

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY EMMENUEL GREENE,

APPELLANT

APPELLATE CASE NO 2016-001123

RECORD ON APPEAL

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SC Court of Appeals

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State of South Carolina.,) In the General Sessions
) Court of York
)
 County of York.) Case No.: 2015-GS-46-03033
) 2016-GS-46-01120

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Timothy Emmenuel Greene.,)
)
 Defendant.)

May 17, 2016
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, judge.

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 To the Honorable John C. Hayes, III

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Reporters' Note: All Exhibits were filed with the York County Clerk of Court's Office.

1 (COURT IN SESSION, TUESDAY, MAY 17, 2016 AT 09:41 AM.)

2 (JOSEPH WILLIAM SWINFORD PLEA WITH GARY LEMEL.)

3 (COURT IN SESSION IN THE MATTER OF STATE VERSUS
4 TIMOTHY EMMENUEL GREENE AT 09:46 AM.)

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

6 SOLICITOR HAMILTON: May it please the court, your
7 Honor.

8 THE COURT: Yes, ma'am.

9 SOLICITOR HAMILTON: This is going to be the trial of
10 Timothy Emmenuel Greene Warrant or Indictment Number 2016-
11 GS-46-0-1-1-2-0. He is charged on that indictment for
12 possession of a marijuana second offense. This is a direct
13 indictment in which he hasn't been formerly arraigned on,
14 your Honor. This was - This indictment was True Billed on
15 April 21st, 2016. He has plead not guilty to that
16 indictment.

17 An indictment on Timothy Emmenuel Greene 2015-GS-46-
18 0-3-0-30 is for possession of a controlled substance second
19 offense specifically for Xanax. It was True Billed October
20 22nd, 2015 and the defendant has also pleaded not guilty to
21 these indictments.

22 THE COURT: The indictment says alprazolam.

23 SOLICITOR HAMILTON: Xanax and alprazolam.

24 THE COURT: They're the same thing?

25 SOLICITOR HAMILTON: Correct.

1 THE COURT: All right, Ms. Russo, do you represent Mr.
2 Greene?

3 MS. RUSSO: Yes, your Honor.

4 THE COURT: Do you have any matters before we get the
5 jury up?

6 MS. RUSSO: I do have some Motions in Liming. I don't
7 know if you want to take up those before or after the jury.

8 THE COURT: Let's do it now. If you'll hand that up
9 and any request to voir dire.

10 MS. RUSSO: Yes.

11 (DOCUMENTS RECEIVED UP BY THE COURT.)

12 THE COURT: Have you given Ms. Hamilton a copy of
13 this?

14 MS. RUSSO: Yes, your Honor.

15 THE COURT: All right. The first is -- These are
16 pretty standard so we're gonna go through them with some
17 repetity but not over looking anything or giving short
18 shrift to anything. Number One, discovery motion.

19 Has the state complied with discovery?

20 SOLICITOR HAMILTON: We have, your Honor.

21 THE COURT: Prior record of Mr. Greene as impeachment
22 purposes.

23 SOLICITOR HAMILTON: It's two crimes of dishonesty
24 from 2007; a grand larceny and a petty larceny. That's it.

25 THE COURT: 2007. Okay. What about the petty

1 larceny? Carries of course less than a year and your
2 position is that it's a crime of moral turpitude or

3 SOLICITOR HAMILTON: Dishonesty as to his credibility,
4 your Honor.

5 THE COURT: I know. It would be -- Okay.

6 Any objection?

7 MS. RUSSO: No objection, your Honor.

8 THE COURT: All right. Criminal history. That
9 witness looks like --

10 SOLICITOR HAMILTON: Your Honor, I'm sorry. We have
11 two felonies that carry over a year. 2007 burglary third
12 and 2006 burglary second non-violent.

13 THE COURT: All right, so you got the petty larceny;
14 grand larceny and two burglaries?

15 SOLICITOR HAMILTON: Yes, your Honor.

16 THE COURT: Okay. All right. Witness list and the
17 records. I saw the list a moment ago and it looks like
18 it's all law enforcement.

19 SOLICITOR HAMILTON: We just have law enforcement. We
20 don't have any records to hand over.

21 THE COURT: Okay. Motion to sequestration. That will
22 be granted reciprocally. Any Lyle testimony?

23 SOLICITOR HAMILTON: Nothing, your Honor, from the
24 State.

25 THE COURT: Any need for a Jackson versus Denno?

1 SOLICITOR HAMILTON: We do, your Honor.

2 THE COURT: Okay. We'll do that after we draw the
3 jury and not swear 'em. All right, number seven. Tell me
4 about that, Ms. Hamilton.

5 SOLICITOR HAMILTON: What we are anticipating our
6 officers to say what they believe to be -- what they
7 believe to be marijuana.

8 THE COURT: No. Well this has to do with alprazolam
9 and Xanax.

10 SOLICITOR HAMILTON: Yes, that is - It's marijuana.

11 THE COURT: I understand that but are you -- go ahead.

12 SOLICITOR HAMILTON: We just were anticipating when he
13 gets on the stand when we question our officer about the
14 Xanax alprazolam. The chemical name is alprazolam. He
15 would state we saw what we believed to be alprazolam based
16 on his experience in law enforcement, your Honor.

17 THE COURT: Ms. Russo, any --

18 MS. RUSSO: Your Honor, in this case the Xanax was
19 actually chemically tested; it wasn't just identified by
20 the chemist based on any prints or anything like that. It
21 would be inappropriate to have the officers testify what
22 they believe it to be when they are not chemist. They
23 haven't chemically it. They don't know for sure what it is
24 since drugs can be imprinted onto other drugs.

25 THE COURT: How can they tell that what -- On what do

1 they base their belief that this is Panax?

2 SOLICITOR HAMILTON: Based on their experience in law
3 enforcement working on the Drug Enforcement Unit for how
4 many number of years he's worked on the Drug Enforcement
5 Unit. We will put that out once he gets on the stand as to
6 his experience. And additionally we will be putting up a
7 chemist stating what these drugs are.

8 THE COURT: Well I'll allow them to testify as to what
9 their belief as to what it was.

10 MS. RUSSO: Thank you, your Honor.

11 THE COURT: Of course there is no proof that it was
12 and that's not relevant. All right, same thing with
13 marijuana.

14 I'm assuming you're gonna do the same thing with
15 marijuana.

16 SOLICITOR HAMILTON: Yes, your Honor.

17 THE COURT: Okay. All right, I'm gonna allow that.

18 All right, so we have Jackson versus Denno after we
19 draw the jury.

20 MS. RUSSO: Your Honor, I do have one other matter.

21 THE COURT: Okay.

22 MS. RUSSO: I just wanted to at least stipulate to
23 jurisdiction on the marijuana second offense if there's no
24 mention of Mr. Greene's prior offense on the marijuana
25 charge or the alprazolam.

1 SOLICITOR HAMILTON: No. We have specifically told
2 the officers not to mention that they do not have the
3 option.

4 THE COURT: Now, you've also got request to char --
5 I mean with the voir dire request from the State first.

6 I of course will ask number three. I will ask some
7 form -- I'll ask one and two in some sort of form about
8 drugs involvement. As to the defense any objection to any
9 of those, Ms. Hamilton? I'm not gonna ask number two. I
10 will ask one, three. Four I will again ask that kind of
11 wrapped up with one and two of the state's. I won't ask
12 number five. I will ask six. Anything else?

13 SOLICITOR HAMILTON: Nothing from the state, your
14 Honor.

15 THE COURT: Ms. Russo?

16 MS. RUSSO: Nothing from the defense.

17 THE COURT: All right. Let's get us a jury panel up.
18 The strikes are five and five.

19 Ms. Russo, this is probably isn't important concerning
20 not questioning the jury but I noticed that Mr. Cameron
21 Greene does not have an E on the - on the end of his name.
22 I didn't know if he was a relative of this Mr. Greene.

23 MS. RUSSO: He is. He's Mr. Greene brother and that
24 should have an E on the end. We don't expect him to
25 actually testify.

1 THE COURT: Beg pardon.

2 MS. RUSSO: We don't actually expect him to testify.

3 THE COURT: But you want me to ask the jury anyway?

4 MS. RUSSO: Yes.

5 THE COURT: And it really doesn't matter. I guess
6 Greene is Greene but I mean when you say it not when you
7 look at it on a piece of paper. A jury's not gonna be
8 looking at it on a piece of paper.

9 The jury's not supposed to be 'till ten so I'm just
10 gonna ask the Clerk to let me know when we're ready to
11 bring the jury panel up. And go ahead and bring 'em up
12 when we're ready; just keep me informed.

13 That's fine. Thank you.

14 (COURT IN RECESS AT 09:56 AM.)

15 (JURY ENTERS COURTROOM AT 10:03 AM.)

16 (COURT BACK IN SESSION AT 10:08 AM.)

17 THE COURT: Thank you. You may take your seats.

18 Members of the jury panel, I'm John Hayes along with
19 Judge Burch I'm holding court here this week. I am from
20 Rock Hill; this is my permanent home although we travel all
21 over the state. This is Alexis Glitch, my law clerk over
22 here to my left.

23 We're getting ready to start the first trial in this
24 courtroom for the week and that is the case of the State
25 versus Timothy Emmenuel Greene.

OFFICER DAVID VAUGHN: DIRECT BY SOLICITOR HAMILTON
JACKSON V. DENNO

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1 own mind. I'll have some further instructions to give you
2 when you come back in after we take up a legal matter.

3 So I'm gonna let you go to the jury room at this time
4 and we'll send for you as promptly as we can. And you
5 don't need to take notes.

6 (PETIT JURY EXITS COURTROOM AT 10:29 AM.)

7 THE COURT: All right, you got a *Jackson versus Denno*
8 matter, you want to call your first witness?

9 SOLICITOR HAMILTON: Thank you, your Honor.

10 The State calls Officer Vaughan.

11 (WHEREUPON, DAVID VAUGHN
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 THE COURT: All right, you may proceed.

14 DIRECT EXAMINATION

15 OFFICER DAVID VAUGHN BY SOLICITOR HAMILTON:

16 Q. Officer Vaughan, could you please state your full
17 name for the record?

18 A. David Timothy Vaughn.

19 Q. And on -- When did you have contact with the
20 defendant Mr. Timothy Greene?

21 A. It was on July 15, 2015.

22 Q. What were the cir -- Or what year? I'm sorry.

23 A. 2015.

24 Q. What were the circumstances of you coming in contact
25 with him?

1 A. We went to the residence to place Cameron Greene
2 under arrest for some outstanding warrants.

3 Q. And at that time was that when you made contact with
4 Mr. Greene?

5 A. Yes.

6 Q. And did you interview the defendant at some time on
7 that date?

8 A. I did.

9 Q. And was anyone else from law enforcement with you?

10 A. Yes.

11 Q. Okay. Who was that?

12 A. Officer Suchenski and Officer McGarity.

13 Q. And where did this interview take place?

14 A. It took place in the living room at the residence.

15 Q. And what was the date of that interview?

16 A. July 15th.

17 Q. Could you tell us a little bit about the environment
18 that this took place? How many people were present total?

19 A. Uh -- For that particular incident it was myself,
20 Officer Suchenski, Officer McGarity, Mr. Greene and his
21 brother and another female.

22 Q. And was anyone pointing a weapon at the defendant?

23 A. No.

24 Q. Anyone threatening the defendant?

25 A. No.

OFFICER DAVID VAUGHN: DIRECT BY SOLICITOR HAMILTON
JACKSON V. DENNO

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1 Q. Were people nice to him?

2 A. Yes.

3 Q. Was he handcuffed?

4 A. Yes.

5 Q. Did he appear to be clear headed and sober?

6 A. Yes.

7 Q. Did he appear to be hurt or injured?

8 A. No.

9 Q. Did he appear to be reasonably intelligent and
10 understand what you were saying to him?

11 A. Yes.

12 Q. Did anyone make any promises to him in order to get
13 him to talk?

14 A. No.

15 Q. Did you read him his rights according to Miranda?

16 A. I did.

17 Q. And do you have a card that you read from or do you?

18 A. I have a card that I read from.

19 Q. Okay. Please tell us his rights as you read them to
20 him that day.

21 A. "You have the right to remain silent anything you say
22 can and will be used against you in a court of law. You
23 have the right to talk to a lawyer and have them present
24 with you while you're being questioned. If you cannot
25 afford to hire a lawyer one will be appointed to represent

1 you before any questioning if you wish. You can decide at
2 any time to exercise these rights and not answer any
3 questions or make any statements."

4 Q. Did he indicate he understood those rights?

5 A. Yeah. After I read him his rights there is another
6 two questions we ask them. We ask do you understand each
7 of these rights that we explained. And then we ask them
8 having these rights in mind do you wish to speak with us.

9 Q. And what was his response to those questions?

10 A. Yes to both of 'em.

11 Q. And did he waive those rights and agree to talk with
12 you?

13 A. Yes.

14 Q. Did you actually interview him and talk with him
15 about the incident?

16 A. I did..

17 Q. And he told you his story?

18 A. Yes.

19 Q. And, I ask you one more time, did anyone make any
20 threats or promises to him in any way to get him to speak
21 to you?

22 A. No.

23 Q. To give a statement?

24 A. No.

25 Q. Can you please tell the court what he said?

OFFICER DAVID VAUGHN: DIRECT BY SOLICITOR HAMILTON
CROSS BY MS. RUSSO
JACKSON V. DENNO

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1 A. The drugs that Officer Suchenski found in the bedroom
2 Timothy Greene advised that the drugs were his.

3 SOLICITOR HAMILTON: Your Honor, that's the proffer
4 from the State.

5 Please answer any questions the defense has.

6 CROSS-EXAMINATION

7 OFFICER DAVID VAUGHN BY MS. RUSSO:

8 Q. Did you threaten Mr. Greene in any way?

9 A. No.

10 Q. Did any other officer threaten him in any way?

11 A. No.

12 Q. You said their weapon was pointed at him. Was anyone
13 holding a weapon at the time of the questioning?

14 A. No.

15 Q. Were weapons on your person or any other officer's
16 person?

17 A. Yes.

18 Q. Did you or any other officer have a taser at that
19 time?

20 A. No.

21 Q. Was it out or pointed? No taser on your person?

22 A. No taser.

23 Q. Okay. That other time?

24 A. No.

25 Q. You said several of the people were present in the

OFFICER DAVID VAUGHN: CROSS BY MS. RUSSO
JACKSON V. DENNO

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1 house at that time. Correct?

