he's not the one who took
17 the ariel photograph. He's just describing what's on a
18 map that somebody else prepared. I think that's
19 hearsay.

20 MR. SHIPLEY: Can we approach, Your Honor?

21 THE COURT: Sure.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 THE COURT: All right. I'm going to note Mr.
25 Deysach's objection to this line of testimony.

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1 Overruled. And you may continue.

2 Q. [Mr. Shipley] Let me back up a moment, Officer.
3 You testified you were working for Bluffton for five years
4 and your typical duties were patrol. How familiar are you
5 with the Martha Brown Circle and the surrounding area?

6 A. I'm very familiar with it.

7 Q. Do you have a good idea of what's nearby Martha
8 Brown Circle --

9 A. Yes. Yes, I do.

10 Q. -- and what's not?

11 A. Yes.

12 Q. Where I left off: I was asking you if there was
13 -- first of all, is there a park near Martha Brown Circle?

14 A. Yes, sir.

15 There's actually two parks near Martha Brown
16 Circle.

17 Q. What's the name of one of them?

18 A. Oscar Frazier Park. That's the bigger park and
19 the mostly-used park.

20 Q. Okay. How far is that park from Martha Brown
21 Circle? Did you ever -- is it something you can just
22 drive straight through and measure it with your car?

23 A. You could if you took Martha Brown from Goethy
24 Road over to Schultz Avenue and then into the park.

25 Q. But would that -- would that route that you took

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1 on the road be the distance between the two and a crow
2 would fly [phonetic]?

3 A. No, it would not.

4 Q. Were you able to determine, from working on this
5 case, the approximate distance between Martha Brown Circle
6 and Oscar Frazier Park?

7 A. Yes, I was.

8 Q. Okay. And how familiar are you with Oscar
9 Frazier Park?

10 A. Very familiar with it. It's within the town
11 limits that I do work, so it's been --

12 Q. Is there a --

13 A. -- there since I worked.

14 Q. Is there a pentagon shape on that map?

15 A. Yes, there is.

16 Q. What is that -- is that a fair -- is that
17 marking where Oscar Frazier Park is?

18 A. Yes, it is.

19 Q. Is that a fair and accurate representation of
20 where it is on that map?

21 A. Yes, it is.

22 Q. Is there, on that map, a shaded area?

23 A. Yes, there is.

24 Q. From your knowledge of the area and the
25 measurements that you conducted independently, is that

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1 shaded area a fair and accurate representation of a half-
2 mile radius spanning out from Martha Brown Circle?

3 A. Yes, it is.

4 MR. DEYSACH: I think that was an appropriate
5 time to renew the objection, Your Honor -- no new
6 information.

7 THE COURT: Sure. And that certainly is noted.
8 Overruled. Allow it.

9 MR. SHIPLEY: Your Honor, I move State's Exhibit
10 25 into evidence.

11 MR. DEYSACH: Obviously subject to the objection
12 that I've already made twice.

13 THE COURT: Sure. Absolutely.

14 I'm going to allow it into evidence, subject to
15 the objection from the defense counsel.

16 [Whereupon, State's Exhibit Number 25 is
17 admitted into evidence by the Court]

18 MR. SHIPLEY: Permission to publish this to the
19 jury?

20 THE COURT: Yes, sir.

21 MR. SHIPLEY: Officer, I'll have you step down
22 here again, please.

23 [Whereupon, the witness complies]

24 Q. [Mr. Shipley] Describe what we're looking at
25 here. Where is Martha Brown Circle on this map?

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1 A. This would be Martha Brown Circle right here
2 where the blue dot is. It's an ariel photograph --

3 Q. What are we looking at here?

4 A. This is the Bluffton Parkway that runs parallel
5 to Highway 278, which is up here.

6 The Bluffton Highway.

7 This is State Route 46 traffic circle. State
8 Route 46 also runs here.

9 This would be Goethy Road right down through
10 there, and then this is Schultz Road that I testified to
11 earlier.

12 And then you turn into the park right here. So
13 the park.

14 Q. Is this Oscar Frazier Park right here?

15 A. That right here is Oscar Frazier Park. That
16 whole -- actually, right about in that area,
17 approximately.

18 Q. What is -- what kind of park is Oscar Frazier
19 Park? Is this an overgrown, abandoned park?

20 A. No, it's not.

21 It's an actively-used park. It has multiple
22 baseball, softball fields, soccer fields, has a community
23 center, also has a play park for little children, and
24 swings and different things.

25 Q. Oscar Frazier Park, is that -- on this map, does

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1 that appear within the shaded area which represents the
2 half-mile radius?

3 A. Yes, it does.

4 MR. SHIPLEY: You can return to the witness
5 stand. Thank you.

6 THE WITNESS: Thank you.

7 [Whereupon, the witness complies]

8 Q. [Mr. Shipley] I want to ask you about Martha
9 Brown Circle. Describe this circle for me. Is it a well-
10 traveled area?

11 A. [No response]

12 Q. Is Martha Brown Circle a two-lane highway with
13 yellow stripes?

14 A. No, it's not. It's actually a dirt road.

15 Q. What's located along that road?

16 A. Multiple residences.

17 Q. And are you able to -- are you able to make your
18 way all the way around the circle? If you're in a vehicle
19 and you're traveling on Martha Brown Circle, are you able
20 to -- is it a complete circle? Can I drive my car all the
21 way through it to the other end?

22 A. Originally you could. Unfortunately, since then
23 there's an elderly lady who lives in the back. She put up
24 a chainlink fence that opens up to where you can't
25 complete the circle anymore.

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1 Q. So is it essentially a dead-end on either side
2 of the --

3 A. Yes.

4 It is now a dead-end on either side that you go
5 down.

6 Q. Is this a public road that the average citizen
7 can just drive down if he wanted to?

8 A. No. I believe it's a private road.

9 Q. How would you describe this area? Is it a -- is
10 Martha Brown Circle known for --

11 MR. DEYSACH: I'm going to object to apparently
12 a leading question that's coming, what is it known --
13 you know, is it known for x, y and z.

14 THE COURT: Sustained as to the leading.

15 Q. [Mr. Shipley] What kind of area is Martha Brown
16 Circle known as amongst you and other officers in the
17 community?

18 MR. DEYSACH: I think how it's known by other --
19 Objection to it, first. I think how it's known
20 by other officers in the community is asking for a
21 hearsay response I think -- and I think it's -- I think
22 it's --

23 MR. SHIPLEY: May we approach, Your Honor?

24 THE COURT: Yeah.

25 [Whereupon, an off-the-record bench conference

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1 is held]

2 THE COURT: Overruled.

3 Q. [Mr. Shipley] What kind of area is Martha Brown
4 Circle known as? Is it known as a high-drug activity
5 area?

6 A. Yes, it is.

7 And based on my personal experiences, I've made
8 numerous arrests concerning drugs coming from that vehicle
9 in the last five years. Multiple.

10 MR. DEYSACH: Objection, Your Honor. I think we
11 were talking about the area, not the vehicle.

12 THE COURT: He can testify as to the area.

13 MR. SHIPLEY: May I approach the witness, Your
14 Honor?

15 THE COURT: [Indicates affirmatively]

16 Q. [Mr. Shipley] I'm going to show the witness
17 State's Exhibit 26. Can you identify what is pictured
18 there?

19 A. This would be the sign of Oscar Frazier Park at
20 the main entrance.

21 Q. Is it a fair and accurate depiction of the sign?

22 A. Yes, it is.

23 MR. SHIPLEY: Move this exhibit into evidence,
24 Your Honor.

25 THE COURT: Any objection to State's Exhibit --

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1 MR. DEYSACH: No, Your Honor.

2 THE COURT: All right. Without objection.

3 [Whereupon, State's Exhibit Number 26 is
4 admitted into evidence by the Court]

5 MR. SHIPLEY: Permission to publish to the jury
6 -- to the jury.

7 THE COURT: Yes, sir.

8 Q. [Mr. Shipley] Officer, does this sign say that
9 it's a city park, a county park?

10 A. It does say it's a park, yes.

11 MR. SHIPLEY: I have no further questions, Your
12 Honor.

13 THE COURT: Mr. Deysach.

14 MR. DEYSACH: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. DEYSACH:

17 Q. When you are done executing the search warrant,
18 don't you have to -- I guess you gave us -- you showed us
19 the video of the -- I guess the after, and we saw that
20 during your direct testimony; correct?

21 A. Yes.

22 Q. And that is supposed to show the end of the
23 search; correct?

24 A. Yes.

25 Q. Because at the end of the search, it's not like

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1 you guys took the car and impounded it, is it?

2 A. No, we did not.

3 Q. In fact, one of the requirements of a search
4 warrant is to leave a copy of it with the owner or in a
5 place where they would find it; correct?

6 A. Yes, it is.

7 Q. And, in fact, you gave, that night, a copy of
8 the search warrant to the owner of the car; correct?

9 A. I believe it was originally left on the
10 dashboard and then the owner showed up and then we gave it
11 to him, yes.

12 Q. Okay. So did you also give him the keys to the
13 car at the time?

14 A. I personally did not.

15 Q. Okay. The owner of the car at the end of the
16 night was left in possession of the car?

17 A. Yes.

18 Q. All right.

19 [Whereupon, Mr. Deysach and Mr. Walker confer]

20 Q. [Mr. Deysach] Did you actually drive the
21 distance from the incident location to the park?

22 A. I've driven it many times on patrol. I've never
23 measured it.

24 Q. You didn't measure it for this case, or you
25 haven't ever measured it for any case?

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1 A. Driving-wise, no.

2 Q. Okay. The search -- the first video, the before
3 video, are -- that is taken before entry into the car at
4 all; correct? Before the search begins?

5 A. Before the search I would say yes, but not
6 before entry.

7 Q. Okay. I guess if there was somebody in the car,
8 that they had been removed?

9 A. Exactly.

10 Q. Right.

11 Other than that, would doors be opened before
12 then?

13 A. Other than to clear the vehicle to make sure
14 nobody else was in there --

15 Q. Correct.

16 A. -- they could be opened at that point in time
17 prior to the search, yes.

18 Q. Did you do that?

19 A. I don't recall.

20 MR. DEYSACH: I don't have anything else, Your
21 Honor.

22 THE COURT: Anything further of this witness?

23 - - -
24 - - -
25 - - -

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REDIRECT EXAMINATION

BY MR. SHIPLEY:

Q. Do you recall: when you arrived there, was the back door of the Dodge Intrepid open?

A. No, it was not.

MR. SHIPLEY: No further questions, Your Honor.

THE COURT: Thank you very much, Officer. You may step down.

THE WITNESS: Thank you, Your Honor.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: All right. You may call your next witness.

MR. SHIPLEY: The State calls Lieutenant Renita Berry.

Your Honor, if there's no objection from the defense to excuse Officer Carmany for the day?

THE COURT: Any objection to the Officer being excused?

MR. DEYSACH: No, Your Honor.

THE COURT: Thank you. You may be excused, sir.

THE WITNESS: Thank you.

[Whereupon, Ms. Berry comes forward]

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

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1 [Whereupon, Ms. Berry is duly sworn by the clerk
2 of court as follows: do you solemnly swear or affirm
3 that the testimony you give to the Court in this trial
4 shall be the truth, so help you God]

5 THE WITNESS: Yes, I do.

6 THE CLERK OF COURT: Thank you. Please be
7 seated.

8 [Whereupon, the witness takes the witness stand]

9 MR. SHIPLEY: Good morning, Lieutenant.

10 THE WITNESS: Good morning.

11 - - - - -

12 RENITA BERRY,

13 Having Been First Duly Sworn,
14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MR. SHIPLEY:

17 Q. Could you please state your name again and spell
18 your last name for the court reporter.

19 A. Renita Berry. B-E-R-R-Y.

20 Q. And where are you employed?

21 A. Beaufort County Sheriff's Office.

22 Q. And in what capacity? What do you do for the
23 sheriff's office?

24 A. I'm a forensic chemist and also the lab director
25 for the Beaufort County Sheriff's Office forensics lab.

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1 Q. What is your educational background?

2 A. I have a degree in chemistry from the University
3 of South Carolina. I also have a master's degree in
4 management from Wester [phonetic] University.

5 Did you -- that's it? Just education?

6 Q. Tell us about --

7 A. Okay.

8 Q. -- any training or experience you may have as it
9 relates to --

10 A. Okay. After completing college with University
11 of South Carolina, I was then employed by South Carolina
12 Department of Health and Environmental Control, commonly
13 known as DHEC. I was an analytical chemist there for
14 about four years.

15 After leaving DHEC I was then employed by South
16 Carolina Law Enforcement Division, commonly known as SLED
17 and it was at SLED where I received the majority of my
18 training as a forensic chemist.

19 I was there for about four years before coming
20 here to Beaufort County. And then throughout the years
21 you continue to get training in your discipline.

22 Q. Could you tell us what exactly forensic
23 chemistry is?

24 A. Forensic chemistry is simply the application of
25 science or chemistry to -- as it applies to the law.

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1 Q. And what are your typical -- your duties in that
2 field for the sheriff's department?

3 A. Okay. My primary responsibility as a chemist is
4 to analyze any suspected drug evidence that is submitted
5 to the lab. We analyze it, determine, if we can, what it
6 is and then generate a report and then testify in court
7 when necessary.

8 Q. Have you ever testified in court as a forensic
9 chemist?

10 A. Yes, I have.

11 Q. Have you ever been qualified as an expert in the
12 field of forensic chemistry?

13 A. Yes, I have.

14 MR. SHIPLEY: Your Honor, at this time the State
15 moves Lieutenant Berry being qualified as an expert in
16 the field of chemistry and analysis of narcotics.

17 THE COURT: All right. Any objection or any
18 voir dire you wish to have of the witness?

19 MR. DEYSACH: No, Your Honor.

20 THE COURT: All right.

21 Q. [Mr. Shipley] Would you describe for us the
22 process of what you do, how the drugs -- or suspected
23 drugs come to you and what you do with them?

24 A. Okay. We either pick the evidence up from our
25 evidence or central receiving. Once we have it in hand,

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1 then we secure it until we're ready to work the case.
2 Once we're ready to work the case, then we inspect the bag
3 to make sure the seal is intact and everything is secure
4 within the bag. Once we do that, then we start taking out
5 the different pieces of evidence, taking samples, and then
6 analyzing it.

7 We run a series of tests on it. Preliminary
8 test, which consists mainly of chemical tests where you're
9 adding a small amount of the substance, adding a small
10 amount of chemical to the small amount of substance,
11 watching for a chemical reaction. And that simply gives
12 you an idea of what you may have, telling you the
13 classification of the drug or suspected drug that you
14 have.

15 Once that's completed, then you take samples for
16 what we call the confirmatory testing, and that usually
17 consists of instrumentation such as the GC mass spec or
18 gas chromatography mass spectrometer. And we call it the
19 GC mass spec for ease of use. Once we receive the data
20 from that, that usually allows us to review the data and
21 then determine what that substance actually is.

22 Q. How do these items come to you?

23 A. They come to us from the officer. The officer
24 turns it into evidence or they bring it directly to us.

25 Q. And how do you keep track of them? Do you have

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1 numbers assigned to them, to the --

2 A. Yes.

3 We have what we call a LIM system, Laboratory
4 Information Management system. And all evidence that's
5 submitted to the lab is first put in there and it gets
6 assigned a number. Not only do we have that laboratory
7 number, we also have the case number that the agency
8 provides and we also have -- for best-bag issues, we also
9 have what we call a control number. And so with those
10 three different sets of numbers we're able to track any
11 evidence that's submitted to the laboratory.

12 MR. SHIPLEY: May I approach the witness, Your
13 Honor?

14 THE COURT: Yes, sir.

15 Q. [Mr. Shipley] Showing the witness State's
16 Exhibit 27, a bag containing other State's exhibits.

17 A. Thank you.

18 Q. Can you identify that?

19 A. Yes.

20 Q. And how did it come to you? You can empty the
21 contents, if you would like.

22 A. When this evidence came to me, it was all placed
23 in this bag here. And this is what we call a best bag and
24 it's -- you can tell whether or not someone's tried to
25 open it up or tried to take anything out of it. So it's

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1 not a tamper-proof bag, but a more -- it allows you to be
2 able to determine if it's been tampered with, or a tamper
3 proof evidence bag.

4 The substance was placed inside of the bag. And
5 then once I received it, I then cut it along the edge to
6 remove the substance.

7 Q. Is that the bag that you used in this case?
8 That the items came in in this case?

9 A. Yes, it is.

10 Q. How were you able to determine that?

11 A. I mentioned earlier that there is a control
12 number that we also use that's on each of the bags, and
13 that control number is here, along with there is a sticker
14 here that's placed on it once it's received into evidence.
15 And even though this one is somewhat faded, you can see
16 the laboratory number that's listed on here, plus I've
17 written it on the back also.

18 Q. When it came to you, was it -- was the seal
19 intact?

20 A. Yes, it was.

21 Q. Was there any evidence of it being tampered with
22 at all?

23 A. No, there wasn't.

24 Q. Did you perform analyses on the items within the
25 bag?

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1 A. Yes, I did.

2 MR. SHIPLEY: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes, sir.

5 Q. [Mr. Shipley] Showing the witness what's been
6 marked as State's Exhibit 27-F. Did you perform analysis
7 on the contents of that bag?

8 A. Yes, I did.

9 Q. And what were the -- what is your opinion
10 regarding the items within that bag?

11 A. Based on the various tests that was conducted --

12 MR. DEYSACH: Your Honor, I think I have the
13 chain of custody objection to renew that I made, that
14 we discussed yesterday, the chain of custody problem.

15 THE COURT: All right. I'm going to overrule
16 that but note your objection.

17 Q. [Mr. Shipley] What was your opinion of the
18 contents of that bag?

19 A. Okay. Based on the various testing that was
20 conducted on this sample -- this is number 2 -- this is
21 cocaine base and tetrahydrocannabinol found, or THC.
22 Marijuana.

23 Q. So is it a mixture of the two?

24 A. It is.

25 If you look closely, you can see the green plant

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1 substance. This dried green -- or plant substance is
2 somewhat brownish because it's dried out. But you also
3 see white specs, little white chunks, and that's the
4 cocaine.

5 Q. I'm now handing you State's Exhibit 27-E. Can
6 you identify the items within that bag?

7 A. Yes.

8 This is just the marijuana found, or THC, and
9 you can see that green substance right there, the brownish
10 substance.

11 Q. Did you perform analysis on that?

12 A. Yes.

13 Q. That was all -- that was THC?

14 A. Yes.

15 Q. What is THC? Is that --

16 A. THC is just -- or tetrahydrocannabinol is just
17 the active ingredient in marijuana. And we run -- when we
18 conduct the instrumental test on it, the instrument brings
19 out THC so that's what we usually report instead of
20 marijuana.

21 MR. DEYSACH: Your Honor, I don't want to keep
22 standing up. I was just going to say that the
23 objection that I have as far as the chain of custody
24 goes to each one of the substances --

25 THE COURT: Sure. And I certainly would note

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1 that for the record and would overrule that as far as
2 to all of the substances that are -- that make up
3 State's Exhibit is it 27?

4 MR. SHIPLEY: 27 and then the 27-A --

5 THE COURT: A through G.

6 MR. SHIPLEY: -- through G, I believe.

7 THE COURT: All right.

8 MR. DEYSACH: Thank you, Your Honor.

9 Q. [Mr. Shipley] Showing the witness State's
10 Exhibit 27-G. Can you identify what's in there and would
11 you tell us if you performed analysis on the contents of
12 that.

13 A. No, I didn't, not on this one.

14 Q. And what about State's Exhibit 27-B?

15 A. Yes, I did.

16 Q. And what was your opinion about the contents of
17 that bag?

18 A. Based on the different testing that was
19 conducted on this sample, it's my opinion that it was
20 determined to be THC again, or marijuana.

21 Q. Showing the witness what's been marked as
22 Exhibit 27-C. Can you tell us if -- if you can identify
23 the item in that bag and whether or not you performed
24 analysis of it.

25 A. Yes, I did.

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1 Q. And what was your opinion regarding the contents
2 of that bag?

3 A. Based on the various testing conducted, it's my
4 opinion that this substance with the residue within the
5 bag is cocaine found.

6 Q. What was the approximate weight of that cocaine?

7 A. Because it was such a small amount we did not
8 take a weight, or the weight was less than what we report
9 out.

10 Q. So did you -- what's the approximate weight of
11 the THC items that you tested?

12 A. For this one, and this is Exhibit 27-E, it was
13 2.90 -- two point nine zero grams. Two point nine zero
14 grams. And that was just the marijuana by itself.

15 For -- what is this -- 27-F, my item number 2,
16 this is the combination of cocaine base and the marijuana
17 and this was 0.98 grams.

18 And this is Exhibit 37-D, my number 8, and this
19 is marijuana found, 0.54 grams.

20 MR. SHIPLEY: The State moves Exhibits 27-C, G,
21 E, F and D into evidence.

22 THE COURT: All right. And those are admitted
23 into evidence, noting your objection, Mr. Deysach.

24 MR. DEYSACH: Thank you, Your Honor.

25 [Whereupon, State's Exhibit Number 27-C is

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1 admitted into evidence by the Court]

2 [Whereupon, State's Exhibit Number 27-D is
3 admitted into evidence by the Court]

4 [Whereupon, State's Exhibit Number 27-E is
5 admitted into evidence by the Court]

6 [Whereupon, State's Exhibit Number 27-F is
7 admitted into evidence by the Court]

8 [Whereupon, State's Exhibit Number 27-G is
9 admitted into evidence by the Court]

10 MR. SHIPLEY: Permission to publish these to the
11 jury.

12 THE COURT: Yes, sir.

13 Q. [Mr. Shipley] 27-D that I'm holding up in front
14 of the jury, Lieutenant, is this the substance that's
15 tested positive for THC?

16 A. What's the item number?

17 Q. 27-D.

18 A. Yes.

19 Q. Handing the witness what's been marked as
20 State's Exhibit 27-A. Can you identify the contents of
21 that bag, please.

22 A. 27-A, based on the testing that was conducted --
23 got it here in a pill bottle or in a brown bottle -- it
24 was cocaine base found and that was 6.32 grams.

25 MR. SHIPLEY: The State moves Exhibit 27-A into

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1 evidence, Your Honor.

2 THE COURT: All right.

3 MR. DEYSACH: Same objection, Your Honor.

4 THE COURT: Subject to the objection, it's in
5 evidence.

6 [Whereupon, State's Exhibit Number 27-A is
7 admitted into evidence by the Court]

8 MR. SHIPLEY: Permission to publish this to the
9 jury?

10 THE COURT: Yes, sir.

11 Q. [Mr. Shipley] Handing the witness what's been
12 marked as State's Exhibit 27-B. Can you identify the
13 contents of that bag, please, and did you perform analysis
14 on its contents?

15 A. Okay. Item 6. Exhibit 27-B, you can see the
16 white substance here, the chunky substance, was determined
17 -- based on the testing, it's my opinion that it's cocaine
18 found, 25.13 grams.

19 MR. SHIPLEY: The State moves Exhibit 27-B into
20 evidence, Your Honor.

21 THE COURT: Subject to your objection, it's in
22 evidence.

23 MR. DEYSACH: Thank you, Your Honor.

24 [Whereupon, State's Exhibit Number 27-B is
25 admitted into evidence by the Court]

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1 MR. SHIPLEY: Permission to publish it to the
2 jury.

3 THE COURT: Yes, sir.

4 MR. SHIPLEY: State also moves 27-H, the best
5 bag, identified by the witness, into evidence.

6 MR. DEYSACH: I don't have an objection to the
7 bag, Your Honor.

8 THE COURT: All right.

9 [Whereupon, State's Exhibit Number 27-H is
10 admitted into evidence by the Court]

11 Q. [Mr. Shipley] Did you have any further
12 involvement in this case, Lieutenant?

13 A. No, I don't.

14 MR. SHIPLEY: No further questions, Your Honor.

15 THE COURT: All right Mr. Deysach, your
16 witness.

17 MR. DEYSACH: Just briefly, Ms. Berry.

18 CROSS-EXAMINATION

19 BY MR. DEYSACH:

20 Q. You test the substances that come to your lab.
21 That's your job; correct?

22 A. Yes, it is.

23 Q. And when you give an opinion, you give the
24 opinion either THC found or cocaine found or cocaine base
25 found? Is that what -- are those the types of opinions

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1 you give?

