

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lexington County

Honorable Robert E. Hood, Circuit Court Judge

S.C. SUPREME COURT

DOUGLAS J. MAYES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001376

APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)

State of South Carolina,	)	
	)	TRIAL
	)	2011-GS-32-01300
	)	2011-GS-32-01302
PLAINTIFF,	)	2011-GS-32-01303
	)	2011-GS-32-01304
-VS-	)	2011-GS-32-01305
	)	
Douglas James Mayes,	)	
	)	
DEFENDANT.	)	

BEFORE THE HONORABLE HOWARD P. KING, JUDGE

OCTOBER 1 AND 2, 2012

LEXINGTON, SOUTH CAROLINA

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

Michael Ross, Esq.
For the State

Wayne Floyd, Esq.
For the Defendant

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

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1 Monday, October 1, 2012

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 THE COURT: All right, now, ladies and
6 gentlemen of the jury panel, I now need to ask you
7 or must ask you several questions required by our
8 constitution to determine your qualifications to
9 serve on the jury this week. Please give your
10 attention to these questions. And if any of them
11 apply to you, then respond accordingly.

12 (Whereupon, the jury panel was qualified.)

13 THE COURT: All right, Mr. Solicitor,
14 what's the first matter?

15 MR. ROSS: Thank you, Your Honor, may it
16 please the Court?

17 THE COURT: The State calls Douglas Mayes
18 for trial. This is Indictment 2011-GS-32-1303,
19 1304, and 1305, indictments for trafficking crack
20 cocaine, possession with intent to distribute
21 cocaine, and possession of a weapon during the
22 commission of a violent crime.

23 THE COURT: All right, with this list of
24 potential voir dire or requested voir dire, I have
25 the witness list from the State. Any special voir

1 dire requests from the State, Mr. Ross?

2 MR. ROSS: None from the State, sir.

3 THE COURT: Mr. Floyd?

4 MR. FLOYD: Nothing special, Your Honor.

5 THE COURT: All right, ladies and
6 gentlemen, if you will give me your attention. You
7 have heard the State call the case of the State of
8 South Carolina versus Douglas James Mayes -- M-A-Y-
9 E-S. What I am going to tell you now is not
10 evidence in this case. It is simply the allegations
11 of the indictments.

12 I tell you this so that you can determine
13 if you have any conflict or know anything about the
14 case that would prevent you from serving as a juror.
15 But you will decide the case based on the evidence
16 that is presented from this witness stand and from
17 any exhibits that are introduced into evidence.

18 I will give you a brief summary of the
19 allegations of the indictment for those purposes of
20 determining if you have a conflict. The State
21 alleges that Mr. Mayes did in Lexington County on or
22 about February 17, 2011, in one charge, knowingly
23 and willfully possess a firearm during the
24 commission of a violent crime, that being the
25 trafficking and distribution of drugs. And that is

1 an indictment for possession of a weapon during the
2 commission of a violent crime.

3 Another of the indictments alleges that
4 Mr. Mayes did in Lexington County on or about
5 February 17, 2011, knowingly and intentionally,
6 willfully and lawfully sell, cultivate, manufacture,
7 deliver, purchase, or bring into the state, or
8 provide financial assistance, or did have actual or
9 constructive possession of a quantity of drugs and
10 is charged with trafficking in crack cocaine.

11 And the other indictment says that on that
12 same date, February 17, 2011, that Mr. Mayes did
13 traffic in powder cocaine. And I will, of course,
14 define trafficking and those matters at a later
15 time. But there are two drug allegations and then
16 one of possession of a weapon illegally.

17 The defendant, Mr. Mayes, is represented
18 by Mr. Floyd. Mr. Floyd, would you stand, have your
19 client stand, introduce yourself to the jury, and
20 introduce your client to the jury.

21 MR. FLOYD: Yes, Your Honor.

22 My name is Wayne Floyd, and I live in
23 Lexington and practice law down on Highway One in
24 West Columbia. And this is the defendant in this
25 case, Mr. Douglas Mayes.

1 THE COURT: Thank you. You may be seated.

2 Before we select the jury, I need to ask
3 you some questions. Please give your attention to
4 these questions, and if any of the questions apply
5 to you, then respond accordingly.

6 Is any member of the jury panel related by
7 blood or connected by marriage to the defendant,
8 Douglas James Mayes? If so, please stand.

9 The following individuals may appear as
10 witnesses in this case, and I would ask that if any
11 of the witnesses are present in court at this time
12 that you stand when your name is called.

13 Agent Paige Barnes of the Lexington County
14 Sheriff's Department; Beth Harmon of the Lexington
15 County Sheriff's Department; Deputy Michael Joe Hart
16 of the Lexington County Sheriff's Department; Agent
17 Ronnie Hinson of the State Law Enforcement Division;
18 Emily Homer of the Lexington County Sheriff's
19 Department; Agent Eric Kirkland of the Lexington
20 County Sheriff's Department; Candy Kyzer of the
21 Lexington County Sheriff's Department; Sgt. Billy
22 Laney of the Lexington County Sheriff's Department;
23 Barbara McMullen of the Lexington County Sheriff's
24 Department; Agent Dennis Tracy of the Lexington
25 County Sheriff's Department; and Marie Wearing of

1 the South Carolina Department of Motor Vehicles.

2 Is any member of the jury panel related by
3 blood or connected by marriage to any of the
4 proposed witnesses in this case? If so, please
5 stand. Thank you. The State of South Carolina, of
6 course, is represented by the Eleventh Circuit
7 Solicitor's Office but specifically by Mr. Michael
8 Ross.

9 Mr. Ross, would you stand and identify
10 yourself to the jury, please?

11 MR. ROSS: Good morning. My name is Mike
12 Ross. I'm an Assistant Solicitor here in Lexington
13 County, and I'm prosecuting this case.

14 THE COURT: Thank you.

15 Is any member of the jury panel
16 represented now or been represented in the past 10
17 years by anyone in the Lexington County Solicitor's
18 Office or by Mr. Michael Ross in any capacity? If
19 so, please stand.

20 Is any member of the jury panel
21 represented now or been represented in the last 10
22 years by Mr. Wayne Floyd? If so, please stand.

23 All right, sir, yes, sir. Give me your
24 name again, please, sir?

25 MR. SMOAK: Steven Smoak.

13

1 THE COURT: All right. And do you recall
2 your number?

3 MR. SMOAK: One ninety-four.

4 THE COURT: One ninety-four, okay. All
5 right, Mr. Smoak, I think you did come up in the
6 general qualification and indicated that you knew
7 Mr. Floyd. Has he also represented you?

8 MR. SMOAK: Yes, sir. We do have a case
9 open which we transferred the case to regarding my
10 children.

11 THE COURT: Okay. But you have a current
12 matter pending in his office?

13 MR. SMOAK: I'm not sure if it would be
14 with him or with his associate.

15 THE COURT: But in his office -- it's in
16 his office?

17 MR. SMOAK: Okay. All right, thank you,
18 sir.

19 Other than what has been disclosed to me,
20 is any member a close personal friend of any of the
21 parties, the lawyers, or any of the witnesses whom I
22 have read off to you? If so, please stand.

23 Yes, sir, your name?

24 MR. WINDSOR: Tommy Windsor.

25 THE COURT: Mr. Windsor?

1 MR. WINDSOR: Yes, sir, I'm actually a
2 friend of Mr. Scott. I worked with him in the
3 Attorney General's Office.

4 THE COURT: All right, this is juror
5 number 221. And you are friends of --

6 MR. WINDSOR: The Solicitor, Mr. Scott.

7 THE COURT: All right, Mr. Scott. Are you
8 social friends, and you've known him from your
9 dealings in the Attorney General's Office?

10 MR. WINDSOR: We've been out in groups of
11 friends once or twice.

12 THE COURT: All right, sir.

13 MR. WINDSOR: And we worked together.

14 THE COURT: All right, thank you, sir.

15 Does any member of the jury panel know
16 anything about the facts of this case as I have
17 briefly recited them to you? If so, please stand.
18 Has any member of the jury panel formed or expressed
19 an opinion as to the guilt or innocence of the
20 defendant, Douglas James Mayes? If so, please
21 stand.

22 Other than what has been disclosed to me,
23 is any member of the jury panel aware of any
24 interest, any bias, or any prejudice for or against
25 the defendant, Douglas James Mayes? If so, please

1 stand.

2 Again, other than what has been disclosed
3 to me, can each member of the jury panel give to the
4 State and the defendant, Douglas James Mayes, a fair
5 and impartial trial? If not, please stand.

6 Other than what has been disclosed to me,
7 does any member of the jury panel know of any reason
8 whatsoever why he or she should not serve as a juror
9 in this case? If so, please stand. Thank you.

10 Additional questions on behalf of the
11 State, Mr. Ross?

12 MR. ROSS: No, Your Honor.

13 THE COURT: On behalf of the defense, Mr.
14 Floyd?

15 MR. FLOYD: Your Honor, the agency is the
16 Lexington County Sheriff's Department. We would
17 just ask if any of them are close friends --

18 THE COURT: All right.

19 MR. FLOYD: -- or related to employees
20 there.

21 THE COURT: All right, the law enforcement
22 agency involved in this case is the Lexington County
23 Sheriff's Office. Is any member of the jury panel
24 or a member of your immediate family -- and I define
25 immediate family as spouse, parent, brother, sister,

1 or child -- employed or been employed by the
2 Lexington County Sheriff's Office within the last 10
3 years? If so, please stand.

4 Does any member of the jury panel or a
5 member of your immediate family as I have defined
6 that term have a close friend or a social
7 acquaintance with any member of the Lexington County
8 Sheriff's Office? If so, please stand.

9 All right, thank you, sir. I don't need
10 for you to.

11 The juror who stood was Mr. Windsor, and I
12 have already noted his relationship with Mr. Scott.

13 All right, counsel, come up just a moment,
14 please.

15 All right, Madam Clerk, if you'll give us
16 the jury. I know it will take a minute for the
17 computer to randomly select the names. As soon as
18 we get the list, we'll go forward. All right, Madam
19 Clerk, if you'll give us the jury, please.

20 CLERK OF COURT: When I call your name, if
21 you'll come up to the front where the bailiff is
22 standing. Bring your belongings just in case you're
23 seated, okay?

24 Juror number 25, Benjamin Brooks.

25 THE COURT: Just turn around right there.

1 There you go. Thank you, sir.

2 CLERK OF COURT: What say you for the
3 State?

4 MR. ROSS: Please present Mr. Brooks.

5 THE COURT: What say you for the defense?

6 MR. FLOYD: Present Mr. Brooks.

7 THE COURT: If you'll have a seat in the
8 jury box, sir.

9 Juror number 193, Lauritz Smitt. What say
10 you for the State?

11 MR. ROSS: Please present Mr. Smitt.

12 CLERK OF COURT: What say you for the
13 defense?

14 MR. FLOYD: Excuse Mr. Smitt, please.

15 CLERK OF COURT: If you'll return to your
16 seat, sir.

17 Juror number 192, Shefornia Smith. What
18 say you for the State?

19 MR. ROSS: Please present Ms. Smith.

20 CLERK OF COURT: What say you for the
21 defense?

22 MR. FLOYD: Present Ms. Smith, please.

23 CLERK OF COURT: If you'll have a seat in
24 the jury box, ma'am.

25 Juror number 67, Roy Farr. What say you

1 for the State?