2 A. Correct.

3 Q. Was it all the occupants of the house during the
4 incident were there in the living room during questioning?

5 A. Yes.

6 Q. And that was Mr. Cameron Greene the defendant's
7 brother?

8 A. Yes.

9 Q. The defendant himself?

10 A. Yes.

11 Q. Ms. Heather Messer?

12 A. I don't recall their names.

13 Q. Okay. But there were two other women in the house.
14 Right?

15 A. I believe so.

16 Q. Okay. Did you ask any of them if the drugs belonged
17 to him?

18 A. No.

19 Q. Did you question Mr. Timothy Greene at all before he
20 was Mirandized?

21 A. I don't recall.

22 Q. So you located the drugs and arrested him immediately?

23 A. No. Go back to your first question. Before we
24 searched the residence we ask what room belonged to who.

25 Q. Okay.

OFFICER DAVID VAUGHN: CROSS BY MS. RUSSO
JACKSON V. DENNO

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1 A. At that time Timothy said this room is mine. Cameron
2 said this room is mine. At that point Officer Suchenski
3 searched the bedroom located the illegal drugs. We placed
4 him under arrest. After we ask him were they his drugs
5 read him his Miranda rights ask him if they were his drugs
6 again. He said yes they were his drugs.

7 Q. So just so I have it right. After you found the
8 drugs you ask him and then Mirandized him and then ask him
9 again?

10 A. Correct.

11 Q. Okay. Did you find out where the third person who
12 lived in the house stayed, in which bedroom she stayed in?

13 A. I did not.

14 Q. Did this Mr. Greene the defendant did he ever identify
15 the drugs?

16 A. I don't recall.

17 Q. Okay. Did he ever indicate that he had knowledge of
18 where the drugs were located?

19 A. I don't recall.

20 Q. Okay. At that point before you Mirandized him was
21 Mr. Greene free to leave?

22 A. He was.

23 Q. So he could have walked out of the house and you
24 would not arrested him and not taken him in at that point?

25 A. Yes.

OFFICER DAVID VAUGHN: CROSS BY MS. RUSSO
JACKSON V. DENNO

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1 Q. Prior to Miranda?

2 A. Correct.

3 Q. Okay. Even though you found the drugs located in
4 what you believed to be his bedroom?

5 A. Before we found the drugs he was free to go.

6 Q. Okay.

7 A. After he said that's his bedroom we found drugs. We
8 ask if the drugs were his at that point he would be
9 detained because of the drugs.

10 Q. Okay. So you find the drugs in his bedroom you ask
11 him if their his and he says yes. Then you Mirandize --

12 A. I place him under arrest then I Mirandize him.

13 Q. Okay. You place him under arrest Mirandized him and
14 ask him again. So was he free to leave between when you
15 found them and when you first ask him whether those were
16 his drugs?

17 A. He could.

18 Q. Okay. And you would let him go at that point?

19 A. Yes.

20 Q. All right.

21 MS. RUSSO: I have no further questions. Thank you.

22 THE COURT: Any redirect?

23 SOLICITOR HAMILTON: No, your Honor.

24 THE COURT: All right, you can step down.

25 Any further witnesses.

1 (WITNESS LEAVES WITNESS STAND.)

2 SOLICITOR HAMILTON: Not from the State, your Honor.

3 THE COURT: Ms. Russo, do you have any witnesses on
4 behalf of Mr. Greene?

5 MS. RUSSO: If I can have just one moment, your Honor.

6 (PAUSE AT 10:39 AM.)

7 MS. RUSSO: No further witnesses, your Honor.

8 THE COURT: All right. What's the position of the
9 Defense?

10 MS. RUSSO: Your Honor, I believe that they questioned
11 Mr. Greene before Miranda getting the answers that they
12 want and then asking that exact same question after
13 Miranda. At that point the officer says that he was free
14 to leave. I think there is a question there whether he
15 would have been free to leave since they had based the
16 evidence on why they arrested him and why they questioned
17 him alone on the fact that that was his bedroom and the
18 drugs were located in that area. I have questions about
19 whether he was truly free to leave at that point. I think
20 it would be inappropriate for them to question him,
21 Mirandize him, and ask him the exact same question. I
22 would ask that we suppress the statement made both before
23 and after Miranda.

24 THE COURT: Well he wasn't in custody as I understood
25 his testimony.

1 MS. RUSSO: That was the testimony, your Honor.

2 THE COURT: All right. Well I find that the statement
3 is admissible. I find it was freely voluntarily knowingly
4 made after Mr. Greene freely voluntarily and knowingly and
5 understanding he waived his rights and provided under
6 *Miranda* and under the *Fifth and Sixth Amendments* of the
7 *Constitution of the United States*.

8 I find that by a preponderance of the evidence, of
9 course the jury will weigh the same matter based on the
10 higher standard burden of proof of beyond a reasonable
11 doubt. The jury must determine that the statement was
12 freely voluntarily and knowingly given before they could
13 consider it. I find that the statement was given after Mr.
14 Greene had been advised of his right to remain silent;
15 advised that any statement he made could be used in court
16 against him. That he had the right to have an attorney
17 present; if he could not afford one one would be appointed
18 to represent him. That he could exercise his rights at any
19 time. I find that Mr. Greene then indicated he understood
20 these rights and agreed to talk being freely voluntarily
21 and knowingly.

22 The evidence indicates there was no coercive conduct
23 or weapons, no threats, no promises; that Mr. Greene
24 appeared to be clear headed and sober and was not afflicted
25 by any injuries, seemed to be reasonably intelligent and

1 AT 10:52 AM.)

2 THE COURT: You can be seated. Members of the jury
3 panel, I'm gonna talk with you for just a few moments now.
4 After I get through the State and the Defense have the
5 right but no obligation to come before you to make opening
6 statements. And I remind you first that Mr. Greene is
7 presumed innocent of the two charges against him. He does
8 not have to prove his innocence, he is by law presumed
9 innocent and the State must prove his guilt beyond a
10 reasonable doubt before you could convict him of either of
11 these offenses.

12 The attorneys will come before you in a few moments
13 and have the opportunity but again no obligation to make
14 opening statements. These opening statements are simply
15 outlines or blue prints of the trial. They are not
16 evidence and they are not arguments. They are not at this
17 time the attorneys are not trying to convince you of a
18 certain verdict. They will at the end of the trial have an
19 opportunity after you've heard the evidence to appear
20 before you and argue why your verdict based on the law as I
21 charge it should be a certain verdict. That's not what
22 they're doing at this time. They're just giving you more
23 information about what they expect the trial to be about.

24 I've already -- I have three primary jobs in a trial
25 such as this. One is, I am the logistics person. I make

1 sure we take breaks, I make sure that you can hear what you
2 need to hear and see what you need to see. Along those
3 lines if you can't hear or you can't see what you need to
4 hear or see let me know. Cup your ear, give me a voice
5 raising gesture, a nudging gesture. It's not fair to ask
6 you to resolve this matter and not give you the opportunity
7 to see and hear those things you need to see and hear.

8 I already told you -- Well let me go back. I am the
9 logistics person. I make sure we take breaks; that one
10 person's speaking at the time; that you can see, those kind
11 of things. I also have the responsibility to rule on
12 questions of admissibility of evidence. If one side
13 believes certain evidence should be admitted into the
14 record for your consideration and the other based on some
15 legal principle believes the evidence is not admissible I
16 have to rule on that.

17 My third job is that I am the sole judge of the law in
18 this case. I'm giving you some legal principles now; I may
19 during the trial give you some and at the end of the trial
20 I'll give you a concise and comprehensive charge on the law
21 that you are to apply to the facts as you determine them to
22 be in this case. You're not to infer from anything I say
23 or do at any time during this trial as being an indication
24 of an opinion of mine on the facts. Our law does not allow
25 a trial judge to express or even formulate an opinion on

1 the facts. That is solely your job. It is solely your job
2 to examine the evidence give to the evidence the effect the
3 value the weight and truth you believe it should have.

4 In doing this you may believe one witness opposed to
5 several; several witnesses opposed to one. You may believe
6 all part or none of a witness's testimony. In analyzing
7 the evidence use your common sense, your sense of logic,
8 your sense of reason, your experiences in life. As judges
9 of the facts you necessarily must judge the credibility;
10 that is, the believability of the witnesses who testify.
11 In accessing believability use the things I talked about;
12 use the things that you find in your day to day life as
13 indicators of truthfulness. And you can use certain
14 evaluators: A witnesses demeanor, how they act on the
15 stand; are they hesitant or straightforward. Is their
16 testimony consistent or inconsistent. Consider the
17 opportunity a witness had to know those things to which the
18 witness testified. And you can consider a witness has any
19 reason to help or hurt one side or the other. That is, any
20 bias or prejudice.

21 Consider all these things, determine the true facts,
22 apply the law and your verdict will speak the truth.

23 I've already told you not to discuss the case or try
24 to make up your own mind until I instruct you to jointly
25 deliberate and return a unanimous verdict. Do not let

1 anyone discuss this case with you outside the courtroom.
2 If anyone tries to discuss this case with you tell them you
3 cannot as you are a seated juror. And if they persist in
4 discussing the case with you report that back to me
5 hopefully giving me the identity of anyone who tries to
6 discuss this case with you.

7 I do not know that this case will receive any news
8 coverage but if it does do not let yourself be exposed to
9 it. Don't read, listen, or watch anything that could
10 remotely deal with this trial. Do not do any independent
11 research. Particularly do not go to any electronic or
12 media device such as Google or anything like that to obtain
13 any information about Mr. Greene; about the Solicitor,
14 about me, about the attorneys, about the trial. You have
15 to be restricted to making your decision based on what you
16 see and hear here in this courtroom so don't access any
17 information, any electronic or digital devices while you
18 are on the jury.

19 Do not even go on line to some social network simply
20 to say, hey, guess what? I'm serving on a jury. That
21 sounds manocious enough but somebody may reply or respond
22 by saying something that would not be helpful to a juror
23 sitting on a jury so just stay away from that. This case
24 will take maybe today and into tomorrow but it is not a
25 very long case so please adhere to that admonition.

1 If you need a break at any time just raise your right
2 hand and with no questions ask we'll take a break. We take
3 breaks about every hour and a half. I find that's a good
4 break time but we do not want anyone to be in discomfort.
5 Hard to pay attention if you are so if you need a break
6 raise your right hand and we'll take a break. And I extend
7 that to counsel and Mr. Greene.

8 We'd like to move the case along but we're not in such
9 a hurry that we won't take a break if we need it. Please
10 pay close attention.

11 Ms. Berry, you will be the Forelady of the jury. You
12 will preside over the deliberations, write the unanimous
13 verdict of the jury and be the liaison between myself and
14 the jury during the trial.

15 Counsel.

16 SOLICITOR HAMILTON: May it please the Court, your
17 Honor.

18 THE COURT: Yes, ma'am.

19 OPENING STATEMENT BY SOLICITOR HAMILTON:

20 SOLICITOR HAMILTON: Good morning, ladies and
21 gentlemen. We're here today because the defendant Mr.
22 Timothy Greene is charged with possession of alprazolam
23 which is also known as Xanax and possession of marijuana.

24 On the night of July 15th, 2015 the defendant who was
25 living at [REDACTED] Woodland Heights officers went to that

1 residence to serve outstanding warrants on the defendant's
2 brother Mr. Cameron Greene. Upon coming to that residence
3 officers made contact with the defendant Mr. Timothy
4 Greene. They were given consent to search that residence
5 in which he did live there with his brother.

6 You will hear from Officer Vaughn that the defendant
7 gave consent, verbal and written, to search that residence.
8 Additionally he stated what bedroom was his. So Mr.
9 Timothy Greene pointed out the bedroom in which he stayed
10 in. You will also hear from Officer Suchenski from the
11 DEU, the Drug Enforcement Unit of York County and he will
12 state that he searched the defendant Mr. Timothy Greene's
13 bedroom and he found in that bedroom three alprazolam
14 pills. As I said it is also called Panax. And also found
15 some marijuana in that bedroom.

16 He was questioned about those drugs and ask if those
17 drugs were his and he stated yes. Last you will hear from
18 Cynthia Mitchum. She is our forensic chemist here in York
19 County. She will get on the stand and she will testify
20 that those pills tested positive for alprazolam that were
21 seized from the defendant's bedroom. And the marijuana
22 seized from the defendant's bedroom tested positive for
23 marijuana. A simple case, ladies and gentlemen.

24 Now those are the facts and we'll go over them all
25 with you. The judge will charge you at the conclusion of

1 the case on the law to apply and I'm just gonna summarize
2 what we're gonna be dealing with today. Again the
3 defendant is charged with possession of a controlled
4 substance which is alprazolam in this case. And possession
5 of marijuana.

6 Now there are three basic requirements for each of
7 those crimes. The defendant is in knowing actual or
8 constructive possession of those drugs. Now actual
9 possession is when you actually have that object in your
10 hand. You have physical contact with that object. That's
11 not what we're dealing with in this particular case. What
12 we are dealing with is constructive possession.

13 Now constructive possession is when there is no
14 physical contact with that object but the person has the
15 ability to exercised dominion and control over that object.
16 In this case the drugs. I just want to give you an example
17 of constructive possession. Say you're sitting at a table
18 in a restaurant. You have your cell phone and you lay your
19 cell phone down on the table on the other side of the
20 table. You have constructive possession of that cell phone
21 because even though you don't have physical contact with
22 that cell phone you have the ability when that phone rings
23 to exercise dominion and control over that item.

24 So when that phone rings even though you don't have
25 actual physical contact with it you can reach over and you

1 can pick that phone up and that's what we are doing in this
2 case. Constructive possession case in which the defendant
3 had these drugs in his bedroom knew he had these drugs in
4 his bedroom and exercised dominion and control over those
5 drugs. Constructive possession.

6 So then we also have to prove the second element that
7 these were in fact illegal drugs. Marijuana being one and
8 alprazolam. And as I stated before Ms. Mitchum, she will
9 get on the stand and testify that these were -- tested
10 positive for that controlled substance.

11 Now as to the third element. In this case there has
12 never been a valid prescription for marijuana so that's not
13 something that we do have to prove. But in regards to the
14 alprazolam we do have to prove that he had that without a
15 valid prescription. Those are the three elements, the
16 alprazolam, the two elements constructive possession of
17 marijuana of the charge.

18 Now it's my burden as the State to prove beyond a
19 reasonable doubt that the defendant committed these crimes.

20 That he unlawfully possessed these pills and the
21 marijuana. Now beyond reasonable doubt is not beyond any
22 and all doubt. It's not one hundred percent certainty.

23 Proof beyond a reasonable doubt is proof that leaves
24 you firmly convinced of the defendant's guilt.

25 So ladies and gentlemen, I ask that you listen to all

1 the evidence presented to you today throughout this trial.
2 At the close of this case I will stand back before you and
3 I will ask that you come to verdict that speaks the truth
4 in this case and find the defendant guilty of possession of
5 a controlled substance specifically alprazolam in this case
6 and possession of marijuana. Thank you.

7 THE COURT: Ms. Russo.

8 MS. RUSSO: May it please the court, your Honor.

9 OPENING STATEMENT BY MS. RUSSO:

10 MS. RUSSO: Thank you ladies and gentlemen of the
11 jury, for being here today. You are the most important
12 piece of the judicial process. The most important
13 mechanism that we have. I love juries because when they
14 come in they are made up of all sorts of different people
15 who have all sorts of different life experiences. And when
16 you walk through that courthouse door in the morning or
17 after lunch or perhaps even tomorrow or later this week,
18 you don't leave those experiences at the courthouse door.