2 A. The opinion is based on what's been analyzed and
3 the results of those -- of the different testing.

4 Q. Sure.

5 And I guess your expertise is knowing how to do
6 that analysis; is that right?

7 A. Yes.

8 Q. Okay. But I guess my point is that you can tell
9 that cocaine is found but you do not test the purity or
10 the percentage that is found in what's delivered to you,
11 do you?

12 A. No, we don't, because it's not a requirement of
13 South Carolina law.

14 MR. DEYSACH: I don't have anything further,
15 Your Honor.

16 MR. SHIPLEY: No further questions of this
17 witness, Your Honor.

18 THE COURT: Thank you very much, ma'am. You may
19 step down.

20 THE WITNESS: Thank you, Judge.

21 [Whereupon, the witness is excused and exits the
22 witness stand]

23 MR. SHIPLEY: Before the State rests, Your
24 Honor, I request a brief recess to make sure that my
25 evidence is properly admitted and everything is in.

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1 THE COURT: All right. Ladies and gentlemen,
2 I'm going to get you to step into your jury room. If
3 you need anything, please let the bailiff know. Please
4 have no conversation about the case, and we'll get you
5 back out here shortly.

6 [Whereupon, the jury exits the courtroom at
7 11:07 a.m.]

8 [Off the record momentarily]

9 MR. SHIPLEY: Your Honor, if we can go back on
10 the record regarding an item of evidence?

11 THE COURT: All right, sir.

12 MR. SHIPLEY: Exhibit 27, it's just an empty bag
13 containing 27 -- all the 27 exhibits. I did not admit
14 this bag into evidence. If the defense would stipulate
15 to the admission of this bag.

16 MR. DEYSACH: I'm not going to fight over it,
17 Your Honor.

18 THE COURT: All right.

19 MR. SHIPLEY: Just to keep them all together.

20 THE COURT: And that's 27; right?

21 MR. SHIPLEY: That's 27, Your Honor.

22 THE COURT: All right.

23 [Whereupon, State's Exhibit Number 27 is
24 admitted into evidence by the Court]

25 MR. SHIPLEY: I believe we're all set, Your

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1 Honor.

2 THE COURT: All right. Just give me one second
3 here.

4 [Off the record momentarily]

5 THE COURT: All right. Then does the State
6 rest, then, Mr. Shipley?

7 MR. SHIPLEY: The State does rest, Your Honor.

8 THE COURT: All right. Let me go ahead, then,
9 while we have the jury out -- when we come back in
10 we'll -- I'll allow you to rest on the record. But let
11 me go ahead and take up any motions at the close of the
12 State's case while we have the jury out.

13 MR. DEYSACH: Right now?

14 THE COURT: Yes, sir.

15 MR. DEYSACH: Okay. Your Honor, I have -- I
16 want to renew all my objections --

17 THE COURT: All right, sir.

18 MR. DEYSACH: -- both pretrial and during --

19 THE COURT: During the trial.

20 MR. DEYSACH: -- the trial.

21 THE COURT: Okay.

22 MR. DEYSACH: I think certainly the suppression
23 motion that we heard, the Jackson v. Denno, the
24 objection during the trial about the statement that
25 Mr. Rodriguez made that we spent some time discussing

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1 on the record yesterday, I want to renew that motion,
2 as well as all the other motions. I know I'm not
3 remembering all my motions -- my objections that were
4 overruled.

5 That mistrial motion, one, which I felt like
6 mistrial was the only proper remedy for what I
7 characterized as a violation of Your Honor's ruling. I
8 don't think that the record needs to be fleshed out
9 anymore on that but I do want to make sure that I'm
10 preserving it at the proper time during the proceeding.

11 - - - - -

12 MOTION FOR A DIRECTED VERDICT

13 MR. DEYSACH: I do have a number of directed
14 verdict motions. Obviously, there is seven different
15 charges here and so there are directed verdict motions
16 that apply to each one. And I'm not -- there's no good
17 place to start, so I'll just start somewhere.

18 THE COURT: All right, sir.

19 MR. DEYSACH: First, I want to talk about the
20 three distribution of a controlled substance within the
21 proximity of a school charges. It is my position that
22 -- and I'll have other motions that are separate from
23 this. It is my position that it is inappropriate under
24 the law, especially the new law -- this is a little
25 different law than it was before where crack was

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1 separated from marijuana and cocaine; that each one of
2 the indictments alleges a violation of I think it's --
3 you know, 44-53-445(a) where it's -- a criminal offense
4 -- separate criminal offense to distribute a controlled
5 substance within a half-mile radius of grounds of
6 school. The State has charged him one time each for
7 each substance: crack, powder, and marijuana.

8 To me, that is -- he's still only violating the
9 law one time. This is all happening at one time.
10 They're all controlled substances. PWID of a
11 controlled substance, that element -- they satisfied
12 that element multiple times, just like in a burglary
13 somebody can commit a burglary and satisfy the element
14 of aggravation by doing it at night and having a prior
15 record of two or more burglaries. You can satisfy that
16 element in more than one way. But at the time of the
17 arrest, he's satisfying the element and he can't then
18 charge him two extra times, even if it is separate
19 substances. And so for that reason I think the jury
20 should only consider -- the motion on this one would be
21 to consider one PWID school zone of a controlled
22 substance.

23 THE COURT: One proximity charge.

24 MR. DEYSACH: One proximity charge.

25 THE COURT: All right, sir. Do you want to

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1 address that, Mr. Shipley?

2 MR. SHIPLEY: The State argues that when the
3 statute says that it's illegal to possess with intent
4 to distribute a controlled substance, it's not
5 controlled substances. It's not an all-encompassing
6 statute. And we've got testimony that there are three
7 different narcotics here involved so there's
8 appropriately three different proximity charges for
9 each narcotic involved. And that evidence presented
10 fits the statute. Whether or not the jury wants to
11 decide is a question of fact.

12 THE COURT: And, Mr. Deysach, let me -- so what
13 your position is is that in considering the evidence,
14 the jury, for example, part of what we're going to --
15 I'm going to charge the jury on each of these is the
16 lesser included offenses of simple possession. So that
17 a jury -- if they found that it's simple possession of
18 cocaine, then it wouldn't be in violation of this
19 statute. But you're saying that that doesn't matter,
20 Judge; you've got three different substances; if they
21 found him guilty of any of -- if they find him guilty
22 of all of those to the lesser offense of simple
23 possession, then of course the proximity charge doesn't
24 matter. But if they found him guilty of any of those
25 charges -- in other words, the sentence for possession

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1 with intent to distribute is the same whether it's
2 marijuana, whether it's crack or whether it's cocaine;
3 is that correct?

4 MR. DEYSACH: It is correct. And it's the same
5 section and subsection of the statute that's -- it's
6 the same sentence of the statute that's violated,
7 whether it's cocaine -- it just says controlled
8 substance. It doesn't -- it doesn't list out -- you
9 know, where it used to make a distinction between crack
10 and others, it no longer does.

11 THE COURT: All right.

12 MR. DEYSACH: So that -- you know, it used to be
13 -- marijuana and powder used to be treated in the same
14 subsection as a controlled substance.

15 THE COURT: Right.

16 MR. DEYSACH: And I think you'll understand what
17 the basis of my motion is. At the time of the
18 incident, he -- if they had evidence that he is
19 possessing with intent to distribute within a half mile
20 of a school zone, of a controlled substance, then that
21 would be the crime. It's not that each specific -- I
22 mean, I don't know what would prevent them, then, from
23 stopping and breaking up -- in a separate trial
24 breaking up separate quantities of the same substance,
25 you know. If there's two marijuanas, they've got the

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1 marijuana in the pocket and the marijuana in the center
2 console, I don't know -- if we don't do it the way I'm
3 saying, I don't know what prevents them from saying,
4 well, PWID school zone for what's in his pocket and
5 PWID school zone for what's in the center console, even
6 though they're the same substance.

7 MR. SHIPLEY: It's a separate intent to
8 distribute each narcotic, Your Honor, and I think it's
9 reasonable to assume the legislature would want someone
10 who's intending to distribute three different
11 substances near a school to face a harsher penalty than
12 someone who's only intending to distribute one
13 controlled substance near a school or park.

14 MR. DEYSACH: I'm not assuming that, Your Honor.
15 I'm not assuming the legislative intent on that.

16 THE COURT: All right.

17 MR. DEYSACH: In fact, as you see, the law has
18 actually gone less -- on the school zone part, the law
19 has been softened.

20 THE COURT: All right. Let me hear your next --

21 MR. DEYSACH: Okay. The next one. Still on the
22 offense of PWID of a controlled substance within half
23 mile of a school, separately consider the -- I guess
24 this applies to all of them. Another change in the law
25 that Matthew's being -- Matthew Frazier, my client, is

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1 being prosecuted under from what it was -- I guess it
2 was the middle of 2010 that the law took effect that a
3 person to be convicted, he has to have knowledge that
4 he is in or within one-half mile radius of the grounds
5 of a public or private elementary or middle or
6 secondary school, what-have-you. Park, in this case.

7 They have introduced the map. They have put up
8 testimony by Officer Carmany who says, you know what, I
9 work the neighborhood but I've never measured it in my
10 car to know. And so the only way that anybody here
11 knows that this is within one-half mile of a school is
12 by the map that was presented with the mapping system
13 and everything, obviously something that Mr. Frazier
14 wouldn't have had access to.

15 And if you look at the map, you can actually see
16 the way that somebody would have to drive to get to
17 Oscar Frazier Park is down Martha Brown, down Goethy,
18 down another road. That does look as though it would
19 probably, if stretched out, be longer than half a mile.
20 And so they said, well, it's as the crow flies versus
21 how you would get there driving. The only way we know
22 how it is is as the crow flies is what the GIS map
23 says.

24 There's no evidence in the record whatsoever
25 that Matthew had access to such a map, that he may have

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1 known of the existence of Oscar Frazier Park -- I think
2 there was some testimony from Mr. Squires about -- they
3 asked him about the park being up the road. But as far
4 as the distance that he is from the park, he has no way
5 of knowing and --

6 THE COURT: There's no requirement that a
7 defendant know how far he is from a park.

8 MR. DEYSACH: 44-53-445(b)(1): for a person to
9 be convicted of an offense pursuant to subsection (a),
10 the person must have knowledge that he is in, on, or
11 within one-half mile radius of the grounds of a public,
12 private, elementary, public playground or park. That's
13 the new --

14 THE COURT: How would you ever prove anybody had
15 knowledge that they were within one half mile of
16 anything?

17 MR. DEYSACH: They asked him if he knew the park
18 was there -- do you know this is -- do you know whether
19 it was within one half mile of a park. Yes. They
20 asked him if he knows the park is near. It's not that
21 much more to --

22 THE COURT: Asked who?

23 MR. DEYSACH: Mr. Frazier. There is testimony
24 by Officer Squires that he says, do you know that
25 there's a park and the answer is, I know that there's a

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1 park. But there's no talk of distance to the park.
2 And we're talking about a park that is, even as the
3 crow flies, you know, at least -- certainly the
4 entrance is close to the half-mile circumference that
5 if you were to take the -- the road --

6 I don't know if it was in testimony, but I think
7 in sidebar the solicitor acknowledged that if you were
8 to take the road to get there, it would be more than a
9 half mile. And so we need something to show -- I mean,
10 it's a tough requirement of the law. If you were in a
11 place where you could see the park, where it was on
12 your road or something like this -- but this park is at
13 least two turns away from where this occurs.

14 And like I said, he knows that the park is
15 there. But the law requires -- and it's new, but it's
16 very clear, also, about requiring that knowledge
17 element. And there is no evidence in the record about
18 Matthew Frazier knowing the distance from the park.
19 And like I said, the mapping stuff really almost
20 verifies that it's a number of turns and that if you
21 were to take the road, it would be longer than a half
22 mile.

23 MR. SHIPLEY: There's evidence in the record,
24 Your Honor, that, one, he knew it was there; he grew up
25 playing basketball there. Clearly, he intended to be

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1 at the spot that he was at in that -- at that time.
2 There's evidence that the park is, in fact, within a
3 half mile of Martha Brown Circle.

4 The question of whether he was knowingly there
5 is a question of fact for the jury to decide. We have
6 satisfied the elements of the law for the purposes of
7 this directed verdict motion, Your Honor. It's up to
8 the jury to decide whether he knowingly was within one
9 half a mile of the park.

10 THE COURT: All right.

11 MR. DEYSACH: I think he went -- like knowingly
12 being where he's at or intending to be where he is, I
13 think the solicitor is minimizing the essential element
14 that -- if we're going to go into legislative intent,
15 you know, they put it there in black and white in the
16 law. And so -- you know, I could tell from the report
17 that -- before this law ever passed, I don't think Mr.
18 Squires would have even asked the defendant, do you
19 know about the park, you know. But he didn't quite get
20 there because the law, like I said, is quite clear
21 about the half mile -- the half mile thing.

22 And so for that reason -- that applies to all
23 three different PWID half mile of a school zone
24 charges.

25 THE COURT: All right. Next motion.

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1 MR. DEYSACH: More? All right. Ready for --
2 okay.

3 Still this is for PWID one half mile on the
4 cocaine charge. The law, 44-53-445, still the same
5 code section, (b)(2): actually distribute, sell,
6 purchase, manufacture, or unlawfully possess with the
7 intent to distribute controlled substance, public,
8 vocational, trade school, or technical education
9 center, private college, university.

10 The cocaine was -- I think all testimony,
11 constructively possessed. Constructive possession,
12 actual possession, the code requires actual possession.

13 THE COURT: Does it use the term actual
14 possession?

15 MR. DEYSACH: It says actually, and then goes
16 into the litany. And you've got to actually distribute
17 actually sell, actually purchase, actually manufacture,
18 or actually unlawfully possess with intent to
19 distribute, comma, the controlled substance. So it
20 uses the word actually. That's new, also.

21 Obviously, there's -- you know, that law has
22 been modified. That's where I think a lot of the
23 negotiations between the defense bar and the
24 prosecution took place was on the school zone charge.
25 And now we're dealing with it. But the law is the law

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1 and now we have to follow it.

2 THE COURT: All right. What else?

3 MR. DEYSACH: All right. I think -- okay. For
4 the possession of a pistol by a person convicted of a
5 violent crime -- or not -- sorry -- during the
6 commission of a violent crime.

7 THE COURT: Right.

8 MR. DEYSACH: The pistol is found in the car. I
9 think there was testimony that it was not in plain
10 view. There are -- at least there's pictures of the
11 car, none of which show the gun as it lies in plain
12 view; that it was an hour after the search began that
13 the gun is found.

14 There is -- Mr. Squires, while he tells of the
15 conversation that he has with Matthew about drugs, the
16 -- anything to do with the drugs, he does not ask him
17 anything about the car. So there is nothing in the --
18 the car -- the gun. There's nothing in the record
19 about any knowledge that he would know that the gun was
20 there. And we're talking about a car that is not
21 registered to him and the gun is not in plain view.
22 And so really without any evidence of his knowledge of
23 the gun, that there's nothing that the jury can decide
24 that he was in possession of the gun during
25 trafficking.

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1 MR. SHIPLEY: The testimony actually was that it
2 was found right there on the passenger-side floorboard.
3 That's constructive possession of the gun.

4 Also, the defendant said whatever is on him and
5 in the car is his.

6 MR. DEYSACH: That was a discussion about drugs.

7 THE COURT: Let me back you up, Solicitor.

8 Why would he be in constructive possession of
9 the gun?

10 MR. SHIPLEY: He's sitting -- he's found seated
11 in the vehicle when they arrive. He's right there in
12 the driver's seat. Anything within his reach could be
13 considered constructively possessed by him, arguably
14 so. And this is right here on the passenger's side
15 floorboard, right there like kind of where the inositol
16 is and everything else, the torn baggies all around
17 him. Cocaine right there on the gear shift. He's
18 constructively possessing all of that.

19 MR. DEYSACH: I look at the cocaine and
20 obviously -- you know, the pictures of the cocaine, you
21 know -- I elicited the testimony, okay, this is what
22 the car looked like when you start the search. The
23 cocaine they take a picture of sitting right there on
24 the gearshift.

25 From the picture through the front seat where

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1 they testified that Matthew is sitting either one leg
2 in, one leg out, or some combination of legs in or out,
3 you can't see the gun. The gun itself is found inside
4 either one or two plastic ziplock bags in a holster,
5 and so even if you looked -- if you looked straight at
6 it, you're not even sure what it is.

7 And even though this wasn't in front of the
8 jury, if you would have heard the sound of the search
9 warrant video, the guy looks at where they're saying
10 that the gun would have been and says nothing about a
11 gun, even though he's mention --

12 THE COURT: Well, you're asking me now to
13 consider --

14 MR. DEYSACH: All right. All right.

15 THE COURT: -- evidence that's not --

16 MR. DEYSACH: All right. I just don't want --

17 THE COURT: -- in front of the jury.

18 MR. DEYSACH: -- I want you to feel good about
19 the ruling, I guess.

20 THE COURT: I'm not always right, but I usually
21 feel good about it.

22 All right. Mr. Deysach, any other --

23 MR. DEYSACH: I think that as far as the
24 trafficking is concerned, I would argue that there
25 isn't enough to send it to the jury, more than mere

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1 presence. I think the same is true for the PWID crack.
2 I don't obviously have as much to say. I think that --
3 you know, that probably that that's more of a weight of
4 the evidence type of a situation based on what was
5 presented. But I would argue that there's just mere
6 presence when you consider that it is somebody else's
7 car. And the same with the crack. I think that there
8 was testimony that a lot of people ran at the time and
9 that he found the crack on the ground outside of the
10 car.

11 So I think more of a general just not enough
12 evidence to go to the jury on those two charges
13 directed verdict motion.

14 THE COURT: All right. Anything further,
15 solicitor, regarding those motions?

16 MR. SHIPLEY: It's a question of fact for the
17 jury now.

18 We've got testimony that it is, in fact,
19 cocaine, marijuana and crack, that the cocaine did
20 exceed ten grams, and that the intent to distribute the
21 marijuana and the crack is a question of fact for the
22 jury. We have plenty of evidence to support it.

23 THE COURT: You do raise a -- well, I'm going to
24 say novel. Novel to me. Not necessarily novel. It's
25 probably been argued in other courts and I'm just not

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1 as familiar with it. But it is an interesting concept
2 you raise regarding the three proximity charges.

3 However, I'm going to deny that. The
4 legislature -- and, again, trying to determine the
5 intent of the legislature is always a difficult thing.
6 But there are three separate offenses that it is
7 unlawful to possess this substance. And then of course
8 as you said, the proximity charge then states that it's
9 unlawful to possess controlled substances in, near or
10 -- a park, school or playground.

11 But we do have three separate charges here based
12 on the three separate drugs, and I think it -- I think
13 on each one the jury has to decide whether or not --
14 first, you have to decide whether or not there is even
15 a possession with intent. The jury may find that it's
16 simple possession and find that the proximity charge
17 doesn't relate to the marijuana but does relate to the
18 others.

19 And, again, it's a -- it's an interesting
20 thought, and one that I've really been wrestling with
21 as I've been going through this in my mind.

22 I'm not going to hear anymore argument.

23 MR. DEYSACH: Okay. One last little point,
24 please?

25 THE COURT: No, sir. I'm not going to hear any

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1 argument about it.

2 I understand your position, but I think I'm
3 going to allow the three proximities to go. The jury
4 can do with those as they feel is appropriate, based on
5 the evidence as presented.

6 I'm going to deny your motion regarding the
7 language where you differentiate between actual
8 possession and constructive possession.

9 I think the actual possession and constructive
10 possession, those are two types of possession under the
11 law or two ways that you can possess. But if you
12 constructively possess something, I think for purposes
13 of that statute, you're in possession of it. And I
14 don't know that that language actually was meant that
15 that statute only applies -- that constructive
16 possession cases do not fall under the statute because
17 then what you're saying is that if you have a situation
18 where an individual is in constructive possession of
19 300 pounds of crack, you can't charge him under
20 trafficking because the statute says it's actual
21 possession and so constructive possession wouldn't fall
22 under that.

23 I mean, that's what you're arguing; correct?

24 MR. DEYSACH: I think that the difference is
25 that -- if it was trafficking -- certainly, trafficking

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1 -- I think that the example that you gave was over
2 ten --

3 THE COURT: But you're saying that the statute
4 says actual possession.

5 MR. DEYSACH: The PWID school is under the
6 statute. Just the school is under the statute --

7 THE COURT: The proximity?

8 MR. DEYSACH: Yeah, the proximity statute says
9 that. It doesn't say -- you know, somebody has to --

10 THE COURT: So that any case that is based on
11 constructive possession is not a case that is
12 appropriate for the proximity charge?

13 MR. DEYSACH: That's what the law -- I mean, I
14 can't imagine what the actual -- why they would put the
15 word actually in there if that's not what is meant. I
16 can't think of an alternate -- why would that -- why
17 would that --

18 MR. WALKER: Strictly construe it.

19 MR. DEYSACH: Yeah. I mean, we have to strictly
20 construe it.

21 You could hear him say it before I said it --
22 strictly construe the statute in favor of the
23 defendant. I mean, that's one of the rules that we
24 have to live by. But I just -- I can't ignore the word
25 actually. And I don't think we should.

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1 MR. SHIPLEY: Your Honor, I think it's intended
2 to address situations where maybe there's conspiracy,
3 multiple people charged with the same crime. They
4 don't want a co-conspirator charged with this, they
5 want only the guy who is actually selling or actually
6 distributing or actually manufacturing or actually
7 possessing, which would include actual possession or
8 constructive possession, doing this within a half a
9 mile of a school.

10 THE COURT: And that's the way I read the
11 statute. Because the actually doesn't -- you know,
12 they don't use that term for just the possession part.
13 They use it for selling, they use it for all of the
14 things. And so -- and, again, I may be wrong. I'm not
15 saying I'm always right. God knows, I know I'm not
16 always right. The courts have told me that in the
17 past, that I'm not always right.

18 But I think in this case that the proximity
19 charge and the newly-worded proximity charge does not
20 exclude constructive possession cases from the
21 proximity charge and so I'm going to respectfully deny
22 your motion on that.

23 With regards to the gun charge, you know, I was
24 -- I was wondering if the State was going to put up any
25 further evidence regarding that. But for purposes --

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1 and keep in mind, folks, what I'm dealing with here is
2 directed verdict motions and the law is clear that the
3 Court is not to weigh the evidence, the Court is to see
4 is there an existence of evidence whereby a jury could
5 find. It's just basically determining whether there is
6 evidence in the record.

7 In this case -- and I understand your
8 interpretation of the comment, even though it wasn't
9 said, well, any drugs in the car are mine. The comment
10 was, everything in the car is mine. I don't know how a
11 jury will interpret that. But I think that there is
12 evidence in the record -- they may not believe that Mr.
13 Frazier said that at all. They may not even believe
14 that the statement was a proper statement.

15 You know, the fact that I admit a statement into
16 evidence doesn't make it believable. The jury decides
17 whether it's believable or not. And they could just
18 disregard the statement in its entirety, or they could
19 accept it verbatim for what is, is that everything in
20 the car is mine.

21 So for purposes of directed verdict, I think
22 there is evidence in the record, depending on how the
23 jury looks at it, how they weigh it. So I respectfully
24 deny that.

25 Have I missed anything?

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1 MR. DEYSACH: I think, Your Honor, that the
2 knowledge that he's in within one-half mile aspect of
3 PWID proximity.

4 THE COURT: Again, I'm going to respectfully
5 deny the motion.

6 You're right. The question wasn't directly
7 asked do you know that that parks -- that park is
8 within the half mile. But he did testify that he grew
9 up there, that he grew up playing basketball there,
10 which would indicate he's -- I mean, the jury,
11 depending on how the jury takes that evidence, whether
12 or not he knew or should have known that he's within a
13 half mile of that park. You pose a very good argument
14 of the road versus the crow flies and how that -- but
15 the law is within a half-mile radius. But I think it's
16 a matter for the jury to decide, based on the evidence
17 that was presented. And if the jury finds that there's
18 a lack of evidence on the State's part or if they find
19 there's sufficient -- I think it's their call.