2 MR. ROSS: Please present Mr. Farr.

3 CLERK OF COURT: What say you for the
4 defense?

5 MR. FLOYD: Seat Mr. Farr, please.

6 CLERK OF COURT: If you'll have a seat in
7 the jury box, sir.

8 Juror number 53, Tracie Donahue. What say
9 you for the State?

10 MR. ROSS: Please excuse Ms. Donahue.

11 CLERK OF COURT: If you'll return to your
12 seat, ma'am.

13 Juror number 157, Jason Pittman. What say
14 you for the State?

15 MR. ROSS: Please present Mr. Pittman.

16 CLERK OF COURT: What say you for the
17 defense?

18 MR. FLOYD: Excuse Mr. Pittman, please.

19 CLERK OF COURT: If you'll return to your
20 seat, sir.

21 Juror number 83, Kimberly Harrison. What
22 say you for the State?

23 MR. ROSS: Please excuse Ms. Harrison.

24 CLERK OF COURT: If you'll return to your
25 seat, ma'am.

1 Juror number 124, Steven McConnell. What
2 say you for the State?

3 MR. ROSS: Please present Mr. McConnell.

4 CLERK OF COURT: What say you for the
5 defense?

6 MR. FLOYD: Seat Mr. McConnell.

7 CLERK OF COURT: If you'll have a seat in
8 the jury box, sir.

9 Juror number 3, Shoka Alston. What say
10 you for the State?

11 MR. ROSS: Please excuse Ms. Alston.

12 CLERK OF COURT: If you'll return to your
13 seat, ma'am.

14 Juror number 7, Sheila Asmond. What say
15 you for the State?

16 MR. ROSS: Please present Ms. Asmond.

17 CLERK OF COURT: What say you for the
18 defense?

19 MR. FLOYD: Seat Ms. Asmond.

20 CLERK OF COURT: If you'll have a seat in
21 the jury box, ma'am.

22 Juror number 186, Donna Smith. What say
23 you for the State?

24 MR. ROSS: Please present Ms. Smith.

25 CLERK OF COURT: What say you for the

1 defense?

2 MR. FLOYD: Seat Ms. Smith.

3 CLERK OF COURT: If you'll have a seat in
4 the jury box, ma'am.

5 Juror number 131, Matthew Mervine. What
6 say you for the State?

7 MR. ROSS: Please present Mr. Mervine.

8 CLERK OF COURT: What say you for the
9 defense?

10 MR. FLOYD: Excuse Mr. Mervine, please.

11 CLERK OF COURT: If you'll return to your
12 seat, sir.

13 Juror number 35, James Clarke. What say
14 you for the State?

15 MR. ROSS: Please present Mr. Clarke.

16 CLERK OF COURT: What say you for the
17 defense?

18 MR. FLOYD: Seat Mr. Clarke.

19 CLERK OF COURT: If you'll have a seat in
20 the jury box, sir.

21 Juror number 73, Tiffany Gartmon. What
22 say you for the State?

23 MR. ROSS: Please present Ms. Gartmon.

24 CLERK OF COURT: What say you for the
25 defense?

1 MR. FLOYD: Present Ms. Gartmon.

2 CLERK OF COURT: If you'll have a seat in
3 the jury box, ma'am.

4 Juror number 190, Randall Smith. What say
5 you for the State?

6 MR. ROSS: Please present Mr. Smith.

7 CLERK OF COURT: What say you for the
8 defense?

9 MR. FLOYD: Excuse Mr. Smith, please.

10 CLERK OF COURT: If you'll return to your
11 seat, sir.

12 Juror number 177, Donald Sell. What say
13 you for the State?

14 MR. ROSS: Please present Mr. Sell.

15 CLERK OF COURT: What say you for the
16 defense?

17 MR. FLOYD: Present Mr. Sell.

18 CLERK OF COURT: If you'll have a seat in
19 the jury box, sir.

20 Juror number 219, Rita Williams. What say
21 you for the State?

22 MR. ROSS: Please present Ms. Williams.

23 CLERK OF COURT: What say you for the
24 defense?

25 MR. FLOYD: Seat Ms. Williams.

1 CLERK OF COURT: If you'll have a seat in
2 the jury box, ma'am.

3 207, George Turner. What say you for the
4 State?

5 MR. ROSS: Please present Mr. Turner.

6 CLERK OF COURT: What say you for the
7 defense?

8 MR. FLOYD: Present Mr. Turner.

9 CLERK OF COURT: If you'll have a seat in
10 the jury box, sir.

11 Juror number 208, Brandon Ulmer. What say
12 you for the State?

13 MR. FLOYD: Please present Mr. Ulmer.

14 CLERK OF COURT: What say you for the
15 defense?

16 MR. FLOYD: Present Mr. Ulmer.

17 CLERK OF COURT: If you'll have a seat in
18 the jury box, sir.

19 THE COURT: One alternate, please.
20 Counsel, one and two strikes.

21 CLERK OF COURT: Juror number 28, Mary
22 Cannon. What say you for the State?

23 MR. ROSS: Please present Ms. Cannon.

24 CLERK OF COURT: What say you for the
25 defense?

1 MR. FLOYD: Present Ms. Cannon.

2 CLERK OF COURT: If you'll have a seat in
3 the jury box, please, ma'am.

4 THE COURT: All right, anything with
5 regard to selection of the jury on behalf of the
6 State?

7 MR. ROSS: No, Your Honor.

8 THE COURT: On behalf of the defense?

9 MR. FLOYD: No, Your Honor.

10 THE COURT: All right.

11 All right, ladies and gentlemen of the
12 jury selected in the trial of this case, I have been
13 advised that there are a number of matters that we
14 now need to take up that I have to take up on the
15 record and outside of your presence and that this is
16 going to require the rest of the morning and part of
17 the early afternoon.

18 So I don't want to just keep you waiting
19 in your jury room while we do these matters that
20 must be addressed and must be addressed on the
21 record and outside of your presence. So I'm going
22 to excuse you until 3:00.

23 What I'm going to ask that you do is go
24 with the bailiff. He's going to show you where your
25 jury room is then. And then when you come back, do

1 not come back into the courtroom but come into the
2 jury room at 3:00 this afternoon.

3 I will tell you before you leave that I
4 know you do not know anything about the case as far
5 as evidence is concerned and only what I have told
6 you that the allegations of the indictment are. But
7 it would be improper for you to discuss this case
8 with anyone or to allow anyone to discuss this case
9 with you while you are away from the courthouse.

10 You should not talk to your family or your
11 friends about it. You can tell them that you have
12 been selected on a jury, but you are not allowed to
13 discuss the case with them. And the reasons for
14 that are pretty apparent.

15 You've got to decide the case based upon
16 what you hear in this courtroom and not on the basis
17 of what anyone else might say. Similarly, do not
18 allow anyone to talk to you about the case.

19 If anyone should attempt to talk to you
20 about the case over this recess or any recess when
21 you're away from the courthouse, get their name or
22 their description, report it to the bailiffs, they
23 will report it to me, and I will deal with them.

24 Also, whenever you are in the jury room,
25 either this afternoon or tomorrow if this case runs

1 into tomorrow, which it likely will, it would be
2 improper for you to discuss this case among
3 yourselves in any fashion whatsoever until I tell
4 you it is appropriate for you to begin your
5 discussions.

6 So you should not begin your discussions
7 until you have heard all of the evidence in the
8 case, the arguments of counsel, and the instructions
9 on the law by the Court. So when you are assembling
10 there in the jury room, you can talk about anything
11 you want to -- children, grandchildren, sports,
12 weather, anything at all -- but don't talk about
13 this case until I tell you that it is appropriate
14 for you to do so.

15 So with those admonitions, I'm going to
16 excuse you now and allow you to go with the bailiff.
17 He will show you where the jury room is, and he'll
18 show you how to get out and get back in here this
19 afternoon. But be back in the jury room, please,
20 this afternoon at 3:00, and I'll see you at that
21 time. Thank you. You may go with the bailiff.

22 (The jury left the
23 courtroom at 11:43 a.m.)

24 THE COURT: Mr. Solicitor, let me talk
25 with you about the balance of the panel. I think I

1 know what you're going to do, but just from the
2 standpoint of scheduling.

3 All right, ladies and gentlemen not
4 selected in the trial of this case, it's often very
5 difficult for us to estimate exactly how long a
6 matter is going to take. So I am going to excuse
7 you now for the rest of the day.

8 And I'm going to ask that you call that
9 number that you have after 6:00 tonight, anytime all
10 night long. That's an answering machine in the
11 Clerk's Office, very much like the one that you've
12 got at home, and your reporting instructions for
13 tomorrow will be on the answering machine.

14 So you can call at any time after six all
15 night long and get your instructions for reporting
16 tomorrow. If we are still trying or end the trial
17 of this case, it may be that we will have you not
18 report back until after lunch tomorrow or may have
19 you call back at a later time.

20 But this is a device that most all of the
21 counties have gone to that prevents us from running
22 jurors back and forth to the courthouse more than is
23 absolutely necessary. So I am going to excuse you
24 now but ask that you call that number after 6:00
25 tonight to get your reporting instructions for

1 tomorrow. But with those instructions, you are
2 excused for the rest of the day. Thank you. You
3 are free to go.

4 (The petit jury panel was
5 dismissed at 11:47 a.m.)

6 THE COURT: All right, thank you, counsel.
7 Now I understand that there are a couple of motions
8 that the defense has, having had a pre-trial
9 conference on this matter in chambers -- that the
10 defense has a Jackson versus Denno motion that I
11 believe we can take up before lunch that the
12 witnesses are here for, and then a motion with
13 regard to continuance or some other relief in
14 connection with a possible conflict that Mr. Floyd
15 has that we can only take up after the witnesses
16 available this afternoon or the chain-of-custody
17 issue that we can only take up with the evidence
18 custodian. And I understand she will be here at --
19 is it a she? --

20 MR. ROSS: Yes, Your Honor.

21 THE COURT: -- will be here at 2:00. So
22 those are your two motions, are they not, Mr. Floyd?

23 MR. FLOYD: That's correct, Your Honor.
24 And there would also, of course, be an issue at the
25 appropriate time for whether or not the search

1 warrant was defective.

2 THE COURT: Oh, a motion to suppress, all
3 right. Well, hopefully we can do both of those
4 before lunch. And let's go first with the motion to
5 suppress. And, again, for the record, I believe
6 that this matter was actually -- the case was
7 called. I don't know whether it was called or not,
8 but a motion to suppress was actually made before
9 Judge James in a previous term of court.