19 You bring them with you and you bring them into the
20 jury room. And when you discuss this case and the facts of
21 this case then you discuss it back in the jury room once
22 the case is over you're gonna discuss it knowing all of
23 your different life experiences. Don't forget about those.
24 Don't forget about the common sense that you bring with you
25 and all those experiences that you bring with you.

1 It's gonna help you make sense of this case; of the
2 testimony in the case and what makes sense in this case.
3 You are the first check against the power of the State.
4 Because the State has the power to charge individual
5 citizens or people in its jurisdiction with a criminal
6 charge. And that's why we're here today because Mr. Greene
7 has been charged.

8 And those charges are not evidence in this case. They
9 don't raise the level of proof or anything like that.
10 They're just a mechanism to bring him into court. A
11 mechanism that the State uses its power to bring people
12 into court to answer for certain charges. And because they
13 have that amazing power there are certain checks against
14 them. You are the first one. And I think the most
15 important one because you are made up of individual people
16 who are going to bring those life experiences in who have
17 common sense and who are gonna look at these charges very
18 carefully knowing that it's a fellow citizen on trial.

19 The second check against the power of the state is the
20 fact that when Mr. Greene walked through those courthouse
21 doors this morning he was innocent. As he sits there now
22 he is innocent. Mr. Greene is innocent until and if the
23 State can prove him guilty. That's not just something we
24 say; it's not just something you see on TV. That's a real
25 check against the power of the state that Mr. Greene up

1 until the end of this trial if the state can prove it he
2 remains innocent until that point.

3 The third check is that the State must prove him
4 guilty beyond a reasonable doubt if they can. And he is
5 entitled to the benefit of any reasonable doubt in this
6 case. If there is a doubt and it's reasonable and you are
7 not sure he is entitled to the benefit of that reasonable
8 doubt because that's another check on that amazing power of
9 the State to bring people in to answer for charges.

10 You're gonna hear a lot of testimony in this case.
11 There may not be a lot of physical evidence but you're
12 going to be judging whether what you hear from this stand
13 is true; whether it's complete and what you think actually
14 happened. That's why we bring jurors in because you are
15 the fact finders. You determine what you think actually
16 happened in this case. Not me, not the solicitor, not the
17 judge. The judge will determine the law; he will tell you
18 when to take breaks and when to eat lunch. And you may not
19 feel like the most important people in the room but as fact
20 finders you are. And I urge you to take that role very
21 seriously. I urge you to take a close look at this
22 testimony. That's all anyone can ask of you. To take a
23 close look at everything that is presented to you in this
24 case and ask yourselves if you think it's true; if you
25 think it's reasonable and what you think actually happened.

OFFICER MARK SUCHENSKI: DIRECT BY SOLICITOR HAMILTON

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1 Until the state can prove to you beyond a reasonable doubt
2 that Mr. Greene is guilty he remains innocent. And once we
3 come together again at the close of this case we will take
4 a close look at what that evidence actually is. What was
5 actually presented to you and what's missing. All of those
6 things. And at that point when there is not enough
7 evidence to rise to the level of beyond a reasonable doubt
8 I will ask you to find Mr. Greene not guilty. Thank you.

9 THE COURT: All right. You may call your first
10 witness.

11 SOLICITOR HAMILTON: The State calls Detective
12 Suchenski.

13 THE COURT: Please step up here and put your left hand
14 on the Bible and raise your right.

15 (WHEREUPON, MARK SUCHENSKI,
16 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 THE COURT: Just have a seat.

18 DIRECT EXAMINATION

19 OFFICER MARK SUCHENSKI BY SOLICITOR HAMILTON

20 Q. Good afternoon. Or good morning. Thank you for
21 being here. Could you please state your full name for the
22 record.

23 A. Mark Allen Suchenski.

24 Q. And what is your occupation?

25 A. I'm a police officer. Actually a detective with the

1 Fort Mill PD right now.

2 Q. How long have you been an officer?

3 A. A little over ten years.

4 Q. And what were you doing before you were a detective
5 at Fort Mill Police Department?

6 A. I was with the York County Multi-Jurisdictional Drug
7 Enforcement Unit.

8 Q. And how long have you been with them?

9 A. Five years.

10 Q. What type of work did you do in that position?

11 A. I worked the criminal highway interdiction and I
12 worked narcotics investigations.

13 Q. Were you employed in that capacity as a drug
14 enforcement officer July 15th, 2015?

15 A. Yes, ma'am.

16 Q. I'd like to draw your attention to that evening.

17 What were you doing around 7:00 pm on July 15th?

18 A. Myself and other drug enforcement officers went to
19 [REDACTED] Woodland Heights. We had to locate Mr. Cameron
20 Greene, outstanding warrants.

21 Q. And where is that house located? Is that York County?

22 A. Yes.

23 Q. Please describe to me how you came in contact with
24 the defendant Mr. Timothy Greene.

25 A. He was at the residence. When we went to the

OFFICER MARK SUCHENSKI: DIRECT BY SOLICITOR HAMILTON

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1 residence he was inside.

2 Q. Was he home?

3 A. He was.

4 Q. What did you do once you made contact with him?

5 A. Officer Vaughn spoke with Mr. Greene.

6 Q. What did y'all do next?

7 A. Officer Vaughn got consent from Mr. Greene to
8 search the residence.

9 Q. And did you witness that?

10 A. I did.

11 Q. And was consent given?

12 A. Yes.

13 Q. And what happened once the defendant gave consent to
14 search his residence?

15 A. I searched his room. It's on the right side of the
16 residence when you walk in.

17 Q. How did you know that was his room?

18 A. He said it was his room.

19 Q. And did you locate anything within that bedroom?

20 A. I did.

21 Q. Okay. And what did you locate?

22 A. I located a substance I believed to be marijuana and
23 another -- another substance I believed to be alprazolam.

24 Q. And you said you believed to be. So you have
25 experience in investigating drugs crimes. Correct?

1 A. Yes, ma'am.

2 Q. How many years again?

3 A. Five years on the Drug Unit and ten years total.

4 Q. And that's what you believed the substances to be?

5 A. Yes, ma'am.

6 Q. I'm sorry, could you repeat how many, what you
7 believed to be alprazolam, how many pills did you find?

8 A. There was three pills which was twelve dosage units.

9 Q. Where in the bedroom was these pills located?

10 A. They were in a -- There was an end table next to the
11 bed.

12 Q. And what type of bottle -- or what were they in
13 actually?

14 A. It was -- The pills were in a black container that you
15 couldn't see though. It almost looked like a film
16 container.

17 Q. This container was not a prescription pill bottle?

18 A. It was not.

19 Q. Was there any label on this container indicating a
20 valid prescription for these pills?

21 A. No, ma'am.

22 Q. Was there anything around indicating about a
23 prescription for these pills?

24 A. There was not.

25 Q. Okay. And where did you find the marijuana?

OFFICER MARK SUCHENSKI: DIRECT BY SOLICITOR HAMILTON

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1 A. It was in the same end table. It was in a small box.

2 Q. And this is where in the bedroom?

3 A. Next to the bed.

4 Q. What did you proceed to do once you did locate these
5 drugs?

6 A. I seized the evidence, the drugs, and maintained
7 custody and control of them and then I informed Officer
8 Vaughn that I located the drugs in the room.

9 Q. After you informed Officer Vaughn, what did you
10 proceed to do with the drugs?

11 A. I kept them in my custody and took them back to the
12 York County -- to the Moss Justice Center where I went to
13 the office, I sealed the evidence in bags and dropped it in
14 evidence.

15 Q. So from the time that you were on the scene at [REDACTED]
16 Woodland Heights to the time that you sealed these when you
17 were back at the station, they were continuously in your
18 custody and control?

19 A. Yes.

20 Q. I hand you what has been marked as State's Exhibit
21 Number One and Number Two.

22 Could you just take a look at both of those.

23 A. Uh-huh.

24 (WITNESS COMPLIES.)

25 Q. Do you recognize State's Exhibit Number One?

1 A. Yes.

2 Q. Okay. And how do you recognize that?

3 A. It's an evidence bag with my signature on it.

4 Q. If you could flip that exhibit over. Okay. And what
5 is in that bag?

6 A. Marijuana. What I believe to marijuana and a black -
7 black box it was found in.

8 Q. And is that what you found that day in the defendant's
9 bedroom?

10 A. Yes.

11 Q. And what's been marked for Identification purposes
12 State's Exhibit Number Two, could you please take a look at
13 that.

14 A. Uh-huh.

15 Q. How do you recognize that?

16 A. Evidence bag that I sealed and signed. Contains the
17 black pill container. The black container and the
18 alprazolam.

19 Q. Now is this the envelop you secured both the pills and
20 the marijuana. Those are the envelops that you secured
21 those drugs in on July 15th, 2015?

22 A. Yes.

23 Q. And once you secured the pills in the envelops what
24 did you do with them?

25 A. I dropped them in the evidence drop box.

1 Q. And did you do the same thing with the marijuana?

2 A. Yes.

3 Q. Or what you believed to be marijuana. I'm sorry.

4 So what was the condition of both envelopes when they
5 left your possession?

6 A. They were sealed and signed by me.

7 Q. And when you put 'em in that locked box, did anyone
8 else have access to that box once it was shut?

9 A. No. It was locked.

10 Q. And when did you put those in the evidence drop box?

11 A. They were dropped at 10:30 pm.

12 Q. And that's --

13 A. On the 15th.

14 Q. And that's both what you believed to be the ---

15 A. Yes.

16 Q. --- pills and ---

17 A. Yes.

18 Q. --- the marijuana were both dropped. Now do you see
19 the person in the courtroom today whose bedroom -- who
20 identified the bedroom in that house as being his and the
21 bedroom where you recovered what you believed to be the
22 alprazolam pills and the -- what you believed to be
23 marijuana?

24 A. I do.

25 Q. Would you please point to him?

OFFICER MARK SUCHENSKI: CROSS BY MS. RUSSO

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1 (WITNESS INDICATED TOWARD DEFENDANT TIMOTHY GREENE.)

2 Q. Thank you.

3 SOLICITOR HAMILTON: Thank you. Please answer any
4 questions the Defense may have.

5 MS. RUSSO: May it please the Court, your Honor.

6 CROSS-EXAMINATION

7 OFFICER MARK SUCHENSKI BY MS. RUSSO:

8 Q. Officer Suchenski, you entered the house in the first
9 place to arrest Mr. Timothy Greene's brother. Right?

10 A. Yes.

11 Q. So when you're talking about Cameron Greene that's
12 Timothy's brother.

13 A. Yes.

14 Q. How long were you outside the house before you went
15 inside?

16 A. I can't recall.

17 Q. Did you send anyone around to the back of the house
18 or surround the house in any way?

19 A. I can't recall if we did. Normally we would.

20 Q. Okay. So normally you send officers around back to
21 make sure no one comes out the back or something like that?

22 A. Yes, ma'am.

23 Q. Okay. When you knocked do you remember how long it
24 took for all the occupants to come to the door?

25 A. I don't.

OFFICER MARK SUCHENSKI: CROSS BY MS. RUSSO

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1 Q. Do you remember who arrived first?

2 A. I don't.

3 Q. Mr. Cameron Greene was present in the house at this
4 time. Right?

5 A. No. He got there -- I can't remember. He was in the
6 back bedroom I believe.

7 Q. Anyway he was in the house?

8 A. Yes.

9 Q. And Mr. Timothy Greene was in the house?

10 A. Yes.

11 Q. And there were two women in the house as well. Right?

12 A. As I recall, yes.

13 Q. Okay. And three people had to sign the -- I'm
14 sorry, you didn't handle the permission to search. Right?
15 Officer Vaughn did.

16 A. Yes.

17 Q. Okay. Was anyone else arrested at this point in time?

18 A. I don't believe so.

19 Q. So Cameron Greene was arrested on his outstanding
20 warrants?

21 A. Yes.

22 Q. Wasn't there one -- Heather Messer in the house
23 charged with possession of marijuana at this time?

24 A. I believe she was arrested at some point or charged.
25 I can't recall if it was arrested or charged.

1 Q. Okay. So she was either arrested or somebody cited
2 for ---

3 A. Cited, yeah.

4 Q. --- a possession of marijuana charge at the same
5 time as this --

6 A. Yes.

7 Q. Okay. Officer Suchenski, you're not a chemist.
8 Right?

9 A. I am not.

10 Q. So you didn't test the drugs?

11 A. I didn't.

12 Q. You don't know for certain whether they are alprazolam
13 or whether they are marijuana?

14 A. I didn't test them, no.

15 Q. Okay. You did not test them or check for that in
16 any way. Were you wearing a body camera that night?

17 A. No, ma'am.

18 Q. Did you audio record anything?

19 A. No, ma'am.

20 Q. Did you get any written statements from anyone?

21 A. I don't believe I did, no.

22 Q. Okay.

23 MS. RUSSO: Your Honor, that's all the questions I
24 have.

25 THE COURT: Redirect?

OFFICER DAVID VAUGHN: DIRECT BY SOLICITOR HAMILTON

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1 SOLICITOR HAMILTON: None from the State.

2 THE COURT: You can step down. Any reason this
3 witness cannot be excused?

4 You can be excused. Thank you.

5 (WITNESS LEAVES WITNESS STAND.)

6 THE COURT: Call your next witness.

7 SOLICITOR HAMILTON: The State calls Officer Vaughn.

8 (WHEREUPON, DAVID VAUGHN,
9 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 SOLICITOR HAMILTON: I beg the Court's indulgence.

11 DIRECT EXAMINATION

12 OFFICER DAVID VAUGHN BY SOLICITOR HAMILTON:

13 Q. Good morning. Could you please state your full name
14 for the record.

15 A. David Timothy Vaughn.

16 Q. And Officer Vaughn, what is your occupation?

17 A. I'm currently assigned to the York County Multi-
18 Jurisdictional Drug Enforcement Unit.

19 Q. How long have you been with that unit?

20 A. I've been with the Drug Unit for five years now.

21 Q. What type of work do you do in your position?

22 A. We do all kinds of things. We investigate illegal
23 gambling, prostitution; our main focus is to investigate
24 drug crime.

25 Q. And were you employed in your present capacity on

1 July 15th, 2015?

2 A. I was.

3 Q. Okay. I'd like to draw your attention to that
4 evening. What were you doing around 8=7:00 pm., July
5 15th, 2015?

6 A. Myself and other drug unit officers went to [REDACTED]
7 Woodland Heights Road in order to arrest Cameron Greene on
8 some outstanding warrants.

9 Q. And where is that house located?

10 A. It's located in York County.

11 Q. Could you please describe to us how you came in
12 contact with the defendant?

13 A. On this particular day I went to the front door and
14 knocked on the front door; knocked a couple of times and
15 eventually Mr. Timothy Greene come to the front door and
16 answered the door.