20 Anything else?

21 MR. DEYSACH: I think you've dealt with
22 everything, Your Honor, on the directed verdict
23 motions.

24 THE COURT: All right. Any other motions at
25 this point?

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1 MR. DEYSACH: No, Your Honor.

2 MR. SHIPLEY: Nothing from the State.

3 THE COURT: Now, Ian, have you had an
4 opportunity to talk with Mr. Frazier about the -- his
5 decisions regarding his defense?

6 MR. DEYSACH: We have spoken. I probably would
7 want to get one last check-back and make sure that
8 we're still on the same page.

9 THE COURT: All right. Go ahead and do that now
10 and then let me know what that decision is. Okay?

11 MR. DEYSACH: Okay.

12 [Whereupon, Mr. Deysach, Mr. Walker and Mr.
13 Frazier confer]

14 MR. DEYSACH: Your Honor, I think we're done
15 discussing it, Your Honor.

16 THE COURT: All right. Let me make another
17 comment for the record regarding my ruling on the
18 proximity charge and the actually language that you
19 referenced, because I didn't have the statute right in
20 front of me. But I do now.

21 When you read that statute it says: for a
22 person to be convicted of an offense pursuant to
23 subsection [a], which is the proximity statute, that a
24 person must -- and it talks about knowledge -- his
25 knowledge that he's within that radius. And then it

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1 says, and actually distribute, sell, purchase,
2 manufacture, or unlawfully possess with intent to
3 distribute.

4 And I think there's that break. I think the
5 actually refers to the distribute, sell, purchase or
6 manufacture.

7 Then it says: or unlawfully possess with
8 intent.

9 And that's my reading of the statute, is that
10 that or unlawfully possess with intent to distribute
11 would encompass both actual possession as well as
12 constructive possession. So that's just to clarify the
13 ruling of the Court on that.

14 - - - - -

15 DEFENDANT'S RIGHTS

16 THE COURT: Mr. Deysach, what is the decision?

17 MR. DEYSACH: He indicates that he does not wish
18 to testify, Your Honor.

19 THE COURT: All right. Well, are there any
20 other witnesses that the defense would present?

21 MR. DEYSACH: There are not.

22 THE COURT: All right. Mr. Frazier, if I may,
23 let me just ask you, sir, regarding your decision to
24 remain silent, that it's important -- because that is a
25 constitutional decision that we all have. And so it's

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1 important, a couple of things, number one, that you
2 talk with your attorneys, that you get their
3 understanding of that -- of the trial, of what they've
4 intended to do and what's in your best interest. And
5 it's important that as your lawyers that they give you
6 their thoughts and their feelings about it. But the
7 decision whether or not to exercise a constitutional
8 right, that always has to be the decision of the person
9 that carries that right. In this case, it is your
10 right to either testify or to remain silent and to
11 exercise that constitutional right.

12 Now, in talking with your attorneys, you
13 understand that if you exercise your right to remain
14 silent, that I have a charge on the law that I will
15 instruct the jury that they cannot in any way hold that
16 against you. Do you understand that?

17 MR. FRAZIER: Yes, sir.

18 THE COURT: And I will instruct them that the
19 State has the burden of proof and that you don't have
20 to prove anything, that you have no burden of proving
21 anything and the fact that you've chosen to remain
22 silent cannot even be discussed in the jury room.

23 Do you understand that I will charge them that?

24 MR. FRAZIER: Yes, sir.

25 THE COURT: All right, sir. And this decision

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1 to exercise your right to remain silent, has that been
2 your decision, Mr. Frazier?

3 MR. FRAZIER: Yes, sir.

4 THE COURT: And I know you've conferred with
5 your attorneys and they've given you their thoughts.
6 But is your opinion -- has anyone -- I guess I'm asking
7 has anyone forced you to make this decision or coerced
8 you into making this decision.

9 MR. FRAZIER: No, sir.

10 THE COURT: This decision to remain silent or to
11 exercise that constitutional right, has that been your
12 decision, made freely and voluntarily, sir?

13 MR. FRAZIER: Yes, sir.

14 THE COURT: All right, sir. Thank you very
15 much. You may have a seat.

16 [Whereupon, Mr. Frazier complies]

17 THE COURT: I certainly will respect that, and
18 we will honor your request to do that.

19 Now, let me ask -- let me -- since the defense
20 is not going to put up a case, let me give you an
21 option, while the jury is out, to take up motions at
22 the close of all the evidence since once the jury
23 returns the evidence will be closed.

24 So at this point, Mr. Deysach, I'll take up any
25 motions at the close of all the evidence.

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1 MR. DEYSACH: So, again, I think it's the
2 appropriate time for me to renew all the pretrial
3 objections, all the objections that took place during
4 the trial. At the directed verdict stage I gave some
5 specifics on what those objections were. I'm going to
6 decline to do so now. Just with the understanding that
7 what I'm saying right now is a renewal of all of those
8 objections that were overruled, just as I mentioned at
9 the directed verdict stage.

10 THE COURT: Yes, sir.

11 MR. DEYSACH: I think that it's appropriate to
12 renew the directed verdict motions at this time. We've
13 just had a lengthy colloquy about the -- you know, the
14 ins-and-outs of what the motions that I made.

15 I think that there was one point where I tried
16 to stand up and say something and you were not in a
17 posture to hear more argument because you had heard all
18 you needed to hear, Your Honor, and --

19 THE COURT: Well, now is your time to get it in.

20 MR. DEYSACH: Yes. So now I'm going to get it
21 in.

22 But the point I was going to make is that you'll
23 notice that when it comes to PWID powder, PWID
24 marijuana, or PWID crack without the proximity, just
25 the regular charge, there are separate -- there are

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1 separate offense written out in the code which is
2 different than the way the proximity statute is made.
3 This goes to the all three versus just one argument
4 that I made.

5 And so if anybody is going to try and -- you
6 know, we talked about legislative intent. And the
7 funny thing about that is once you start trying to find
8 evidence of legislative intent, many people can find
9 evidence just to support their position.

10 But my position is that because you can see that
11 the legislature decided to make certain different
12 possession with intent to distribute crack, PWID powder
13 or trafficking powder or -- and marijuana separate
14 offense but declined to do so, even though that's the
15 way it used to be in a modified way that that's clear
16 evidence of the legislative intent that in this case
17 would mean that just one school zone charge would go
18 back to the jury.

19 And so that's the only thing I was going to say
20 then, so I appreciate you giving me the opportunity to
21 say that.

22 Other than that, I would just renew all the
23 other direct verdict motions.

24 THE COURT: All right. Just if you would --
25 [Whereupon, the Court and the law clerk confer]

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1 THE COURT: All right. Thank you for giving me
2 that little bit of time to confer with my law clerk.

3 I'm going to respectfully deny those motions and
4 I think, as I said earlier on those issues, that I --
5 on the directed verdict issues I think there is
6 evidence in the record, depending on how the jury views
7 that evidence. And that's certainly their prerogative
8 to view the evidence how they view it.

9 One last issue regarding the thing that caused
10 me a lot of thought, and that was the proximity
11 charges. I think the way it -- when you have the
12 possession with intent to distribute charges, obviously
13 for marijuana and for cocaine and for crack cocaine,
14 they are different because legislatively the elements
15 that the State must prove vary depending on weight of
16 those particular subjects. It changes with marijuana
17 versus cocaine versus crack, the difference in
18 trafficking versus possession with intent and those
19 types of things. Each of those drugs carries different
20 weights and all.

21 But the proximity charge, the reason there's
22 only one proximity charge is because the proximity
23 charge isn't affected by weights. It is simply that if
24 a jury were to find that the State has proven
25 possession with intent to distribute, then this statute

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1 applies. And so that's why I don't believe that it was
2 a legislative intent to have one proximity charge that
3 applies to all of these drugs because they were found
4 together. I think that it allows for there to be a
5 separate proximity charge for each drug. And the
6 reason it's not broken out separately, as it is in the
7 substantive statutes regarding each of those drugs, is
8 because other than a drug being -- other than a charge
9 being classified as possession with intent, there is no
10 difference. There's no weight consideration to be
11 given.

12 Anyway, that's just the thought process.

13 But, now, let me ask this. You had mentioned
14 some charges that you were going to ask the Court to
15 consider. Let's talk about those.

16 MR. DEYSACH: I think as I looked through judge
17 Anderson's charge book I found some that I need. I
18 mean, I've got a few different things I want to talk
19 about and, again, not any great place to start.

20 But I think mere presence -- I think if they're
21 going to get a constructive possession charge, that a
22 mere presence charge would be appropriate. And the one
23 that I see that's in Judge King's charge book is the
24 one that I would ask that you charge.

25 THE COURT: Let me just say this --

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1 MR. DEYSACH: -- Judge Anderson -- Judge
2 Anderson --

3 THE COURT: I'm going -- I'm going to charge
4 mere presence. And I'll let you see what I've got. I
5 think the world of Judge Anderson, respect him
6 incredibly and put him in very high esteem, but as long
7 as my charge encompasses the elements and the things --
8 I don't necessarily intend for it to be as wordy as his
9 charge is. And I may have that charge verbatim. I
10 don't -- I haven't compared them. But I'll certainly
11 give you an opportunity to look at what I've got.

12 MR. DEYSACH: I appreciate that.

13 I think he also has a charge on mere
14 association, which is pretty short and it's not
15 particularly wordy: mere association with people who
16 control drugs or who control property on which drugs
17 are found is not sufficient to support a finding of
18 possession. In the absence of any proof that the
19 defendant had dominion and control over the drugs or
20 had the right to exercise dominion and control over the
21 drugs, you should find the defendant not guilty.

22 That's the mere association.

23 They talked about my cousin, Derrick's car, he
24 let me hold the car. And so he's the one who controls
25 the property on which the drugs are found. And so at

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1 least there's evidence to that effect to support that
2 charge.

3 THE COURT: Do you have that -- Judge Anderson's
4 book in front of you?

5 MR. DEYSACH: I do.

6 THE COURT: What page is that on?

7 MR. DEYSACH: I have it on 433. It is section
8 4-23.

9 MR. SHIPLEY: Can I see that?

10 [Whereupon, Mr. Deysach and Mr. Shipley confer]

11 [Whereupon, Mr. Shipley reviews documents]

12 THE COURT: Solicitor, have you read that?

13 MR. SHIPLEY: I have, Your Honor, and I don't
14 feel that it is appropriate. I feel that's skewed
15 towards more of a situation where perhaps another
16 habitual was in constructive or actual possession of
17 something and we're trying somebody else. There's no
18 evidence in this case that that's even close to a
19 factual scenario.

20 THE COURT: Mr. Deysach, that charge states
21 here, it says that in the absence of any proof that the
22 defendant had dominion and control over the drugs or
23 had the right to exercise dominion and control over the
24 drugs --

25 MR. DEYSACH: Correct.

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1 THE COURT: -- you should find the defendant not
2 guilty.

3 And in this case there is evidence that --

4 MR. DEYSACH: But not --

5 THE COURT: Go ahead.

6 MR. DEYSACH: I'm sorry. I didn't mean to cut
7 you off and --

8 THE COURT: No. Go ahead.

9 MR. DEYSACH: Okay. I think you said there in
10 the absence of proof. And there is evidence, I think,
11 obviously, that there is an in between there. You
12 know, in the absence of proof that the defendant had
13 dominion and control over the drugs, had -- I mean,
14 whether or not there's proof is exactly what the jury
15 is deciding. Whether there is evidence of something,
16 that's something that you decide.

17 But I don't think -- you know, you're not to
18 decide whether or not there is the presence or absence
19 of proof. I assume that that kind of means proof --
20 what I'm reading it, meaning proof beyond a reasonable
21 doubt.

22 [Whereupon, Mr. Deysach and Mr. Walker confer]

23 MR. DEYSACH: And so that's what -- the jury
24 decides if there is or isn't any proof that the
25 defendant had dominion or control over the drugs. If

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1 there were that proof, then they would know from this
2 instruction that they could find him guilty. And so
3 that's why that instruction is appropriate. I think
4 that we are -- you know, whether or not there is proof,
5 that he had constructive possession is exactly what
6 they're here to decide, so I don't think we should
7 invade their decision.

8 MR. SHIPLEY: There's no evidence that anyone
9 else could possibly have constructive possession --

10 THE COURT: That's not true. There's three guys
11 that ran away, and they didn't catch him.

12 MR. SHIPLEY: Well, the stuff that's outside the
13 car he claims, the stuff inside the car he claims. No
14 one was seen in the car other than him.

15 THE COURT: I'm going to charge it. And, of
16 course, obviously, solicitor, you can argue, because
17 the charge that he's asking for says that: in the
18 absence of proof that the defendant had dominion and
19 control over or had the right to exercise that. That's
20 certainly -- you can argue that there is no absence of
21 that and therefore that doesn't apply. But I think
22 they're entitled to it.

23 [Off the record momentarily]

24 THE COURT: All right, sir.

25 MR. DEYSACH: I want to -- again, revisiting my

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1 favorite statute, the proximity statute. I just wanted
2 to make sure that in your instruction on this law that
3 it would include the requirement that the defendant had
4 knowledge, that he is in or on or within the half-mile
5 radius of the school ground.

6 I know that when we were arguing the directed
7 verdict I heard you say something, well, I think that
8 he knew or should have known or could have known or
9 anything like that. I don't think that to charge them
10 should have known, could -- or something along those
11 lines would be appropriate in this scenario because
12 this is a specific intent statute for which, you know,
13 we know nothing is left up to anything other than what
14 the law is as it was passed by the legislature.

15 So I wanted to make sure that part of your
16 charge on distribution of a controlled substance within
17 proximity of a school would include subsection (b)(1):
18 had knowledge that -- you know, had knowledge that he
19 was within a half-mile radius of a school, and not
20 include should have known language.

21 THE COURT: All right.

22 MR. SHIPLEY: As long as the instruction tracks
23 the statute, Your Honor, I have no objection.

24 THE COURT: All right.

25 [Whereupon, the Court and the law clerk confer]

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1 THE COURT: All right. Let me tell you what
2 we've got here: however, if you find that the
3 defendant is guilty of possession with intent to
4 distribute cocaine -- and it should be cocaine base --
5 you must then consider the law on proximity because the
6 defendant is also charged with possession with intent
7 to distribute cocaine base within proximity of a school
8 or a park. The State must prove beyond a reasonable
9 doubt that the defendant unlawfully possessed, with
10 intent to distribute, cocaine base while in, on, or
11 within one-half mile of the grounds of a park. The
12 State must also prove that the defendant had knowledge
13 that he was within a one-half mile radius of a park.

14 MR. DEYSACH: And I think you just cut out all
15 the stuff that doesn't apply in this case.

16 THE COURT: Correct. There's no sense in going
17 through trade school, technical center, public or
18 private college or university. There's no sense in
19 going through all of that.

20 MR. DEYSACH: Yes, sir.

21 I believe that -- you know, our difference of
22 opinion as to the use of the word actually, you know,
23 whether it modifies unlawfully possess with intent to
24 distribute, if that section were read out I believe
25 that I could still argue to the jury that the -- that

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1 the law requires actual possession with intent to
2 distribute? Or no?

3 THE COURT: I don't think that's the law.

4 MR. DEYSACH: Okay.

5 THE COURT: I'm not going to charge that portion
6 because -- and, again, it goes back to -- I think
7 you're reading that statute differently than the Court
8 is reading it. I think that actually applies to
9 actually distributing, selling, purchasing, or
10 manufacturing. Then it uses the article "or"
11 unlawfully possess with intent to distribute, and I
12 think that unlawfully possess can be either
13 constructive or actual possession.

14 And so I'm not going to allow you to argue that
15 the law is that even though -- even if the State proves
16 constructive possession, you cannot find him guilty of
17 the proximity charge because the law requires actual
18 possession, not constructive, because I don't think
19 that's the law.

20 MR. DEYSACH: Okay. And so I just wanted to
21 make sure my request was registered. And I think --

22 THE COURT: It is.

23 MR. DEYSACH: -- that's all I can --

24 THE COURT: Sure.

25 MR. DEYSACH: -- all I can do, even though I

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1 feel like my highschool grammar teacher. I wish I had
2 her today so that she could come and hopefully back me
3 up. But that's --

4 THE COURT: Your highschool grammar teacher
5 wouldn't help you today. Okay? So that's the Court's
6 ruling and if I'm wrong, there's someone that can
7 correct it.

8 MR. DEYSACH: Yes, Your Honor.

9 I wanted to make sure that your instructions as
10 they regard inference weights are made clear to the
11 jury that that is a rebuttal inference, because I think
12 there was some testimony by the State's witness that,
13 you know, under the law, over a gram or something like
14 that. He kind of -- the way he stated the law was
15 something like, under the law, over a gram is
16 possession with intent to distribute or something along
17 those lines that made it sound as though those weights
18 were something more, I don't know, stronger than just
19 permissive inferences.

20 THE COURT: I'm going to tell you what we're
21 going to do, because we can beat this to death until
22 tomorrow afternoon but we're not going to do that.

23 I'm going to bring the jury out and I'm going to
24 excuse them to go to lunch. I'm then going to work
25 with RandiLynn. I'm going to print you out the charge

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1 that we're going to propose, I'm going to let you look
2 at it, let you read through it, and then it's better
3 that we can come back and actually talk about an actual
4 document that what -- you know. So we're going to do
5 that.

6 Let me -- and, again, in an effort to make the
7 record clear: this was brought to my attention, which
8 I think supports my position with regards to the
9 proximity charge being appropriate that there would be
10 three proximity charges when you have three different
11 positions. So if you would look at section 17-25-50 of
12 the Code of Laws. That statute says: in determining
13 the number of offenses for a purpose of imposition of
14 sentence, the Court shall treat as one offense any
15 number of offenses which have been committed at time so
16 closely connected in point of time that they may be
17 considered as one offense, notwithstanding under the
18 law that they constitute separate and distinct
19 offenses.

20 I think what that statute is saying relates to
21 this issue. I don't know what a jury will do. A jury
22 may find Mr. Frazier not guilty on everything. They
23 may find him guilty of some and not of others. But if
24 they found him guilty of all three proximity charges, I
25 think this statute is saying that the Court, for

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1 purposes of sentencing, needs to take into
2 consideration -- because of the closeness in time and
3 the connection of point, that the Court should consider
4 those as one offense. And I think that kind of
5 supports that even when these offenses are so close in
6 time that they should be considered as one, they are --
7 the law constitutes that they are separate and distinct
8 but for purposes for the Court, the Court should
9 consider the fact and treat it as one. So that's that.

10 So let me do that. Let me bring the jury out,
11 send them to lunch. I'll send y'all to lunch, as well,
12 while we put this in final form, and then when y'all
13 get back -- I'm going to get y'all to come back a
14 little bit earlier -- we'll give you a copy of it, let
15 you look through it, and then we'll talk about it.
16 Okay?

17 MR. DEYSACH: Now, do you want us to do the rest
18 thing and everything when you bring --

19 THE COURT: Well, yeah. When I bring them out
20 I'll recognize you first, Mr. Shipley. You can say,
21 Your Honor, the State rests. And then I'll say, all
22 right, ladies and gentlemen, at the end of the State's
23 case the Court typically would take up motions. We
24 have done that while you've been out so I'll now
25 recognize the defense.

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1 Mr. Deysach, you can then rest on the record.

2 And then I'll say, all right, we've now reached
3 the point where we're moving into another phase of the
4 trial but it is lunch time and so y'all are going out
5 lunch. Okay?

6 Bring the jury back.

7 [Off the record momentarily]

8 THE BAILIFF: The jury is ready to enter.

9 THE COURT: All right.

10 [Whereupon, the jury enters the courtroom at
11 12:20 p.m.]

12 THE BAILIFF: The jury is present.

13 THE COURT: Thank you, ma'am.

14 Thank you, ladies and gentlemen, for your
15 patience.

16 Mr. Shipley, on behalf of the State?

17 MR. SHIPLEY: At this time, Your Honor, the
18 State rests.

19 THE COURT: All right. Ladies and gentlemen,
20 the State has rested their case.

21 And you have been sitting back there probably
22 wondering what in the world are those folks doing out
23 there. Well, at the close of the State's case, in
24 every case that is tried here, this Court has to take
25 up motions at the close of the State's case and I

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1 thought that while you were out it would probably be a
2 good use of your time and court time to do that, not
3 bring you back in, have Mr. Shipley rest, then send you
4 back out while I take up those motions. So we have
5 taken up those motions. We've done that and so now
6 we'll proceed and we'll recognize Mr. Deysach.

7 MR. DEYSACH: Your Honor, at this time the
8 defense rests.

9 THE COURT: All right, sir. Thank you.

10 There are also motions that I have to take up at
11 the end of all of the evidence, which the defense has
12 rested so all the evidence is in. And so we took up
13 those motions, as well. In other words, we really did
14 maximize our time and didn't have you just back there
15 for no reason.

16 However, we've now -- we are now moving into the
17 phase of the trial where the attorneys are going to
18 have an opportunity to address you with their closing
19 remarks and then I will charge you on the law. And
20 we're on the lunch hour here so rather than have you
21 sit back there while I take up matters regarding the
22 law with the lawyers, I'm going to send you to lunch
23 and ask that you be back at two o'clock. That gives
24 you a little over an hour and a half for lunch. Hour
25 and thirty-five minutes.

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1 Please be back at two o'clock and when you
2 return we will then proceed with the case. Okay?

3 Again, as you leave the Court, no conversation
4 with anybody about this case. You're not there yet.
5 We're close, but you're not there yet so please
6 continue to guard your ability to be fair and
7 impartial.

8 And we'll see you back here at two o'clock,
9 ladies and gentlemen.

10 [Whereupon, the jury exits the courtroom at
11 12:24 p.m.]

12 THE COURT: All right. If there's nothing else,
13 we'll go ahead and break for lunch.

14 For purposes of court personnel, we'll start
15 back at 2:00. Guys, when y'all come back at 1:30, how
16 about let's just come back to chambers back here and
17 we'll look over this charge and everything. Okay?

18 MR. DEYSACH: Yes, Your Honor.

19 THE COURT: All right.

20 [Whereupon, a recess is taken from 12:25 p.m. to
21 2:23 p.m.]

22 THE COURT: Okay. Have y'all had a chance to
23 look over what we had here?

24 MR. SHIPLEY: Yes, Your Honor.

25 MR. DEYSACH: Yes, Your Honor.

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1 THE COURT: All right. Is there anything we
2 need to change, do different, or what? Anything from
3 the State?

4 MR. SHIPLEY: No, Your Honor.

5 THE COURT: From the defense I'm confident there
6 is.

7 MR. DEYSACH: And this one was pointed out to me
8 by Mr. Walker so --

9 [Off the record momentarily]

10 MR. DEYSACH: He's in -- possession with intent
11 to distribute cocaine within proximity of a park. He's
12 like, shouldn't that say half mile, and within half-
13 mile proximity of a park, instead of just proximity.

14 THE COURT: That's right. The -- I think the
15 body of it --

16 MR. DEYSACH: Probably says that.

17 THE COURT: -- does mention half mile. But
18 you're right. The caption of it --

19 MR. DEYSACH: And that's just on the first page
20 that he was --

21 THE COURT: Well, yeah. Typically, I always
22 refer to that as a proximity charge. But then I think
23 if you'll look at the body, the actual charge on the
24 law I think says that it must be within a half-mile
25 radius.

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1 MR. DEYSACH: It does say it. As long as that's
2 made clear to -- and I'm sure --

3 THE COURT: And I -- absolutely. Okay.

4 All right. Now, if I recall from the trial, I
5 don't -- the defense has not put in any evidence; is
6 that correct?

7 MR. DEYSACH: Correct, Your Honor.

8 THE COURT: So I'm assuming you wish to argue
9 last?

10 MR. DEYSACH: I do.

11 [Off the record momentarily]

12 THE COURT: I did the verdict form as I told you
13 I was going to do with just the options. And so we'll
14 -- and I'll explain to them exactly about -- you know,
15 it can be confusing, but I think we've simplified it
16 enough to where -- and I do have the language in there
17 that they are not to consider the pistol charge unless
18 they have first found the defendant to be guilty of
19 trafficking, and I'll explain to them the reason behind
20 that is that that only applies to a violent offense.