10 But my understanding of the law is that
11 motions to suppress evidence are appropriately heard
12 by the trial judge, that after the motion was heard
13 before Judge James, the case was not called for
14 trial. And therefore I believe Mr. Floyd is
15 entitled to have the matter heard before me, as the
16 matter is up for trial.

17 Any objection to that procedure, Mr. Ross?

18 MR. ROSS: No, Your Honor.

19 THE COURT: All right, let's hear the
20 motion to suppress. You may call your witnesses.

21 MR. ROSS: Your Honor, first, I'd ask that
22 the defense advise the State what its grounds for
23 the motion are.

24 THE COURT: All right, what's the grounds
25 of your motion, Mr. Floyd?

29

1 MR. FLOYD: Your Honor, at this time we
2 would move to suppress on the grounds that the
3 search warrant was issued based upon misleading and
4 incomplete information that was provided to the
5 issuing judge at the time.

6 I think under the trial of State v. Jones
7 we're entitled to have a hearing on that and even a
8 suppression of the evidence if the Court deems that
9 it was issued based upon incomplete or misleading
10 evidence.

11 THE COURT: All right. Basically, then,
12 the lack of probable cause for the issuance of the
13 warrant?

14 MR. FLOYD: That would be correct, Your
15 Honor.

16 THE COURT: Okay. All right, that being
17 the case, Mr. Ross, you may call your witnesses.

18 MR. ROSS: The State calls Eric Kirkland
19 to the stand.

20 THE COURT: All right, come around,
21 please.

22 (The witness was sworn.)

23 CLERK OF COURT: If you'll have a seat and
24 state your name for the record, please.

25 MR. ROSS: And, Your Honor, I'm going to

1 have a certified, true copy of the search warrant
2 and the affidavit in support of the search warrant
3 marked as a Court exhibit for Your Honor.

4 THE COURT: All right, Court Exhibit
5 Number One would be the affidavit for the search
6 warrant and the search warrant.

7 MR. KIRKLAND: My name is Detective --

8 COURT REPORTER: Hold on, please.

9 THE COURT: Wait just a minute.

10 (Court's Exhibit Number
11 One, Affidavit for Search Warrant and Search
12 Warrant, were marked for identification purposes.)

13 THE COURT: Thank you, sir.

14 All right, Mr. Ross, you may proceed.

15 ERIC KIRKLAND, having first been duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION (IN-CAMERA)

18 Q Agent Kirkland, do you have a copy of the
19 search warrant that you obtained in this case?

20 A I do, sir.

21 Q Is it over here sitting at the bar?

22 A Yes, sir. Can you bring it to me, please?

23 Yes, I do, yes. Thank you.

24 Q Agent Kirkland, how long have you been a
25 narcotics officer?

Eric Kirkland - Direct In-Camera

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1 A Approximately eight years, sir.

2 Q And did you obtain a search warrant in
3 this case against Mr. Mayes?

4 A I did.

5 Q And can you tell me about the
6 investigation that led to the issuance of that
7 search warrant?

8 A I can. On or about 12/1 of 2010, I
9 received an anonymous complaint of a possible drug
10 activity at a location, [REDACTED] [REDACTED] [REDACTED], in the
11 Pelion area of Lexington County, South Carolina.

12 The call actually stated that a black male
13 by the name of -- let me turn to it -- by the name
14 of Dougie and gave a description, stated that a
15 person lived there, that there was constant traffic
16 in and out of the residence, vehicles pull in, stay
17 a few minutes, and then leave.

18 There was also information given that a
19 white female, a child, and another individual,
20 possibly a brother, were all at that residence. On
21 12/20, I was contacted by a confidential and
22 reliable informant that did verify that information
23 to be true.

24 Q He verified that Douglas Mayes lived at
25 the address?

1 A I did, sir. I actually verified that
2 through the Department of Motor Vehicles.

3 Q Did he -- you verified that?

4 A Yes, sir, we did.

5 Q Did the confidential informant verify
6 that, as well?

7 A He did. Yes, he did.

8 Q Did he verify the drug activity occurring
9 at that residence?

10 A He did, sir.

11 Q Okay. You said he was reliable?

12 A Yes.

13 Q Had he worked for you in the past?

14 A Many times in the past.

15 Q And did his information and assistance
16 lead to arrests and prosecutions in the past?

17 A It did.

18 Q Okay. What did you do next?

19 A Well, the next thing we did was actually
20 orchestrate what we call a controlled purchase using
21 a confidential informant -- the individual or the
22 target, as we call it, sir.

23 Q Okay. What is a controlled purchase?

24 A A controlled purchase is when a narcotic
25 investigator actually sets up a controlled purchase

Eric Kirkland - Direct In-Camera

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1 with a confidential informant. We meet with the
2 informant prior to discussion of how much before the
3 purchase can be made, number one.

4 Number two, the confidential informant is
5 searched before and after the controlled purchase.
6 What we're looking for is drugs, weapons, and money
7 to ensure that they don't go in and make a purchase
8 for themselves.

9 The next thing that is done, they are
10 given documented money, and they're equipped with a
11 recording device so that we can listen and, if we're
12 lucky, visually see the controlled purchase as it
13 happens in real time.

14 Sometimes we're lucky. A phone call is
15 made to the target, and we get to record that
16 conversation. From there, we actually follow or we
17 drive the confidential informant as close to the
18 location as we can.

19 They go in, and we try to, if at all
20 possible, visually watch the confidential informant
21 go into the location. Once the controlled purchase
22 is made, once it's made, we meet back up with the
23 confidential informant.

24 Whatever he or she purchased is actually
25 turned over to us. We immediately do another search

1 to make sure that they don't have any drugs, money,
2 or weapons on them. We actually take that illegal
3 substance, put it in what we call a Best kit and
4 seal it.

5 And from there, we actually get a
6 statement, and we actually -- if they're paid, we
7 get them to actually sign a voucher, and we leave.

8 Q Okay. So you receive the drugs that are
9 purchased, and then you search them an additional
10 time, as well?

11 A Correct.

12 Q Okay. And when did this first controlled
13 purchase occur in this case?

14 A The first controlled purchase was January
15 31, 2011.

16 Q And can you tell me the details about
17 that?

18 A Sure. We met with the confidential
19 informant at a predetermined location. In this
20 case, the call had already been made and the deal
21 arranged prior to. So we met with the confidential
22 informant.

23 The same rules applied. We searched
24 before the drug purchase with negative results for
25 money and/or narcotics. He was wired up. Myself

Eric Kirkland - Direct In-Camera

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1 and an assisting agent drove him to a location near
2 the target location, being [REDACTED] [REDACTED] [REDACTED].

3 We parked across the street, and we
4 monitored the confidential informant walk down the
5 dirt road to the location. I want to guesstimate
6 somewhere around a scope of maybe five to ten
7 minutes. I'm probably stretching it a bit.

8 Five or ten minutes for the controlled
9 purchase to take place. The confidential informant
10 leaves, meets back up. He's picked up by us later
11 on down the road.

12 And we retrieved the crack cocaine or the
13 quantity of rock-like substance, researched him with
14 negative results for money and/or narcotics,
15 obtained a statement. In this case, had verified
16 the identity, so we actually had a -- I think I had
17 a photo lineup on hand, if I'm not mistaken.

18 I can't be positive, but I think I had a
19 photo lineup on hand, and I showed it to the
20 confidential informant.

21 Q And who did the confidential informant
22 identify?

23 A He identified Douglas James Mayes.

24 Q Okay. Was there a second controlled
25 purchase in this case?

1 A It was, on January 9, 2011.

2 Q Did you document the date of that
3 controlled purchase in your file?

4 A In my file?

5 Q Yes.

6 A Which file?

7 Q On your case file?

8 A Yes, it's right here.

9 Q And would that refresh your memory as to
10 the date of that second controlled purchase?

11 A That's correct.

12 Q Was it January or February 9th?

13 A Oh, I'm sorry, February 9th -- February
14 9th -- February 9, 2011.

15 Q And can you tell me how that controlled
16 purchase occurred?

17 A The very same way. We actually met with
18 the confidential informant. In this case, the
19 telephone call was made in our presence. I had a
20 cell phone number of [REDACTED] [REDACTED]. And the
21 individual on the other end the confidential
22 informant stated was Douglas James Mayes.

23 We actually asked for and -- someone asked
24 was it okay to come over and conduct a purchase of
25 \$100 of crack cocaine, and yes. We actually

Eric Kirkland - Direct In-Camera

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1 equipped him with the devices as stated earlier,
2 searched before actually wiring him up, took him
3 over.

4 In this case, he was driving, so we
5 followed the individual to the location. And as
6 soon as he veered off one way, we actually parked
7 back at the same spot we were at before and
8 monitored the vehicle go in, listened to the
9 controlled purchase.

10 As soon as it was over, we followed him
11 back out to the location, retrieved the rock-like
12 substance, and did another search, negative results,
13 photo lineup shown. And then we actually got a
14 statement, got him to sign the voucher, and parted
15 ways.

16 Q I'm going to show you what's been ID'd as
17 State's Number One. I'm showing Mr. Floyd, as well.
18 Just for situational awareness --

19 A Yes, sir.

20 Q -- you said you parked while the
21 controlled purchase was going on.

22 A Yes, sir.

23 Q Could you point out where on State's
24 Number One you were parked?

25 A Right here, right there.

- 1 Q Okay.
- 2 A Yes, sir.
- 3 Q And is this [REDACTED] [REDACTED] [REDACTED] right
- 4 there?
- 5 A It is, sir.
- 6 Q Okay. So you were basically across the
- 7 street, right?
- 8 A Yes, that's correct.
- 9 Q Okay. And you subsequently received the
- 10 drugs back from the confidential informant?
- 11 A That's correct.
- 12 Q Did you place them in a Best kit?
- 13 A I did.
- 14 Q Did you send that to evidence?
- 15 A I did, sir.
- 16 Q Okay. Based on that, did you go to a
- 17 magistrate to obtain a search warrant?
- 18 A I did, sir.
- 19 Q And which magistrate did you go to?
- 20 A I think I went to Judge William Shockley
- 21 -- Judge Will Shockley.
- 22 Q Okay. And when you went to Judge
- 23 Shockley, did he place you under oath?
- 24 A He did.
- 25 Q And did you tell the truth?

Eric Kirkland - Direct In-Camera

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1 A Always, yes, sir.

2 Q Did you present an affidavit to Judge
3 Shockley?

4 A I did.

5 Q And by presenting that affidavit, did you
6 intend to swear to the truthfulness of that
7 information?

8 A That's correct.

9 Q And do you have a copy of that --

10 A I do.

11 Q -- affidavit with you?

12 A I do, right here, yes, sir.

13 Q Before we get to the affidavit, let me ask
14 you one question regarding the town which [REDACTED]
15 [REDACTED] is located in.