17 Q. And what did you do next once he answered the door?

18 A. I advised Mr. Greene that I had warrants for Cameron
19 Greene at this particular address. Then I ask him could I
20 come inside and get Mr. Cameron Greene.

21 Q. Okay. And what happened next?

22 A. Mr. Greene while I was coming in the residence we
23 found Cameron Greene placed him under arrest. At that
24 point we ask the homeowners for consent to search the
25 residence.

1 Q. Okay. And how -- You ask for consent. Did they give
2 you consent?

3 A. Yes they did. We got verbal consent and written
4 consent.

5 Q. I'm gonna hand you what's marked for identification
6 purposes State's Exhibit Number Three. Could you please
7 take a look at that.

8 A. Yes.

9 Q. Do you recognize that form?

10 A. I do.

11 Q. Okay. What is that form?

12 A. This is our York County Multi-Jurisdictional Drug
13 Enforcement Unit what's called permission to search form.
14 And what happens when we go to people's houses that we have
15 complaints about in reference to drugs and stuff like that,
16 we'll take this form with us and ask for consent to search.
17 And what happens we'll put the homeowner's names in there
18 and explain everything in there to 'em and if they give us
19 consent they'll sign the form saying yes I do give you
20 consent to search my residence.

21 Q. Okay. So the people that signed that form they're
22 the residents of that home?

23 A. Correct.

24 Q. Okay. And did you witness the defendant sign that
25 form?

1 A. I did.

2 Q. Okay. And do you recognize that signature on there?

3 A. I do.

4 Q. And what does this signature say?

5 A. We have a Timothy Greene on here.

6 Q. And did you sign that for too?

7 A. I did.

8 Q. And what is that; what's the date of that form?

9 A. July 15th, 2015.

10 Q. And is this the same form that was signed on July 15th
11 2015?

12 A. This is the same form.

13 Q. Okay. So no deletions, everything looks the same on
14 this form?

15 A. Yes.

16 SOLICITOR HAMILTON: Your Honor, the State would ask
17 to admit the written consent form into evidence as Exhibit
18 Number Three.

19 MS. RUSSO: No objections, your Honor.

20 THE COURT: In without objection.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE, IDENTIFIED
22 AND MARKED, RECEIVED INTO EVIDENCE.)

23 BY SOLICITOR HAMILTON:

24 Q. So once you gained consent what did y'all proceed
25 to do next?

OFFICER DAVID VAUGHN: DIRECT BY SOLICITOR HAMILTON

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1 A. What happened a few of the officers split up and the
2 officers state searching the residence.

3 Q. Okay. They started searching the residence. Did
4 anyone identify whose bedroom was who?

5 A. Yes.

6 Q. Okay. Who did that?

7 A. The general practice is before we search a house we
8 like to ask the occupants of the house whose bedroom is who
9 in case we do find anything illegal we can direct our
10 attention to the correct person. At this point I ask Mr.
11 Timothy Greene which bedroom was his. He said this one on
12 the right. If you walk in the front door of the house, I
13 mean the room to the right is his. And Mr. Cameron Greene
14 advised me the other room was his which is all the way down
15 the hall on the left.

16 Q. And once you had identified which room was whose and
17 you already identified Timothy Greene's bedroom, what did
18 you proceed to do next?

19 A. Basically what happens when we search the residence
20 and we got a few people inside the residence somebody has
21 to sit with the occupants of the house to ensure safety and
22 the other people search the house. On this particular day
23 I sit with the occupants at the residence.

24 Q. Okay. And then what happens next at this point?

25 A. Officer Suchenski was searching Timothy Greene's

1 bedroom. He advised me that he found some what he believed
2 to be illegal drugs in the bedroom.

3 Q. And then what did you do?

4 A. At this point I ask Mr. Greene was the drugs his. He
5 says yes. I sequently placed him under arrest; I read him
6 his Miranda rights. And I ask him again were the drugs his
7 that Officer Suchenski found in his bedroom. He advised
8 yes they were.

9 Q. Okay. Now you said you had given him his Miranda
10 rights. Do you have a card that you read off of to give
11 him his rights?

12 A. Yes, I do.

13 Q. Do you have that card with you?

14 A. I do.

15 Q. Could you please read that?

16 A. I will. It states, "You have the right to remain
17 silent anything you say can and will be used against you in
18 a court of law. You have the right to talk to a lawyer and
19 have him present with you while you're being questioned.
20 If you cannot afford to hire a lawyer one will be appointed
21 to represent you before any questioning if you wish. You
22 can decide at any time to exercise these rights and not
23 answer any questions or make any statements."

24 Then there's two more questions that we ask. "Do you
25 understand each of the rights I have explained to you?"

OFFICER DAVID VAUGHN: DIRECT BY SOLICITOR HAMILTON

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1 And if they say yes we'll ask them, "Having these rights in
2 mind do you wish to talk to us now?"

3 Q. And where did you read him these rights?

4 A. We was in the living room. As soon as you walk in
5 the front door the living room's right there.

6 Q. Okay. Can you please tell us a little bit about the
7 environment? Like how many people were present?

8 A. I believe it was me, myself, Officer Suchenski;
9 Officer McGarity with the Drug Enforcement Unit. Mr.
10 Timothy Greene, Cameron Greene and I believe the two
11 females were in there.

12 Q. Was anyone threatening the defendant?

13 A. Nobody threatened the defendant.

14 Q. Did anyone make any promises to him to make him make
15 any statements?

16 A. No.

17 Q. Was the defendant handcuffed?

18 A. Yes.

19 Q. Did he appear to be hurt or injured?

20 A. No.

21 Q. And you stated you ask those two questions at the end.
22 Was he able to understand what was going on and what
23 was being said?

24 A. Yes.

25 Q. Okay. And did he -- Did he indicate, Mr. Timothy

1 Greene, did he indicate that he understood the rights as
2 you have read them?

3 A. He did verbally.

4 Q. I'm sorry?

5 A. He verbally indicated. He said yes he understood his
6 rights.

7 Q. Okay. And did he decide to speak with you?

8 A. He did.

9 Q. Okay. Now what did you ask him in regards to this
10 incident?

11 A. I ask him about what Officer Suchenski found what he
12 believed to be drugs when they were found in his room did
13 the belong to him and he advised me yes they do belong to
14 him.

15 Q. Now do you see the person in the court today who you
16 told -- who told you that the drugs found in his bedroom
17 the night of July 15th, 2015 belong to him?

18 A. Yes.

19 Q. Okay. And where is he sitting?

20 A. Right there.

21 Q. And what is he wearing?

22 A. A black and white shirt.

23 Q. Okay.

24 SOLICITOR HAMILTON: I beg the Court's indulgence.

25 (PAUSE AT 11:27 AM.)

OFFICER DAVID VAUGHN: CROSS BY MS. RUSSO

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1 SOLICITOR HAMILTON: Thank you. Please answer any
2 questions the defense may have for you.

3 MS. RUSSO: May it please the court.

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION

6 OFFICER DAVID VAUGHN BY MS. RUSSO:

7 Q. Officer Vaughn, you entered the house originally to
8 arrest Mr. Greene's brother Cameron Greene. Right?

9 A. I did.

10 Q. And before you knocked at the door before you went
11 inside did you send some officers around to the back of the
12 house?

13 A. I believe we did. I believe we did.

14 Q. Okay. Do you remember how long that took?

15 A. I don't recall.

16 Q. Okay. You said that Timothy Greene answered the door
17 first?

18 A. Yes.

19 Q. How long did it take for all the occupants in the
20 house to come to the door?

21 A. I don't remember but once we knocked on the door and
22 I explained to Mr. Timothy Greene what was going on people
23 started coming out.

24 Q. Okay. And you said that Officer Suchenski was there
25 with you, Officer McGarity was there with you?

1 A. Yes.

2 Q. Wasn't Officer Clark there as well that night?

3 A. I don't recall.

4 Q. You don't remember ---

5 A. I don't remember.

6 Q. --- what officers were there? Okay. You ask and
7 you got consent to search the house on a written form?

8 A. I did.

9 Q. And you specifically took this form with you on these
10 occasions just in case you might need to search somebody's
11 residence?

12 A. I did.

13 Q. Okay. And this form is signed by three different
14 people. Right?

15 A. Yes.

16 Q. So all of the people who live in the house?

17 A. I don't know if the one individual in there lives in
18 the house.

19 Q. Okay. But Timothy Greene and Tiffany Poole, Cameron
20 Greene all signed the form?

21 A. Correct.

22 Q. And you ask Cameron and Timothy Greene where their
23 bedrooms were in the residence?

24 A. I did.

25 Q. You did not ask Tim -- Tiffany Poole?

OFFICER DAVID VAUGHN: CROSS BY MS. RUSSO

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1 A. I did not.

2 Q. Okay. So she was never questioned as to which
3 bedroom was her's or where she lived?

4 A. No.

5 Q. Okay. Now you had this form with you just in case
6 you might have to search somebody's house. You didn't
7 bring a Miranda Waiver Form for anyone to sign?

8 A. I did not.

9 Q. Okay. You didn't bring a statement sheet for someone
10 to write a written statement on?

11 A. I did not.

12 Q. So we have no written statement in this case?

13 A. We do not have no written statement.

14 Q. Okay. And you didn't bring any cameras with you that
15 night?

16 A. No cameras.

17 Q. Any audio recording devices?

18 A. No.

19 Q. And so we have no statement recorded from anyone in
20 the house?

21 A. No.

22 Q. Okay. Did you ever ask anyone else if the drugs
23 belonged to them?

24 A. I did not.

25 Q. You didn't ask Tiffany Poole?

1 A. I did not.

2 Q. You didn't ask Cameron Greene?

3 A. No.

4 Q. And Heather Messer was in the house as well. Right?

5 A. I don't remember if that was her name or not.

6 Q. Okay.

7 A. I don't.

8 Q. But the second female in the house --

9 A. There was a second female.

10 Q. And she was charged with possession of marijuana that
11 night?

12 A. She was.

13 Q. And you didn't ask her if these drugs belonged to her?

14 A. Uh -- Ask her specifically? There is a specific place
15 where the drugs were found that we knew that was hers.

16 Q. Okay. So she was charged with other drugs but you
17 didn't ask her whether the drugs ---

18 A. I did not.

19 Q. --- here belonged to her? Did you search her?

20 A. I did not.

21 Q. Were you around when she was searched?

22 A. I was not.

23 Q. Okay. Did you ask for fingerprints on the marijuana
24 or the box or the film case or the pills?

25 A. I did not.

OFFICER DAVID VAUGHN: CROSS BY MS. RUSSO
REDIRECT BY SOLICITOR HAMILTON

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1 Q. Did you ever ask for any DNA evidence to be pulled?

2 A. I did not.

3 Q. So we don't have any fingerprints or DNA?

4 A. No.

5 Q. No audio/video recording?

6 A. No.

7 Q. When you ask Mr. Greene whether the drugs were his
8 did you identify the drugs?

9 A. I don't recall.

10 Q. Did he ever identify the drugs?

11 A. I don't think so. I don't recall.

12 Q. Did he ever indicate where he -- the drugs were
13 located or that he was where the drugs were located?

14 A. He did not.

15 MS. RUSSO: I have no further questions, your Honor.

16 REDIRECT EXAMINATION

17 OFFICER DAVID VAUGHN BY SOLICITOR HAMILTON:

18 Q. Officer Vaughn, why did you not fingerprint?

19 A. We search houses and people claim the drugs; say the
20 drugs are theirs, at that point there's no sense in sending
21 off to have the analysis done or anything else because that
22 subject claimed possession of the drugs.

23 SOLICITOR HAMILTON: Thank you.

24 MS. RUSSO: Nothing further, your Honor.

25 THE COURT: You can step down. Thank you.

JIMMY STILES: DIRECT BY SOLICITOR HAMILTON

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1 DETECTIVE VAUGHN: Yes, sir. Thank you.

2 (WITNESS LEAVES WITNESS STAND.)

3 THE COURT: Call your next witness.

4 SOLICITOR HAMILTON: The State calls Jimmy Stiles.

5 THE COURT: If you'll come up here and put your left
6 hand on the Bible and raise your right.

7 (WHEREUPON, JIMMY STILES,
8 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 DIRECT EXAMINATION

10 JIMMY STILES BY SOLICITOR HAMILTON:

11 Q. Good morning.

12 A. Good morning.

13 Q. Could you please state your full name for the record.

14 A. Jimmy Floyd Stiles.

15 Q. And what is your occupation?

16 A. I work in evidence, York County Sheriff's Office.

17 Q. And what are your duties?

18 A. Duties of take in evidence, secure it, sign it in;
19 log it into the system and shelf it for storage.

20 Q. And how long have you been with that department?

21 A. Five years.

22 Q. Let me show you what's been marked for identification
23 purposes as State's Exhibit Number One and Number Two.

24 And I'm gonna ask if you'll just take a look at those.

25 (WITNESS COMPLIES.)

JIMMY STILES: DIRECT BY SOLICITOR HAMILTON

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1 Q. You've had contact with these exhibits before?

2 A. That's correct.

3 Q. I'm gonna go through each one ---

4 A. Okay.

5 Q. --- been marked as State's Exhibit Number One.

6 How do you recognize this bag?

7 A. It has my signature, date and time on it.

8 Q. When did this bag come into your possession?

9 A. I retrieved it July 16th of 2015 at 8:00 am.

10 Q. Where did you retrieve that from?

11 A. From the -- We have a drop box outside our evidence
12 department that's secured.

13 Q. And when you first received this bag did it appear
14 to have been tampered with in any way?

15 A. No.

16 Q. Was it completely sealed?

17 A. Yes, with the signature when it was sealed.

18 Q. And was it signed?

19 A. Yes.

20 Q. And while the evidence is with you did any other
21 person have access to it?

22 A. There's two others that works in evidence. My
23 supervisor Lieutenant Pete Mitchum and another co-party
24 Patrick Patterson.

25 Q. Now I'm gonna go onto -- Actually the same questions

1 for what's been marked as State's Exhibit Number Two.

2 A. Okay.

3 Q. When did this exhibit come into your possession?

4 A. I retrieved it July 16th, 2015 at 8:00 am.

5 Q. And when you first received this bag did it appear to
6 have been tampered with in any way?

7 A. No.

8 Q. Was it completely sealed?

9 A. Yes.

10 Q. And was it signed?

11 A. Yes.

12 Q. And, again, this evidence while it was with you,
13 did any other people have access to it?

14 A. The two that works with me in evidence.

15 Q. Okay. Now both of those bags, what did you do with
16 both the exhibits once you received them?

17 A. Once we receive the evidence we do ensure that the
18 seal integrity is in place. It's been signed by the person
19 that sealed it. And also the front of the bag is complete.
20 The signatures all on the bag. And we'll enter it into our
21 computer system for log in qualification for the sticker
22 that we attach to it. And then the sticker shows you
23 location where we put it. And the tag number that's on the
24 sticker.

25 Q. And once you have those in your possession, is that

JIMMY STILES: DIRECT BY SOLICITOR HAMILTON

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1 a secured area?