21 All right. Let's bring the jury out.

22 MR. SHIPLEY: Your Honor?

23 THE COURT: Yes.

24 MR. SHIPLEY: One thing.

25 Well, first, Your Honor, I just -- the drug bags

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1 have been sealed and stapled --

2 THE COURT: Right.

3 MR. SHIPLEY: -- as you requested.

4 And the other thing, I wanted to make sure:
5 during opening statements Mr. Deysach made a comment
6 that any mistake that they make is final in this
7 procedure, there's no form of redress for them. And I
8 didn't object during opening --

9 THE COURT: Yeah. That was absolutely an
10 improper statement.

11 MR. SHIPLEY: I didn't object during opening
12 statements, Your Honor, but I would just want to make
13 sure that that's not done again in closing.

14 THE COURT: And, Mr. Deysach, you understand
15 that it's exactly the opposite? There is a way to
16 correct any errors that are made.

17 MR. DEYSACH: By the jury --

18 THE COURT: Through the appellate courts.

19 MR. DEYSACH: -- in the deliberation -- the
20 point was that there's no record of what takes place in
21 the deliberation room. And there isn't. And, in fact,
22 what I said I think is something very close to what
23 Judge Nettles instructed in the last trial that I had,
24 or at least during his opening comments, not
25 instructions, but opening comments, about the

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1 permanence of their decision as well as the fact that
2 there's no record that's being taken in the jury
3 deliberation room; you know, you can only appeal from
4 mistakes of law, you can appeal from, you know, a
5 decision to send a case to the jury. But if they go
6 back there and don't follow the rule of reasonable
7 doubt and come back with a --

8 THE COURT: I've got a question for you.

9 MR. DEYSACH: Uh-huh.

10 THE COURT: Would you object and stand on your
11 head and spit nickels if the State got up and said,
12 your decision is going to be permanent and if you let a
13 guilty drug dealer go on the streets, there's no way
14 that can be corrected?

15 MR. DEYSACH: I would. I mean, I --

16 THE COURT: I know you would. I would be
17 disappointed in you if you didn't.

18 MR. DEYSACH: I mean, I would.

19 But I don't think that there's -- like this --
20 you know, when you're the defendant where the burden of
21 proof is on the State, you know, we're not exactly on
22 equal footing as far as that goes.

23 I mean, I understand your ruling. If you're
24 telling me don't say anything about -- you know, I
25 mean, obviously I want them to worry about making a

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1 mistake on a wrongful conviction. That's the point.
2 And I think I can tell them that that's the point and I
3 can tell them that what they're doing is important and
4 has, you know, quite possibly a permanent effect. I
5 think those are all things I can say --

6 THE COURT: Then would it not be appropriate for
7 the State to argue the exact same thing? That if you
8 were to let a guilty man loose on the street, that's a
9 permanent error that we cannot correct?

10 MR. DEYSACH: Right. I think the difference is
11 when you get to the burden of proof beyond a reasonable
12 doubt. I mean, our system is built this way, you know,
13 that we have chosen to let the guilty person go, over
14 convicting the wrongful person. That's why -- people
15 can have done the crime and still have not had it
16 proven; correct? But it's hard to imagine a scenario
17 where somebody hasn't done it, if the burden is on --

18 THE COURT: Well, I don't think there's any
19 issue of telling a jury that -- telling them that it's
20 their duty to hold the State responsible to their
21 burden.

22 MR. DEYSACH: Correct.

23 And that's -- you know, and what I'm doing is
24 obviously trying to not just make it, and the State
25 must prove that he's guilty beyond -- a -- you know, to

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1 try and add a little bit of context to what they --

2 THE COURT: You're trying to make them afraid
3 that finding somebody guilty, of the possibility that
4 they may not be -- but isn't that taken care of when
5 they're instructed that any reasonable doubt must be in
6 favor of the defendant? That the defendant gets the
7 benefit of any reasonable doubt?

8 MR. DEYSACH: I mean, there's a number of things
9 that you'll tell them that I will also tell them, that
10 I will emphasize. And so I don't think that just
11 because it's something that's also told to them by you
12 doesn't mean that it's not something that I can
13 emphasize during my -- during my closing.

14 THE COURT: Sure.

15 MR. DEYSACH: But I don't want to --

16 THE COURT: I think you can emphasize it. I
17 would, and did, when I used to defend, used to harp on
18 the jury about the presumption of innocence and the
19 burden that the State has to carry.

20 MR. DEYSACH: And why.

21 You know, that's kind of what I'm trying to --

22 THE COURT: But to -- you know, it's just like
23 when -- you can't tell a jury to put themselves in
24 somebody else's place. I mean, I don't know that it's
25 appropriate to tell them that if you make a mistake,

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1 there's no way it can be corrected. You know? I mean,
2 I don't know that that's appropriate.

3 MR. DEYSACH: Okay.

4 THE COURT: You can do --

5 MR. DEYSACH: All right. I --

6 THE COURT: You can do it. If he objects, I'll
7 just have to rule. But --

8 MR. DEYSACH: I understand. I don't --

9 THE COURT: -- I'm thinking about it.

10 MR. DEYSACH: You know, I don't want to -- you
11 know, I want to make it similar -- you know, do what I
12 can to let them know that what they're doing is
13 important, but I don't want to do something that you're
14 telling me not to do. And so, you know, I'm trying to
15 figure out how I can --

16 THE COURT: Well, I'm just --

17 MR. DEYSACH: -- work it out.

18 THE COURT: You know, I just -- I want you to
19 very zealously advocate on behalf of Mr. Frazier but,
20 you know, just like the State has to -- we all have to
21 do it within the bounds of the procedure and stuff and
22 I'm -- it concerns me, from this aspect, is that it's
23 telling the jury that this is it, this is the final
24 thing, that Mr. Frazier has no other options based on
25 what you do here today.

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1 I don't know that that's -- it's confusing,
2 because that's not totally correct. Because depending
3 on any number of things, Mr. Frazier has all types of
4 appellate rights to have, you know, errors -- any
5 errors that were made --

6 I know what you're saying. You're saying that
7 -- I'm just going to let you argue. If you object,
8 I'll rule on it and we'll go from there. It's a -- I
9 just think it's the way you said it earlier is -- and I
10 know where Mr. Shipley is coming from, because even
11 when you said it then I was thinking to myself, I think
12 I might have objected to that because there are avenues
13 to correct errors.

14 But I know what you're saying: there's no
15 avenue to --

16 [Off the record momentarily]

17 MR. DEYSACH: I'm not going to try and -- I'm
18 going to back off a little bit, you know, is what I'm
19 saying. You know --

20 THE COURT: Don't worry --

21 MR. DEYSACH: -- I'm not going to totally
22 abandon --

23 THE COURT: Well, do what you --

24 MR. DEYSACH: -- the idea.

25 THE COURT: Yeah. Do what you want to do.

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1 I mean, here's the worst-case scenario. If he
2 objects, I sustain, you move on.

3 You know, it just depends on -- I think you just
4 need to go ahead and make your argument.

5 MR. DEYSACH: Thank you, Your Honor.

6 THE COURT: All right. Let's bring them in.

7 [Off the record momentarily]

8 THE BAILIFF: The jury is ready to enter.

9 [Whereupon, the jury enters the courtroom at
10 2:35 p.m.]

11 THE BAILIFF: The jury is present.

12 THE COURT: Thank you, ma'am.

13 Ladies and gentlemen, before we broke for lunch
14 you heard that the defense has rested. All of the
15 evidence that you'll have to decide this case is in and
16 so we have reached the portion of this trial where the
17 attorneys get a chance to address you with what we call
18 closing arguments or final summation.

19 This is their opportunity to argue to you what
20 they believe the evidence has shown. It is important
21 that you give them your undivided attention. It is
22 also important that you understand that just as I told
23 you on the opening statements, what the attorneys tell
24 you in their closing remarks is not evidence. The
25 evidence is closed. The evidence that you'll use to

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1 consider your -- you'll use in considering your
2 decision would be the testimony that came from the
3 stand and then any evidence that came in during the
4 trial.

5 But it is important that you listen carefully to
6 the attorneys as they address you with their closing
7 remarks. Once they have concluded their remarks, I
8 will then give you the law that is applicable to this
9 case.

10 So having said that, I would recognize Mr.
11 Shipley on behalf of the State.

12 MR. SHIPLEY: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. SHIPLEY: May it please the Court.

15 - - - - -

16 CLOSING ARGUMENT

17 MR. SHIPLEY: Ladies and gentlemen, thank you
18 for sticking with us through all this. Not much left,
19 I promise you. Thank you for paying attention to
20 everybody. Just ask that you pay attention to me for a
21 little while longer. You're going to hear from me
22 first and then Mr. Deysach, on behalf of the defendant,
23 and then the judge is going to instruct you on the law.
24 And when it comes to the law, what he says goes.

25 One thing you're going to hear -- we've got

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1 seven charges. We've got trafficking cocaine, ten to
2 twenty-eight grams; we've got, let's see -- we've got
3 this right here [indicates]. We know from the chemist
4 that this is, in fact, cocaine. We also know that this
5 is twenty-five grams. He's charged with ten to twenty-
6 eight. So we've got that.

7 We've got -- there's also an element of
8 possession involved with that. And you're going to
9 hear from the judge that there is actual possession and
10 constructive possession. Actual possession would be my
11 wallet in my pocket. It's mine, it's there, I actually
12 possess it. Constructive would be like say you're in
13 your car, you take your sunglasses off, you put them
14 around your rearview mirror. They're right there.
15 They're within your reach, they're within your
16 dominion, your control. You possess those sunglasses.
17 Or maybe you put a CD player -- a CD in your CD player,
18 you throw the book over here on the passenger seat.
19 That's also within your constructive possession. I
20 mean, it's there, you have control over it. It's
21 yours.

22 We've also got -- he's also charged with
23 possession with intent to distribute crack cocaine. We
24 know this is crack cocaine. Lieutenant Berry testified
25 that she tested it. Crack cocaine. We also know that

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1 it is just over six grams. And you're going to hear
2 that in South Carolina anything over a gram, there's
3 this permissible inference that there's an intent to
4 distribute. We've got six times that number.

5 We also have some marijuana. And we know this
6 is, in fact, marijuana because Lieutenant Berry
7 testified that it was. And she testified the combined
8 weight of these is 3.44 grams. It's not very much.

9 You'll hear that in the state of South Carolina,
10 the inference weight -- you know, I said with cocaine
11 it's anything over a gram. I believe with marijuana
12 it's an ounce or anything more. So we're well below
13 that. But like I said, that's an inference you can
14 make. There are other things to consider, other than
15 the weight, when you're determining whether he had the
16 intent to distribute these drugs.

17 And intent, his intent to do with something that
18 he has near him? How would we know that for sure? You
19 can't unless you tap into his brain. This is something
20 we have to infer from the circumstances, you know,
21 what's going on around him. One thing is the weight
22 and how much is there. You know, we had Officer
23 Menendez testify that in his experience, you know, a
24 user amount would be like anything less than a gram,
25 half a gram, a little tiny thing like that. So when

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1 you see this much cocaine, you can infer from that,
2 well, that's not just for him; you know, he intends to
3 sell it to somebody or give it to somebody. That's an
4 inference you can make.

5 The same for crack. Also, you know, that's well
6 over a gram, six times that much. I mean, it's
7 possible that it -- just his. But an inference you can
8 make is that it's six times what a normal person may
9 have and that he has the intent to distribute this.

10 Another thing you can consider is maybe
11 something -- the same something is packaged. We've got
12 two different things of marijuana. Perhaps he meant to
13 sell this to one person and this to another. You know,
14 we don't know.

15 But let's also consider the fact that we have --
16 we've got this lottery ticket that had marijuana in it.
17 And we had lottery tickets all over the place. Perhaps
18 those were additional packaging for marijuana to sell
19 to somebody else. We've got this baggie, a corner
20 baggie -- and, in fact, you remember those pictures you
21 saw of the car. There are corner baggies everywhere,
22 the little plastic bags where the corner had been
23 ripped off. You can look at -- think about that and
24 say, well, you know, all those -- if he was just using
25 it himself, why are there all these corner bags

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1 everywhere. It looks like -- you can infer perhaps
2 that maybe he was tearing those off, packaging it, and
3 then giving it to somebody else.

4 And then we have this right here, this inositol
5 powder. We heard today about how this is a common
6 cutting agent, something that a drug dealer might use
7 to enhance the weight of his product. If you had a --
8 I don't know, an ounce that you wanted to make more
9 money of it, you want to turn it into two ounces, they
10 add this to it and sell it for the -- sell it as if it
11 were just regular cocaine.

12 They found this [indicates] in there, too.
13 Another inference you can make of his intent to
14 distribute.

15 And then we have a gun. Officer Menendez also
16 testified that this is commonly found in drug
17 investigations. This was also found in the car.

18 And then, of course, large sums of money. Not
19 only do we -- remember those pictures of the --
20 underneath the console there was all that cash down
21 there. And then there was this thing underneath the
22 steering wheel, eleven grand. That's another inference
23 you can make from eleven grand being carried around in
24 a car that he had -- that this is all part of this big
25 operation of intent to distribute.

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1 This digital scale used by drug dealers to weigh
2 things out. And I think Officer Rodriguez testified
3 there was still some green residue on there. You can
4 infer that he was using this to weigh out marijuana to
5 sell, that he -- he was possessing this marijuana and
6 these drugs, he intended to sell it and this is an
7 instrument of that intent.

8 Three cell phones. You also heard that common
9 in drug cases is a dealer having multiple cell phones.
10 Three. Three in this car. How many cell phones you
11 got? I have one.

12 Again, baggies. And you've got this here. This
13 was found in there, too, a little clever-looking
14 sealable container, unscrews at the top, hide things in
15 there. More baggies. Something that you can -- when
16 you're deciding whether or not he had the intent to
17 distribute these drugs, think about all that.

18 And think about my analogy earlier to this.
19 Let's say this is the driver's seat, which the
20 defendant was seen sitting in when the officers
21 approach. And I don't have the center console, so
22 pretend this is my center console. We've got cocaine
23 sitting right here on the gear shift; we've got cell
24 phones here in the map pocket; we've got \$11,000 up
25 here; we've got the -- this is the baggie that was

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1 found on the ground outside but if you remember there
2 were baggies throughout. Maybe over here on the
3 floorboard, baggies all over the place. We've got the
4 gun also in the floorboard. Inositol, the cutting
5 agent, on the floorboard. The digital scale sitting
6 right on top of the armrest on top of the console in
7 which there was all that cash. And then we have
8 marijuana was also in there. And then he also
9 testified that he was sitting right here like this.
10 And I believe it was this cell phone, they found on the
11 ground later, sitting here. This was sitting here when
12 they pulled up.

13 It seems to me like he set up shop. It's like
14 my analogy earlier at the very beginning yesterday,
15 about the -- about the guy selling burritos at the
16 construction stand. He's got his door open, he's got
17 his customers kind of over here, going, what you want?
18 You want some crack? I've got six grams of it. He's
19 got this packaging right here. He can just put it in
20 there, wrap it up, give it to them. You need change?
21 He's got change. He's got a little scale to weigh it
22 out. You want a gram? I'll weigh it out. You want
23 two grams? Okay, no big deal. You want marijuana? I
24 got that. You want coke? I got that, too. Crack?
25 What do you need? I've got it. It all to me just

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1 paints this picture of this guy setting up business
2 dealing drugs. You know, it's that simple.

3 Then you heard that the car that he was in, this
4 Dodge Intrepid, registered to a Derrick Fields, his
5 cousin. And we heard that the defendant testified he
6 was using it for a couple of days. Now, Mr. Shipley,
7 it wasn't his car. Well, how many times have you lent
8 your car out to somebody and leaving eleven grand
9 tucked in there, twenty-five grams of cocaine, six
10 grams of crack, just laying around? All these items,
11 all these instruments, of the drug trade just around.
12 If these were mine, before I gave them to somebody else
13 to drive around with, I'd probably get them back. Or
14 at least if I were the one borrowing the car, I might
15 hide these things. You know, not in plain view. I
16 wouldn't be sitting with them, driving around with them
17 in my lap.

18 And, you know, yeah 'cause, you know, thank you
19 for letting me borrow your car. This scale that you
20 had in here, I'll just leave it sitting right here on
21 top of the console for everyone to see. The twenty-
22 five grams of cocaine, I'll just leave that right next
23 to the gear shift. And your crack, you know, I'll just
24 leave that sitting in my lap. No big deal. And don't
25 worry about all the hundreds of dollars in your console

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1 and the eleven grand underneath the steering wheel.

2 And why would it be in his lap anyway? Why
3 would he have the cocaine just -- this much cocaine is
4 sitting out. I mean, this is something normally that
5 you hide. If you're driving down the road or -- you
6 don't leave that in plain view. He's got it right here
7 so it's easily accessible. He's selling. He's got his
8 customers waiting outside, waiting to buy, and he's got
9 it easily accessible. You know, it's here. You want
10 crack? It's in my lap. Coke? Right here. Scale. I
11 mean, it seems to me he's got the scale sitting right
12 up here, he's got his drugs all out in plain view. He
13 was interrupted in the middle of a deal.

14 So I want you to consider all that when you're
15 deciding whether or not he had an intent to distribute
16 these drugs. The weight and just the circumstances
17 around it indicate an intent to distribute. And it's
18 all within his reach. I mean, you know, like I said,
19 none of these -- well, the crack -- that's why it's
20 sitting in his lap when the cops walked up. But the
21 rest of it, it's not in his pocket but it's right
22 there. It's right next to him. And this -- he
23 constructively possesses all this stuff. It's his. I
24 mean, you've got all these other people sitting outside
25 the car.

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1 No one else is in the car with him. He's the
2 closest one to the drugs. There's no one sitting
3 shotgun, there's no one sitting in the back seat.
4 These are his. They're close to him, they're all
5 around him. They're not even a far reach from him.
6 They're right there. I mean, he's doing business.
7 He's got his portable drugstore set up at Martha Brown
8 Circle, customers, he's ready to deal.

9 Also, we've got these accompanying charges, the
10 proximity to a school. So if you find that he's got --
11 that he's in possession with intent to distribute these
12 three drugs, then you consider possession with intent
13 to distribute each of these drugs within a half mile of
14 a park.

15 You heard testimony that there is a park within
16 a half a mile of this place, Oscar Frazier Park. You
17 also saw that it's actually a park, it does exist, the
18 sign, officers' testimony that it's opened up and
19 operating. And you also heard that the defendant said
20 that he grew up in that area. He knows that -- he
21 played basketball or played ball up there at that park,
22 so he knows it's there. And you can't tell me that he
23 didn't intend to be at that spot where he's at. I
24 mean, anywhere you are at any given moment, you intend
25 to be there. You're not there involuntarily unless

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1 you're locked up.

2 So you consider that. He's possessing these
3 drugs with intent to distribute them and he's doing it
4 just around the corner from the park he grew up playing
5 basketball with [phonetic], a park where kids play.

6 And then you have this possession of a weapon
7 during a violent crime. There's a gun here. Again,
8 not found on his person but it's right there
9 intermingled with everything else that's right around
10 him. Part of his drug trade right here.

11 I think you can -- oh, and another thing.
12 Another thing. The key to this car: if you recall, we
13 took photographs of -- there were photographs taken of
14 everything that he had in his lap when he was pulled
15 out of the car and detained, handcuffed around his back
16 and he was put on the ground. There was this bottle,
17 this crack cocaine, this cell phone. I believe also
18 included in that picture was a like a forty-ounce Bud
19 Lite or something like that. There was also
20 photographed there, right next to everything, the key
21 to the Dodge Intrepid. Think about that, as well.

22 And the kicker for me is that considering all
23 these possible variations of what could have happened,
24 not his car, these other people around, you know,
25 whatever kind of excuse you might want to think of, you

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1 heard testimony that the defendant said that day, what
2 is on me is mine. Six grams of crack cocaine, his.
3 And anything in the car, also mine. Twenty-five grams
4 of coke, marijuana, and all these instruments of the
5 drug trade.

6 I want you to think about these things when you
7 go back there and deliberate. We know they're drugs,
8 so you have to decide did he possess them and did he
9 possess them with the intent to distribute them and if
10 so, was he within a half a mile of a park. And then
11 also decide whether or not he has possession of this,
12 this gun sitting right here, and if so, find him guilty
13 of trafficking, possession of a weapon during a violent
14 crime.

15 I appreciate y'all listening to me and sticking
16 with us through all this. Thank you for your service.

17 That's it, Your Honor.

18 THE COURT: Thank you, sir. Mr. Deysach.

19 MR. DEYSACH: Thank you very much, Your Honor.
20 May it please the Court.

21 I'm going to get Mr. Walker to help me with the
22 podium. I'm going to set it up a little bit closer to
23 the --

24 THE COURT: Yeah. Go ahead. That's fine.

25 MR. DEYSACH: -- to the jurors. Thank you.

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[Off the record momentarily]

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CLOSING ARGUMENT

MR. DEYSACH: Again, I'm just as excited to talk to you this time as I was when I first got the chance at the beginning of the case. There is so much that I want to say and I want to make sure that I do it in an organized fashion.

I think I talked to you at the beginning about why your decision is so important, why the consequences are so high. And I want you to remember those things that I said when you're making your decision. But right now I definitely want to spend a little bit more of my time taking about the details of this case because it is, as criminal cases go, somewhat complicated because of the number of charges and all the different elements. And so it really takes the analytical mind.

It's almost like a school project or a work project or something like that where you've got to match the fact with the law as the judge gives it to you. Because when you've got basically a drug sweep by the drug task force that sweeps up Matthew -- really, one of the only things that we have on our side is the law and the instructions that the judge are [phonetic]

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1 going to give you. And it's my understanding and --
2 that he's going to give you a copy of what those
3 instructions are, that he reads to you, when you're
4 back in your jury room and so that you'll be able to
5 match those rules and laws up with what the facts are.

6 And so that's what you'll be doing really seven
7 times, you know, because each -- each -- individual
8 charge is different. And I know we're talking about a
9 grand scheme here, but I do need to get into each
10 individual charge.

11 I think that what the solicitor said during his
12 closing was kind of like, hey, come on; you know, he's
13 sitting in the car, he must be guilty. And I think
14 that that conclusion without more investigation is why
15 we're here right now and that when you actually go and
16 start asking questions about what -- how do we know
17 that he is setting up shop, caught in a drug deal, just
18 like the guy who's selling burritos at the construction
19 site, just because of where he happens to be when the
20 search warrant is executed and how do we know that.
21 And so that's what this trial is about, and that's what
22 really my job is about, is to analyze what are these
23 facts that they're relying on.

24 I think one thing that I wanted to say before I
25 jump in is I think sometimes the elephant in the room

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1 can be, well, hey, why didn't Matthew testify, you
2 know. It's not -- the judge is going to tell you
3 you're not even supposed to consider it. But my
4 concern is you might. You know, you might say, well,
5 if he didn't do it, then he would have gotten up there
6 and said so. Okay. Well, the truth of the matter is
7 his decision on whether or not to testify impacted
8 whether or not I speak before the solicitor or after
9 the solicitor. And so because he didn't testify, I get
10 the last word. Okay? So that's the strategic --
11 that's the strategic advantage. That is why I gave him
12 the advice.

13 But he pled not guilty, you know. He pled not
14 guilty. And he talked to the police in the first place
15 and he -- everything he said at that time was used by
16 the State to twist against him, and so I think he
17 learned from that experience. But really it's my
18 advice. I get to talk last. He pled not guilty.

19 Like I was saying, you jump to -- you know, he's
20 sitting in the car when the search warrant is executed,
21 therefore, he must be the trafficker just like the
22 burrito salesman is the seller of burritos. And when
23 we say, okay, well, we want to -- we want to hear from
24 the drug task force how do we know this, what are these
25 facts that you can show us, I highlighted --

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1 You know, I did say something about it, you
2 know, because there is the competitive nature of the
3 drug task force. I think that probably more than a cop
4 who walks the beat they may count, well, how many
5 people did we catch, because of the nature of their
6 business. And I'm not saying it's bad, because if
7 you're trying to root out drugs you do have to do this
8 kind of work. But what I don't like and what a defense
9 attorney doesn't like is when this happened and it
10 seems as though they cherry-picked, when they execute
11 the search warrant, which types of evidence they wanted
12 to preserve for a jury and which types they won't. And
13 I'll tell you what I mean.