16 A That town is actually located in Pelion.

17 Q Okay.

18 A But the typo actually stated Lexington
19 County -- Lexington, South Carolina, excuse me.

20 Q And is that underneath the description of
21 premises to be searched through that typo?

22 A It is, sir.

23 Q And that only came to your attention after
24 you had obtained the judge's signature, right?

25 A That's correct.

1 Q Okay. Is there a [REDACTED] [REDACTED] [REDACTED] in
2 the Lexington area?

3 A No, sir. No, sir, there is another 7004
4 anywhere in Lexington County.

5 Q Okay.

6 A Not [REDACTED] Highway, no, sir.

7 Q Let's go through the affidavit portion of
8 the search warrant. Paragraph one on page one of
9 the affidavit, can you tell me what's going on here
10 in this paragraph?

11 A You mean the description of premises or
12 persons?

13 Q No, I'm looking at the affidavit portion.
14 It begins, "This affiant, Detective Eric Kirkland."

15 A Okay, yes, sir.

16 Q Is that a summary of your law enforcement
17 experience?

18 A It is.

19 Q And was that true at the time that the
20 search warrant was issued?

21 A It was.

22 Q Turning to the next page of the affidavit,
23 paragraph one, can you go through this paragraph,
24 please?

25 A Yes, sir. Would you like me to read it in

Eric Kirkland - Direct In-Camera

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1 its entirety?

2 Q Just tell me your personal basis for this
3 paragraph.

4 A It's actually a general synopsis of how
5 this investigation began. We received an anonymous
6 phone, the information that was given. And I
7 actually just put that in the paragraph not to
8 mislead the judge but to let the judge know how this
9 investigation led or began and the person or persons
10 described in it with description as best as possible
11 given on that date.

12 Q Okay. I'd like to turn your attention to
13 about midway through this paragraph, a sentence that
14 begins "This agent began an investigation."

15 A Uh-huh.

16 Q Can you tell me about what investigation
17 you did to identify who lived at [REDACTED]
18 [REDACTED]?

19 A I actually went and actually verified that
20 through call cards from the Sheriff's Department.
21 Law enforcement had actually had some interaction
22 there, and the names actually matched up with the
23 address per se.

24 Q Okay.

25 A Then from there, we went and did DL

1 pictures and things of that nature.

2 Q When you say DL, you mean driver's
3 license?

4 A Driver's license, I'm sorry -- South
5 Carolina driver's license, DMV, correct.

6 Q And those photographs matched Douglas
7 Mayes?

8 A Yes, sir.

9 Q Okay. And going to paragraph number two,
10 can you tell the judge a little bit about paragraph
11 two?

12 A Yes, sir. This is actually on or about
13 the date that the confidential informant contacted
14 me to let me know that drug activity was taking
15 place, corroborated that the address was 7004,
16 corroborated that the individual there was James
17 Douglas Mayes.

18 He even went as far as to say that he had
19 actually physically seen drugs there and the amount
20 of drugs that was seen at that particular time prior
21 to the controlled purchase.

22 Q Was the confidential and reliable
23 informant a different person than the individual --
24 than the anonymous individual that called in --

25 A Yes.

Eric Kirkland - Direct In-Camera

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1 Q -- the complaint earlier?

2 A Yes, correct.

3 Q All of these sentences that say "The
4 informant stated that" -- for example, "The
5 informant stated that a controlled purchase could be
6 made with Dougie Mayes" --

7 A Yes.

8 Q -- was that a statement that the informant
9 gave you?

10 A I'm stating exactly what the informant
11 stated to me, yes.

12 Q Okay. And then the rest of the sentences
13 in that paragraph that begin "The informant stated,"
14 again, he's stating that to you?

15 A Correct.

16 Q So you have personal knowledge of that?

17 A That's correct.

18 Q Okay. Turning to the next page, it says,
19 "During the past three days, agents made at least
20 one controlled purchase of illegal narcotics." Is
21 that the same controlled purchase that you testified
22 to earlier?

23 A It is.

24 Q And that's the one that occurred on
25 February 9th?

Eric Kirkland - Direct In-Camera

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1 A Yes, that's correct.

2 Q You searched him before and after the
3 controlled purchase?

4 A I did.

5 Q And monitored the controlled purchase?

6 A Yes, sir.

7 Q Okay. Now going to the second paragraph.
8 Can you please explain this second sentence, "The
9 target answered, and the informant asked the target,
10 'Can I come by and see you?'" Tell the judge what's
11 going on there?

12 A That is actually during the controlled
13 purchase on February the 9th. The phone call was
14 made in the agent's presence. And once the call was
15 answered by the target on the other end, I actually
16 put in there actually as best what was said, "Can I
17 come by and see you?" And the target said to come
18 on over. So that is actually the phone call that
19 led up to the controlled purchase.

20 Q Okay. And, again, everything in paragraph
21 two is based on your personal knowledge?

22 A Yes, correct. I was present.

23 Q He was shown a photo lineup after the
24 controlled purchase?

25 A That's correct.

Eric Kirkland - Direct In-Camera

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1 Q Okay. I want to go to the next page and
2 the first full paragraph that begins with
3 "Furthermore." It says, "Furthermore, this affiant
4 states that within the past 72 hours, agents with
5 the LCMANT have conducted at least one controlled
6 purchase of illegal narcotics." What were you
7 expressing to the judge when you used the word
8 "furthermore"?

9 A That's an in-conclusion type, might be a
10 typo again. But in conclusion, I am letting the
11 judge know that an overall synopsis or a generalized
12 overview of what we did prior to, letting him know
13 that in 72 -- reiterating again in that 72 hours we
14 made a purchase of illegal narcotics from the actual
15 location and just giving him an overview of what
16 happened as stated earlier before in the search
17 warrant.

18 Q So that's the same controlled purchase
19 that you're describing earlier in the affidavit?

20 A That's correct.

21 Q Now let me turn your attention to the last
22 sentence of that paragraph that reads, "Agents made
23 no less than two controlled purchases of illegal
24 narcotics from inside the residence." Does that
25 refer to the January 31st and the February 9th

1 deals?

2 A That's correct, yes, sir.

3 Q So one of those occurred outside of the
4 72-hour window?

5 A Yes, sir, based on -- when I said no less
6 than two, I'm giving him a total of how many buys.

7 THE COURT: What paragraph are you
8 referring to, Mr. Ross?

9 MR. ROSS: This is the first full
10 paragraph on page --

11 THE COURT: The last page --

12 MR. ROSS: Yes, Your Honor.

13 THE COURT: -- over the signature?

14 MR. ROSS: The page before the signature.

15 THE COURT: Oh, okay. And the last
16 paragraph begins with "furthermore"?

17 MR. ROSS: Yes, Your Honor.

18 THE COURT: And his statement is what,
19 less than two?

20 MR. ROSS: It reads, "Agents have made no
21 less than two controlled purchases of illegal
22 narcotics from inside the residence."

23 THE COURT: All right, the copy of the
24 affidavit that I have says no less than one
25 controlled purchase of illegal narcotics.

Eric Kirkland - Direct In-Camera

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1 MR. ROSS: At the end of the paragraph,
2 there's a different sentence, Your Honor. I think
3 the pages have gotten a little bit mixed up, sir.
4 Different copies, I'm sorry, Your Honor.

5 THE COURT: Speak up, because everybody's
6 got to hear you.

7 MR. ROSS: What I was referring to, Your
8 Honor, is the second-to-last paragraph on Court's
9 Exhibit Number One reads, "Agents have made no less
10 than one controlled purchase of illegal narcotics
11 from inside the residence." That's the sentence to
12 which I was previously referring.

13 THE COURT: All right, and that was my
14 question. You said two. This says one, the Court's
15 exhibit has.

16 MR. ROSS: I must be looking at the wrong
17 copy, Your Honor.

18 THE COURT: All right. Let the record
19 reflect the copy that was introduced into evidence
20 as Court's Exhibit Number One is the one the Court
21 is relying on and the one that the State has
22 indicated. That's why I asked him the question,
23 because what I read is it says not less than one.
24 But I'll allow you to ask him about that, and I'll
25 allow Mr. Floyd to cross-examine him on it.

1 Q When did you present the affidavit to the
2 judge, Investigator Kirkland?

3 A On February 11, 2011.

4 Q Okay. Had you previously gone before that
5 judge before on February 3, 2011?

6 A Yes.

7 Q And can you tell me about that?

8 A On February 3rd, I think that is when -- I
9 can't remember if that's when I obtained the
10 warrants or not. I can't remember.

11 Q Well, the date that you obtained the
12 warrant would be on the front of the warrant, would
13 it not?

14 A Correct.

15 Q And that would be February 11, 2011,
16 right?

17 A Correct.

18 Q I am going to hand you what I'm going to
19 mark as Court's Exhibit Number Two.

20 A Uh-huh.

21 Q And on the front page, I've written
22 "Solicitor's copy" on it.

23 A Uh-huh.

24 Q But if you could take a look at that
25 search warrant, please -- the affidavit.

Eric Kirkland - Direct In-Camera

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1 A Okay.

2 Q Take a minute to review that. Does that
3 match the affidavit that you have in your file?

4 A Yes, sir, it does.

5 Q Is that the affidavit that you presented
6 to Judge Shockley on February 11, 2011?

7 A Yes, sir.

8 Q Okay. Is that the affidavit that you
9 swore the truthfulness to?

10 A Yes, sir.

11 Q Okay. Was there a second affidavit in
12 this case?

13 A No, sir.

14 Q Okay.

15 A No, sir. That's the only one I had, sir.

16 Q If I were to show you Court's Exhibit
17 Number One -- I'm going to show Mr. Floyd this as
18 well -- what is the date written underneath the
19 signatures on Court's Exhibit Number One, right
20 here?

21 A 2/3/11.

22 Q So is that the affidavit that you
23 presented to the judge?

24 A No, sir.

25 Q Do you have any idea how this affidavit

Eric Kirkland - Direct In-Camera

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1 got in the --

2 A No, sir.

3 Q -- judge's file?

4 A No. My affidavit is 2/11/11.

5 Q And that would be on Court's Exhibit
6 Number Two?

7 A That's correct, yes, sir.

8 THE COURT: Let me have those two, Mr.

9 Ross.

10 MR. ROSS: Please answer any questions Mr.

11 Floyd may have for you.

12 THE COURT: Mr. Floyd?

13 MR. FLOYD: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. FLOYD:

16 Q Officer Kirkland --

17 A Yes, sir.

18 Q -- according to the description of the
19 premises to be searched pursuant to this search
20 warrant --

21 A Yes, sir.

22 Q -- isn't it true that you identified the
23 premises as having an address of [REDACTED]
24 [REDACTED], Lexington, South Carolina?

25 A Yes, sir, that's correct.

Eric Kirkland - Cross In-Camera

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1 Q And there is no such address in Lexington,
2 is there?

3 A That's correct.

4 Q In fact, that would be a Pelion address,
5 is that correct?

6 A That's correct, sir.

7 Q However, wouldn't you agree with me that
8 the Lexington address is the one you carried all the
9 way through your affidavit?