2 A. Yes.

3 Q. Now do you recognize this signature of the person who
4 logged this evidence bag after you?

5 A. After?

6 Q. Logged it out after you had taken it in.

7 A. Yes.

8 Q. I believe on the other side of it.

9 A. Well, my other co-person is Patrick Patterson. He had
10 signed it out to the chemist.

11 Q. And how long have you worked with Patrick Patterson?

12 A. Five years.

13 Q. Okay. Are you familiar with his signature?

14 A. Oh, yes.

15 Q. From when did he log out that evidence bag?

16 A. Patrick logged it out on July the 22nd, 2015 at 9:00
17 am.

18 Q. Okay. And on the other exhibit I believe -- Is that
19 Exhibit Number Two?

20 A. Yes.

21 Q. When did he do that one?

22 A. The same date. 7-22-2015 9:00 am.

23 SOLICITOR HAMILTON: Thank you. Please answer any
24 questions the defense may have.

25 MS. RUSSO: The Defense has no questions, your Honor.

1 THE COURT: You can step down and be excused. We
2 appreciate your time.

3 (WITNESS LEAVES WITNESS STAND.)

4 THE COURT: Call your next witness.

5 SOLICITOR HAMILTON: The State calls Cynthia Mitchum.

6 (WHEREUPON, CYNTHIA MITCHUM,
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 DIRECT EXAMINATION

9 CYNTHIA MITCHUM BY SOLICITOR HAMILTON:

10 Q. Good morning.

11 A. Good morning.

12 Q. Could you please state your full name for the record.

13 A. Cynthia Mitchum, M-i-t-c-h-u-m.

14 Q. Okay. Ms. Mitchum, what is your occupation?

15 A. I am a drug chemist with the sheriff's office.

16 Q. And where do you work?

17 A. I work in the drug analysis laboratory next door in
18 the York County Sheriff's Office.

19 Q. And what duties do you have within that drug lab?

20 A. I will analyze substances for controlled and
21 non-controlled substances and then report my results for
22 the officers so they can go forth with their case.

23 Q. How long have you worked there?

24 A. I've been at the sheriff's office now for sixteen
25 years.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR HAMILTON

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1 Q. What education and training do you have that qualifies
2 you to be able to identify illegal drugs; prescription
3 drugs and controlled substances?

4 A. I have a Bachelor of Science degree in Chemistry
5 which I received in 1990 from Winthrop University. And
6 prior to working with the sheriff's office I worked with
7 SLED also known as the South Carolina Law Enforcement
8 Division in Columbia also in their drug analysis department
9 for seven and a half years.

10 Q. And how many or have you ever been qualified in court
11 as an expert in drug identification analysis?

12 A. Yes I have.

13 Q. How many times?

14 A. In excess of two hundred times.

15 SOLICITOR HAMILTON: Your Honor, the State would offer
16 Ms. Mitchum as an expert in analysis and identification of
17 prescription drugs; illegal drugs and illegal substances.

18 THE COURT: Any voir dire?

19 MS. RUSSO: No voir dire, your Honor.

20 THE COURT: I find she's qualified.

21 SOLICITOR HAMILTON: Thank you, your Honor.

22 Q. I hand you want's been marked for identification
23 purposes as State's Exhibit Number One and Number Two.

24 Did you have contact with both of these bags before?

25 A. Yes I have.

1 Q. And how did each exhibit come into your possession?

2 A. I received these from Patrick Patterson on July 27th
3 -- 22nd, 2015.

4 Q. And when you first received each bag did they appear
5 to be tampered with in any way?

6 A. No they didn't. On both of them it's the inner bag
7 that I received, the blue filigree bag, has okay, the date
8 and my initials on that and that lets me know that I
9 checked the bag and it was in contact and sealed. It
10 hadn't been tampered with.

11 Q. And the other exhibit.

12 A. The other one's also the same way. It's got okay,
13 the date and my initials right here at the top of the bag.

14 Q. Again when you received that bag was it signed?

15 A. You mean for the chain of custody?

16 Q. Yes.

17 A. Yes. They're both signed.

18 Q. And while the evidence is with you at the drug lab
19 did any other people have access to either one of those
20 bags?

21 A. Not directly. They had access to the room that we
22 store the drugs in but not access to my filing cabinet that
23 I have the drugs in.

24 Q. Is that filing cabinet locked?

25 A. Yes it is. I have the only key to the filing cabinet.

CYNTHIA MITCHUM: DIRECT BY SOLICITOR HAMILTON

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1 Q. Okay. Now I'm gonna do each exhibit. What was
2 contained in Exhibit One when you received it or what you
3 believed to be?

4 A. Exhibit One had some yellow tablets, a - cannister and
5 a zipped lock bag with yellow tablets in it.

6 Q. Is that Exhibit One?

7 A. Oh, I'm sorry. That's Exhibit Two. Its Item Number
8 One. So ---

9 Q. Okay.

10 A. --- Exhibit One which is Item Number three has a
11 small container and then a zip lock with some green plant
12 material in it.

13 Q. Did you analyze the substance in each one of those
14 bags?

15 A. Yes I did.

16 Q. Okay. And in analyzing that substance specifically
17 the pills, do you take a certain portion of the pill to
18 test?

19 A. Yes I do.

20 Q. And is it the same each time?

21 A. No it's not. It depends on the dosage unit of the
22 pills. Say this is point five milligram or one milligram
23 or two milligram tablet depending on which type of drug I'm
24 analyzing to how much of a tablet I would take.

25 Q. So that one would be alprazolam, how much would you

1 normally take with that one?

2 A. This one typically would be half a tablet which it
3 looks like this was half a tablet.

4 Q. Okay. So how many pills are in there?

5 A. Two and a half now.

6 Q. Now when you analyze - Since you have it in
7 your possession ---

8 A. Okay.

9 Q. --- Exhibit -- What's been marked as State's Exhibit
10 Number Two. You said you analyze the substance in that
11 bag. What did you find it to be?

12 A. I found this -- This is State's Exhibit Number Two
13 which is Item One in this case was found -- it was
14 determined to contain alprazolam which is a control four
15 substance.

16 Q. Okay. Do you run the same test that you run on the
17 marijuana that you would run on Panax?

18 A. No I do not.

19 Q. Okay. What test do you specifically run?

20 A. On the Panax we would with tablets -- on tablets first
21 we would look them up in a program called Drugsdotcom
22 that's on the internet to look at -- each tablet has an
23 inscription. If you've ever got tablets from the drug
24 store that they have numbers and letters on them, those
25 numbers and letters are unique to the tablet. So we look

CYNTHIA MITCHUM: DIRECT BY SOLICITOR HAMILTON

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1 up that to make sure that the tablet has the same number
2 and letters that it should have on it and it's the same
3 color. And then from there I will take my sample and I
4 will run it through an instrument called a GC-MS Spec and
5 that's basically I will dissolve this substance into a
6 reagent pull that liquid off and run it through there and
7 then that instrument would then give me a result that I
8 will compare to known results to make sure my analysis is
9 correct.

10 Q. And how reliable have you found these test to be?

11 A. It's very reliable. It's what's typically used in
12 probably ninety-nine percent of the drug labs.

13 Q. And what did you determine the amount of Panax to be
14 in that bag?

15 A. I didn't determine the amount. It was three tablets
16 but just we only report out the active ingredient. We
17 don't determine if it's one milligram, five milligram or
18 anything like that.

19 Q. Did you make a written report of your findings?

20 A. Yes I did.

21 Q. Okay. Do you have a copy of that?

22 A. Yes.

23 SOLICITOR HAMILTON: I marked that for Identification
24 purposes. It's Exhibit Number Four.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR, PREMARKED FOR

1 IDENTIFICATION.)

2 Q. And I'm gonna ask you about Exhibit Number One.

3 Did you analyze the substance in this bag?

4 A. Yes I did.

5 Q. And what did you find that substance to be?

6 A. Exhibit Number One which is Item Number Three in this
7 case, was determined to contain marijuana weighing three
8 point two six grams and that's a control one substance.

9 Q. And what test did you run?

10 A. With marijuana basically we can use a microscopic test
11 which we look at the sample under the microscope and look
12 for certain characteristics and then we use a chemical
13 test. We'll put chemicals on a portion of the substance
14 and look for a color change. And if those two test
15 positive in combination we can call it marijuana.

16 Q. How reliable have you found this test to be in
17 analyzing drugs?

18 A. It is the one that's used by most laboratories so it's
19 very reliable.

20 Q. And did you make a written report of your findings
21 as to the marijuana?

22 A. Yes. It's also included in the other report.

23 Q. Now after you ran the test on each exhibit what did
24 you do with the evidence?

25 A. What I did with both of these is I sealed them in this

1 outer bag; this bag. And then that has the date that I
2 sealed it with my initials in it and then it's still intact
3 on both bags today. I kept that in the laboratory until I
4 had a chance to return it back to the evidence department
5 where they held it until it would be either destroyed or
6 come to court.

7 Q. I'm going to bring your attention back to the drug
8 report of your findings. What is the date that you made
9 these findings?

10 A. The date of the report itself is September the 22nd,
11 2015.

12 Q. Okay. And you found the pills to test positive for
13 what was it again?

14 A. Alprazolam.

15 Q. Was there another name used for alprazolam?

16 A. The -- This would be the generic name and then the
17 other one would be Panax.

18 Q. And what controlled substance is that?

19 A. Control IV.

20 SOLICITOR HAMILTON: Your Honor, the State would move
21 to admit State's Exhibit Number One, State's Exhibit Number
22 Two and State's Exhibit Number Four.

23 MS. RUSSO: No objections, your Honor.

24 THE COURT: In without objection.

25 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE, TWO, AND

CYNTHIA MITCHUM: CROSS BY MS. RUSSO

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1 FOUR, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

2 SOLICITOR HAMILTON: Thank you, your Honor.

3 Thank you. Please answer any questions the Defense
4 may have.

5 MS. RUSSO: May it please the Court.

6 THE COURT: Yes, ma'am.

7 CROSS-EXAMINATION

8 CYNTHIA MITCHUM BY MS. RUSSO:

9 Q. Ms. Mitchum, you're laboratory report it says delivery
10 method and that delivery method is hand to hand. Right?

11 A. Correct.

12 Q. That just means the way they turn it over to you?

13 A. Yeah, that's the way Patrick Patterson would have
14 brought me -- just hand to hand.

15 Q. Okay. And your report is dated September 22nd?

16 A. Correct.

17 Q. Which is about two months after it was turned over to
18 you in July?

19 A. Correct.

20 Q. And that was about ten months from today?

21 A. Hum --

22 Q. From the July date to today?

23 A. Right.

24 Q. Okay. And on this report that you filled out there's
25 three suspects listed. Correct?

CYNTHIA MITCHUM: CROSS BY MS. RUSSO

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1 A. That is correct.

2 Q. Timothy Greene, Cameron Greene and Heather Messer is
3 also listed.

4 A. Correct.

5 MS. RUSSO: No further questions. Thank you.

6 THE COURT: Anything else?

7 SOLICITOR HAMILTON: I beg the Court's indulgence,
8 your Honor.

9 (PAUSE.)

10 SOLICITOR HAMILTON: No further questions, your Honor.

11 THE COURT: You can step down. Thank you.

12 (WITNESS LEAVES WITNESS STAND.)

13 SOLICITOR HAMILTON: Your Honor, the State has no
14 further witnesses.

15 THE COURT: All right. Members of the jury panel, the
16 State is resting. That means the State has presented it's
17 case. We've reached the point in the trial where I have to
18 take up some matters outside your presence. It's a little
19 early for lunch but once I get through and bring you back
20 in you wouldn't be in there very long so we're gonna go
21 ahead and break for lunch until 1:15.

22 Keep in mind not to discuss the case among yourselves
23 or try to make up your own mind or use any devices to
24 obtain any information about the case. The bailiff will
25 tell you how to get in and out. Again, even though you --

1 The state has rested you don't have everything you need to
2 make a fair and reasonable decision so do not be trying to
3 make up your mind as to what your verdict should be. And
4 of course do not discuss the case within the jury or with
5 anyone outside. We'll see you back at 1:15.

6 (JURY EXITS COURTROOM ON LUNCH RECESS AT 11:52 AM.)

7 THE COURT: Anything from the State?

8 SOLICITOR HAMILTON: Nothing from the State.

9 THE COURT: Defense?

10 MS. RUSSO: We make a directed verdict motion, your
11 Honor. I don't believe that the State has presented enough
12 evidence at this point in time basically to have the
13 statement that they claim Mr. Greene made they don't have
14 any audio or video recording of that, no written statement
15 that they can contribute to him, and so I would ask for a
16 directed verdict at this time.

17 THE COURT: I deny it. There is no requirement that
18 it be -- that a statement be written or videoed or anything
19 like that, although there is a question of credibility of
20 the witness, so I deny the motion.

21 Now, Mr. Greene, can you hear me?

22 MR. GREENE: Yes, sir.

23 THE COURT: We've reached the point in the trial where
24 you have a right to present a defense if you wish. You're
25 not required to present any evidence because you are

1 presumed innocent of the charge and you need not -- you
2 need not prove your innocence. The State has to prove your
3 guilt beyond a reasonable doubt before you could be
4 convicted. You have a right to remain silent. If you
5 exercise your Constitutional right to remain silent I will
6 tell the jury that that's what you've done. And that the
7 jury I will tell them they cannot use that against you in
8 any way whatsoever; that they cannot discuss in the jury
9 room the fact that you exercised your right to remain
10 silent nor can they use it in their personal deliberations.

11 You do have a right to call witnesses and you have a
12 right to testify. If you testify you'll be sworn and then
13 under oath and required to answer questions from your
14 attorney and from the State. But if you remain silent I
15 will tell the jury that they cannot hold that against you
16 and remind them that you are presumed innocent and you need
17 not prove your innocence. The burden is on the State to
18 prove your guilt beyond a reasonable doubt.

19 Do you have any questions about any of that?

20 MR. GREENE: No, sir.

21 THE COURT: Have you explained that to him, Ms. Russo?

22 MS. RUSSO: Yes, your Honor.

23 THE COURT: All right. Have you determined whether
24 you're going to testify or exercise your right to remain
25 silent? Or you can tell me after we break for lunch. I'm

1 not gonna require you to be incarcerated over lunch but I
2 will tell you now that if you for some reason you do not
3 show up at 1:15 that does not mean this case will stop.
4 The case will go forward; the jury will return a verdict.
5 If that verdict is not guilty of course it would end the
6 matter. If it's guilty I will issue a bench warrant for
7 your arrest. I will enter a sentence, a sealed sentence,
8 and your arrest will be sought and once you were
9 apprehended you will be brought back to court and a judge,
10 it could be; it could be another judge, will impose that
11 sentence so I'm not gonna require you to remain
12 incarcerated over lunch break. But you do need to be back
13 at 1:15 and then at that time you can let me know whether
14 you have any witnesses and whether you wish to testify.