14 What we have here as far as the statement is
15 what Officer Squires read to you, which was filtered
16 through him. And it's frustrating because I know that
17 they have a video camera there. I know that the drug
18 task force probably had more recording equipment than
19 any other department in the police -- in the police
20 department, in the sheriff's department.

21 The solicitor's office brings you their -- I
22 guess kind of their veteran officer, Rich Menendez, who
23 is a surveillance expert. Not only do they have the
24 equipment, they've got a person who's job it is to
25 record things. And yet when I asked why isn't any

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1 statement with the defendant recorded, I find out that
2 the decision not to record such a statement has been
3 institutionalized into the drug task force.

4 Now, Mr. Squires himself, he said that's just
5 the rule. And he was like -- he wouldn't say who set
6 the rule or -- you know, he wouldn't really give me a
7 straight answer, to be honest with you. But it's
8 obvious that it must come from a supervisor if it's a
9 rule. And so what they're doing is intentionally not
10 taping the conversation with a person that they're
11 interviewing at the scene and then they're just going
12 to come here and tell you what they said. And they --
13 and, you know, we have to trust them to tell you
14 everything that they said and to tell you everything
15 exactly accurately as they said it, even though he's
16 destroyed the notes and there isn't any written
17 statement or anything like that. And so that's where,
18 you know, I'm asking you to exercise some skepticism.

19 You know, I think the judge said in the
20 beginning, you know, we have the -- I mean, I believe
21 this. I mean, the judge said, you know, we have the
22 best court system in the world. And, you know, I said
23 it doesn't work unless, you know, you do the reasonable
24 doubt. We have the best court system in the world and
25 I'll tell you that it did not get this way because

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1 people just trusted the government and the police and
2 what they said. That is not how it got that way.

3 So what I'm looking for is some corroboration
4 that isn't just trust me, I'm the police; trust me, I'm
5 the drug task force. You know, he says this, he says
6 that, just trust me. And that's what we're kind of
7 left with with that. And so what I'm asking you to do
8 is to look more at these facts that we know are true,
9 than these facts that we just have to trust the drug
10 task force.

11 You know, I would even say I would prefer if
12 there were two members of the drug task force that
13 would have heard what Matthew had said, as opposed to
14 one member of the drug task force. Two members that
15 would have said, hey, I saw him in the driver's seat of
16 the car, even. It's really the same guy who sees both.
17 But I -- you know, so skepticism. You know, because
18 there isn't -- you know, we have cameras. They shut
19 them -- turn them on and turn them off when they choose
20 and we're just left to pick up the pieces and the
21 solicitor can pull up two chairs here and kind of cover
22 himself in the evidence and say, hey, come on, you
23 know, he's got to be guilty.

24 It's not that simple. It really is not that
25 simple. And so I'm going to try and step you through

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1 the analysis that I think you should take when you're
2 deciding what to do. I mean, the one fact that the
3 solicitor's office -- all right. Let me slow down.
4 All right.

5 What the case is about is the execution of a
6 search warrant for a car that belongs to Derrick Fields
7 and that search warrant is executed nine days after it
8 is applied for. So between the time that somebody says
9 may we please search this car and they actually go and
10 do it, time passes. Nine days pass. Okay? And we're
11 talking about a car, not somebody's house or something
12 like that.

13 So the conditions in that car would change
14 because it's a car. And that's what cars do, they
15 move. And what's in cars change. Who drives cars
16 change. Who's in cars changes. In fact, I don't think
17 there's any testimony ever, not even by one member of
18 the drug task force, that anybody sees Matthew Frazier
19 driving the car. I don't think that there was
20 testimony that said that Matthew Frazier had the key to
21 the car. Investigator Squires saw what was in his lap
22 and he says it was the pill bottle, the cash, the cell
23 phone, not the beer, and I don't remember a key. And
24 let me tell you, if he had seen the key, he would have
25 written it down in his report.

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1 And you saw that he was reading his report as he
2 was testifying. He was relying on that. I mean,
3 there's not -- I'm not saying that that's a problem but
4 I'm just saying that if he had seen a key, I find it
5 very difficult to believe that he would just leave that
6 out.

7 And so we have the picture in State's Exhibit 3
8 that has, you know, this is where Matthew Frazier was.
9 And the whole time I'm listening to them I'm thinking,
10 he's right outside -- this is right outside the
11 driver's seat, the -- you know, the driver's front,
12 he's right outside there. That's the way they make it
13 sound: we pull him right out and he just falls,
14 everything goes right here.

15 And it turns out that the area that we're
16 talking about is actually closer to the back seat and
17 that the key is right next to this big beer. Well, I
18 can't find the one that's showing the whole context.
19 But it's back by the backseat passenger, even farther
20 away from the car. And the key is right next to this
21 beer that -- Lance Corporal Squires, I think he
22 specifically said he wasn't carrying a beer. So the
23 person that had this beer is not Matthew Frazier.
24 Okay? And so if anybody wants to say, oh, he's got the
25 key, that's just not in evidence. That is not in

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1 evidence. And I guarantee you that if they did have
2 evidence of that, you would have heard it. You would
3 have heard it.

4 So what does this all mean? You know, the
5 connection between Matthew and the car versus, well,
6 what about the guy who owns the car, you know. If
7 Matthew was a drug trafficker who had \$11,000, don't
8 you think he would have his own car? You know, that's
9 just one thing that makes -- you know, I mean, I can't
10 say that that's some fact that is the ah-ha moment
11 that, oh, well, it couldn't have been him. But it does
12 -- it's one of those things that makes you think, well,
13 why would somebody who has so much money at his
14 disposal, why is he sitting in somebody else's car.

15 And I think that, you know, there's just a
16 number -- what I'm saying is the connection between the
17 car and Matthew isn't that strong, especially when you
18 realize that the owner of the car is there that night.
19 He receives the car back. He keeps the key. He gets
20 the car -- I mean, I find it hard to believe that a car
21 can be loaded like they say it is. I mean, the stuff
22 is sitting right here and then they just gave -- the
23 guy who owns the car shows up and says, oh, thanks for
24 the car back, and that the police don't impound that in
25 some way.

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1 But I will -- would -- I wouldn't be surprised
2 because, I mean, I -- you know, I can only talk about
3 what evidence there is, and I can't say that something
4 is true when it's not evidence. But I would bet you
5 that the first thing that Derrick Fields did when he
6 got that car back -- why he was so interested in the
7 car was probably the \$11,000 that he had up under
8 the -- I don't know whether they call it the dashboard
9 or the kick spot or something like that. That's what
10 he was worried about.

11 And another thing that there is one person who
12 the State -- you know, and the burden is on them.
13 There is one person who the State did not call, one
14 person who doesn't come up here and say, well, no, I
15 sure -- you know, it wasn't my car, or I wasn't using
16 the car. And that is Derrick Fields. Where is he?
17 Where is he to say, hey, this wasn't my stuff, this
18 wasn't my car, I don't know anything about it.
19 Instead, he's the guy who shows up at the scene. So
20 he's around. But yet we don't hear from him. And so
21 what does that mean for Matthew in this case?

22 You know, I don't think that there's any
23 question that anybody who was sitting in that seat as
24 the police approached wished that they weren't, you
25 know. I mean, I can't sit here and pretend like, oh,

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1 gosh, you know -- you know, this car is not a horrible
2 place to be sitting. But to automatically attribute
3 ownership to everything in that car just because he's
4 sitting half in, half out, I mean, I think we never
5 really got the clear answer is that one leg in, two
6 legs out, two legs in. We know that the door was open.
7 I think that's all we really know, and that Matthew
8 didn't run when the police came, while others did. But
9 that -- to say that just because he's sitting right
10 there, that he is responsible and has knowledge of
11 everything that's in that car -- because the judge --

12 And like I said, you know, sometimes in a case
13 like this, you know, where you don't -- you're not the
14 prosecutor, you don't call the witnesses, you don't run
15 the procedure of the whole thing, and it's hard to get
16 that ah-ha Perry Mason, you know, Matlock moment. You
17 just kind of get -- got to get the little facts that
18 hopefully you guys notice and then highlight them at
19 this point, that -- that you don't necessarily -- you
20 know, I don't stand up here and everybody see where I'm
21 going with everything.

22 But the judge is going to tell you about
23 something called mere presence. And that just being
24 there isn't enough.

25 And when I was listening to the solicitor's

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1 closing, it seemed like, hey, come on, he's right
2 there. It seemed like exactly the opposite of the mere
3 presence. And so that's where the law recognizes that
4 somebody can be there and not be responsible for
5 everything that's there. And they're going to talk
6 about, you know, well, possession. I mean, if
7 marijuana is in Matthew's pocket, that's his marijuana.
8 You know, there's nothing I'm going to tell you about
9 that, that that lottery ticket folded up with the
10 marijuana in his pocket, that was his marijuana.

11 You know, the State made a big deal about -- or
12 made not a big deal. But they said something about,
13 oh, it's just like the drug-seller packages it. Well,
14 if that's the case, then Matthew Frazier is really in
15 the Bill Shipley situation if this is the burrito
16 truck, because that's one of the burritos. And so why
17 does -- I bet the burrito truck doesn't sell themselves
18 their own -- one burrito and carry it around. So
19 really what that looks like is as if Matthew was a
20 purchaser of those things. It doesn't make any sense
21 like for somebody who is, you know, supposed to be the
22 drug dealer to package their own marijuana and just
23 keep it in their pocket. And so that's my point. I
24 mean, he's the -- you know, the Bill Shipley, you know,
25 in that analogy of the burrito truck.

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1 And so I think we noticed that when the search
2 warrant is executed that it is dark out, that it is
3 seven o'clock. I think you'll see on the video that is
4 at the beginning of the search that even though that
5 door is open, the dome light is not on. That's one of
6 the things I -- you know, I looked at. And I wouldn't
7 necessarily expect you guys to be looking for it. But
8 if you look at this -- the video, they're going around.
9 And so a lot of times you open the door of your car,
10 the light stays on unless you flip it off. And I think
11 in this situation that light was flipped off. And so
12 to think that, you know, stuff that's sitting out in
13 the open that, you know, when the light is flashed in
14 there, isn't necessarily going to be obvious to the
15 person who just sits down there. And so -- and so
16 that's where we're talking about mere presence.

17 I think when you're also talking about mere
18 presence, you know, the flip side is, well, especially
19 as far as the cocaine on the gear shift, knowledge and
20 dominion and control and the authority -- I don't want
21 to say it wrong.

22 [Whereupon, Mr. Deysach reviews documents]

23 MR. DEYSACH: [Reading] The right to exercise
24 dominion and control over the controlled substance.

25 Even though that cocaine might have been there,

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1 it doesn't mean that Derrick had given Matthew the
2 right to touch it one bit. Okay? That's what they
3 mean by dominion and authority. Just because it's
4 there and within his reach does not in itself mean
5 possession. And that's why I am so thankful that you
6 will have these rules to go over and to look at,
7 because you'll know. Like I'm saying, sometimes, you
8 know, in a situation like this, the law is the only
9 thing that Matthew has on his side. It does not mean
10 that Derrick Fields had given him permission to do
11 anything with that powder just because it's in plain
12 view.

13 And the gun that's in the car isn't in plain
14 view. It's not found until a hour into the search. If
15 you look at the video or if you look at any of the
16 pictures of the car that are going to go back there
17 with you -- I think if you want to watch the video,
18 you're probably going to have to ask to come back out
19 here. But if you look at any of those pictures, from
20 where Matthew was sitting or even from the other side
21 you can't see that gun. You cannot see that gun.
22 There is no -- you know, what we're talking about is
23 somebody supposed to have knowledge of everything
24 that's in somebody else's car? The police don't say
25 Matthew said anything about that gun. There is nothing

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1 in the record that gives you any evidence for you to
2 find him guilty of possessing that gun, knowing it's
3 there, knowing that he has some dominion and control
4 overrule that gun. That's just not there. That is
5 just not there, you know. When we talk about, you
6 know, the gear shift and everything like that with the
7 cocaine, that cocaine is in a bad spot, you know. I
8 mean, I can admit that. You know, it's right there
9 where somebody would have seen it. That gun is not.
10 That gun is not.

11 And so now you're talking about holding Matthew
12 accountable for everything that is in somebody else's
13 car that he is sitting -- not driving, but sitting in.
14 And that's just not -- I fail to see how a verdict of
15 guilty would be justice, you know.

16 I think one of the points that I also wanted to
17 make is -- you know, why I'm going through each charge
18 like this is that you need to each -- consider each
19 charge almost like it's a case by itself, you know.
20 You have to consider each charge like it's a case by
21 itself and whether they have the evidence to prove it.
22 And that is one -- to me, that seems like an easy one.
23 That seems like an easy one: somebody else's car, it's
24 not in plain view, they don't find it until it's an
25 hour into the search. Nobody says that Matthew says

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1 anything about the gun. I just don't see where the
2 evidence is. I think it's got to go.

3 All right. The crack in the lap, you know:
4 I've called into question, you know, how does all --
5 how does -- you know, how everything is in this pile;
6 the beer, the keys, are in the same pile as the stuff
7 that they're saying was in Matthew's lap. And I want
8 you to, you know, be skeptical and everything like
9 that. And I'm standing by that a hundred percent. I
10 think you should be skeptical. But even given the
11 facts as the police say that they are, we don't have
12 Matthew possessing this crack with an intent to
13 distribute. You know, the judge is going to give you
14 these instructions and they're going to say, well, you
15 know, there is possession, there is -- with the
16 marijuana, there's marijuana possession; with the
17 cocaine, there's possession. There's possession with
18 intent to distribute. And the cocaine has the
19 trafficking. But with the crack and the marijuana
20 you'll have the choice of possession, possession with
21 intent to distribute, possession being a situation
22 where the State hasn't proven beyond a reasonable doubt
23 that there is an intent to distribute.

24 So even if the case is as the police say it is,
25 even if you take their word for it, what we've got is

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1 Matthew with six grams of crack. And, I mean, I'm not
2 Rich Menendez, but I personally don't think that just
3 because you have these rocks of crack that we
4 automatically know that there is an intent to
5 distribute. In Matthew's lap -- what they're trying to
6 put in his lap, is a cell phone and a bottle of crack.
7 They want to rely on all of the stuff that is strewn
8 about the car to show that he had an intent to
9 distribute. But if you're just looking at what's in
10 his lap, there's nothing to prove an intent to
11 distribute. There's the word that the solicitor used,
12 the -- the inference, you know, where if somebody has
13 more than a gram of crack, you can infer that they had
14 an intent to distribute. Well, there is a wide gulf
15 between inferring that somebody has an intent to
16 distribute and proof beyond a reasonable doubt that
17 somebody has an intent to distribute. So that's where
18 the gulf lies, you know, on that score, even as the
19 police are describing it to you. That's where the gulf
20 lies.

21 And, you know, I think oftentimes, you know --
22 you know, the policeman, Mr. Menendez, many people
23 think, oh, it's more than a gram, must be intent to
24 distribute. He even said I think something like under
25 the law, that's intent to distribute. That's not the

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1 law. You know, the law is going to be in your little
2 packet that you get. But that is -- you know, many
3 people think it is. And it's not. And so that's why
4 somebody can be accused of and -- of possession with
5 intent to distribute just simply on weight alone.
6 Because we talked about the separate packing and
7 everything like that. This is all just in one package..
8 This is all just in one package.

9 I think basically what I'm saying is that
10 Matthew is at the party but this is not Matthew's
11 party. This is not Matthew's party. And one thing --
12 you know, I don't know if it bothered others the same
13 way it did me, but how the State had to make a point of
14 saying, you know, this is a high-drug area. You know,
15 this is where these people live, you know. I mean,
16 this is where they live, you know. Nobody gets to pick
17 where they're from.

18 And so it just kind of -- you know, Matthew's
19 just not just some guy from a high-drug area. He's a
20 person, you know. So, you know -- so that's why I just
21 want you to do the reasonable doubt thing.

22 I'm going to get back, compose myself a little
23 bit.

24 But one other thing I want to talk about. As a
25 defense attorney, you feel like when you see that PWID,

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1 possession with intent to distribute within a half mile
2 of a school zone, sometimes it can feel like you're
3 getting piled on, especially in a situation like this
4 where the school or the park -- I'm sorry, school --
5 this is a park. The park has nothing to do with the
6 case, you know.

7 And they give us the map and, you know, it's got
8 the blue dot and the green dot. And you'll see that in
9 order to get from the blue dot to the entrance of the
10 park, you've got to drive all the way up here, all the
11 way down here, all the way up here, and all the way
12 over here and all the way down here, you know. And the
13 police officer, you know, he's -- I mean, he's
14 Bluffton. He's familiar with Bluffton. You know, he
15 says, I have never measured it. I don't know in my car
16 if that is more or less than a half mile. To me I
17 think it seems pretty obvious if you're just going by
18 where the circle is to stretching -- you know, in your
19 mind kind of stretching out where the road -- if you
20 took it by the road, it would be more than a half mile.
21 I think that's pretty obvious from this map.

22 And this is another place where, you know,
23 luckily Matthew has the law on his side on this, where
24 I think the law recognizes it's not fair -- if you
25 don't really realize where the -- where the park is or

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1 that the park is as close as it really is, especially
2 in a situation where you have to, you know, go around
3 your rear-end to get to your elbow in order to get to
4 it.

5 And so when the -- when you're deciding that
6 case -- and this is for each one of the three charges,
7 if you get to them. Because you don't even get to them
8 if you haven't found possession with intent to
9 distribute in the first place. But the State must also
10 prove that the defendant had knowledge that he was
11 within one half mile of a radius of a park. And that's
12 not there. They haven't proved that he's not -- that
13 he knew that. In fact, when you look at this map, it
14 looks like it's kind of confusing that you would think
15 that it was within one half mile of a park, that you
16 kind of do have to -- I mean, that's obviously more
17 than -- on the road more than one half mile of a park.

18 And so without the evidence, you can't just
19 guess what he knows. You know, I mean, I think a lot
20 of the times during his closing argument the solicitor
21 said, well, perhaps, and maybe he knew this, and he
22 could have known this, and that type of thing. Unless
23 you can prove beyond a reasonable doubt that he knew he
24 was that close to the park, that case should just go
25 away.

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1 And so, you know, it's not as simple as all
2 that. You know what I mean? You know, you come and
3 you can sit the -- sit the sit -- you know, the chairs
4 up and cover yourself in the evidence and just kind of
5 say, hey, you know, this is it. It's not as simple as
6 all that. And each case needs to be looked at
7 individually, you know. And, you know, I guess -- what
8 am I trying to say -- there's a reason why when there's
9 a doubt, that the defendant gets the benefit of it, you
10 know. And that's not -- you know, I tried to get into
11 the reason in the opening, and it's a good reason, you
12 know, and it's one of the things that kind of
13 separates, you know, your jury service from something
14 that might happen in another country that's not as
15 good.

16 And so all that Matthew can ask, all that I can
17 ask, is just that we get a fair trial, you know. We're
18 not going to sit here and say, oh, well, we need you to
19 do this, or it's not fair, you need to do that, it's
20 not fair. What we need you to do is apply the facts,
21 that you know beyond a reasonable doubt, to the law as
22 it is given to you from the judge. And where those
23 facts don't amount to proof beyond a reasonable doubt,
24 you give Matthew what a citizen is entitled to, you
25 know. And that's all we can ask you to do.

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1 And so you guys have listened. I mean, I'm not
2 going to tell you what the evidence is. But there are
3 a lot of things. You know, it's not just open and shut.
4 And so, you know, beyond maybe getting down on my knees
5 and just praying that you do what the judge tells you
6 to do, I don't think there's anything else I can do at
7 this point other than to just thank you. Because like
8 I said, you're always going to remember your jury
9 service and when you look back on it you're going to
10 want to know that you did the hard -- it's not fun --
11 that you did the hard work. And I guarantee you that
12 if you do what the judge says and you follow this law,
13 that you will be proud of it. And that's all that we
14 can ask. So thank you very much.

15 THE COURT: Thank you, Mr. Deysach.
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CHARGE OF THE COURT

1
2 THE COURT: Ladies and gentlemen, as I told you
3 when we started this case, that you are the judges of
4 the facts of the case. So during the course of the
5 trial while the attorneys have been presenting to you
6 the evidence, it's been appropriate for me to be
7 overrule off to the side, out of the way, to allow them
8 to do that.

9 But now we've reached the portion of this trial
10 where you and I are in this together, you as the judges
11 of the facts and me as the judge of the law. And so I
12 come down here to give you the law that applies to this
13 case.

14 Mr Walker, I will send this notebook back into
15 the jury room when y'all retire to deliberate so you
16 will have the charge. You will have this law with you,
17 as well as the verdict form.

18 But I would ask that you please give me your
19 close attention, undivided attention, as I charge you
20 the law that is applicable to this case.

21 Mr. Foreman and members of the jury, you have
22 heard the evidence and the arguments of both parties.
23 I will now explain to you the law which applies to this
24 action.

25 The indictments charge the defendant, Matthew

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1 Frazier, with the offenses of trafficking in cocaine in
2 an amount over ten grams but less than twenty-eight
3 grams; possession with intent to distribute cocaine
4 within proximity of a park; possession with intent to
5 distribute cocaine base, or what is commonly referred
6 to as crack; possession of crack cocaine with --
7 possession of crack cocaine with the intent to
8 distribute within proximity of a park; possession with
9 intent to distribute marijuana; possession of marijuana
10 with intent to distribute within proximity of a park;
11 and possession of a weapon during the commission of a
12 violent crime.

13 I remind you that the fact that the defendant
14 was arrested, charged, and indicted in this case is not
15 evidence in this case and it cannot be considered by
16 you as evidence of guilt in this case, nor does it
17 create any presumption or inference of guilt. These
18 documents, the indictments, are simply the formal
19 written instruments which contain the charges made
20 against the defendant. They are the formal documents
21 by which these cases are brought into court.
22 Throughout these charges when you hear me use the term
23 defendant, please understand and know that I'm
24 referring to Matthew Frazier.

25 The defendant has pled not guilty to these

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1 indictments and that plea puts the burden on the State
2 to prove the defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is
4 never required to prove him or herself innocent. I
5 charge you that it is an important rule of law that the
6 defendant in a criminal trial, no matter what the
7 seriousness of the charges may be, will always be
8 presumed to be innocent of the charges for which the
9 indictments were issued unless guilt has been proven by
10 evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 The presumption of innocence does not end when
13 you begin your deliberations but it accompanies the
14 defendant throughout the trial until you reach a
15 verdict of guilt based on evidence satisfying you of
16 that guilt beyond a reasonable doubt. The presumption
17 of innocence is not a mere legal theory. It is not
18 just a legal phrase but it is a substantial right to
19 which every defendant is entitled unless you, the jury,
20 are satisfied from the evidence of the defendant's
21 guilt beyond a reasonable doubt.

22 So what is a reasonable doubt in the law? Some
23 of you have served as jurors in civil cases where you
24 were told that it is only necessary to prove that a
25 fact is more likely true than not true, such as by the

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1 greater weight or the preponderance of the evidence.
2 In criminal cases the State's proof must be more
3 powerful than that. It must be beyond a reasonable
4 doubt. Proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the defendant's guilt.
6 There are very few things in this world that we know
7 with absolute certainty, and in criminal cases the law
8 does not require proof that overcomes every possible
9 doubt. If based on your consideration of the evidence
10 you are firmly convinced that the defendant is guilty
11 of the crimes charged, you must find the defendant
12 guilty. If on the other hand you think there's a real
13 possibility that the defendant is not guilty, you must
14 give him the benefit of that doubt and find him not
15 guilty.

16 I remind you that during this trial you and I
17 have certain duties to perform. As the trial judge, it
18 is my responsibility to preside over this trial and I
19 also have the duty to rule on the admissibility of
20 evidence that is offered during the trial. You are to
21 consider only the competent evidence that is before
22 you. You are to consider only the testimony which has
23 been presented from the witness stand and any exhibits
24 which have been made a part of this record.