10 A That's correct.

11 Q In fact, you call it Lexington at least
12 seven times, do you not?

13 A Yes, sir.

14 Q And would you agree with me that whatever
15 contraband that you discovered as a result of this
16 particular search concerning Mr. Mayes came from
17 ████████████████████, Pelion, South Carolina?

18 A I would answer that by saying that the
19 address of ████████████████████ sits just beyond the
20 outside of Pelion on 302, this side of it, okay?
21 That was a typo and my mistake, but actually it's a
22 Pelion address. And I can actually answer that by
23 saying a typo on my part, a mistake.

24 The DMV photo that I obtained of him

1 beforehand on -- allow me a minute -- that I got on
2 1/21/11 clearly states [REDACTED] [REDACTED] [REDACTED], Pelion,
3 South Carolina, in Lexington County. So that was a
4 typo, my mistake, sir.

5 Q And that same typo was carried all the way
6 through all the paperwork, is that correct?

7 A That's correct, sir.

8 Q And when you describe with particularity
9 the --

10 A Uh-huh.

11 Q -- premises to be searched, you definitely
12 carry Lexington, South Carolina, as the address, is
13 that correct?

14 A That's correct.

15 Q And that is not the correct address for
16 Mr. Douglas Mayes?

17 A That's not the correct town, yes, sir.

18 Q Now, did you also mention -- maybe I
19 misheard you. Did you say he lived on a dirt road?

20 A No, I did not say he lived on a dirt road.

21 Q What was that said about a dirt road?

22 A We actually parked on the other side. He
23 lives off of a main road, and there is a dirt road
24 that extends down to that residence. But it's

Eric Kirkland - Cross In-Camera

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1 clearly seen from 302. But if he'll produce the
2 photo, there's a dirt road that leads down to his
3 residence.

4 Q Now, according to the information in your
5 affidavit, you were asking the judge to grant you
6 the search warrant based upon two prior
7 transactions --

8 A Correct.

9 Q -- is that correct?

10 A Correct.

11 Q Now, when you made -- when these
12 transactions were allegedly occurring, did you have
13 the CI make out a statement for you as to what
14 happened?

15 A Yes, sir.

16 Q And to when it happened?

17 A Yes, sir.

18 Q Now, your affidavit is based, is it not,
19 upon alleged transactions that occurred on January
20 31, 2011, and February 9, 2011, is that correct?

21 A Uh-huh.

22 Q Is that correct?

23 A Yes, sir, that's correct, sir.

24 Q Do you have a copy of the CI's statement

1 concerning the February transaction in your
2 paperwork?

3 A I do.

4 Q And would you agree with me on the first
5 line it says "on February 9, 2010"?

6 A That's correct, sir.

7 Q So his statement said that he made a
8 transaction on February 9, 2010, not February 9,
9 2011, is that correct?

10 A That's correct, sir.

11 MR. FLOYD: Your Honor, could I maybe have
12 a copy of this marked?

13 THE COURT: Court's Exhibit Number Three
14 for purposes of this hearing.

15 (Court's Exhibit Number
16 Three, Statement, was marked for identification
17 purposes.)

18 Q And, Officer Kirkland --

19 A Yes, sir.

20 Q -- is that an accurate copy of the
21 statement made to you by the CI?

22 A It is. There is another portion that goes
23 with that, the front portion, the officers that were
24 present. My paperwork says 2/9/2011. So there is

Eric Kirkland - Cross In-Camera

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1 actually another portion that goes with that
2 statement, and it lists the times, the dates, who
3 searched him. And that paperwork says 2/9/2011.

4 Q But the gentleman who gave you the
5 statement --

6 A I understand, yes, sir.

7 Q -- that you relied upon says February 9,
8 2010, is that correct?

9 A That's correct, sir.

10 Q Let's go to page two -- on the third line,
11 page two.

12 A Of what, sir?

13 Q Of your affidavit.

14 A Yes, sir.

15 Q Isn't it true that on line three, you
16 identified the location as [REDACTED] [REDACTED] [REDACTED],
17 Lexington?

18 A Are you asking me, sir?

19 Q Yes.

20 A Yes, sir. I answered that already, yes,
21 sir.

22 Q And then if you go down to the second
23 paragraph on that page, is it also not true that you
24 once again identified in line four and line five the

1 premises location as Lexington, not Pelion?

2 A That's correct, sir.

3 Q And on page three --

4 A Uh-huh.

5 Q -- is it not true that on line three, you
6 once again identified the premises as Lexington
7 rather than Pelion?

8 A That's correct, sir.

9 Q And on page four, first paragraph, line
10 four, once again, Lexington, not Pelion, is that
11 correct?

12 A That's correct, sir.

13 Q Next paragraph, line four, once again,
14 Lexington and not Pelion, is that correct?

15 A That's correct, sir.

16 Q In fact, at no time and at no place during
17 your affidavit do you ever identify the premises as
18 being in Pelion, South Carolina?

19 A That's correct.

20 Q Now, let's go back to what you told the
21 magistrate other than the premises situation. On
22 page three, you say, "During the past three days,
23 agents have made at least one controlled purchase,"
24 is that correct?

Eric Kirkland - Cross In-Camera

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1 A Where are you now? Say it again?

2 Q Top of the page at page three.

3 A Yes, sir.

4 Q Now, in reality, you had only made one
5 purchase, is that correct?

6 A That's correct. Say that again?

7 Q In reality, during the last three days you
8 had only made one controlled purchase, is that
9 correct?

10 A That's what I have.

11 Q Well, now, you have "at least one."

12 A Okay.

13 Q That implies there could have been more,
14 is that correct?

15 A No, sir. "At least one" means just one.
16 You have to do at least one buy within that 72-hour
17 period. Matter of fact, while the judge was reading
18 it, I can actually tell you while he's reading, I'm
19 actually reiterating that to him verbally while he's
20 reading. So if it wasn't here, I'm pretty sure I
21 told him. I am almost definite I told him. But one
22 implies one, yes, sir.

23 Q Are you saying "at least one" is the same
24 as one?

1 A By my standards, yes, sir. By my
2 standards, "at least one" would have meant one. If
3 it had of been two, that still would have given me
4 more than what I needed. But in this case, one --
5 one meant one, sir.

6 Q So you didn't need "at least" in there?

7 A I probably didn't, yes, sir.

8 Q But by putting that in there, it implies
9 there could have been more than one, does it not?

10 A No, sir.

11 Q Okay. Now, you follow that up on the next
12 page --

13 A Uh-huh.

14 Q -- and you use the word "furthermore."

15 A Uh-huh.

16 Q "Affiant states that within the past 72
17 hours, agents have conducted at least one controlled
18 purchase of illegal narcotics."

19 A Uh-huh.

20 Q Is that correct?

21 A That's correct, sir.

22 Q But, now, that seems to indicate that's a
23 different matter than the one on the previous page.

24 A No, sir. That's a reiteration of the

Eric Kirkland - Cross In-Camera

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1 entire search warrant. I actually gave him a brief
2 paragraph, a synopsis, of everything that occurred
3 during the course of it, to include the searching of
4 the confidential informant and everything that we
5 just reiterated it and captured it. It could have
6 been meant to be the same thing as "in conclusion."

7 Q But it doesn't. It says "furthermore,"
8 which means in addition.

9 A No, sir -- no, sir.

10 Q In fact, you word it differently. You say
11 72 hours rather than three days, is that correct?

12 A Yes, sir.

13 Q Which clearly implies, does it not, that
14 you're talking about a different transaction on this
15 page than you were on the other page?

16 A Seventy-two hours is equivalent to three
17 days. No, sir, I don't see how that implication
18 could be made, no, sir.

19 Q Well, then, why have it two different
20 ways, two different dates?

21 A I wasn't aware I had fixed it a different
22 way. I had the 72 hours as three days. That's the
23 way I write my search warrants. But it's not an
24 implication or meant to be misleading. It's

1 actually meant to include everything that's in here.
2 I give a generalized overview, and I leave nothing
3 out.

4 Q Now, then we go to the last paragraph of
5 that page. You claim that there was a violation
6 entitled 44-53-370 --

7 A Yes, sir.

8 Q -- is that correct?

9 A Yes, sir.

10 Q That's not accurate, is it?

11 A No, sir.

12 Q So you gave the magistrate misleading and
13 inaccurate information in this paragraph also?

14 A Yes, sir. That was supposed to be 375.
15 That's why the issuance of warrants was actually
16 given to Mr. Mayes, yes, sir. When I caught that
17 mistake, it was quickly reiterated and changed it,
18 yes, sir.

19 Q Now, the confidential informant, that was
20 a Mr. Charles Walker?

21 A Yes, sir.

22 Q And in fact, has he not given a statement
23 that he did not really make any buys from Doug
24 Mayes?

Eric Kirkland - Cross In-Camera

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1 A We never had that. Do you want me to
2 answer that? You really want me to answer that?

3 Q What do you want to say?

4 A Yes, sir, he gave that statement under
5 pressure. And warrants have since been issued and
6 served on your client for intimidation of a State's
7 witness, statements to follow that from him and his
8 mother that were present when those verbal threats
9 happened. I don't have that file with me, but I'll
10 be glad to go get it if the Court would indulge.

11 Q I'm going to show what was previously
12 marked as Court's Exhibit Ten. Is that the
13 statement you're talking about?

14 A Yes, sir.

15 THE COURT: We've got to have it marked
16 for this case, Court's Four.

17 MR. FLOYD: Okay, sorry about that, Judge.

18 THE COURT: Any objection?

19 MR. ROSS: No, Your Honor.

20 THE COURT: Court's number four.

21 MR. FLOYD: How should we do that, Judge?

22 THE COURT: It can be taken off for that
23 and give that back to the Clerk. I don't know what
24 that is, but give that back to the Clerk and

1 identify it as -- I assume that that was the hearing
2 before Judge James, is that correct?

3 MR. ROSS: Yes, Your Honor.

4 MR. FLOYD: That's correct.

5 THE COURT: All right, this is a de novo
6 hearing.

7 COURT REPORTER: It's Court's number four,
8 Your Honor.

9 THE COURT: Court's number four.
10 (Court's Exhibit Number
11 Four, Statement, was marked for identification
12 purposes.)

13 MR. FLOYD: Thank you, Your Honor. No
14 further questions.

15 THE COURT: Redirect?

16 MR. ROSS: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. ROSS:

19 Q Are there two [REDACTED] [REDACTED] [REDACTED] in
20 Lexington County?

21 A No, sir.

22 Q Mr. Floyd talked about the dirt road
23 leading to the residence.

24 A Yes, sir.

Eric Kirkland - Redirect In-Camera

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1 Q Again, I'm going to show you what's been
2 premarked for ID purposes only as State's Number
3 One. Is this the location where the buy occurred?