15 MR. GREENE: Yes, sir.

16 MS. RUSSO: Thank you, your Honor.

17 THE COURT: Thank you. We'll be at ease and if the
18 lawyers would like to take a short break, come back, and
19 we'll talk about charges.

20 (COURT IN LUNCH RECESS AT 11:55 AM.)

21 (COURT BACK IN SESSION AT 01:19 PM.)

22 THE COURT: You may take your seats.

23 Is the State ready?

24 SOLICITOR HAMILTON: State's ready, your Honor.

25 THE COURT: Defense ready?

TIFFANY POOLE: DIRECT BY MS. RUSSO

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1 MS. RUSSO: Yes, your Honor.

2 THE COURT: Bring in the jury?

3 (JURY REENTERS COURTROOM AT 01:20 PM.)

4 THE COURT: Ms. Russo.

5 MS. RUSSO: Thank you, your Honor. We would call
6 Tiffany Poole.

7 THE COURT: Please come up and be sworn. Just step
8 right up here and you'll see a Bible and put your left hand
9 on the Bible and raise your right.

10 (WHEREUPON, TIFFANY POOLE,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 MADAM CLERK: Thank you. You can have a seat right up
13 there.

14 DIRECT EXAMINATION

15 TIFFANY POOLE BY MS. RUSSO:

16 Q. Ms. Poole, can you tell the jury how old you are?

17 A. I am twenty-two years old.

18 Q. And where do you live?

19 THE COURT: You'll have to speak up.

20 A. In York. In York.

21 Q. And how long have you lived there?

22 A. My whole life.

23 Q. You're whole life?

24 A. Yes.

25 Q. Does your family live in York as well?

1 A. Yes.

2 Q. What do you do for a living?

3 A. I'm a stay-at-home mom.

4 Q. And who is Mr. Greene to you?

5 A. My boyfriend.

6 Q. And were you present at this home on July 15th of last
7 year?

8 A. Yes, ma'am.

9 Q. And I want you to walk us through the events of that
10 night. When did you first become aware of the police?

11 A. When they came to the house they knocked to the door.

12 Q. You did not notice them until they knocked on the
13 door?

14 A. Right.

15 Q. Okay. At that point who was in the house?

16 A. Me, Heather, Timothy and his brother Cameron.

17 Q. Does Heather have a last name?

18 A. Messer.

19 Q. Heather Messer. Did you all go to the door at once?

20 A. No.

21 Q. Who went to the door first?

22 A. Timothy.

23 Q. Okay. Who went to the door after that? What order
24 did you arrive at the door?

25 A. Timothy went first and then they had -- I guess they

TIFFANY POOLE: DIRECT BY MS. RUSSO

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1 stated that they were there for Cameron. He yelled for
2 Cameron to come to the door and then we all proceeded to
3 come out to see who it was.

4 Q. Do you recall how long it was between when Timothy
5 answered the door and when his brother came to the door?

6 A. Not too long. It was at least two minutes.

7 Q. At least two minutes. Do you recall how long after
8 that it took for you and Ms. Messer to get to the door?

9 A. Not long. Not too long after we heard the commotion.

10 Q. Okay. What did the officers do first?

11 A. They ask for Cameron I guess and Cameron came to the
12 door. They ask what was going on. They were looking for
13 him and proceeded to tell us just that they were there for
14 Cameron.

15 Q. Okay. And did a point come when they wanted to
16 search the house?

17 A. Yes.

18 Q. Okay. And did they ask you for consent to search?

19 A. Yes.

20 Q. Who consented to that search?

21 A. Timothy

22 Q. Did anybody else sign the consent form?

23 A. Yeah, I think we all did.

24 Q. Okay. Do you recall when they located the drugs?

25 A. Uh -- They came and had us all sit on the couch ---

1 Q. Okay.

2 A. --- and they proceeded to search the house. When they
3 pulled us out -- they pulled a couple of people out one by
4 one to ask them -- I don't know, questions.

5 Q. Okay.

6 A. And it took 'em at least thirty minutes. At least
7 thirty, forty-five.

8 Q. Did they ask you any questions as a group?

9 A. Uh -- They ask if anybody had anything; if there's
10 anything they needed to worry about that they had on them,
11 anything.

12 Q. Did they ask Timothy any questions in your presence?

13 A. They ask if those were his -- That what they found was
14 his; that who was the -- the home owner and stuff like
15 that.

16 Q. Did he deny that the drugs were his or did he claim
17 them?

18 A. Yes he denied --

19 Q. He denied the drugs?

20 A. Yes.

21 Q. Okay. And did they continue to question all of you or
22 just Timothy Greene or what did they do at that point?

23 A. They questioned all of us.

24 Q. Okay. And how did that questioning go?

25 A. Uh -- They ask if anybody had anything in their cars.

TIFFANY POOLE: DIRECT BY MS. RUSSO

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1 They ask if they had anything on them; whose was what,
2 what were we doing there.

3 Q. Okay. Did they ever threaten you in any way?

4 A. They threatened to take us all to jail.

5 Q. Did they threaten ---

6 A. --- if nobody -- if nobody came out and said this
7 is their's they threatened to take us all to jail.

8 Q. So they did threaten to arrest everybody in the house?

9 A. Yes.

10 Q. If nobody claimed it?

11 A. Yes.

12 Q. Okay. What was your condition at that point?

13 A. I was very pregnant, very. We were nine months in
14 and we were waiting any day.

15 Q. Okay. And you were present in the house that was
16 possible that you could be arrested for the drugs?

17 A. Yes, ma'am.

18 Q. Okay. Were you there when they searched Ms. Messer?

19 A. Yes.

20 Q. And was she arrested or cited or what happened with
21 her?

22 A. She -- Uh -- Before they even offered she let them
23 know, hey, I have this in my car; this in my purse, just
24 go. She went ahead and told them anything that she had.

25 Q. Did you see any of the things that she said she had?

1 A. She had an empty prescription bottle. And then when
2 we were all out on the porch they pulled out the stuff that
3 she had out of her car.

4 Q. Was she arrested at that point or did they just --

5 A. No. They just gave her a ticket.

6 Q. Okay. At any point when they were questioning you
7 about who the drugs belonged to did they ever show you the
8 actual drugs?

9 A. They did not show us anything that was found in the
10 house but I did see whatever they pulled out of the car.

11 Q. So you saw -- You saw what was in the car but didn't
12 see anything from the house?

13 A. No. They did not tell us.

14 Q. Did they ever tell you what the drugs actually were
15 or did they just say --

16 A. They said that they had found marijuana and some type
17 of pills.

18 Q. Okay. And that was all?

19 A. Yes.

20 Q. Is there anything else you remember that you think the
21 jury should know?

22 A. No.

23 MS. RUSSO: I have no further questions. Please
24 answer any questions the Solicitor may have.

25

CROSS-EXAMINATION

TIFFANY POOLE: CROSS BY SOLICITOR HAMILTON
REDIRECT BY MS. RUSSO

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1 TIFFANY POOLE BY SOLICITOR HAMILTON:

2 Q. Good afternoon, Ms. Poole. So you just stated at the
3 time of the incident you were pregnant?

4 A. Yes.

5 Q. Is the defendant Timothy Greene the father?

6 A. Yes.

7 Q. And as a father of your child -- You're a stay at
8 home mom ---

9 A. Right.

10 Q. --- do you depend on him for income?

11 A. Yes.

12 Q. Okay. So he means a lot to you?

13 A. Yes.

14 Q. And your child?

15 A. Yes.

16 Q. And you do what you can to protect him?

17 A. Right.

18 Q. You'd do anything for him?

19 A. Right.

20 SOLICITOR HAMILTON: Thank you.

21 THE COURT: Any redirect?

22 MS. RUSSO: Thank you, your Honor.

23 REDIRECT EXAMINATION

24 TIFFANY POOLE BY MS. RUSSO:

25 Q. Ms. Poole, you said you would do anything for Mr.

1 Greene. Does that include lying for him?

2 A. No.

3 Q. Do you understand you're under oath here today?

4 A. God comes first before everything.

5 Q. Okay.

6 MS. RUSSO: I have no further questions.

7 THE COURT: Anything else from the State?

8 SOLICITOR HAMILTON: Nothing from the State.

9 THE COURT: You can step down and be excused. We
10 appreciate your time.

11 (WITNESS LEAVES WITNESS STAND.)

12 THE COURT: Thank you. You got some other witnesses?

13 MS. RUSSO: No other witnesses, your Honor.

14 THE COURT: Anything in reply?

15 SOLICITOR HAMILTON: Nothing, your Honor.

16 THE COURT: All right. Members of the jury panel,
17 you've now heard all the witnesses and received the
18 evidence which is the two exhibits. Before we go to the
19 next state which would be the closing statements of the
20 attorneys at which time they will be arguing why your
21 verdict should be a certain verdict before we do that we
22 have to take a short break to go over some matters of law
23 so I'm gonna let you go back to the jury room and we'll
24 send for you in just a few minutes.

25 (JURY EXITS COURTROOM AT 01:28 PM.)

CLOSING STATEMENT: BY MS. RUSSO

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1 THE COURT: All right. Anything from the State?

2 SOLICITOR HAMILTON: Nothing from the State, your
3 Honor.

4 THE COURT: Defense?

5 MS. RUSSO: We just renew all previous motions, your
6 Honor.

7 THE COURT: All right. Motions denied. I think as I
8 said earlier there's sufficient evidence from which a jury
9 could -- I'm not saying they will -- conclude that the
10 State has carried it's burden to prove Mr. Greene guilty of
11 one or both of these offenses beyond a reasonable doubt.

12 All right. Does State waive opening?

13 SOLICITOR HAMILTON: Yes, your Honor.

14 THE COURT: You ready to go forward?

15 MS. RUSSO: Yes, your Honor.

16 THE COURT: All right. Bring the jury back in.

17 (JURY REENTERS COURTROOM AT 01:30 PM.)

18 THE COURT: Ms. Russo.

19 MS. RUSSO: May it please the Court.

20 CLOSING ARGUMENT BY MS. RUSSO:

21 MS. RUSSO: Ladies and gentlemen of the jury, this has
22 been a relatively short trial. And as the Solicitor said
23 before it's a relatively simple one. But those standards
24 we talked about earlier, the reasonable doubt, the innocent
25 until proven guilty, all of those still apply here and it's

1 no less important to the Defendant and for the State. It
2 means a lot for them; that's why we're here.

3 Those standards are the same in every criminal case
4 from a DUI to a drug case like this all the way up to
5 murder. Those standards are very serious, very important
6 and I urge you to consider this case just like you would
7 any other case because it's very serious for the people
8 involved even though it might seem relatively simple and
9 relatively basic.

10 And even though it's relatively simply and relatively
11 basic you've heard quite a bit of testimony and it's been a
12 relatively short trial but you have heard from officers in
13 the case and you did hear from Mr. Greene's girlfriend
14 Tiffany Poole. Now the officers have a lot of cases. They
15 all told you that they have been in law enforcement for
16 five plus years just working drug cases, maybe ten years.
17 They've had a lot of cases in that period of time. And its
18 no wonder that they can't remember a lot of details about
19 this particular case.

20 But when Tiffany Poole sat up there she remembered
21 those details. Yes, she told you Mr. Greene is the father
22 of her child, is forthright, at a time she was about nine
23 months pregnant and it was a serious event for her and she
24 remembers those details very well. So while the officers
25 tell us that they can't remember where the other officers

CLOSING STATEMENT: BY MS. RUSSO

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1 were around the house, and in fact can't even remember
2 which officers were necessarily on the scene that day, I
3 think that's a problem. It's a problem with their
4 testimony when we're ask to rely on their testimony alone.

5 They tell us they can't remember whether officers went
6 around back. They can't remember who came to the door
7 first or in what order. One of them can't remember exactly
8 who was in the house or what their names were even though a
9 third party was actually arrested or cited -- we're not
10 sure -- for marijuana that day. But we can't remember her
11 name or the name of the other female who was there. That's
12 the recollection you're being ask to rely on.

13 They didn't ask anyone else about the drugs; didn't
14 ask if they belonged to anyone else in the house.
15 According to their testimony that's what they can remember
16 even though they don't remember a whole lot else. And
17 remember they took out a consent to search warrant. They
18 know that they might ask for consent to search this house;
19 that they might be looking for something else when they
20 went there. Because of the warrants they were serving they
21 might be asking to search that house so they made sure to
22 take with them a consent to search the house.

23 But what didn't they bring with them? They weren't
24 wearing body cameras that day. They didn't video record
25 anything in the home. They didn't audio record anything in

1 the home. We saw no pictures of where anything was located
2 inside the house. We have no written statement from anyone
3 actually claiming the drugs. We have no signed Miranda
4 Waiver Form. All we have is the testimony of two officers
5 who stated that they can't remember some basic facts like
6 what officers were on the scene that day. That they can't
7 remember if the defendant was able to identify the drugs or
8 know what they were when he said yes, the drugs are mine.

9 We have to rely on that recollection because those
10 officers going out there knowing that they might be
11 searching somebody's house; knowing that they might be able
12 to get a charge like this, didn't bother with audio, video,
13 pictures, a consent, a Miranda waiver or a written
14 statement.

15 And you heard from one officer that, you know, why do
16 they need those things, why would they need to find any
17 evidence or fingerprint the evidence? Because once
18 somebody claims it that's all they need. All they need is
19 to get up there and say that's who claimed it, he said the
20 drugs were his. It doesn't matter if they wrote it down,
21 it doesn't matter if it's recorded. That's all that they
22 felt that they needed.

23 So they didn't fingerprint the evidence. They didn't
24 look for DNA. That could have solved all the reasonable
25 doubt in this case if there were fingerprints on the box or

CLOSING STATEMENT: BY MS. RUSSO

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1 the phone canister or either of the drugs that came back to
2 Timothy Greene and not to perhaps Cameron Greene. Or to
3 Heather Messer who had a prescription bill bottle on her
4 and was either arrested or cited for possession of
5 marijuana in the same day.

6 There were three other people in that house. Timothy
7 Greene was the first one to answer the door. Perhaps he
8 did claim that bedroom and in fact he consented remember to
9 a search of the house. It wasn't just a search against his
10 will. He said go ahead and search my house, go ahead and
11 do that.

12 And there were three other people in the house who
13 didn't get to the door as fast as he did; who weren't ask
14 if those drugs were theirs, who were never questioned about
15 it even though one was arrested.

16 There's a lot of evidence missing in this case.
17 Heather Messer is not here to testify to tell us what she
18 knew. We don't have anything written, audio/video,
19 anything even though the officers knew what they were going
20 out there potentially for this type of charge. And the
21 officers, we have a lot of memory gaps, they can't remember
22 but they're being ask to rely on their testimony.

23 I contend that that itself is reasonable doubt. There
24 are so many gaps in this case. There are claims that no,
25 he immediately said it was his and yet the one who never

CLOSING STATEMENT: BY MS. RUSSO
BY SOLICITOR HAMILTON

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1 said I can't remember, Ms. Poole, tells us that he was
2 questioned over and over again; didn't deny it, and only
3 claimed it after they threatened to arrest everybody in the
4 house including Ms. Poole who was the nine-months pregnant
5 girlfriend of Mr. Greene.