25 I have the additional duty to charge you the law

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1 applicable to this case. As the presiding judge, I am
2 the sole judge of the law on this case and it is your
3 duty as jurors to accept and to apply the law as I now
4 state it to you. If you already have an idea as to
5 what the law is or what the law ought to be and it does
6 not agree with what I now tell you the law is, you must
7 abandon your idea because you are sworn to accept the
8 law and apply the law exactly as I state it to you.

9 In every case tried in this court before a jury,
10 the jury is the sole and exclusive judge of all the
11 facts. The trial judge cannot intimate, state, comment
12 on, or make any statement to a trial jury about the
13 facts in a case. Since you, the jury, are the sole
14 judge of the facts in this case, you are not to infer
15 from what I have said during the progress of this trial
16 in ruling on the admissibility of evidence or
17 otherwise, or anything that I say now during the course
18 of this instruction to you, that I have any opinion
19 about the facts in this case. The law does not allow
20 me to have an opinion about the facts in this case.
21 This is a matter solely for you, the jury, to
22 determine. As jurors it is your duty to determine the
23 effect, the value, weight and truth of the evidence
24 that is presented during this trial.

25 Now, there are two types of evidence which are

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1 generally presented during a trial. There's direct
2 evidence and there's circumstantial evidence. Direct
3 evidence is the testimony of a person who claims to
4 have actual knowledge of a fact, such as an eye
5 witness. It is evidence which immediately establishes
6 the main fact to be proven. Circumstantial evidence is
7 proof of a chain of facts and circumstances which
8 indicate the existence of a fact. It is evidence which
9 immediately establishes collateral facts from which the
10 main fact may be inferred. Circumstantial evidence is
11 based on inference and not on personal knowledge or
12 observation. Now, the law makes absolutely no
13 distinction between the weight or the value to be given
14 to either redirect or circumstantial evidence, nor is
15 there a greater degree of certainty required of
16 circumstantial evidence than of direct evidence.

17 You, ladies and gentlemen, should weigh all of
18 the evidence in this case. After weighing all of that
19 evidence, if you are not convinced of the guilt of the
20 defendant beyond a reasonable doubt, you must find him
21 not guilty. If, on the other hand, after weighing all
22 of the evidence in this case you are convinced of the
23 defendant's guilt beyond a reasonable doubt, you would
24 then find the defendant guilty.

25 Under our constitution and code of laws only

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1 you, the jury, can make findings of facts in this case.
2 To determine the facts in this case, you will have to
3 evaluate the credibility or the believability of
4 witnesses. Credibility simply means believability. It
5 becomes your duty as jurors to analyze and to evaluate
6 the evidence and determine which evidence convinces you
7 of its truth. I've already discussed with you at the
8 beginning of the trial some of the things that you may
9 consider as you decide on whether or not to believe a
10 witness' testimony. You, the jury, can believe as much
11 or as little of each witness' testimony as you think is
12 proper. You may believe the testimony of a single
13 witness against that of many, or just the opposite.
14 You may believe part of a witness' testimony and
15 disbelieve the rest.

16 The mere fact that a witness' testimony, even an
17 expert witness, is uncontradicted does not render it
18 undisputed. You, the jury, should assess the
19 credibility of each witness. You may consider whether
20 any of the witnesses have exhibited to you an interest
21 in the case, any bias or any other motive in this case.
22 You may also consider the appearance and the manner of
23 which a witness -- of the witness while that witness is
24 on the witness stand. You do not determine the truth
25 merely by counting the number of witnesses presented by

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1 each side. Throughout this process you have but one
2 objective and that is to seek the truth, regardless of
3 its source.

4 Now, the rules of evidence ordinarily do not
5 allow a witness to testify to opinions or conclusions.
6 There is an exception to this rule that exists for
7 witnesses that we call expert witnesses, a witness who
8 by education and experience has become an expert in
9 some art, science, profession or calling may state an
10 opinion as to the relevant and material matter in which
11 that witness claims to be an expert and may also state
12 the reasons for that opinion. You should consider any
13 expert opinion received in this -- into evidence in
14 this case and like any other evidence, give it the
15 weight that you think it deserves. If you decide that
16 the opinion of an expert witness is not based on
17 sufficient education and experience or if you conclude
18 that the reasons given in support of the opinion are
19 not sound or that the opinion is outweighed by other
20 evidence, you may disregard that opinion in its
21 entirety. However, if you decide that the opinion of
22 an expert is based on sufficient education and
23 experience, or if you conclude that the reasons given
24 in support of that opinion are sound, or that the
25 opinion is supported by the other evidence, then you

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1 may accept that opinion in its entirety. An expert
2 witness' testimony is to be given no greater weight
3 than that of any other witness simply because that
4 witness is an expert. Further, you're not required to
5 accept an expert's opinion even though it is not
6 contradicted. As with all evidence, you give it the
7 weight and the consideration that you feel it deserves.

8 Now, there are seven indictments in this case.
9 Each indictment charges a separate crime. You must
10 consider each indictment separately; that is, you must
11 decide separately what the evidence in this case shows
12 about each indicted crime. Your decision on one
13 indictment should not affect your decision on the
14 other. You take each indictment on its own merits.

15 Now, I instruct and I emphasize to you that the
16 fact that the defendant in this case did not testify is
17 not a factor to be considered by you in any way in your
18 deliberations and in your consideration on the question
19 of guilt or innocence. It must not be considered by
20 you in any manner whatsoever. A defendant has the
21 constitutional right to remain silent and the assertion
22 of this right must not be considered by you in your
23 deliberations. I repeat, under your oath you are to
24 draw no conclusions whatsoever from the fact that the
25 defendant in this case did not testify. The fact that

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1 this defendant did not testify should not even be
2 discussed in the jury room. The burden of proof, as
3 I've stated to you, is on the State. The defendant is
4 not required to prove his innocence. The burden of
5 proof remains on the State to prove guilt beyond a
6 reasonable doubt.

7 Now, the defendant is charged with trafficking
8 in cocaine. The State must prove beyond a reasonable
9 doubt that the defendant knowingly sold, manufactured,
10 delivered, purchased, provided financial assistance or
11 otherwise aided, abetted, attempted or conspired to
12 sell, manufacture, deliver or purchase or was knowingly
13 in active or constructive possession of, or knowingly
14 attempted to become in actual or constructive
15 possession of, cocaine.

16 Actual possession means that the cocaine was in
17 the actual physical custody of the defendant.
18 Constructive possession means that the defendant had
19 dominion and control, or the right to exercise dominion
20 and control, over either the cocaine itself or the
21 property on which the cocaine was found. Actual
22 knowledge of the presence of the cocaine is strong
23 evidence of the defendant's intent to control its
24 disposition or use. The defendant's knowledge and
25 possession may be inferred when a substance is found on

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1 the property under the defendant's control. However,
2 this inference is simply an evidentiary fact to be
3 taken into consideration by you, along with other
4 evidence in this case, and to be given the weight that
5 you decide it should have. Two or more persons may
6 have joint possession of a drug. The State must also
7 prove beyond a reasonable doubt that the amount of the
8 cocaine was ten grams or more but less than twenty-
9 eight grams.

10 Now, if you determine that the State has not
11 proven trafficking in cocaine beyond a reasonable
12 doubt, you should then consider whether the State has
13 proven beyond a reasonable doubt that the defendant is
14 guilty of possession with intent to distribute cocaine.
15 Possession with intent to distribute contains all of
16 the elements of trafficking except the amount of
17 cocaine. In addition, the State must prove beyond a
18 reasonable doubt that the defendant had the intent to
19 distribute the cocaine. Intent may be shown by acts
20 and conduct of the defendant and other circumstances
21 from which you may naturally and reasonably infer
22 intent. In determining whether the defendant had the
23 intent to distribute the cocaine, you may consider the
24 circumstances surrounding the defendant's alleged
25 possession. You may consider the amount of the

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1 substance alleged to have been possessed, the manner in
2 which it was allegedly possessed, the place where it
3 was allegedly possessed, and other factors which you
4 consider to be important. You must find that the
5 defendant did not intend to have the cocaine solely for
6 his own personal use.

7 Possession of more than one gram of cocaine
8 creates an inference that the defendant possessed the
9 cocaine with intent to distribute it. This inference
10 does not relieve the State from proving beyond a
11 reasonable doubt that the defendant had the intent to
12 distribute. It is simply an evidentiary fact to be
13 taken into consideration by you along with any other
14 evidence in this case and it is to be given whatever
15 weight you decide it should have.

16 Now, if you determine that the State has not
17 proven trafficking in cocaine or possession with intent
18 to distribute cocaine beyond a reasonable doubt, you
19 should then consider whether the State has proven
20 beyond a reasonable doubt that the defendant is guilty
21 of possession of cocaine. To prove possession, the
22 State must prove beyond a reasonable doubt that the
23 defendant had both the power and the intent to control
24 the disposition or the use of the cocaine. Possession
25 may be either actual or constructive.

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1 Now, the defendant is also charged with
2 possession with intent to distribute cocaine base, or
3 what is commonly referred to as crack cocaine, and
4 possession with intent to distribute marijuana. The
5 State must prove beyond a reasonable doubt that the
6 defendant possessed, with the intent to distribute,
7 crack cocaine and/or marijuana. To prove possession,
8 the State must prove beyond a reasonable doubt that the
9 defendant had both the power and the intent to control
10 the disposition or use of the crack cocaine and/or the
11 marijuana. Possession may be either actual or
12 constructive. The defendant's knowledge and possession
13 may be inferred when a substance is found on the
14 property that is under the defendant's control.
15 However, this inference, again, is simply an
16 evidentiary fact to be taken into consideration by you
17 along with all the other evidence in this case, and is
18 given whatever weight you decide it should have. The
19 State must also prove beyond a reasonable doubt that
20 the defendant intended to distribute the crack cocaine
21 and/or the marijuana. Distribute means to deliver,
22 other than by administering or dispensing a drug issued
23 by a licensed physician. Intent may be shown by acts
24 and conduct of the defendant and other circumstances
25 from which you may naturally and reasonably infer

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1 intent. In determining whether the defendant had the
2 intent to distribute the crack cocaine and/or the
3 marijuana, you may consider the circumstances
4 surrounding the defendant's alleged possession. You
5 may consider the amount of the substance alleged to
6 have been possessed, the manner in which it was
7 allegedly possessed, the place where it was allegedly
8 possessed, and other factors which you consider, again,
9 to be important.

10 Possession of more than one gram of crack
11 cocaine creates an inference that the defendant
12 possessed the crack cocaine with the intent to
13 distribute it. Possession of more than twenty-eight
14 grams of marijuana creates an inference that the
15 defendant possessed marijuana with the intent to
16 distribute it. Again, these inferences do not relieve
17 the State from proving beyond a reasonable doubt that
18 the defendant had the intent to distribute. It is
19 simply another evidentiary fact that you may take into
20 consideration and weigh it along with the other
21 evidence in the case and give it whatever weight you
22 feel it is entitled.

23 Now, included within the possession -- within
24 the offense of possession with intent to distribute is
25 the lesser offense of simple possession. If you find

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1 that the State has failed to prove beyond a reasonable
2 doubt that the defendant is guilty of possession with
3 intent to distribute either the crack cocaine and/or
4 the marijuana, you may consider whether the State has
5 proved beyond a reasonable doubt that the defendant is
6 guilty of simple possession of crack cocaine and/or
7 marijuana. Simple possession does not require an
8 intent to distribute.

9 Now, if you find that the defendant is guilty of
10 trafficking in cocaine and/or possession with intent to
11 distribute either the cocaine -- crack cocaine or
12 marijuana, you would then need to consider the related
13 proximity charges. The defendant is also charged with
14 possession with intent to distribute cocaine, as well
15 as cocaine base, as well as marijuana, with the intent
16 to distribute within the proximity of a school or park.
17 The State must prove beyond a reasonable doubt that the
18 defendant unlawfully possessed with the intent to
19 distribute these substances while in, or, or within a
20 one-half mile radius of the grounds of a park. The
21 State must also prove that the defendant had knowledge
22 that he was within a one-half mile radius of a park.
23 Each proximity charge must be decided separately, based
24 upon the evidence presented during the course of the
25 trial.

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1 Now, finally, the defendant is charged with
2 possession of a weapon during the commission of a
3 violent crime. The State must prove beyond a
4 reasonable doubt that the defendant was in possession
5 of a firearm, or visibly displayed what appeared to be
6 a firearm, during the commission of a violent crime. A
7 firearm means any machine gun, automatic rifle,
8 revolver, pistol, or any weapon which is designed to
9 and may readily be converted to expel a projectile. In
10 order to find the defendant guilty of possession of a
11 weapon during the commission of a violent crime, you
12 must first find the defendant guilty of either
13 committing a violent crime or attempting to commit a
14 violent crime. And under South Carolina law,
15 trafficking in cocaine is considered a violent crime.

16 Now, mere presence of a defendant where a crime
17 has occurred or the mere association by a defendant
18 with people who have committed a crime, without more,
19 is insufficient proof that the defendant has committed
20 a crime. Evidence that an individual is present at the
21 time a crime is committed is not, in and of itself,
22 sufficient proof that the individual committed a crime;
23 thus, the mere presence of a defendant on property
24 where controlled substances are kept or the mere
25 association by a defendant with people who possess

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1 controlled substances, without more, is insufficient
2 proof that the defendant possessed a controlled
3 substance.

4 Proof of constructive possession by the
5 defendant requires that the State show beyond a
6 reasonable doubt that the defendant had dominion and
7 control over the subsistence or had the right to
8 exercise dominion and control over the substance.
9 Stated in other terms, the State must prove beyond a
10 reasonable doubt that the defendant had both the power
11 and the intent to control the disposition or the use of
12 the controlled substance.

13 Mr. Foreman and ladies and gentlemen, as you
14 retire to begin your deliberations, I want to wish to
15 you -- I want to express to you the hope that each of
16 you will be mindful of the importance of your
17 responsibility. You are not called upon to serve as
18 jurors very often and the proper performance of the
19 duty requires each of you to reach the height of
20 freeing your mind of all improper influences. You and
21 I are acting for the community and that's why we must
22 see to it that this trial is fair and that the verdict
23 is just. You've observed that the presiding officer of
24 this Court is always addressed as Your Honor but the
25 reason is not because of the person wearing this robe

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1 but that this Court is entrusted with the honor of this
2 community, the honor of this state, and the honor of
3 this country, in seeking that every case tried here
4 receives fair and impartial justice.

5 Don't get the idea that I'm trying to intimate
6 to you how I think you should decide this case. As
7 I've already told you, under the laws of the State of
8 South Carolina, you, the jury, are the sole judge of
9 all questions of fact. It would be highly improper for
10 me to influence you in the performance of that duty.
11 But as the presiding officer of this court I am vitally
12 concerned that whatever your verdict will be the result
13 of you going into the jury room, confining your
14 considerations to the evidence and to the law that
15 you've heard here in this courtroom, weighing it fairly
16 and impartially, as I have every confidence you will
17 do. Everyone is entitled to justice in this case.

18 Both the State and the defense are entitled to
19 justice. Nothing more, nothing less. Your verdict in
20 this case cannot be based on sympathy, compassion,
21 emotion or some other consideration that's not found in
22 the evidence. The Court is of the confirmed opinion
23 that whatever verdict you reach will represent truth
24 and justice for all parties involved.

25 Remember, ladies and gentlemen, your verdict

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1 must be unanimous. You must agree on each of the
2 indictments.

3 Now, I'm going to go over with you the form of
4 the -- the verdict form. It's kind of lengthy but it's
5 not complicated. It's just lengthy because of the
6 number of charges. When you get the verdict form,
7 ladies and gentlemen, you will find the first charge
8 that it addresses is the trafficking cocaine ten or
9 more grams but less than twenty-eight. And you
10 essentially have four options as you consider that
11 charge. In considering the evidence -- and as I go
12 through this verdict form, just understand any time you
13 list more than one thing, you have to list them in some
14 order. The order that these things are listed in and
15 the order that these indictments are in have absolutely
16 no meaning or anything of that nature. It's just you
17 have to list them somehow.

18 And so when you consider that indictment
19 regarding the trafficking in cocaine, of these four
20 options you must select one of these four: either that
21 the defendant is guilty of trafficking in cocaine ten
22 grams or more but less than twenty-eight; or guilty of
23 possession with intent to distribute cocaine; or guilty
24 of simple possession of cocaine; or not guilty. Those
25 are your four options with regards to that indictment.

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1 When you reach the indictment that deals with
2 possession with intent to distribute marijuana and the
3 indictment that deals with the possession with intent
4 to distribute crack cocaine or cocaine base, then you
5 have -- with regards to those indictments you have
6 three options. You would either find one of these
7 three: either that the defendant is not guilty; or
8 that he is guilty of possession with intent to
9 distribute either the marijuana or the crack, whichever
10 indictment you're dealing with; or he is guilty of
11 simple possession of either the marijuana or the crack.
12 So those are the three options and you'll select one of
13 those three options with each of those indictments.

14 Now, the possession with intent to distribute
15 marijuana within proximity of a park, the cocaine
16 within proximity of a park, and the crack cocaine
17 within proximity of a park, with those three proximity
18 charges you have one of two verdicts. Either he's
19 guilty or not guilty of those charges. And you would
20 not consider those charges unless you find -- found
21 that he was guilty of at least the possession with
22 intent to distribute. Okay? Because the possession
23 with intent to distribute within proximity of a park
24 requires that finding. So if in any of those previous
25 charges you find simple possession, then the relating

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1 possession with intent -- the proximity -- the related
2 proximity charge would be not guilty because you must
3 find at least possession with intent.

4 Now, the last charge is the possession of a
5 weapon during the commission of a violent crime. And
6 you'll note, Mr. Foreman, that when you get to that
7 charge, I have put a note on here and put a little
8 asterisk next to it. And it says this. It says: you
9 will only consider this charge if you have found the
10 defendant guilty of trafficking in cocaine.

11 And the reason for that is this. The charge of
12 possession of a weapon during the commission of a
13 violent crime requires a finding of guilt of a violent
14 crime. If you -- the only charge that Mr. Frazier is
15 facing, that is considered under our laws a violent
16 crime, is the trafficking charge. So if you were to
17 find that he was guilty of not trafficking but
18 possession with intent to distribute or simple
19 possession or not guilty, if you were to find any of
20 those other three with regards to the trafficking case,
21 then you would find him not guilty on the weapons
22 charge because the weapons charge does require a
23 finding of a violent crime conviction. Okay?

24 I hope I have explained that to you and that you
25 understand that. If you'll read it and go through it

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1 carefully, I think you will understand it; however, Mr.
2 Walker, as I've said all the time, if you have any
3 questions about anything, then just, you know, send me
4 a note. I'll bring you back in and explain whatever I
5 need to explain to you. Okay?

6 Now, in just a moment I'm going to -- I'm going
7 to get you to step back into your jury room. And, Mr.
8 Walker, don't begin deliberations yet. I'm going to
9 make sure that I've covered everything and if I've
10 missed anything I'll bring you back out and give it to
11 you. But if I have covered everything, we're going to
12 have to gather up these exhibits and send them back for
13 you to have back in the jury room.

14 There are a couple of things. And this is just
15 not this case, it's just across the board. I do not
16 send weapons back into the jury room. And I don't
17 believe for purposes of this trial that it's necessary
18 to examine this weapon. It's just it is what it is and
19 you just deal with it. But I don't send weapons back.

20 The drugs are all sealed in their bags, so that
21 should be fine. If you wish -- and the phonographs you
22 saw on the big board here are all right here. Those
23 will be back there.

24 If you want to see the video again, just let me
25 know. We'll set it up, bring you out and let you see

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1 that again. Okay? You don't have to but it's there,
2 it is in evidence, and if you want to see it again we
3 will certainly make that available to you.

4 Now, if you would step back into your jury room.
5 Don't begin your deliberations just yet. But when I
6 send all this back with you, that will be your cue to
7 begin deliberations. Okay?

8 [Whereupon, the jury exits the courtroom at
9 3:56 p.m.]

10 THE COURT: Are there any exceptions or
11 objections to the Court's charge from the State?

12 MR. SHIPLEY: Not from the State, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. DEYSACH: No, Your Honor.

15 THE COURT: Guys, would y'all go through these
16 things and make sure that everything that's supposed to
17 go back is there and make sure --

18 The only thing -- the only thing that I'm aware
19 of that doesn't go back is the gun, but I think
20 everything else is fine to go back so just make sure
21 that we have everything that's supposed to go.

22 MR. DEYSACH: The video I think would go back
23 but there's nothing for them to play it on unless they
24 come back out here because --

25 THE COURT: Right. But --

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1 MR. DEYSACH: -- it was kind of --

2 THE COURT: What we'll do, we'll send it back
3 with the other stuff and that will remind them that
4 it's there if they want to see it. If they don't, then
5 that's fine again. And then just send that back along
6 with the evidence.

7 MR. DEYSACH: Does the jury form -- the verdict
8 form, does it say proximity or one-half mile? Just
9 proximity?

10 [Off the record momentarily]

11 THE COURT: It does say proximity.

12 MR. DEYSACH: Would you consider putting one-
13 half mile of a park instead of proximity?

14 MR. SHIPLEY: They've got instructions back
15 there with them that say half mile.

16 THE COURT: They do.

17 But I don't mind -- I mean, I'm not going to --
18 how difficult would it be to --

19 [Off the record momentarily]

20 THE COURT: Just when you get back to the --
21 it's on page 2 -- 3, I'm sorry -- page 3 of the verdict
22 form. On each of those if you would just change that
23 to possession with intent to distribute marijuana
24 within one-half mile radius of a park. Change each one
25 of those to that.

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1 All right. Well, y'all go through these and
2 make sure we've got all the numbers together, because I
3 know some things have been jostled around since they
4 put that tape on there.

5 MR. SHIPLEY: Yes, Your Honor.

6 [Off the record momentarily]

7 [Whereupon, the alternate is dismissed by the
8 Court at 4:06 p.m.]

9 THE COURT: All right. Ladies and gentlemen,
10 we'll --

11 We made that correction, Ian, so we'll have
12 that.

13 And we'll just remain at ease, then, while the
14 jury is deliberating. If you need to go anywhere too
15 terribly far, how about make sure you leave us a cell
16 number or some way we can reach you. But other than
17 that, we'll just be at ease.

18 [Whereupon, evidence goes to the jury at
19 4:02 p.m.]

20 [Whereupon, a recess is taken from 4:02 to
21 4:57 p.m.]

22 THE COURT: Okay. Guys, got a question. I'll
23 try to -- I'm going to read it just the way it's
24 written, although -- I'll just read it to you.

25 It says: does the purest of the cocaine count,

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1 or just the presence of cocaine substance, when
2 assessing the weight for trafficking?

3 Now, I don't -- obviously, I can't tell them --
4 I can't answer that question to their satisfaction, I
5 don't think. I think the only thing I could tell them
6 would be that there is testimony in the record
7 regarding the weight of the cocaine and you have to
8 give that testimony whatever weight you think it
9 deserves.

10 And I know that's not answering their question,
11 because -- and I know that wasn't your intent -- Bill,
12 I don't -- I think when you were trying to explain to
13 them -- I'm guessing, okay? I think you were trying to
14 explain to them what the purpose of that cutting agent
15 would be, whatever they found, the cutting -- and you
16 were letting them know that, you know, if a guy wants
17 to increase the value of his, he can add the cutting
18 agent. And so -- and for some reason, they're now
19 trying to discern whether you have to break it out in
20 its purest form or if you have to do the substance.

21 But I don't think -- I can't address that with
22 them. I just think all I can direct them to is that
23 there has been testimony in the record regarding the
24 weight and it is your duty, ladies and gentlemen, to
25 assess that evidence and give it what weight you think

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1 it deserves. Unless y'all can give me some different
2 guidance there?

3 MR. SHIPLEY: I would suggest that there was
4 testimony as to what the substance was and what the
5 weight of that substance was.