4 A Yes, sir, it is.

5 Q And how would you describe this driveway
6 that leads down to the trailer?

7 A A dirt road.

8 Q Okay. You indicated that when the CI does
9 a controlled buy, he fills out a statement, right?

10 A That's correct.

11 Q And there are additional pieces of paper
12 that you filled out as well, right?

13 A That's correct.

14 MR. ROSS: I'm going to mark another
15 Court's exhibit.

16 THE COURT: Court's number five. What is
17 it?

18 MR. ROSS: It's a form filled out by Agent
19 Kirkland regarding the buy.

20 COURT REPORTER: Court's number five.

21 THE COURT: Any objection, Mr. Floyd?

22 MR. FLOYD: No objection, Your Honor.

23 THE COURT: All right, Court's number
24 five.

25 (Court's Exhibit Number

1 Five, Form by Agent Kirkland re buy, was marked for
2 identification purposes.)

3 Q Agent Kirkland, if you could please look
4 at this. Is this a copy of your original?

5 A It is.

6 Q And that copy is a little faint. But does
7 it include the date that this buy occurred on?

8 A It does.

9 Q And is that February 9, 2010, or 2011?

10 A It's 2011 -- February 9, 2011.

11 Q And this portion here that's blacked out,
12 is that the CI -- confidential informant -- number?

13 A It is.

14 Q And is the reason why that's blacked out
15 to protect the identity of the CI?

16 A It is.

17 Q Okay. If you'll pass that the Court, sir.

18 A Yes, sir.

19 Q How many hours are in three days -- 72,
20 right?

21 A Yes, sir, that's correct.

22 Q And when you indicate that a violation of
23 44-53-370 has occurred, did you mean a violation of
24 the crack cocaine statute?

25 A I meant 375, that's correct, sir.

Eric Kirkland - Redirect In-Camera

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1 Q Were you intending to deceive or mislead
2 the judge in any way by indicating it as 44-53-370?

3 A No, sir.

4 Q Did you refer to crack cocaine being sold
5 in that affidavit?

6 A Yes.

7 Q And did you advise the judge of that as
8 well?

9 A I did.

10 Q Okay. Now, regarding this prior
11 statement, I believe it's a Court's exhibit, from
12 the CI.

13 THE COURT: Which one, one or two?

14 MR. ROSS: The statement from the CI, the
15 handwritten on notebook paper.

16 THE COURT: Court's number three.

17 MR. ROSS: No, the second statement.

18 THE COURT: All right, Court's number
19 four.

20 Q Did you investigate this statement?

21 A I did, sir.

22 Q And tell me how you investigated this.

23 A I actually -- after this letter was
24 written, I received a handwritten letter to come and
25 see the confidential informant who was incarcerated

1 at the time this letter was written.

2 Q Incarcerated where?

3 A He was incarcerated at Lexington County
4 Detention Center.

5 Q Who else was incarcerated in Lexington
6 County Detention Center.

7 A In the same pod with Mr. Mayes.

8 Q When you say "pod," what is a pod?

9 A The same general area where they're housed
10 at, their housing area.

11 Q So they were housed in the same area?

12 A That is correct, sir.

13 Q The CI and the target in this case were
14 housed in the same area?

15 A That's correct.

16 Q And did the CI previously testify in the
17 hearing in front of Judge James?

18 A Yes, he did. He testified earlier. Are
19 you asking me -- yes, he did.

20 Q And did he renounce this written
21 statement?

22 A Yes, sir.

23 Q And did you see him here this morning?

24 A Yes, sir.

25 Q Is he ready to testify about this

Eric Kirkland - Redirect In-Camera

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1 statement this morning?

2 A He is, sir.

3 Q Okay.

4 Beg the Court's indulgence, Your Honor.

5 THE COURT: All right.

6 MR. ROSS: Your Honor, no further
7 questions for this witness.

8 THE COURT: Recross?

9 MR. FLOYD: Just a couple of things, Your
10 Honor.

11 RECCROSS EXAMINATION

12 BY MR. FLOYD:

13 Q The document you just put into evidence,
14 number five, is a statement?

15 A That's correct.

16 Q And it also identifies the area as
17 Lexington, South Carolina, and not Pelion, doesn't
18 it?

19 A That's correct.

20 MR. FLOYD: Thank you. I have no further
21 questions, Your Honor.

22 THE COURT: All right, thank you, sir.
23 You may step down.

24 All right, any further witnesses on this
25 issue on behalf of the State, Mr. Ross?

1 MR. ROSS: Yes, Your Honor, just one
2 further witness. I believe he's out here.

3 THE COURT: All right, you may call the
4 witness.

5 MR. ROSS: Charles Walker.

6 (The witness was sworn.)

7 CLERK OF COURT: If you'll have a seat
8 over here. State your name, please, for the record.

9 MR. WALKER: My name is Charles E. Walker
10 II.

11 CHARLES E. WALKER II, having first been
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ROSS:

15 Q Mr. Walker, how long have you known
16 Douglas Mayes?

17 A I've probably known him since high school.

18 Q Okay. Were you the CI in this case?

19 A Yes, sir.

20 Q Did you purchase crack cocaine from him?

21 A Yes, sir.

22 Q And you did it twice, right?

23 A Yes, sir.

24 Q Now, after you did this, did you pick up
25 charges of your own?

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1 A No, sir.

2 Q Were you --

3 A Oh, I did get something non-related, but
4 it was another situation, yes, sir.

5 Q What were you arrested for?

6 A I was arrested for second-degree burglary,
7 first-degree assault and battery, and resisting
8 arrest. That was my charges.

9 Q Okay. And did you go to the Lexington
10 County Detention Center after that?

11 A Yes, sir, I did.

12 Q And were you housed in the same location
13 as Mr. Mayes?

14 A Yes, sir.

15 Q All right. I'm going to show you a
16 written statement. This is Court's Exhibit Number
17 Four, dated 10/1/2012. Could you please take a look
18 at that?

19 A Yes, sir.

20 Q And when you've had a chance to review it,
21 just look up.

22 A Yes, sir, I remember that.

23 Q You wrote that statement?

24 A Yes, sir.

25 Q Can you tell me the details surrounding

1 you writing that statement?

2 A It was in the rec room at F pod -- or in A
3 pod, Lexington County. And that's a false statement
4 because in the circumstances, you know, I haven't
5 been in jail a lot, you know what I mean, but you
6 see bad things. So I was like I went ahead and went
7 with it, you know.

8 Q How did he figure out that you were the
9 CI?

10 A Well, when he confronted me on the walking
11 path, he asked me several times up to five minutes.
12 And, you know, again, the situation, you know. He's
13 telling me that he knows it was me, he knows it was
14 me. And I'm like finally said, "Yeah, it was me,"
15 you know. I had no other choice.

16 Q Okay. And did he ask you to write this
17 statement?

18 A Yes, sir, he did.

19 Q And why did you do it? Why did you write
20 it?

21 A Again, like I said, the circumstances of
22 the situation, I felt -- I don't know who he knows.
23 I don't know, and I've never been in jail like that.

24 Q If you had tried to walk away from the
25 jail, would you have been able to walk out the door

Charles Walker - Direct In-Camera

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1 of that jail?

2 A No, sir. You're exactly right.

3 Q Did you feel threatened?

4 A I was more just, you know, one that
5 doesn't go against the grain. And like you said, I
6 couldn't walk out that jail. I felt if I would have
7 declined, I would have been threatened --

8 Q Okay.

9 A -- into writing this statement.

10 Q So you have purchased crack cocaine from
11 the defendant?

12 A Yes, sir -- yes, sir.

13 Q And those were recorded with a wire?

14 A Yes, sir, they were recorded.

15 Q Okay. Nothing further. If you would,
16 please answer anything Mr. Floyd has for you.

17 THE COURT: Cross-examination, Mr. Floyd?

18 MR. FLOYD: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. FLOYD:

21 Q So, Mr. Walker, Mr. Mayes, he never
22 threatened you to get that statement from you, did
23 he?

24 A No, no, he didn't threaten me. But, you
25 know, in the circumstances I didn't know what was

1 going to happen.

2 Q And you volunteered to make the statement,
3 didn't you?

4 A Because of the circumstances and the
5 situation I was in.

6 Q I understand that. But you volunteered on
7 your own to give them a statement?

8 A I wrote the statement, yes, I did.

9 Q And after you wrote the statement, were
10 you able to get out of jail after that?

11 A It was another month and a half before I
12 got out of jail.

13 Q And by telling them that you renounced
14 that statement, did they give you a deal on those
15 charges you had?

16 A No, sir.

17 Q Well, you're not in jail now, are you?

18 A No, sir.

19 Q And you had a burglary second, assault and
20 battery first, and a resisting arrest?

21 A I was able to get out on bond, sir.

22 Q Are those charges still pending?

23 A No, sir, I'm currently on probation.

24 Q So you got a probationary sentence out of
25 it?

Charles Walker - Cross In-Camera

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1 A Yes, sir.

2 Q Okay. So after you contacted Mr. Kirkland
3 and told him that you wanted to renounce this
4 statement, you got a probationary sentence?

5 A No, sir, that is false.

6 Q Did you get a probationary sentence?

7 A That was on my court date, when I went to
8 my court date. It had nothing to do with Kirkland.

9 Q When did you tell him about the situation?

10 A He knew about the situation a month and a
11 half while I was sitting in Lexington County in the
12 same cell with him.

13 Q All right. So he knew before you went to
14 court, didn't he?

15 A Yes, sir.

16 Q And so then you go to court, and you get
17 your charges handled in a such way that you get
18 probation, is that correct?

19 A Yes, sir.

20 Q And that's after you told them about
21 writing this statement for Mr. Mayes and that you
22 wanted to renounce it?

23 A Yes, sir.

24 Q Now, actually, you and Mr. Mayes, y'all
25 were not in the same cell, were you?

1 A We were in the same pod, sir.

2 Q And a pod contains how many cells?

3 A Shoot, I don't know -- 18 cells?

4 Q Okay. And a bunch of people?

5 A Yes, sir.

6 Q More than one in a cell, is that correct?

7 A Yes, sir.

8 Q And no question that you made the
9 statement and he did not verbally threaten you in
10 any way to get you to write the statement?

11 A No, sir, there was no threat -- direct
12 threat.

13 Q All right, thank you. No further
14 questions.

15 THE COURT: Mr. Ross?

16 REDIRECT EXAMINATION

17 BY MR. ROSS:

18 Q Was it an implied threat?

19 A No, sir. It was just the situation and my
20 own feelings that I felt threatened in the
21 situation.

22 Q So you personally felt threatened?

23 A Yes, sir.

24 Q Regardless of --

25 A Because you see stuff on TV with jail, you

Charles Walker - Redirect In-Camera

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1 don't know the situation, sir.