6 If he did say those drugs were his, couldn't that be
7 because of what the officers said what happened? We don't
8 know because none of it was recorded. But if we had audio
9 and we had video we could tell what actually happened
10 inside that house that night. And these are the
11 recollections that we have left we are to rely on. These
12 are the holes that we have to deal with because the
13 officers didn't film it. I can tell you that that is
14 reasonable doubt and I would ask you to find the defendant
15 Mr. Timothy Greene not guilty of those drugs. Thank you.

16 SOLICITOR HAMILTON: May it please the court, your
17 Honor.

18 CLOSING ARGUMENT BY SOLICITOR HAMILTON:

19 SOLICITOR HAMILTON: Ladies and gentlemen, I want to
20 stress to you that this isn't a search for holes. This is
21 a search for the truth. And in this case that is what I
22 want you to search for. Okay. Search for the truth. This
23 trial isn't a search for doubt. Look at the evidence. Use
24 your common sense. We have a confession from the defendant
25 saying these drugs are his. They are found next to the bed

CLOSING STATEMENT: BY SOLICITOR HAMILTON

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1 in his bedroom that he says was his bedroom.

2 Ms. Poole got on the stand but she never said the
3 drugs weren't his. She didn't. She did nothing to negate
4 that fact; the main fact in this case. Ms. Poole has
5 every reason to protect him. And I get it. He's the
6 father of her child. But that is her source of income.
7 She's a stay at home mother; she needs to protect him and
8 that is what she did.

9 Now again the defendant is charged with possession of
10 alprazolam, Panax in this case, and possession of
11 marijuana. And I just want to run through; I know we
12 talked about this at the beginning of the trial, the
13 evidence of each crime. But I just want to run through
14 briefly how each part of this trial will help satisfy each
15 element. So in this case I'd like as stated before he was
16 in constructive possession of these drugs, so that's the
17 first element, actual constructive possession of these
18 drugs.

19 And how do we know this? The evidence that was
20 presented at trial. Well the defendant pointed out; two
21 officers admitted that this is his bedroom. The belongings
22 in that bedroom he has dominion and control over. He can
23 exercise dominion and control over his belongings in that
24 bedroom. The alprazolam and marijuana were found in that
25 bedroom. His belongings. Constructive possession.

1 Additionally he admitted they were his. He said yes. Well
2 when ask if those were his drugs he said yes. He had
3 acknowledge of those drugs presence. Knowing constructive
4 possession of alprazolam and marijuana. Element one is
5 met.

6 Element two is what the drugs were. Is it marijuana?
7 He knowingly possessed marijuana. And as you heard from
8 the chemist Ms. Mitchum the defendant was in possession of
9 marijuana. Three point two six grams tested positive for
10 marijuana. Additionally the second element as to the Panax
11 charge, alprazolam charge, is did he knowingly possess
12 alprazolam? Alprazolam as Ms. Cynthia Mitchum testified
13 the pills that were found in his room, what officers
14 believed to be alprazolam, tested positive for alprazolam;
15 was in fact alprazolam.

16 Now when you go back in the jury room you're going to
17 have this evidence and you can look at it. And I want you
18 to see that the alprazolam in there the officers did state
19 that they were three pills. As Ms. Mitchum and I just want
20 to remind you stated on the stand she took a half of one of
21 those pills to test for the alprazolam. So what you will
22 see is two and a half pills in evidence that the defendant
23 had in his possession. So those two elements Ms. Mitchum
24 testified on the stand to are met.

25 Now the last element as to the constructive possession

CLOSING STATEMENT: BY SOLICITOR HAMILTON
CHARGE TO THE JURY:

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1 -- I mean the last element as to the alprazolam charge is
2 without a valid prescription and in this case no
3 prescription container. No evidence of a prescription; no
4 evidence found indicating a valid prescription is
5 circumstantial evidence that he didn't have one therefore
6 the State believes that element is met.

7 As I stated before at the beginning of this case this
8 is a simple case. We ask that or we know that it's our
9 responsibility as the State to prove beyond a reasonable
10 doubt the elements of this crime and we believe we have in
11 this case. And as I stated before it's not one hundred
12 percent certainty. If you go back in that room and you
13 believe and you feel that you are firmly convinced of the
14 defendant's guilt that is the defendant's guilt right there
15 and we ask that you bring a verdict guilty back if that's
16 how you feel after deliberating on this case.

17 Please use your common sense, look at the big picture;
18 look for the truth in this case. And I hope you come back
19 with a guilty verdict for Timothy Greene for possession of
20 marijuana and possession of alprazolam. Thank you.

21 CHARGE TO THE JURY:

22 THE COURT: Members of the jury panel, I appreciate
23 your attention you've given every one at this point. I'm
24 going to ask you now to give me your attention as I charge
25 you the law in this case.

1 The indictments charge Mr. Greene with possessing
2 marijuana and possession of alprazolam. Alprazolam is a
3 controlled substance in this state and it is illegal to
4 possess alprazolam unless you possess it by virtue of
5 having a valid prescription issued by a doctor.

6 The fact that Mr. Greene has been arrested; the fact
7 that he is charged, the fact that he has been indicted and
8 the fact that he is on trial is of no evidence that he
9 committed this offense. That's just the way our system
10 works. This does not create any presumption or inference
11 of guilt. The indictment that you will have in the jury
12 room with you is simply the document by way of which this
13 case is processed through our court system and it contains
14 the charge; the allegations, what the State says Mr. Greene
15 did in violation of the laws of this state.

16 The fact that there are two indictments is of no
17 importance. Each indictment charges a separate and
18 distinct offense and each must stand on it's own. That is,
19 you may find a verdict on -- You do not have to find the
20 same verdict as to each of the indictments. The evidence
21 presented by the State must be sufficient beyond a
22 reasonable doubt as to a particular indictment before you
23 could convict Mr. Greene of that charge.

24 Mr. Greene has pled not guilty to these indictments
25 and that places on the State the burden of proving his

CHARGE TO THE JURY:

1 guilt beyond a reasonable doubt. Anyone charged with any
2 offense in our system is presumed innocent of that offense
3 and need not prove their innocence. The State must prove
4 their guilt beyond a reasonable doubt.

5 This presumption of innocence is not a mere legal
6 theory or a mere legal phrase; it is a substantial right.
7 The presumption of innocence attaches to an individual;
8 attached to Mr. Greene at the time of his arrest; has
9 remained with him as his case is processed through our
10 court system; remains with him at this moment. In fact the
11 presumption of innocence in Mr. Greene's favor remains with
12 him as you deliberate. The presumption of innocence in his
13 favor is removed if and when, and only, if you determine
14 that the State has proven his guilt beyond a reasonable
15 doubt.

16 Now the State is not required to prove his guilt
17 beyond all but beyond a reasonable doubt. A reasonable
18 doubt has been defined by our courts as the kind of doubt
19 that would cause a reasonable person to hesitate to act.
20 There are very few things in our world that we know with
21 absolute certainty and that's not required in a case such
22 as this. If based on your consideration of the evidence
23 you are firmly convinced that Mr. Greene is guilty of one
24 or both of these charges you would find him guilty. If on
25 the other hand you think there is a real possibility he is

1 not guilty, you would give him the benefit of that
2 reasonable doubt and find him not guilty. He is entitled
3 to any reasonable doubt you have as to any issue in this
4 case.

5 I remind you that I am the sole judge of the law in
6 this case. You must take accept and apply the law as I
7 charge it. This is true even if you think I charge the law
8 in error, or, even if you think the law should be
9 different. Your oath requires you to apply the law as I
10 charge it. You're not to infer from anything I have said
11 or done or anything I now say or do as indicating an
12 opinion of mine on the facts; I'm not allowed to express or
13 formulate any opinion on the facts. That is solely your
14 job. It is solely your job to examine the evidence and to
15 give to the evidence the effect the value the truth and the
16 weight you believe it should have.

17 In doing this you may believe one witness as opposed
18 to several; several witnesses as opposed to one. You may
19 believe all, part, or none of a witnesses' testimony. In
20 analyzing the evidence use your common sense, your sense of
21 logic, your sense of reason, use your experiences in life.
22 As judges of the facts you necessarily must judge the
23 believability; that is, the credibility of the witnesses
24 who have testified. In accessing believability use the
25 things I've talked about; you use the things that you find

CHARGE TO THE JURY:

1 in your day to day life are indicative of truthfulness.
2 And you can use certain evaluators: A witnesses's
3 demeanor, how they act on the stand; are they hesitant or
4 straight forward, is their testimony consistent or
5 inconsistent. Consider the opportunity a witness had to
6 know those things about which the witness testified. And
7 you may consider any bias or prejudice a witness may have.
8 That is, whether a witness would wish to help or hurt one
9 side or the other.

10 Now in this case we've had testimony of an individual
11 who was qualified as an expert in chemical analysis.
12 Generally witnesses can only testify as to facts. That is
13 something they've seen or something they've sensed with one
14 of their five senses. It could be -- It's usually
15 something they've seen or heard but it could be taste touch
16 or smell. However where a witness has certain training and
17 education and experience that witness may be qualified to
18 take certain facts and from those facts reach an opinion.

19 That's what Ms. Mitchum did in this case as an expert
20 in chemical analysis. Now the testimony of experts is
21 allowed to assist the jury. It's not binding on you. You
22 can take or reject Ms. Mitchum's testimony, the expert
23 witness's testimony. In accessing her testimony you look
24 at her credibility just like you look at the other
25 witnesses. And you also in accessing her -- the weight to

CHARGE TO THE JURY:

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1 give if any her testimony you also look at her credentials.
2 That is I qualified her as an expert but you determine
3 whether you think she had the requisite skill training and
4 experience to render the opinions she rendered. You also
5 can look at and examine the reason she gave for reaching
6 the opinions that she gave.

7 You will take and give whatever value you wish to her
8 testimony. The testimony of experts is allowed to assist
9 the jury; it is not binding on you. As I said you can
10 accept or reject the witnesses testimony . . .

11 Excuse me one minute, I've got my pages out of wack
12 here.

13 (PAUSE.)

14 THE COURT: Generally in a case such as this there
15 are two types of evidence presented. Circumstantial
16 evidence and direct evidence. Crimes may be proved by
17 either. Direct evidence is evidence which proves the
18 existence of a fact and does not require any deduction.
19 Circumstantial evidence is proof of a chain of facts and
20 circumstances which indicate the existence of a fact.
21 Crimes may be proven by circumstantial evidence. Our law
22 makes no distinction between the weight or value to be
23 given to either direct or circumstantial evidence.

24 However to the extent the State relies on
25 circumstantial evidence all the circumstances must be

CHARGE TO THE JURY:

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1 consistent with each other and when taken together point
2 conclusively to the guilt of the accused beyond a
3 reasonable doubt. If these circumstances merely portray a
4 defendant's behavior as suspicious the State's proof has
5 failed. The State has the burden of proving Mr. Greene
6 guilty beyond a reasonable doubt and this burden rest with
7 the State regardless of whether the State relies on direct
8 evidence, circumstantial evidence, or some combination of
9 the two. Our law does not make any distinction between the
10 weight or value to be given to either direct or
11 circumstantial evidence.

12 Now in this case Mr. Greene has exercised his
13 Constitutional right to remain silent. The fact that he
14 has done so cannot be used against him in any way
15 whatsoever. Anyone charged in our system with any offense
16 has an absolute right to remain silent. The fact that he
17 exercised that cannot be discussed by you in the jury room;
18 cannot be factored into your own consideration. He has an
19 absolute right to remain silent and that not be used
20 against him in anyway whatsoever. I remind you that he is
21 presumed innocent and he need not prove his innocence and
22 the State must prove his guilt beyond a reasonable doubt.

23 In this case there has been testimony about a
24 statement alleged to have been made by Mr. Greene. I have
25 allowed that to be admitted but it is up to you to

1 determine beyond a reasonable doubt certain things before
2 you determine what, if any, weight to give it. A statement
3 by a defendant must be given freely knowingly and
4 voluntarily before you can consider it. If you find that
5 he did not -- Mr. Greene did not make the statement then of
6 course you would ignore it entirely. If you find he did
7 make the statement alleged to be made by him you must
8 determine whether that statement was made by him
9 voluntarily and of his own free will. This means that the
10 statement was not caused by pressure, force, fear, threats,
11 coercion, intimidation or by hope or promise of leniency or
12 reward of any kind.

13 In determining whether a statement was voluntarily you
14 should consider the characteristics of Mr. Greene and the
15 details of the questioning. You may consider his age, his
16 mental ability or capacity, place and length of any
17 detention, nature of questioning and the advice or lack of
18 advice as to his Constitutional rights included but not
19 limited to his right to remain silent; that any statement
20 could be used against him in a court of law, the right to
21 have a lawyer present while being questioned; that if he
22 could not afford a lawyer a lawyer would be appointed to
23 represent him at no cost to him. And that he could stop
24 making a statement at any time.

25 You must carefully consider all the surrounding

CHARGE TO THE JURY:

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1 circumstances before you give any weight to an alleged
2 statement.

3 The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement by Mr. Greene
5 was voluntary. If you determine it was you may give it any
6 further consideration you deem proper. You must decide
7 what weight if any should be given to the alleged
8 statement. If you determine the alleged statement was not
9 the free and voluntary statement of Mr. Greene you should
10 not consider it at all.

11 Mr. Greene is charged with possessing marijuana and
12 possessing alprazolam in two separate indictments.
13 Marijuana is a controlled substance and it is illegal to
14 possess it in this state. The State must prove possession;
15 that he possessed marijuana before you could convict him on
16 that indictment. The State must prove that the substance
17 at issue was in fact marijuana.

18 It's also against the law to possess certain other
19 controlled substances including alprazolam unless one has a
20 valid prescription issued by a doctor to possess that
21 controlled substance. To prove possession the State must
22 prove beyond a reasonable doubt that one had both the power
23 and intent to control the disposition or use of the
24 substance, here marijuana or alprazolam on both.

25 Possession may be either actual or constructive.

1 Actual possession means that the substance, marijuana or
2 alprazolam, was in the actual physical custody of Mr.
3 Greene. Constructive possession means that he had, Mr.
4 Greene had, dominion and control or the right to exercise
5 dominion and control over either the marijuana or the
6 alprazolam or both, itself, that is, the substance itself,
7 or, on the property in which it was found. The mere
8 presence at the scene where a controlled substance is found
9 is not enough to prove possession. A defendant's knowledge
10 and possession may be inferred when a substance is found on
11 the property under one's -- a defendant's control.

12 This is an inference that may be taken into
13 consideration by you and it is simply an inference to be
14 considered along with the other evidence in the case and to
15 be given any weight or such weight as you determine it
16 should have. Two or more individuals may have joint
17 possession of a drug.