6 MR. DEYSACH: Can't tell them that --

7 MR. SHIPLEY: What Renita Berry's testimony was.
8 She testified that --

9 THE COURT: No. I can't --

10 MR. SHIPLEY: -- the substance was cocaine and
11 that it was this amount. But there is testimony as to
12 what --

13 THE COURT: Yeah. I think --

14 MR. SHIPLEY: -- the substance was and --

15 THE COURT: -- I can't direct them to one
16 particular part of the testimony but I think that I can
17 tell them that in the record there is testimony as to
18 what these items are and there's testimony regarding
19 the weights and it is your duty, ladies and gentlemen,
20 to decide what weight and effect to give that
21 testimony. And I don't think I can tell them anything
22 more than that.

23 Ian, any thoughts regarding that?

24 MR. DEYSACH: Oh, that's a tough one. The --
25 you know, if there is -- you know, instead of -- if

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1 it's not a question that you can answer, I don't know
2 that answering a different question really does make
3 any sense. And so: if it's like it's not a question I
4 can answer, you just have to refer to the law as I've
5 given it to you, then that would be it. To kind of
6 direct them towards, you know, Ms. Berry's testimony in
7 some way, I don't know if that's --

8 THE COURT: Well, I'm not -- I'm not directing
9 them to Ms. Berry's testimony. There were several
10 folks that talked about weight.

11 And all I was -- all I think I would tell them
12 is there is testimony in the record regarding the
13 substances and weights and you need to evaluate that
14 testimony and give it whatever credibility and weight
15 you think it deserves.

16 You know, I don't -- because, I mean, I think
17 that it answers their question as far as -- you know,
18 what I can't answer is purest form of cocaine versus, I
19 don't know, cutting -- I don't know, because they don't
20 say. The question literally is does the purest of the
21 cocaine count or just the presence of cocaine substance
22 when assessing the weight for trafficking.

23 And, see, there wasn't any -- there wasn't any
24 testimony about cocaine in its pure form and cocaine
25 different. That came -- if it came -- if it came from

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1 anywhere, it came from closing arguments. It didn't
2 come from the evidence. The evidence in the case -- I
3 don't think that -- Ms. Berry didn't discuss cutting
4 agents, I don't believe.

5 MR. DEYSACH: I don't know that she discussed --
6 I did ask her -- you know, I asked her, your opinion is
7 that cocaine is found and you don't know what
8 percentage cocaine, or something like that. That was
9 like the only question that I asked her. But --

10 THE COURT: All right. Anything further,
11 anybody?

12 MR. SHIPLEY: No, Your Honor.

13 I would just reiterate that maybe they should be
14 instructed there was testimony as to what the substance
15 was and what the value -- what the weight of that
16 substance was.

17 THE COURT: All right. Bring the jury in,
18 please.

19 [Off the record momentarily]

20 [Whereupon, the jury enters the courtroom at
21 5:05 p.m.]

22 THE COURT: Ladies and gentlemen, I received
23 your note. And for the record, the note is: does the
24 purest of the cocaine count or just the presence of
25 cocaine substance when assessing the weight for

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1 trafficking.

2 The only thing I can do is direct you to the
3 charge on the law that I gave you and the testimony
4 that has been in the record. There has been testimony
5 from witnesses regarding the substance and the things
6 of that nature, and all I can really do -- and I'm
7 sorry I can't give you more definite, but is just to
8 direct you to the evidence and the testimony that you
9 heard during the course of the trial and apply the law
10 that you have to that testimony, to that evidence.

11 So I'm sorry that that doesn't probably give you
12 the answer that you're looking for, but it's really --
13 it's an evidentiary question that you have to answer
14 based on the evidence and the law that I've given you.

15 And so I'm going to send you back into your jury
16 room and ask you to continue your deliberations with
17 that instruction.

18 Mark that a Court's Exhibit.

19 [Whereupon, Court's Exhibit Number 2 is marked
20 by the court reporter]

21 [Whereupon, the jury exits the courtroom at
22 5:07 p.m.]

23 THE COURT: Any objections or exceptions to the
24 Court's remarks to the jury's question?

25 MR. SHIPLEY: No, Your Honor.

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1 THE COURT: Anything from the defense?

2 MR. DEYSACH: No, Your Honor.

3 THE COURT: All right. We'll remain at ease and
4 allow the jury to continue to do their thing.

5 [Whereupon, a recess is taken from 5:08 p.m. to
6 6:17 p.m.]

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VERDICT

1
2 THE COURT: It's my understanding that the jury
3 has arrived at a verdict.

4 I say this with every trial that I have, whether
5 it's a civil or a criminal trial. As I sit here, as
6 everyone in the courtroom, I don't know what the
7 verdict is. But whatever it is, I always tell people
8 that I don't expect -- I don't ever expect anybody to
9 agree with the jury's verdict but I do expect everybody
10 to at least receive it in a professional manner.
11 They've been here all week and they've worked hard on
12 it and it's okay to disagree with the jury but it's not
13 okay to have any kind of outburst or anything like
14 that. They deserve to have their verdict received in a
15 professional manner. And I say that ahead of time
16 because some folks don't believe me, but I will -- if
17 there is any type of an outburst such as this --

18 [Off the record momentarily]

19 THE COURT: But, seriously, they just need to be
20 received in a professional manner and we'll -- and
21 everything will be all right.

22 All right. Well, let me ask, is the State ready
23 to receive the verdict?

24 MR. SHIPLEY: Yes, Your Honor.

25 THE COURT: Is the defense ready to receive the

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1 verdict?

2 MR. DEYSACH: Yes, Your Honor.

3 THE COURT: All right. If you would please ask
4 the jury to join us, sir.

5 [Off the record momentarily]

6 THE BAILIFF: The jury is entering.

7 [Whereupon, the jury enters the courtroom at
8 6:20 p.m.]

9 THE BAILIFF: The jury is present.

10 THE COURT: Thank you very much, ma'am.

11 Mr. Walker, has the jury reached a unanimous
12 verdict, sir?

13 THE FOREPERSON: It has, Your Honor.

14 THE COURT: All right. Sir, if you would please
15 pass that to the bailiff.

16 [Whereupon, the foreperson proffers documents to
17 the bailiff]

18 THE COURT: Thank you very much.

19 [Whereupon, the bailiff proffers documents to
20 the Court]

21 [Whereupon, the Court reviews documents]

22 THE COURT: All right. I think that's all in
23 order.

24 Madam Clerk, if you would please publish the
25 jury's verdict.

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1 THE CLERK OF COURT: In the State of South
2 Carolina versus Matthew Frazier, indictment 2010-GS-07-
3 02189, trafficking in cocaine, ten or more grams but
4 less than twenty-eight grams, we, the jury, find the
5 defendant, Matthew Frazier, guilty of trafficking in
6 cocaine.

7 Indictment 2010-GS-07-02190, possession with
8 intent to distribute marijuana, we, the jury, find the
9 defendant, Matthew Frazier, guilty of possession of
10 marijuana.

11 Indictment 2010-GS-07-02191, possession with
12 intent to distribute cocaine base, we, the jury, find
13 the defendant, Matthew Frazier, guilty of possession
14 with intent to distribute cocaine base.

15 In indictment number 2010-GS-07-02193,
16 possession with intent to distribute marijuana within
17 one-half mile radius of a park, we, the jury, find the
18 defendant, Matthew Frazier, not guilty of possession
19 with intent to distribute marijuana within one-half
20 mile radius of a park.

21 In indictment 2010-GS-07-02194, possession with
22 intent to distribute cocaine within one-half mile
23 radius of a park, we, the jury, find the defendant,
24 Matthew Frazier, not guilty of possession with intent
25 to distribute cocaine within one-half mile radius of a

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1 park.

2 In indictment 2010-GS-07-02195, possession with
3 intent to distribute crack cocaine within one-half mile
4 radius of a park, we, the jury, find the defendant,
5 Matthew Frazier, not guilty of possession with intent
6 to distribute crack cocaine base within one-half mile
7 radius of a park.

8 Indictment 2010-GS-07-02197, possession of a
9 weapon during a violent crime, we, the jury, find the
10 defendant, Matthew Frazier, not guilty of possession of
11 a weapon during a violent crime.

12 THE COURT: Thank you very much, ma'am.

13 Ladies and gentlemen of the jury, you've heard
14 the clerk read out the verdict that appears on the
15 verdict form. If these verdicts are, in fact, your
16 verdicts, if you would please raise your right hand.

17 [Whereupon, the jury complies]

18 THE COURT: All right. Thank you very much,
19 ladies and gentlemen.

20 Anything further from the State?

21 MR. SHIPLEY: No, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. DEYSACH: Not as to the jury, Your Honor.

24 THE COURT: All right. Ladies and gentlemen, I
25 want to thank you very much for your service this week.

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1 You guys have been very attentive. When I'm up here on
2 the bench there are other things that I'm doing as well
3 as having to listen to the trial. But I do watch and I
4 do observe, and all of you were paying attention.
5 Sometimes you can tell if a jury is really listening or
6 if they're bored. Sometimes they get bored. But I
7 want to thank you because all of you seemed to really
8 be paying attention.

9 Your service -- you've completed your service
10 for this week. There is still some work that we have
11 to do, that the State has for tomorrow, but it involves
12 non-jury matters. So you're done for the rest of --
13 you're done for tomorrow. You don't have to report
14 back.

15 Madam Clerk is going to -- I think checks will
16 go out sometime tomorrow or Monday?

17 THE CLERK OF COURT: Yes, sir.

18 THE COURT: I don't know if y'all were in here
19 when I talked to the other panel but please don't get
20 offended when you see that check because I promise you
21 that's not what we think of your time. We realize that
22 your time is much more valuable than we could possibly
23 afford to pay you. And that's the thing about jury
24 service. It's a service that you have given to your
25 community. It's not really a paid job. So thank you

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1 so much for your service.

2 Now, I tell juries this all the time. Your
3 service has concluded. You've earned an exemption. If
4 you get called for jury service here in circuit court
5 during the next -- well, the balance of this year and
6 for the next two years, you can claim that exemption.
7 So any summons for this court the rest of this year,
8 2012 and 2013, you can claim that exemption and be
9 excused from service. But I do always encourage jurors
10 and remind you that that is just an exemption. It does
11 not mean you're not allowed to serve. So if you want
12 to serve again, if you get called, then, please, I
13 would encourage you to do so.

14 Also, we're going to -- in just a little bit
15 we're going to proceed. There are motions that I have
16 to take up and then at some point we'll proceed to
17 sentencing. I tell jurors I'm going to excuse you in
18 just a second. But if you go out, if you want to come
19 back into the courtroom for sentencing, if you're
20 interested in that, I always tell juries you're welcome
21 to do that. You worked the case, you heard all the
22 evidence, and you're certainly welcome to be present
23 for that.

24 But you're also free to go. Juries are all
25 different. I have juries that can't wait to get out

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1 the door and go home to their families and I have some
2 that are curious and do stay around and listen to what
3 the sentence is.

4 But you're free to do either one. But what
5 we'll do first is I will excuse you. If you have
6 anything in the jury room that you left there, you
7 know, gather your belongings. If you have any cell
8 phones or anything that have been collected, make sure
9 you get those, then you're free to go. And if you did
10 want to come back and listen to the verdict --

11 Madam Clerk, is there a way they can come back
12 in through the back door --

13 THE CLERK OF COURT: Yes, sir.

14 THE COURT: -- from where they're going to be??

15 THE CLERK OF COURT: We can take them around and
16 bring them in through the back door.

17 THE COURT: So if you want to do that, they'll
18 certainly escort you around and help you with that.

19 But, anyway, I want to thank you again.

20 And if everyone will remain seated. Ladies and
21 gentlemen, you are excused.

22 [Whereupon, the jury exits the courtroom at
23 6:28 p.m.]

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POST TRIAL MOTIONS

1
2 THE COURT: At this time I'll be happy to
3 consider any motions at the close of the verdict.

4 Mr. Deysach?

5 MR. DEYSACH: Thank you very much, Your Honor.
6 Certainly a case where a not-guilty verdict was
7 returned, and I counted it on four of the seven
8 charges.

9 THE COURT: I think that's correct.

10 MR. DEYSACH: And so obviously these motions
11 would just go towards the trafficking. I think it's
12 PWID crack, that was a conviction --

13 THE COURT: Yes, sir.

14 MR. DEYSACH: And PWID marijuana was a
15 conviction for possession of marijuana.

16 THE COURT: That was simple possession.
17 Correct.

18 MR. DEYSACH: Simple possession of marijuana.

19 THE COURT: And then the cocaine base was a
20 possession with intent.

21 MR. DEYSACH: Correct. That's what my notes
22 were.

23 THE COURT: Yes, sir.

24 MR. DEYSACH: And so these motions go to those
25 charges.

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1 THE COURT: All right, sir.

2 MR. DEYSACH: And I just want to renew my
3 objections that I made pretrial and post-trial. This
4 is the appropriate time to do so. I would ask from
5 those cases a judgment notwithstanding the verdict and
6 those cases, Your Honor.

7 Actually a -- and I think I need to, you know,
8 make a new trial motion. You know, obviously you hear
9 some ambivalence in my voice because, you know, well,
10 boy, we -- you know, in many ways this does -- you
11 know, it's hard to -- a lot of what I asked the jury
12 they did. But I think I still need to ask for a new
13 trial on the possession of marijuana, the PWID crack,
14 and the trafficking crack and I would like to do that
15 at this time.

16 THE COURT: All right, sir.

17 MR. DEYSACH: And renew the directed verdict
18 motion again.

19 THE COURT: Correct. And I will -- just for the
20 record, just to make it clear, Mr. Deysach, as I
21 understand it, you are renewing all previous objections
22 and motions and --

23 MR. DEYSACH: I appreciate that, Your Honor.
24 That's exactly what I'm doing.

25 THE COURT: All right. And then of course your

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1 motion for a new trial or a judgment notwithstanding
2 the verdict on the trafficking case, the marijuana
3 case, and the crack cocaine case, the three charges
4 that they came back with the verdict of guilty on.

5 MR. DEYSACH: Thank you very much for helping me
6 make the record, Your Honor.

7 THE COURT: All right, sir.

8 And I'm going to respectfully deny those motions
9 at this time. I certainly understand your position and
10 would absolutely make the same motion in your shoes.
11 However, again, and I would go back to what I said
12 earlier and that is that, you know, the courts --
13 you've got to be careful to not step into the jury's
14 role. And I think that there was evidence in the
15 record, depending on how the jury weighed that
16 evidence, and I don't find that there's anything in
17 their verdict that would indicate that they did
18 anything other than consider the evidence that was
19 before them. And so I'm going to respectfully deny
20 those motions.

21 I want to -- before we move to sentencing, I
22 just want to confirm with both the State and the
23 defense: first of all, these charges Mr. Frazier --
24 against Mr. Frazier are first offense drug charges; is
25 that correct?

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1 MR. SHIPLEY: That's correct, Your Honor. They
2 are first offense.

3 THE COURT: So if I'm -- correct me if I'm
4 wrong. The trafficking charge carries a possible
5 sentence of not less than three nor more than ten years
6 and a 25,000-dollar fine. The marijuana charge is a
7 zero to thirty days and/or a 200-dollar fine. And the
8 possession with intent to distribute cocaine base is a
9 zero to fifteen years and a fine of not more -- and/or
10 a fine of not more than \$25,000. Is that correct?

11 MR. SHIPLEY: That's my understanding, Your
12 Honor.

13 MR. DEYSACH: Mine, too, Your Honor.

14 THE COURT: Those are the sentencing ranges.

15 And of course the remaining charges were not
16 guilty so we don't need to concern ourselves with that.

17 THE COURT: All right. Solicitor, is the State
18 ready to proceed to sentencing?

19 MR. SHIPLEY: Yes, Your Honor. I'm signing the
20 last sentencing sheet right now.

21 THE COURT: Well, go ahead and finish that --

22 MR. DEYSACH: Your Honor, could the plaintiff
23 have two seconds to talk with his mama --

24 THE COURT: Yes.

25 MR. DEYSACH: -- mother to see --

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1 THE COURT: Go ahead. He's got to finish those
2 sheets and so if you want to step out and do that. Or
3 you're welcome to do it here.

4 MR. DEYSACH: I was just maybe going to kind of
5 grab a little spot and --

6 THE COURT: But if you need the extra time to
7 step out, you're welcome to take it.

8 MR. DEYSACH: All right. Well, let me do that,
9 then. Thank you, Your Honor.

10 [Off the record momentarily]

11 MR. DEYSACH: Your Honor, do you generally
12 require the defendant to sign these?

13 THE COURT: You know --

14 MR. DEYSACH: Either way?

15 THE COURT: -- they prefer that they do but I
16 don't require --

17 MR. DEYSACH: Okay.

18 THE COURT: -- I don't require it. I'm going to
19 leave that up to Mr. Frazier. It's up to him if he
20 would like to.

21

22

23

24

25

- - -

- - -

- - -

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SENTENCING

THE COURT: All right.

MR. DEYSACH: Would you like us to come forward,
Your Honor?

THE COURT: Yes, sir, please, if you would.

And I will hear from Mr. Shipley regarding
sentencing and if there -- if there is any prior record
regarding Mr. Frazier.

MR. SHIPLEY: I don't feel it necessary to go
into the facts of this case. Your Honor pretty much
heard everything.

I would just like to remind the Court that
leading up to the search warrant there were six
separate controlled purchases of marijuana in which the
confidential informant identified the defendant as the
person from whom they bought the marijuana.

And this was the result of a -- you know, over a
month-long investigation of this defendant. My
understanding is he was a target for some time, known
to be dealing drugs in this area for some time. The
first controlled buy actually occurred back in January
of October -- I mean, of 2010. They intensified the
rest of them in September leading up to the search
warrant.

His prior record: I've got a simple assault and

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1 battery. His rap sheet is a little bit unclear but I
2 think it's 1999. 2008 speeding and false information
3 to police, and also in 2008 criminal domestic violence
4 first offense.

5 THE COURT: Okay, sir. Thank you, sir.

6 Mr. Deysach, I'll be happy to hear from you.

7 MR. DEYSACH: Thank you very much, Your Honor.

8 You know, again, the facts are -- to sit here
9 and tell you what the facts of the case are and what I
10 believe the facts of the case are would probably be a
11 waste of the Court's time.

12 You know, when Mr. Shipley brings up kind of the
13 prior conduct and the prior sales, you know, and these
14 are -- this is unproven conduct, you know, and just --
15 and so I want you to look at it in that frame.

16 There is probable cause. There was the
17 confidential informant, but nobody knows how reliable
18 he is at this point. And, in fact, I think the
19 solicitor, in anticipation of this case, had dropped
20 those -- had nol-prossed them, and so they're not cases
21 that are pending. And really to get into the facts of
22 those, there is like a January controlled buy that I
23 think even during plea negotiations wasn't one that the
24 solicitor's office wanted to get involved in because
25 the officer had been let go from the force.

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1 And then these buys that took place in the month
2 of September leading up were twenty- to forty-dollar
3 marijuana buys that were made very close in -- I don't
4 even think to call it the whole month. If it was --
5 you know, I know that the 24th, the 29th, the 21st, all
6 very close in time. And so really I don't think what I
7 have been provided and what's been proven in court or
8 anything like that really backs up the fact that he has
9 this long history. In fact, I think when you look at
10 his record --

11 And, I mean, let's be honest. I mean, the
12 police around here are proactive. I think that we saw
13 that with the case and that -- I don't know of too many
14 people that are able to be long-term, big-time drug
15 dealers that don't at some point at least get an arrest
16 in that regard. And so I think that instead of
17 weighing the unproven conduct that led up to this, that
18 you should look more at his lack of a general sessions
19 record, his lack of any type of a serious record.

20 Mr. Frazier is twenty-nine years old. Plenty of
21 time, plenty of time, for somebody to get into trouble
22 if that's the kind of person that they are.

23 And, you know, drugs, you know, are -- different
24 people feel different ways about drugs, I guess is what
25 I'm trying to say. And sometimes, you know, if

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1 somebody's -- they don't have -- the victim is the
2 person who's buying the drugs I guess is the best way
3 to put it. And as far as hurting a fly, I think the
4 jury felt that -- I think that the verdict reflects
5 that there wasn't proof beyond a reasonable doubt that
6 Matthew knew that that gun was there. I think that's
7 what the jury's verdict reflects and I would hope that
8 your sentence would reflect that, because he wouldn't
9 hurt a fly.

10 He's a big teddy bear. He's a big fellow, but
11 he is soft-spoken and really, you know, somebody whose
12 family loves him very much. He does have five
13 children. And he's got people here that support him
14 and want him home.

15 Sometimes when you're in my position, Your
16 Honor, you worry that someone gets -- if you were to
17 come before Your Honor and plead guilty to these three
18 charges, you worry that he would maybe be getting
19 either the benefit of taking responsibility or
20 something like that and that when you go -- get to Your
21 Honor in this posture through a trial, that you --
22 sometimes you don't get that benefit.

23 And I'm not saying he's entitled to the benefit
24 of taking responsibility for these charges. But this
25 was never offered. And a lot of times from where I

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1 stand, in many ways to me it is a level of vindication
2 that he was never given a plea offer in which he would
3 have been allowed to plea to this. And I think what I
4 would ask Your Honor to do is look at this case not as
5 somebody who hopefully you wouldn't think that he
6 wasted the Court's time or that we did anything like
7 this.

8 And a little bit of a digression. I heard you
9 earlier this week say, you know, why don't more
10 defendants ask for a speedy trial motion. Matthew's
11 been in jail, I mean, since October. It's been about
12 six months. You know, I think that's a fairly quick
13 turnaround in most jurisdictions for somebody to go
14 from arrest to a trial.

15 And what I'm saying is that we are -- I'm lucky,
16 we're lucky, in Beaufort that we have this opportunity,
17 that we have run a organized docket to where we can do
18 trials instead of having to jam everybody through in a
19 plea or let them sit until they would max out a certain
20 amount of time. And so really I just want you to look
21 at this case for what it's worth: a guy with no record
22 who had ten grams of the powder -- or twenty-five grams
23 of the powder and six grams of crack and possession of
24 marijuana. And I think, you know, whatever you think
25 that that would be an appropriate sentence for that.

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1 I would point out -- I don't know if this would
2 be persuasive at all to Your Honor. I think that it
3 looked like the cocaine was probably something full of
4 a lot of cut, that the crack you never -- you know,
5 they talk about purity. And I'm not -- that's not a
6 legal defense or anything like that. But I guess what
7 I'm -- you know, the marijuana looked like very dry,
8 seedy marijuana.

9 These were not very -- I don't know if it makes
10 a difference, but these were not the type of drugs --
11 they weren't strong drugs is all I'm saying. And I
12 don't think that makes a big difference. But these are
13 -- by the time these drugs got into people's hands,
14 they were not very strong. I mean, that's a big bottle
15 of cut and I have a feeling that this cocaine wasn't
16 very strong. I don't think that that's probably the
17 most persuasive thing to Your Honor.

18 But I did want you to hear from his mom because
19 she's somebody who loves him very much.

20 I've talked to Matthew about speaking. You
21 know, he doesn't know what to say. He wants you to
22 give him as light a sentence as you would deem
23 appropriate. And knowing Matthew and that he doesn't
24 have a record, I think maybe you could go pretty low.
25 I mean, the minimum is three and he knows that. So

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1 he's not going anywhere. He's going to have to do some
2 time. He's going to prison. He knows that.

3 And so his mama wants him to be home. They want
4 him to miss as few Christmases and Thanksgivings and
5 everything as possible. But I'll let you hear from
6 her.

7 THE COURT: All right.

8 MR. DEYSACH: State your name for the judge.

9 MS. FRAZIER: My name is Annie B. Frazier.

10 THE COURT: Ms. Frazier, you can come up here.

11 [Whereupon, Ms. Frazier complies]

12 THE COURT: Yes, ma'am.

13 MS. FRAZIER: Your Honor, all the years I've
14 raised B.J., he's never been no -- he never has been a
15 trouble child. He's never give me no trouble. He just
16 take -- he made a choice. He went down a wrong road.

17 I'm asking you to be merciful to him and give
18 him a chance, to be as light as possible -- on him as
19 possible because I believe that he has changed, I
20 believe he had time to think and know what he did was
21 wrong and if he had a chance he would turn his life
22 around. I'm asking you to be merciful to him and give
23 him a chance to do that. Thank you.

24 THE COURT: Thank you, ma'am.

25 Anything further, Mr. Deysach?

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1 MR. DEYSACH: I don't have anything further,
2 Your Honor.