2 Q Were you offered any deals to cooperate?

3 A I was told I would be able to be helped
4 out with bond when I got bond.

5 Q Okay.

6 A And I declined it.

7 Q Who prosecuted your case? Was it the
8 Solicitor's Office or the Attorney General's Office?

9 A Attorney General's.

10 Q Okay. Did you have pending charges when
11 you made the buys?

12 A No, sir.

13 Q Why did you make the buys? Were you
14 getting paid?

15 A Yes, sir.

16 Q Okay.

17 Nothing further, Your Honor.

18 THE COURT: Recross?

19 MR. FLOYD: Nothing further, Your Honor.

20 THE COURT: All right, thank you, sir.

21 MR. WALKER: Yes, sir.

22 THE COURT: You may step down.

23 MR. WALKER: Thank you.

24 THE COURT: All right, any further
25 witnesses on this question, Mr. Ross?

1 MR. ROSS: No, Your Honor. I would ask
2 for a brief recess before we go into this.

3 THE COURT: You mean before you conclude?

4 MR. ROSS: Before we argue the search
5 warrant issue?

6 THE COURT: Sir?

7 MR. ROSS: Before we argue the issue of
8 the search warrant.

9 THE COURT: Do you anticipate any more
10 evidence?

11 MR. ROSS: Possibly, yes, sir.

12 THE COURT: All right, we won't close the
13 evidence at this time. I'd like to get this
14 concluded before lunch. How much time do you need?

15 MR. ROSS: Fifteen minutes.

16 THE COURT: That runs into the lunch hour.
17 All right, I guess I better do it by the book.
18 We'll recess for 45 minutes. Be ready to start back
19 in 40 minutes. Actually, be ready to start back at
20 1:30, and please get your lunch or whatever you're
21 going to do for lunch by that time. Thank you.
22 We'll be in recess until 1:30.

23 (Court in recess.)

24 THE COURT: All right, we're back on the
25 record with regard to the matter of the State versus

Charles Walker - Redirect In-Camera

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1 Mayes and adjourned the motion to suppress for the
2 lunch recess. And we're now ready to get back into
3 that.

4 Is there anything else on behalf of the
5 State, Mr. Ross?

6 MR. ROSS: Your Honor, in due candor with
7 the Court, the difference in the two affidavits that
8 were presented, there's a Court's Exhibit One and a
9 Court's Exhibit Two, I believe, with two separate
10 affidavits.

11 This was something that I didn't catch
12 pre-trial, and I have since investigated how there
13 are two different affidavits in this case. And I
14 would ask for the opportunity to offer evidence to
15 explain how you have one affidavit with I believe
16 February 3rd written on it and another affidavit
17 with February 11th, if Your Honor would entertain
18 that additional background.

19 THE COURT: Yes, sir, I'll entertain it.

20 MR. ROSS: The State would call Eric
21 Kirkland to the stand.

22 THE COURT: All right.

23 MR. ROSS: And I believe Mr. Mayes is
24 present with his attorney as well.

25 THE COURT: Yes, Mr. Mayes is present.

1 You've been sworn, sir.

2 All right, Mr. Ross, you may proceed.

3 MR. ROSS: Your Honor, do you have the
4 Court's exhibits?

5 THE COURT: I do.

6 FURTHER DIRECT EXAMINATION

7 BY MR.

8 Q Agent Kirkland, I'm going to show you
9 Court's Exhibit Number One. And on this first page
10 on Court's Exhibit Number One, can you read these
11 three words?

12 A "Certified true copy."

13 Q And what is that underneath it? What does
14 that say?

15 A "Swansea Magistrate District Four."

16 Q Okay. And now I'm going to flip to page
17 three of this document. Does this appear to be --
18 page three, does this appear to be a general form
19 that is used in all search warrants in South
20 Carolina?

21 A Yes.

22 Q And what is the date at the bottom of
23 this?

24 A The 11th day of February, 2011.

25 Q And now I'm going to turn to the

Eric Kirkland - Further Direct In-Camera

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1 Attachment A, which is the next page. What is the
2 date at the bottom here?

3 A 2/3/2011.

4 Q And whose initials are that above 2/3/2011
5 in the left-hand corner?

6 A Judge Shockley.

7 Q And here in more the middle portion of the
8 document, whose initials are these?

9 A Those are mine.

10 Q And what is that date underneath here?

11 A 2/3/2011.

12 Q Now I'm going to show you Court's Exhibit
13 Number Two. At the top of this document, what does
14 this say?

15 A "Solicitor's copy."

16 Q Okay. And, again, on page three take a
17 look at that. Does that appear to be identical to
18 page three on Court's Exhibit Number One?

19 A Yes, sir.

20 Q Okay. And now I'm going to flip to page
21 four. What is this?

22 A That is actually the return.

23 Q Okay. Is there a return on this one?

24 THE COURT: "This one" being?

25 MR. ROSS: "This one" being Court's

1 Exhibit Number One.

2 THE COURT: All right.

3 A No, sir.

4 Q Okay. Now I'm going to flip to one, two,
5 three, four -- page five, the Attachment A of
6 Court's Exhibit Number Two. Could you please take a
7 look at that? And what is the date here in the
8 bottom left-hand corner?

9 A 2/11/2011.

10 Q And whose initials are these?

11 A Those are mine.

12 Q And it says "EK"?

13 A That's correct.

14 Q And here on the right-hand portion of this
15 page, what does that date say?

16 A 2/11/2011.

17 Q And whose initials are these right here?

18 A Judge Shockley's.

19 Q Okay. So we've got two separate
20 Attachment A's in this case. Can you explain to the
21 judge how this happened?

22 A Yes, sir. On 1/31, when I made my first
23 controlled purchase, it is actually customary for
24 narcotic investigators to actually when you get a
25 controlled purchase go ahead and obtain a search

Eric Kirkland - Further Direct In-Camera

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1 warrant almost immediately.

2 That way if the CI, for some unknown
3 reason, or the investigation as a whole goes bad,
4 you still have 10 days to execute the search
5 warrant. I got contacted last week by Ms. Judy from
6 Judge Shockley's office.

7 Q Well, let me interrupt you.

8 A Uh-huh.

9 Q After the January 31, 2011, buy, did you
10 present an affidavit for the search warrant to Judge
11 Shockley?

12 A I did.

13 Q And did he sign it?

14 A He did.

15 Q Okay. Did you execute that search
16 warrant?

17 A No, sir.

18 Q And why didn't you execute it?

19 A Because I got a second buy on the third,
20 and I got a second buy later on the ninth, 2/9/2011.

21 Q Okay. And after that second buy, did you
22 appear before the magistrate again?

23 A Yes, sir.

24 Q And did you update your Attachment A?

25 A That's exactly what I did, sir.

1 Q Okay. And how did you write out
2 Attachment A? It looks like a computerized
3 document. Is that Microsoft Office Word or
4 something?

5 A It is Microsoft Word -- it is.

6 Q So you had that saved on your computer?

7 A Yes, sir.

8 Q And you simply updated the attachment to
9 reflect the additional investigation that occurred?

10 A The buy went from one to two, yes, sir.

11 Q Okay. And just to be clear for the
12 record, when you signed that attachment and the
13 affidavit, you were swearing the truthfulness of it?

14 A Yes, sir.

15 Q And when you went to the judge that second
16 time, he placed you under oath?

17 A Yes, sir.

18 Q And everything you told him was true and
19 correct?

20 A Yes, sir.

21 MR. ROSS: Your Honor, I believe that's
22 the factual presentation.

23 THE COURT: All right, Mr. Floyd?

24 CROSS-EXAMINATION

25 BY MR. FLOYD:

Eric Kirkland - Further Cross In-Camera

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1 Q May I see the first exhibit, Officer
2 Kirkland? May I see Exhibit One?

3 A I don't have it.

4 Q Both of those over there?

5 A No, these are my copies that I had, yes,
6 sir.

7 Q All right. It's your testimony that you
8 got a search warrant on February 3rd, but you never
9 executed it?

10 A I did not.

11 Q Did you inform the judge that you never
12 executed this one?

13 A When I went back for the second search
14 warrant is the one return here. It was never
15 executed.

16 Q You have a certain number of days to
17 execute it, do you know?

18 A That's correct.

19 Q How many days do you have?

20 A I have 10 days.

21 Q Now, you've got a return connected to this
22 one, do you not?

23 A I do.

24 Q It's dated February 17th?

25 A Yes. Now, you're talking about the first

1 or the second one?

2 Q First one.

3 A The first one, okay. No, that first one
4 wasn't even executed. It's blank. We never
5 executed --

6 THE COURT: Refer to them as one and two,
7 Court's one and two. That's the easy way to do it
8 for me to follow them.

9 MR. KIRKLAND: Thank you, sir.

10 Q Court's Exhibit Number One.

11 A Okay.

12 Q It's got a return on it, doesn't it?

13 A Yes, sir.

14 Q And it was executed February 17th?

15 A That's correct.

16 Q More than 10 days from the date on the
17 warrant?

18 A If it was signed on the ninth, then, no,
19 sir, it's not more than 10 days.

20 Q It's February 3rd, isn't it?

21 A February the 11th. That one was the one
22 that got from the 31st buy. I actually went back
23 and got a second search warrant. It's not, sir.

24 Q So what's been introduced as evidence as
25 Exhibit One -- Court's Exhibit One -- is a search

Eric Kirkland - Further Cross In-Camera

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1 warrant, is it not?

2 A Yes, sir. And I was elaborating and
3 explaining on last week I received a phone call from
4 the judge's office. They had lost the search
5 warrant, and the Court was wanting a copy.

6 In turn, I pulled the search warrant out
7 of here, which is my miscellaneous file, instead of
8 pulling it out of here, my master file. So
9 therefore I took them a search warrant without
10 looking at the date, because it got lost by them.

11 I took them a search warrant out of here
12 instead of pulling it from here. That's why in here
13 it says 2011, because this is my master.

14 If you'll note, the folder says [REDACTED]
15 [REDACTED]. That's my miscellaneous file. And
16 I kept it because when I got back -- when I got
17 ready to redo my information, to change the one to
18 two, I still had everything I needed in here.

19 Q All right, now --

20 A Yes, sir.

21 Q -- why would Judge Shockley's office be
22 calling to get a copy of the search warrant?

23 A You would have to ask them, sir. I do not
24 know.

25 Q Was that to be used here in this trial?

1 A Again, you'll have to ask them, sir.

2 THE COURT: What was the question?

3 MR. KIRKLAND: I do not know, sir.

4 THE COURT: What was the question?

5 MR. KIRKLAND: I don't know.

6 Q Why did Judge Shockley's office call
7 requesting a copy of the search warrant?

8 A I do not know, sir. You'll have to ask
9 them, sir.

10 Q You didn't ask them?

11 A No, sir. I just obliged the request that
12 was made.

13 Q This is a copy of the search warrant that
14 was issued February 11th right here, isn't it?

15 A Yes, sir.

16 Q There's an affidavit attached to it dated
17 February 3rd?

18 A Because that is what I took them. I took
19 them the wrong thing. It came out of here instead
20 of out of here.

21 Q So did the search warrant that you took
22 out of in Judge Shockley's then come back here for
23 this trial?

24 A Apparently so, because it was a mix-up
25 somewhere. I filed the stuff that's in your hand,

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1 sir.