18 Now in this case each indictment has -- You will have
19 these indictments in the jury room with you and I remind
20 you that they are paperwork by way of which the case is
21 processed. They contain the charges against Mr. Greene but
22 they are not evidence.

23 They also, Madam Forelady, on the back you will see
24 the word verdict and there are three lines. Beneath the
25 word verdict there is a place for you to sign. I'll get

CHARGE TO THE JURY:

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1 back to that in just a moment. As to each indictment there
2 are two possible verdicts, guilty or not guilty. Your
3 verdict must be unanimous all twelve jurors must agree on
4 the verdict before you authorize the forelady to write the
5 verdict on your behalf. If you have any questions while
6 you are deliberating please knock on the door and tell the
7 bailiff and the bailiff will come and get me. I will --
8 Well let me back up.

9 If you have any questions write them down on a note
10 and knock on the door and give it to the bailiff. The
11 bailiff will bring the note to me. After I review the note
12 I will view it with the attorneys and I will decide how to
13 respond. It may be that I can write an answer on the note
14 itself and if I do that keep the note and turn it in with
15 the exhibits because it has to be part of the record, Madam
16 Forelady.

17 If you want me to go over any part or all of my charge
18 on the law let me know and I will bring you back in here in
19 open court and recharge you any part or all of my charge on
20 the law. If you wish to have testimony replayed let me
21 know that and we'll bring you back in and replay testimony.

22 Your verdict cannot be based on sympathy, passion,
23 prejudice, public opinion or matters outside the record.
24 Again it must be unanimous. When you have reached a
25 verdict knock on the door and tell the bailiff. The

CHARGE TO THE JURY:

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1 bailiff will inform me; I will probably be doing some other
2 work, but I will interrupt that as promptly as possible and
3 send for you. Now when you first to into the jury room do
4 not start deliberating yet. I must go over my charge with
5 the attorneys. If have made an error I will have to bring
6 you back in and correct it. If I have not made any errors
7 I will send in the indictments; the exhibits, and the
8 bailiff will tell you to start deliberating but do not
9 start until that point.

10 The alternate, Ms. Cooper, you will stay in this time
11 and not go out with the jury since we do not need the
12 alternate's service. So I'm gonna allow you to go into the
13 jury room while I go over my charge with the attorneys.

14 (JURY EXITS COURTROOM AT 01:58 PM.)

15 THE COURT: Ms. Cooper, I'll be with you in just one
16 minute.

17 All right. Anything from the State?

18 SOLICITOR HAMILTON: Nothing from the State.

19 THE COURT: Anything from the Defense?

20 MS. RUSSO: I would just ask, your Honor, that we not
21 send the indictments back cause they do indicate second
22 offenses.

23 SOLICITOR HAMILTON: The marijuana, yes. They just
24 wanted to also bring that up.

25 THE COURT: All right. Well let me bring the jury

CHARGE TO THE JURY:

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1 back in and tell them that --

2 SOLICITOR HAMILTON: We can also redact it out and
3 send back a copy maybe.

4 MS. RUSSO: We can but I think they'll be wondering
5 what is on there. The alprazolam, does it indicate
6 seconds?

7 THE COURT: Well here's what we'll do. I'm gonna have
8 my clerk do a quick verdict form. It won't take but a
9 second.

10 MS. RUSSO: Okay.

11 THE COURT: And I'll bring the jury back in and
12 explain that to them. Ms. Cooper, just bear with me.

13 (JURY REENTERS COURTROOM AT 02:00 PM.)

14 THE COURT: Members of the jury panel, I am not going
15 to send the indictments back with you. I've explained to
16 you that they are simply the charge against Mr. Greene.
17 They charge him with possessing marijuana and possessing
18 alprazolam. You really don't need those. I will send in
19 two verdict forms; one for each. One for the alprazolam
20 charge. It will be a separate sheet of paper and on there
21 will be the caption and the reference to which drug is
22 involved. And then the jury will have two choices.

23 The order that they're set forth on the verdict form
24 are of no importance. I have to set them forth in some
25 manner; of course, one has to be first and one has to be

CHARGE TO THE JURY:

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1 second. The order they're in is of no importance to you.

2 There will be a check mark before each line and, Madam
3 Forelady, you will put a check before the unanimous -- the
4 one that reflects the unanimous verdict of the jury.

5 One will say we find the defendant guilty and if
6 that's the unanimous verdict of the jury you will put an x
7 there. The other will say we find the defendant not
8 guilty. If you believe the State has failed to carry the
9 burden of proof and failed to prove Mr. Greene guilty
10 beyond a reasonable doubt of an offense then you would mark
11 not guilty that line. And today's the seventeenth, we'll
12 go ahead and put the date on there, and a place for you to
13 sign. So I'm gonna let you go back to the jury room but do
14 not yet start deliberating until you get the verdict forms
15 and the exhibits.

16 (JURY EXITS COURTROOM AT 02:02 PM.)

17 THE COURT: Anything else from the State?

18 SOLICITOR HAMILTON: No, your Honor.

19 THE COURT: Defense?

20 MS. RUSSO: Nothing from us, your Honor.

21 THE COURT: All right, Ms. Cooper, you can leave and
22 call back tonight after seven and follow whatever
23 instructions are.

24 And as soon as we get the verdict forms in we'll let
25 counsel look at them and the exhibits and we'll send them

1 back and tell 'em to start deliberating.

2 (ALTERNATE JUROR DISMISSED AT 02:03 PM.)

3 THE COURT: And, Madam Solicitor, you can find out
4 what next I should be doing.

5 SOLICITOR HAMILTON: I will.

6 THE COURT: Thank you. We'll be at ease.

7 (COURT IN RECESS AT 02:03 PM.)

8 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
9 MARKED, RECEIVED INTO EVIDENCE.)

10 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED AND
11 MARKED, RECEIVED INTO EVIDENCE.)

12 (COURT BACK IN SESSION AT 03:02 PM.)

13 THE COURT: I understand we have a verdict.

14 Is the State ready?

15 SOLICITOR HAMILTON: The State's ready.

16 THE COURT: Defense?

17 MS. RUSSO: Yes, your Honor.

18 THE COURT: All right. Bring in the jury.

19 (JURY REENTERS COURTROOM AT 03:03 PM.)

20 THE COURT: Madam Forelady, I understand the jury has
21 reached a verdict.

22 MADAM FORELADY: Yes, Sir.

23 THE COURT: If you'll hand it to the bailiff the
24 bailiff will hand it up to me.

25 (VERDICT RECEIVED UP BY THE COURT.)

VERDICT

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1 MADAM CLERK: In the state of South Carolina versus
2 Timothy Emmanuel Greene Indictment 2015-GS-46-0-3-0-3-3 we
3 find the Defendant guilty of possession of alprazolam
4 signed by the foreperson dated today's date.

5 2016-GS-46-0-1-1-2-0 we find the Defendant guilty of
6 possession of marijuana signed by the foreperson dated
7 today's date. If this be your verdict so say you all by
8 raising your right hand.

9 Let the record show all jurors affirmed this verdict.

10 (ALL JURORS RESPONDED AFFIRMATIVE.)

11 THE COURT: Anything from the State before the jury is
12 dismissed?

13 SOLICITOR HAMILTON: Nothing from the State.

14 THE COURT: Defense?

15 MS. RUSSO: Nothing from the Defense.

16 THE COURT: Members of the jury panel, thank you so
17 much. I'm going to ask you to call back tonight after
18 seven and receive instructions about whether to report or
19 whether to call in for your next activity as you serve as a
20 juror this week. So call tonight after seven and I might
21 see you again this week. Thank you.

22 Madam Forelady, the clerk has something for you to
23 sign.

24 (JURY DISMISSED AT 03:05 PM.)

25 THE COURT: Anything from the State?

SENTENCING:

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1 SOLICITOR HAMILTON: Nothing from the State.

2 THE COURT: Defense?

3 MS. RUSSO: Yes, your Honor, in sentencing?

4 THE COURT: Well anything before we get to sentencing.

5 MS. RUSSO: Before sentencing no.

6 THE COURT: Okay. All right, now, the record again;

7 petty larceny, grand larceny and two burglaries from 2000?

8 SOLICITOR HAMILTON: There is more to it. Ms. Weaver
9 just ran to get paperwork. I forgot to print out the
10 paperwork so she ran to grab some paperwork. But his
11 record --

12 THE COURT: Why --

13 SOLICITOR HAMILTON: I don't have the paperwork ready,
14 Your Honor.

15 THE COURT: I guess my question is, why do we have to
16 run off paperwork now?

17 SOLICITOR HAMILTON: Because he needs to sign it for
18 sentencing purposes. I just wanted to let you know why she
19 ran out.

20 THE COURT: Well, I know, but do y'all not anticipate
21 in having the paperwork ready?

22 SOLICITOR HAMILTON: I did, your Honor. I'm sorry.

23 It should be in here in less than -- But his record is
24 a 2013 assault and battery third degree. A 2012 possession
25 of marijuana first. A 2011 possession of a controlled

SENTENCING:

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1 substance one through five first offense. 2008
2 trespassing; 2007 burglary third degree; grand larceny,
3 petty larceny. A 2006 burglary second degree non-violent.
4 And, your Honor, I do have certified copies of the two
5 convictions that do make this a second offense for each
6 one. I didn't know if you want to put these as Court
7 Exhibits.

8 THE COURT: Yes, I think you should.

9 SOLICITOR HAMILTON: Okay. I'll get these marked.

10 SOLICITOR HAMILTON: Your Honor, it is marked -- the
11 marijuana charge is Court's Exhibit Number Four, the prior
12 marijuana. And the controlled substance -- possession of a
13 controlled scheduled one through five first offense is
14 Court's Exhibit Number Three.

15 THE COURT: So these are both second offenses?

16 SOLICITOR HAMILTON: Yes, your Honor.

17 (WHEREUPON, COURT'S EXHIBIT NUMBERS THREE AND FOUR,
18 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

19 THE COURT: Ms. Russo, you want to go ahead and be
20 telling me about the mitigation?

21 MS. RUSSO: Yes, your Honor. Mr. Greene is working;
22 he's had steady work. He's now working at ---- Tree
23 Service when I first started to represent him. A few
24 minutes ago -- told me he was with them for about three
25 years so he has been holding steady work.

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1 You did hear from his girlfriend Tiffany Poole who I
2 think would like to speak at the appropriate time.
3 Basically they have a nine-month-old son together and he is
4 the primary bread winner for that family; for her and his
5 son, and so I think it's important that we keep him in his
6 job and keep him working. He's lived in York all his life.
7 He's worked in York all his life. His record is fairly
8 minimal. I think he does have those serious charges -

9 THE COURT: What is your definition of fairly minimal?

10 MS. RUSSO: Well he does have the burglary charges
11 close to ten years ago but since then he's had a couple of
12 misdemeanor magistrate charges and the only two drug
13 charges that are the ones that bring this up to a second
14 one. We're not talking about a third, fourth, fifth.
15 We're talking about bare minimum second offense for both
16 the marijuana and the controlled substance and no other
17 prior drug offenses.

18 I would ask you to consider a probationary sentence;
19 something that would keep him in his job, something that
20 would not be straight time because I think that would cause
21 him to loose work and the livelihood for his son. Anything
22 that would put him on probation I think that would be
23 appropriate given that the prior charges are just a bare
24 minimum for -- to bring this up to a second and so we would
25 ask you to consider probation, your Honor. And I do think

SENTENCING:

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1 that Ms. Poole would like to speak.

2 THE COURT: I'll be glad to hear from her now.

3 Come on up here a little further.

4 TIFFANY POOLE: Ever since we've been together he's
5 changed for the better. He really has, In the the past he
6 was. He has really changed for the better and ever since
7 we had our son he is there for him and he does everything
8 for us. Please . . .

9 THE COURT: Thank you.

10 Ms. Russo, has your client already spent some time
11 in jail on this charge?

12 MS. RUSSO: I don't believe he did.

13 He did two days, your Honor.

14 THE COURT: Tell me his record one more time.

15 SOLICITOR HAMILTON: He has a 2013 assault and battery
16 third degree. 2012 possession of marijuana first. 2011
17 possession of a controlled substance one through five first
18 offense. 2008 trespassing. 2007 burglary third degree;
19 grand larceny and petty larceny. And in 2006 burglary
20 second non-violent.

21 THE COURT: Do you have the paperwork now?

22 SOLICITOR HAMILTON: Yes, your Honor.

23 THE COURT: All right, Mr. Greene, anything you want
24 to say on your own behalf?

25 MR. GREENE: I would just like to say that this 2008

SENTENCING:

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1 charges for the burglary and things I did three years
2 incarcerated and ever since I been out I been a changed man
3 and I been holding jobs. I got a newborn I been taking
4 care of working full time. Lifting trees is not easy but I
5 do it to take care of my family and I just want you to take
6 all that in consideration. I'm not a bad person; just made
7 mistakes.

8 THE COURT: Have you ever been on probation?

9 MR. GREENE: No, sir.

10 THE COURT: All right, the sentence on each of these
11 they're to run concurrent, they are for one year suspended
12 upon service of thirty days on the weekend beginning this
13 Friday. You'll be on probation for two years. You're to
14 have substance abuse counseling; random drug and alcohol
15 testing. In addition to other fees and cost you owe five
16 hundred dollars for having an appointed attorney.

17 They are to run concurrent with the same weeks and
18 they're to run concurrent. Do you understand that?

19 MR. GREENE: Yes, sir.

20 THE COURT: All right. Thank you.

21 MS. RUSSO: Credit for time served, your Honor?

22 THE COURT: I gave him two days.

23 MS. RUSSO: Okay. Thank you, your Honor.

24 THE COURT: All right, we'll be at ease.

25 (COURT IN RECESS AT 03:15 PM.)

WITNESSES

DEU

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610201121

ACTION OF GRAND JURY

TRUE BILL

Shirley Sanders
Foreperson of Grand Jury
Date: 10/22/15

VERDICT

Guilty

Alma M. Berry 5/17/16
Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS46-03033

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

OCTOBER 22, TERM 2015

THE STATE

VS.

TIMOTHY EMMENUEL GREENE

INDICTMENT FOR

**POSSESSION OF A CONTROLLED
SUBSTANCE**

SC Code: § 44-53-370
CDR Code: 0180

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

INDICTMENT

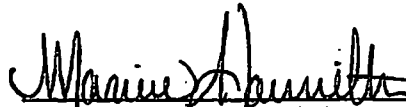
COUNTY OF YORK

At a Court of General Sessions, convened on October 22, 2015, the Grand Jurors of York County present upon their oath:

POSSESSION OF A CONTROLLED SUBSTANCE

The defendant, Timothy Emmenuel Greene, did on or about July 15, 2015, in York County, South Carolina, knowingly or intentionally possess Alprazolam, a schedule IV controlled substance, without obtaining it directly from, or pursuant to a valid prescription or order of a practitioner. All in violation of 44-53-370, *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.




MARINA B. HAMILTON
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of June, 2017.

RECEIVED
JUN 26 2017
SC Court of Appeals