3 THE COURT: Anything, Mr. Frazier?

4 MR. FRAZIER: Your Honor, I just made some
5 mistakes, Your Honor. I went through a great deal, you
6 know, myself, as far as a being, you know.

7 THE COURT: Okay. The thing is -- I'm going to
8 refer to Mr. Deysach because I'm just addressing his
9 comments -- is I don't disagree with the jury's
10 verdicts. I even -- I agree with their verdicts on the
11 gun and I agree with their verdicts on the proximity
12 charges, but I agree with -- I agree with them only
13 from the standpoint that I don't think the State proved
14 those case. I thought you did a good job of pointing
15 out that the State failed to prove those cases.

16 The problem I think -- well, it's not a problem.
17 And I don't know. I'm not in the jury room. I don't
18 know what they're thinking. But I'm kind of -- you
19 know, I think I would have come down just like they
20 did, based on the evidence that I heard, because there
21 was -- there's no doubt in my mind --

22 You know, I'm not trying to be critical, Mr.
23 Shipley. It amazes me the State even bothered to waste
24 time on the marijuana charge. There wasn't a chance
25 that that was anything other than simple possession.

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1 But combined with all the other things that you had, a
2 jury could have found. But they -- I think they did
3 the right thing.

4 But they also did the right thing on the others.
5 I don't think there's any question that Mr. Frazier was
6 running a fairly lucrative operation out of that
7 vehicle.

8 Here's the thing that we all ignore, or at least
9 that we seem to. I vehemently would disagree that
10 these aren't bad drugs. These are the -- and I know
11 what you're saying. You're saying they were cut and
12 they weren't potent. But I don't know that they
13 weren't potent because I don't know. I will say this.
14 I know this. Nobody except maybe the high cats in
15 Hollywood, nobody sells pure cocaine and nobody -- you
16 know, so it's all cut. There's no question about that.
17 But these drugs are destroying this society.

18 And you mentioned, I think, if I recall, Mr.
19 Frazier has five children. I'm confident that Mr.
20 Frazier would if not kill, horribly hurt anybody that
21 would sell crack to his children. And I'm not saying
22 that Mr. Frazier is selling crack to kids. Okay?
23 Here's the problem, though. When Mr. Frazier sells
24 crack to me or her or him, he has no idea what I'm
25 going to do with it. He has no idea that I'm not going

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1 to run it straight down to the park and get some kids
2 going on it. And that's the danger. Nobody cares
3 about where it goes and the harm that it does. You
4 know why? Because they're -- all their focus is on is
5 that \$11,000. \$11,000. You think about how long you
6 have to work to earn \$11,000. And folks like Mr.
7 Frazier are out there making that and a bunch more by
8 putting into the market, into our society, these
9 dangerous drugs. And they're dangerous drugs.

10 I don't know this. I don't know this at all
11 because I don't know Mr. Frazier, but I'll bet he
12 doesn't do cocaine or crack. I'll bet he -- I'm not
13 going to ask him because I'm not going to put him on
14 that spot. But I bet he doesn't. He knows how
15 dangerous it is. He knows what it can do to you.

16 Now, I may be completely wrong. He may be an
17 addict. Well, I know he's not an addict because I've
18 heard from -- I've been to treatment centers where real
19 addicts are in treatment and they've always said -- I
20 know you hate to hear this as a defense lawyer -- but
21 I've had addicts one-hundred percent of the time when I
22 ask them tell me, Judge, if any lawyer tells you that
23 their client was selling just to support their habit,
24 they're lying to you because an addict won't sell it,
25 an addict is going to use it. And I believe them. It

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1 makes sense on what they say.

2 That's why I kind of feel like I don't think Mr.
3 Frazier is an addict. And I'm not saying that he is
4 some huge drug lord, either. But I am saying that he's
5 active. He's very active. And it's -- it's a tragedy
6 because his children are going to be without their
7 daddy for some period of time. His mama is going to be
8 without her son for some period of time. And it's not
9 going to be forever because none of these charges carry
10 -- I mean, these are all parolable offense.

11 But you mentioned it earlier, and I agree: the
12 victims are the folks using and Ms. Frazier and his
13 children. Those are the victims in this case. And
14 why? Why do we leave this big path of destruction
15 behind us? For money. That's all. It's a money
16 thing. And I hate it because I've got a young man -- I
17 don't know Mr. Frazier, as I said, but I hate to see
18 any young man toss his life away because of these
19 drugs. They kill folks. And I don't mean necessarily
20 physically. They're killing him. They're killing him
21 and his family. It's just tragic.

22 I mean, obviously, on indictment 2010-GS-07-
23 2190, the marijuana charge, the sentence of the Court
24 is thirty days and credit for that. I mean, that's --

25 MR. DEYSACH: I don't think I told you his jail

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1 time in, but it has been since October 11th.

2 THE COURT: And I have already marked on here
3 that -- October the 11th was his arrest?

4 MR. DEYSACH: That was the date of this offense
5 and that was his arrest.

6 THE COURT: And I'll make sure that I'm putting
7 on here that he's to get credit from October the 11th
8 so that there's no mistake down the road.

9 And I would also encourage, if you haven't
10 already done it, before these forms go away that you
11 double check the code and the CVR code to make sure
12 that it's appropriate for what the jury came back on.

13 MR. DEYSACH: Yes, sir. I thank you for that
14 opportunity.

15 THE COURT: On indictment 20100GS-07-2189, the
16 sentence of the Court is that you be committed to the
17 State Department of Corrections for a period of ten
18 years and pay a fine of \$25,000. On indictment 2010-
19 GS-07-2191, the sentence of the Court is that you be
20 committed to the State Department of Corrections for a
21 period of fifteen years. Those sentences are all to
22 run consecutive. And you're to be given credit for
23 time from October the 11th, 2010.

24 Good luck to you, sir.

25 [JURY TRIAL CONCLUDES AT 7:00 P.M.]

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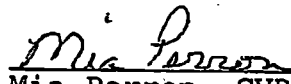
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Thomas A. Russo, on Thursday, May 26, 2011.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 9th day of October, 2011.


Mia Perron, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM

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FORM 5

STATE OF SOUTH CAROLINA

County of Beaufort

Matthew Frazier

(Full name and prison number of applicant)

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014-CP-07-592

APPLICATION FOR
POST-CONVICTION RELIEF

14 MAR 12 PM 3:11
BEAUFORT COUNTY S.C.
CLERK'S COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Reception and Evolutution center
Columbia S.C. 4344 broad river Road 29210
2. Name and location of Court which imposed sentence Beaufort County
court house General Session
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-065-07-2189 traffic King Cocaine 10-289s
(b) 2010-GS-07-2191 Possession with intent to distribute crack cocaine base

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 26, 2011
- (b) 15 years for trafficking
- (c) 10 years PWID
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. they affirmed it rule 220(B) SCACR, State vs. Dupree
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard, June 3, 2013, Filed, June 26, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. I tried to reach my Attorney for a
- ii. Follow up or other actions They didn't respond
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing.
- (a) _____
- (b) NA

NA

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: fifth Amendment

- (a) my Fourth and fourteenth Amendment's was violated
 (b) Ineffective ASS. of counsel
 (c) new discovered Evidences

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Due Process

- (a) Search warrant was invalid on false and unreliable information and out of the trial
 (b) my counsel didn't present all evidence in trial
 (c) counsel fail to show that the C.I. has not shown no reliabil. or cred. bility by making them come to court and take the stand in trial

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? only this
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
 (d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. _____
 ii. NA
 iii. _____
 iv. _____

- (b) the name and location of the Court in which each was filed:

- i. _____
 ii. NA
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
- ii. NA
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. NA
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. NA
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. refusing to suppress the evidence found
- ii. during the execution of a search warrant
- iii. where the search warrant affidavit was facially insufficient to establish probable cause based on false and unreliable information

(b) the proceedings in which each ground was raised:

- i. Beaufort County, general sessions court
- ii. S.C. Appeals court
- iii. _____

- 16 If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented.

(a) _____
 (b) NA
 (c) _____

- 17 Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

- trial court refusing to suppress the evidence and pretrial and directed verdict motions
18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i. Ian Deysach, Matthew Walker, Beau Fort
County, SC, 29902, Duke Street, 1905
 ii. Dayne, C. Phillips, Carmen V. Gantchsanij, Lady Street
Suite, 401, Columbia SC, 29201-3332 P.O. box 11589
 iii. _____

- (b) the proceedings at which each such attorney represented you:

i. General Sessions Court of Beau Fort
 ii. S.C. Appeals Court of Columbia
 iii. _____

19. State clearly the relief you seek in filing this application:

reverse my conviction and remand my case
back to beaufort county general sessions
for a new trial

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, X Matthew Frazier, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Matthew Frazier 3/7/14

SWORN to and subscribed before me this 7th
 day of March 2014

Shirley Ann - T. Ryan (L.S.)
 Notary Public

My Commission Expires: April 12, 2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Matthew Frazier, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Matthew Frazier 3/7/14
Applicant

SWORN or affirmed to and subscribed before me this
7th day of MARCH, 2014

[Signature]
Notary Public

My Commission Expires: April 12, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2014-CP-07-0592
Matthew Frazier, #346254,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed March 12, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the May 2011 and December 2011 terms of the Beaufort County Grand Jury for trafficking cocaine 10-28 grams- first offense (2010-GS-07-2189) and possession with intent to distribute crack (PWID)(2010-GS-07-2191)¹. The Applicant was represented by Ian Deysach, Esquire.

On May 26, 2011 the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Thomas A. Russo, to confinement for a period of fifteen (15) years for PWID and ten (10) years with a \$25,000 fine for trafficking cocaine. The Applicant's convictions are to be served consecutively.

¹ The Applicant was also convicted of possession of marijuana (2010-GS-07-2190) and sentenced to confinement for 30 days. It does not appear the Applicant is challenging this conviction in his application.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Dayne Phillips, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Frazier, No. 2013-UP-280 (S.C. Ct. App. June 26, 2013). The Remittitur was issued on July 15, 2013.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to show that CI was not shown to be reliable or credible by making them come to court and take the stand at trial.
 - b. Counsel failed to present all evidence at trial.
2. 4th, 5th, and 14th amendment violations.
 - a. Due process violated.
 - b. Search warrant was invalid on false and unreliable information and out of time frame.

III.

First, the Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Second, the Applicant alleges a constitutional violation resulting from an invalid search warrant. The Respondent submits this allegation is without merit. This claim is not appropriate for post-conviction relief and has already been ruled on by the appellate court. The Court of Appeals affirmed the Applicant's convictions and the trial court's denial of the Applicant's

motion to suppress evidence found during the execution of the search warrant that the Applicant argued on appeal was facially insufficient to establish probable cause. The Respondent submits post-conviction relief is not a substitute for direct appeal. This Court should summarily dismiss this allegation.

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the Applicant's claim of ineffective assistance of counsel.

[Signature on the following page.]

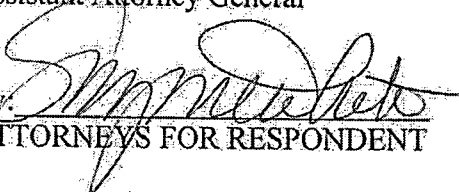
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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February 6, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MATTHEW FRAZIER, #346254

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

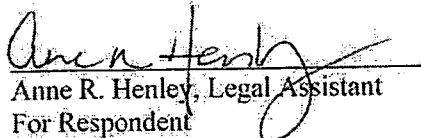
2014-CP-07-0594

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the abovecaptioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer
Axelrod & Associates P.A.
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 6th day of February


Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBER 2015-GS-07-00592

MATTHEW FRAZIER

PLAINTIFF

VERSUS

MAY 19, 2016

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING
BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

DEFENDANT

B E F O R E:

HON. BROOKS P. GOLDSMITH, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PLAINTIFF
MATTHEW FRAZIER:

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AXELROD & ASSOCIATES, P.A.
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ON BEHALF OF DEFENDANT
STATE OF SOUTH CAROLINA:

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EXHIBITS

No exhibits were admitted.

1 BEGINNING 9:35 A.M.

2 BY THE COURT:

3 MR. JOHNSON: May it please the Court, your Honor?

4 THE COURT: Yes, sir.

5 MR. SHAFFER: This is Matthew Frazier versus the
6 State of South Carolina. It's Case Number 2014-CP-07-
7 0592. Mr. Frazier was indicted at the May 2011 and
8 December 2011 terms of the Beaufort County Grand Jury
9 for trafficking cocaine, 10 to 28 grams, first offense;
10 and possession with intent to distribute crack. He was
11 also indicted -- let me see, your Honor -- with other
12 charges. However, those were -- he was found not guilty
13 of those charges. I believe one is a possession of
14 marijuana, with intent to distribute within half a mile
15 of the school; trafficking within half mile of the
16 school; and PWID crack cocaine within half a mile of the
17 school. There was also a marijuana charge that I think
18 that -- or that was pled -- I mean, found guilty of
19 simple possession, I believe.

20 He was -- proceeded to trial on those. Was found
21 guilty. The Honorable Thomas A. Russo confined him to a
22 period of fifteen years for the PWID crack cocaine, and
23 ten years, with a \$25,000.00 fine for trafficking in
24 cocaine. And Judge Russo ordered those to be served
25 consecutively.

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1 There was an appeal filed on his behalf. An appeal
2 was perfected. His conviction and sentence were
3 confirmed by the Court of Appeals on June 26, 2013. The
4 remittitur was issued July 15, 2013, by this immediate
5 action March the 12th, 2014. And the State filed its
6 return on February 6, 2015. And he is represented here
7 today by Mr. Tristan Shaffer.

8 MR. SHAFFER: Your Honor, before we begin, if
9 you'll just give me a moment, I'm trying to print
10 something for my continuance request. I'm actually
11 moving for a continuance in this case.

12 My client, I guess, to give you background on the
13 case, the drugs came from a search warrant, okay? that
14 was executed in his car. The officer had testified that
15 he had a confidential informant who had done prior drug
16 buys for him, and that the confidential informant was
17 previously reliable. That's the extent of it is the was
18 previously reliable.

19 The reliability, much of his statement related to
20 the reliability came from the fact that he previously
21 had given information that the officer already knew.
22 That's what the officer based it on during the -- during
23 the hearing pretrial. He did say the officer said,
24 well, he also said that my client had been selling drugs
25 out of this Dodge Intrepid, which is ultimately where

1 they did the search warrant on. And that he had
2 previous -- previous people telling him that when he was
3 a Bluffton police officer. He said that he was a
4 Bluffton police officer for about five years, and
5 probably about once a month would hear about this Dodge
6 Intrepid the was -- they were selling drugs out of.

7 My client had written me something that -- and I
8 was here prepared to argue what he had argued in his
9 application, but he had written me something about
10 getting the vehicle history from the DMV of that
11 vehicle, because he says it could show perjured
12 testimony. He clarified with that -- that with me this
13 morning. And essentially, he said that he bought the
14 vehicle or that they -- someone had purchased it. The
15 owner of the vehicle had purchased it only approximately
16 a month beforehand. Six months beforehand. Okay.
17 Approximately -- within five months beforehand. That is
18 actually consistent.

19 After speaking with him I did a check through the
20 Internet through AutoCheck, one of these services that's
21 sort of like Carfax. That's consistent with that
22 statement that for, during that five-year period that
23 the officer testified he had heard about this Dodge
24 Intrepid selling drugs in the area. It was actually
25 registered in Virginia during that time period,

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1 according to AutoCheck, which is consistent with what
2 he's saying.

3 One of the things he alleged in his application --
4 this is in a new allegation. I think it's new to me
5 because I really didn't understand it exactly, but he
6 alleged newly discovered evidence in his PCR
7 application, and that's essentially his claim for newly
8 discovered evidence is that his attorney did not present
9 this evidence about the car being -- being -- or, yeah,
10 the car being not registered in South Carolina during
11 that time period.

12 My request for a continuance is so I can actually
13 get the DMV record, because, otherwise, this AutoCheck,
14 I don't think, will be admissible as I have it here
15 today.

16 MR. JOHNSON: May it please the Court, your Honor?
17 First off, once -- upon reading the transcript, I think
18 whoever owns the car is completely irrelevant. He was
19 found in the car when they pulled up to arrest him with
20 all the drugs on him. Found a bunch of money and
21 whatnot. And also, he claims newly discovered evidence,
22 but at the time, and if you look under 17-27-45(c), it
23 says that he has to bring that claim within a year of
24 actual discovery or by reasonable diligence when it
25 could have been discovered. Clearly, that would have

1 been at the arresting. He would have known if he owned
2 the car or not. He didn't file this until March 2014.
3 That year has way since passed. So, it wouldn't be
4 newly discovered evidence in that sense. It wouldn't
5 even meet the statute, your Honor.

6 And also, the *Hayden v. State* test is the test for
7 newly discovered evidence. Basically, it could not have
8 been filed since or before the trial. This information
9 certainly was available before trial. He would have
10 known whether or not at the time he owned the car or
11 not. So, I don't think this is a basis to grant the
12 continuance. I am prepared to go forward. This is a
13 pretty open-and-cut drug case -- or yeah -- and
14 witnesses here. So, your Honor, I actually am going to
15 oppose the continuance request.

16 MR. SHAFFER: And your Honor, just for
17 clarification, my client obviously put in newly
18 discovered evidence. I think that it's actually more
19 related to a failure to investigate claim. That would
20 probably be the more proper way of bringing it. You
21 know, with a pro se litigant, I don't necessary expect
22 him to understand the -- the distinction between the
23 two, because he was pro se whenever he filed the
24 document. I didn't understand what exactly he was
25 talking about, newly discovered evidence. And he just

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1 enlightened me by what exactly he meant by that. He did
2 write me a letter at some point, saying to get the
3 vehicle registration information, which I did not
4 immediately see where that was relevant. After speaking
5 with him, I realized that it probably would be relevant
6 to a failure to investigate claim.

7 THE COURT: I agree with the position of the State
8 on this matter, and I'm going to deny your motion for a
9 continuance. Which leaves us, brings us to what?

10 MR. SHAFFER: Your Honor, I suppose we will proceed
11 forward based off the constitutional challenges. Your
12 Honor, is it possible, if I printed this, I could
13 proffer it for the record?

14 MR. JOHNSON: I have no problem with that.

15 MR. SHAFFER: Okay. Thank you, your Honor. I'll
16 print it at the end, it that's okay.

17 THE COURT: Sure.

18 MR. SHAFFER: I'll go ahead and call --

19 THE COURT: Has the Attorney General seen it?

20 MR. SHAFFER: You want to see it?

21 MR. JOHNSON: It's just an order --

22 MR. SHAFFER: Yeah.

23 MR. JOHNSON: Motion for continuance?

24 MR. SHAFFER: Oh, no. It will be the AutoCheck
25 report.

1 MR. JOHNSON: Oh.

2 MR. SHAFFER: Do you have an issue with me --

3 MR. JOHNSON: Well, I don't know if there's any
4 foundation for that, as we'll have somebody who's
5 controlling that web site to verify the information.

6 THE COURT: That's correct.

7 MR. SHAFFER: And your Honor, I actually -- I would
8 agree with him, but I couldn't admit it as evidence for
9 this hearing. I just wanted to proffer it for purposes
10 of this continuance motion.

11 MR. JOHNSON: I have no problem with that, your
12 Honor.

13 MR. SHAFFER: Thank you, your Honor. Applicant
14 would call Ian Deysach.

15 MADAM CLERK: Do you solemnly swear or affirm that
16 the testimony you give to the Court in this case, shall
17 be the truth, so help you God?

18 HON. IAN DEYSACH: I do.

19 MADAM CLERK: You may sit down.

20 HON. IAN DEYSACH: State my name? Ian Deysach.

21 IAN DEYSACH, DIRECT EXAMINATION

22 BY MR. SHAFFER:

23 Q Mr. Deysach, you represented Matthew Frazier,
24 correct?

25 A Correct.

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1 Q How did you come to represent him?

2 A Well, as a public defender, I was appointed to his
3 case.

4 Q Okay. And tell us a little bit about the
5 allegations in this case.

6 A Accused of -- I guess they served a -- executed a
7 search warrant on the car that was occupied by Mr.
8 Frazier. And when they executed that search warrant,
9 they found Mr. Frazier and the drugs that they charged
10 him with.

11 Q Now, tell us the basis for the search. Do you
12 recall it?

13 A There was a warrant. I think it was prior buys
14 with -- I can't think the -- the police said -- I don't
15 recall. It would help if I had the search warrant in
16 front of me. But -- but that prior buys, with the
17 police kind of hiding in the bushes, looking at their
18 confidential informant. At least going to the area
19 where they make the buys. And I believe that the
20 confidential informant claimed that it was Mr. Frazier
21 that he made the buys from. Then, on that basis, they
22 got a search warrant for the car; executed the search
23 warrant on the car; and like I said before, they kind of
24 found the drugs.

25 Q Okay. Do you recall what your strategy was

1 defending Mr. Frazier?

2 A I mean, I think it was that he just happened to be
3 in the car, the mere presence.

4 Q Okay. And do -- you planned on attacking the
5 search?

6 A Yes.

7 Q And you did attack the search, correct?

8 A I -- I challenged the search warrant. I believe I
9 did, yeah.

10 Q Do you recall why you -- what the basis for the
11 challenge was?

12 A I don't recall.

13 MR. JOHNSON: I'm going to object. Anything about
14 the search warrant was taken care of in the direct
15 appeal. I've got the Court of Appeals argue -- the
16 order right here, stating that, yeah, the trial court
17 error denying his motion to suppress evidence found
18 during the execution of the search warrant, which
19 Frazier alleges is facially insufficient to establish
20 probable cause. That is a direct appeal under *Ashley*
21 *versus State* and *Simmons versus State*. It is not proper
22 for this PCR forum, your Honor.

23 MR. SHAFFER: And your Honor, I would suggest that
24 one of the issues was brought up there. He actually had
25 the three different ways. The direct appeal apparently

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1 only addressed two of them. And it appears, from the
2 opinion, it was a -- it wasn't a full opinion. It was
3 unpublished, but it appears that it only addressed two
4 of them. I also believe that, you know, obviously I
5 understand the precedent and the citing, but I think
6 that, you know, the statute -- the PCR statute itself,
7 on its face, would allow me to bring the claim. And I
8 understand the previous rulings of the Supreme Court
9 related to that. But if I -- if the statute itself says
10 that I can bring any -- or any violation of a
11 constitutional right, I think I should be able to at
12 least explore it here.

13 MR. JOHNSON: And your Honor, it sounds like that
14 -- if appellate counsel didn't brief one of the issues,
15 that's ineffective assistance of appellant counsel
16 argument, which is not pled in this case.

17 THE COURT: I guess that's what you're saying. Is
18 it?

19 MR. SHAFFER: Your Honor, I actually would not go
20 that far. I just wanted to explore and talk to him --
21 or ask him about what his preparation was, essentially,
22 related to it. But that being said, there could be
23 appellate counsel issue in this, assuming that -- I
24 wasn't planning on arguing the appellant counsel issue,
25 to be honest with you, your Honor. The appellate

1 counsel -- one of the issues that he argued, your Honor,
2 just for clarification, so you'll understand what I'm --

3 THE COURT: I've read the transcript.

4 MR. SHAFFER: He argued the -- the reliability of
5 the confidential informant, the lack of probable cause.
6 He also argued the time frame, which didn't seem to be
7 addressed by appellate counsel at any point. I wasn't
8 actually planning on raising that issue here today. I
9 just wanted to basically question him about it.

10 THE COURT: Overrule the objection. Go ahead,
11 then. Let's see what you got to say.

12 IAN DEYSACH, CONTINUE DIRECT EXAMINATION

13 BY MR. SHAFFER:

14 Q Do you recall the nature of your attacks on the
15 search warrant?

16 A I knew to -- to some degree. You know, as you're
17 mentioning time frame, I think I remember the nature of
18 the time frame attack, if that's what you wanted to ask.

19 Q Okay. Did you discuss these attacks with Mr.
20 Frazier prior to trial?

21 A I believe so.

22 Q Okay. Do you know if there was -- if he was
23 willing to plead guilty or not.

24 MR. JOHNSON: Objection, your Honor. That is not
25 one of the claims of whether or not there's a plea offer