2 Q So that means that Judge Shockley's office
3 did not have a copy of the search warrant?

4 A They had to have it because the copy that
5 she has is actually signed by the judge. When you
6 execute a search warrant and I took it back on the
7 17th, I get a copy of the one that's signed by the
8 judge.

9 That's why I can go here and show you a
10 copy of the signed copy by the judge, because I get
11 a copy of it. And I can show you here 2/11, that's
12 the one I turned in. Now, what happened to it, I
13 can't answer that question, Mr. Floyd.

14 Q Well, I understand. But what I'm saying
15 is last week or whenever it was -- was it last week?

16 A It was last week, yes, sir.

17 Q Last week, Judge Shockley's office called
18 because they did not have a copy of the warrant, did
19 they?

20 A Apparently, they misplaced it, sir.

21 Q Which means they did not have a copy of
22 the return to the warrant either?

23 A Well, I have it, and I'm assuming that's
24 why they called me. But I don't have the authentic
25 copy.

1 Q All right. They didn't have a copy of the
2 warrant or the return, did they?

3 A No, sir.

4 Q And when you execute the search warrant,
5 you have to file a return within a certain amount of
6 time, don't you?

7 A And I did.

8 Q How much time do you have to file it?

9 A I've got three days.

10 Q And you file it with the magistrate that
11 issued it?

12 A That's correct.

13 Q So Judge Shockley issued the warrant.

14 A Yes, sir.

15 Q So you would file it with Judge Shockley,
16 is that correct?

17 A Uh-huh, that's correct.

18 Q Now, whatever Judge Shockley's office as
19 of last week, which would have been the last week of
20 September of 2012, Judge Shockley's office did not
21 have a copy of the warrant or the return?

22 A Undoubtedly, it was misplaced because they
23 called me.

24 Q Well, now, you don't know why. You just
25 know they don't have copies, is that correct?

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1 A I just know they called me on the phone
2 stating that they needed one, and I had a copy. So
3 that's what I did, sir, and that's all I can answer
4 to that.

5 Q Thank you, no further questions.

6 A Yes, sir.

7 THE COURT: Mr. Ross?

8 MR. ROSS: Yes, briefly.

9 REDIRECT EXAMINATION

10 BY MR. ROSS:

11 Q Did you tender Judge Shockley's office the
12 entire search warrant or just the affidavit?

13 A That portion.

14 Q So just to be clear, what you gave them
15 was --

16 A Just that.

17 Q And what does that say at the top of that
18 page?

19 A Attachment A.

20 Q So this is page --

21 A They had that portion. They just didn't
22 have that.

23 Q Four, five, six, and seven --

24 A Uh-huh.

25 Q -- of Court's Number One, sir?

1 A Yes, sir, that's correct -- yes, sir.

2 Q All right. And a return was filed within
3 10 days in this case?

4 A Yes, sir.

5 Q And again referring to Court's Number One,
6 this is the return in the case, that last page on
7 Court's Number One?

8 A That is, sir. That is it, yes, sir.

9 MR. ROSS: Nothing further, Your Honor.

10 THE COURT: Anything further, Mr. Floyd?

11 MR. FLOYD: Yes, sir.

12 REXCROSS EXAMINATION

13 BY MR. FLOYD:

14 Q What did you just testify that Judge
15 Shockley's office did not have?

16 A They called me for the attachment, which
17 is Attachment A, is what they called me for.

18 Q That's the affidavit?

19 A The affidavit, because, see, the affidavit
20 here says "See Attachment A." They didn't have the
21 attachment. I took them the attachment.

22 A And they didn't have the return either,
23 did they?

24 A No. Apparently, they didn't ask me for
25 the return. They asked me for the attachment which

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1 is marked, and I took them the wrong one, yes, sir.
2 I took them the wrong one. I don't include anything
3 on there. I put everything in Attachment A which is
4 in word form, and that's what they didn't have.

5 Q So that would mean that when the warrant
6 was issued, there was no accompanying affidavit?

7 A That would mean they misplaced it,
8 apparently so.

9 Q It was stapled, wasn't it?

10 A It was all together.

11 Q Thank you, no further questions.

12 THE COURT: All right, thank you, sir.
13 You may step down.

14 MR. KIRKLAND: Thank you.

15 THE COURT: All right, any further
16 evidence on this issue of the motion to suppress on
17 behalf of the State?

18 MR. ROSS: No, Your Honor.

19 THE COURT: Any evidence on behalf of the
20 defense on the motion to suppress?

21 MR. FLOYD: No evidence, Your Honor.

22 THE COURT: All right, it's your motion,
23 Mr. Floyd. I'll be glad to hear from you.

24 MR. FLOYD: Thank you, Your Honor. Your
25 Honor, at this time we would move that the drugs

1 that were seized pursuant to the purported search
2 warrant be suppressed because it was obviously
3 issued upon a defective search warrant.

4 The reasons that the warrant is defective
5 are several. First, the warrant describes the
6 premises to be searched as [REDACTED]
7 Lexington, South Carolina.

8 THE COURT: I understand the evidence on
9 that. All right, your first issue is with regard to
10 the incorrect description of the premises?

11 MR. FLOYD: That's correct, Your Honor.

12 THE COURT: All right, next ground.

13 MR. FLOYD: Okay. The second issue, Your
14 Honor, is we think the wording of the affidavit of
15 the search warrant was misleading because of the
16 phraseology that was used in connection with the
17 affidavit.

18 THE COURT: Specifically what?

19 MR. FLOYD: Your Honor, the way they said
20 "at least one," which implies there could have been
21 more than one buy. There had only been one buy
22 within the past 72 hours.

23 Then they repeated on the next page and
24 changed the phraseology and used the leading word
25 "furthermore," which seems to indicate additional

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1 evidence which was actually the same evidence just
2 repeated using 72 hours rather than three days and
3 using the term "furthermore."

4 THE COURT: All right, two things with
5 regard to wording so far, "at least one" language
6 used and "furthermore." All right, what else?

7 MR. FLOYD: That's correct. Your Honor,
8 the next issue would be of course what we just went
9 through here where it appears that obviously there
10 was no -- either there was no return filed with
11 Judge Shockley, or the warrant was issued without
12 the affidavit in support because the judge's office
13 did not have it. So that --

14 THE COURT: Well, let me ask you, isn't
15 that something that -- my first thought on that and
16 the first time it came up is just now. But wouldn't
17 the time to have challenged that have been when the
18 search warrant was offered into evidence. You
19 didn't challenge the authenticity of it.

20 MR. FLOYD: Well, we just found out about
21 that right there too, Your Honor, by the --

22 THE COURT: You've had this hearing once
23 already, and there was no objection to the
24 authenticity of either one or two.

25 MR. FLOYD: Your Honor, I understand. But

1 we did not know at that first meeting, it did not
2 come out, that there was this affidavit dated
3 February 3, 2011, and that it was presented to Judge
4 Shockley's office, because that just happened last
5 week.

6 THE COURT: Okay.

7 MR. FLOYD: So that was something new to
8 us.

9 THE COURT: All right, what else?

10 MR. FLOYD: Furthermore, Your Honor, it
11 appears from the letter from Charles Walker, the
12 alleged CI, that the information contained in his
13 statements to the detectives, which was the basis of
14 the search warrant, was inaccurate. As he said,
15 without threat or without harm or anything from
16 anyone, he gave a statement saying that those
17 transactions did not occur.

18 THE COURT: Well, doesn't that come under
19 an issue of credibility for me to determine between
20 the statement that he made in the jail and the
21 statement that he made today?

22 MR. FLOYD: Yes, sir, it would be.

23 THE COURT: Okay.

24 MR. FLOYD: For all those reasons, Your
25 Honor, it's our position that the search warrant is

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1 defective and the drugs seized as a result of that
2 or any other evidence should be suppressed.

3 THE COURT: All right.

4 All right, Mr. Ross?

5 MR. ROSS: Your Honor, I'll take them up
6 as he took them up. With regard to the typo
7 Lexington versus Pelion, we'll cite Maryland versus
8 Garrison, 480 U.S. 79 and also U.S. v. Owens, which
9 is 848 Federal Second 462.

10 Your Honor, the standard in this type of
11 situation is that the search warrant must describe
12 the location to be searched with sufficient
13 particularity.

14 THE COURT: Can't you give me a South
15 Carolina case rather than giving me some federal
16 case because that would --

17 MR. ROSS: Your Honor, I couldn't find a
18 South Carolina case on point, but the next best
19 thing is this U.S. v. Owens, which was written by
20 Judge Wilkins, a South Carolina judge sitting on the
21 Fourth Circuit.

22 THE COURT: I know him well.

23 MR. ROSS: I think this case really --
24 that case really is on point because there was a
25 search warrant for [REDACTED] [REDACTED] [REDACTED], Apartment 336.

1 After that warrant was issued, the police officers
2 arrested a co-conspirator and confirmed that the
3 apartment they were going to search was a stash
4 house for narcotics.

5 It was the third-floor apartment on the
6 right side. When the officers get there, the third-
7 floor apartment on the right side is actually 334.
8 They check the apartment on the left side, and it
9 was vacant.

10 So at that point, they searched Apartment
11 334, not the apartment that's listed on the written
12 search warrant. And the Court in that case held
13 that the warrant meets the particularity requirement
14 if the description is such that the officer with the
15 search warrant can with reasonable effort ascertain
16 and identify the place intended.

17 And they quoted Maryland versus Garrison
18 to the effect that "When the purposes justifying a
19 police search strictly limit the extent of the
20 search, the Court has also recognized the need to
21 allow some latitude for honest mistakes that are
22 made by officers in the dangerous and difficult
23 process of making arrests and executing search
24 warrants."

25 So the bottom line here, Your Honor, what

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1 we have is a typo. This is an honest mistake. The
2 warrant describes the place to be searched with
3 sufficient particularity. Second, with regard --

4 THE COURT: All right, before you leave
5 that point, let me ask you this. I'm looking at --
6 and I want to look at it just a minute -- Court's
7 Number Two. The affidavit, of course, was executed
8 by the officer that testified, and he's the one that
9 appeared before the magistrate. And I'm looking for
10 the return. I guess my question to you is, is the
11 executing officer the same officer that obtained the
12 warrant?

13 MR. ROSS: I believe it is, Your Honor.

14 THE COURT: Officer Kirkland?

15 MR. ROSS: Yes, sir.

16 THE COURT: That's what I see here. So he
17 went to the magistrate and gave him the address. It
18 was typed in as Lexington when it should have been
19 Pelion. But that same officer executed the warrant
20 that was issued by the magistrate.

21 MR. ROSS: Yes, sir.

22 THE COURT: Okay.

23 MR. ROSS: So, again, it's a typographical
24 error on the State's part. Your Honor, with regard
25 to the misleading argument, Judge, I think the

1 defense is reading in ambiguities where none exist.
2 There is a state case directly on point. There are
3 several state cases directly on point.

4 And the whole body of case law --
5 specifically, State versus Leroy Dupree, 583
6 Southeastern Second 487, is from the Court of
7 Appeals in '03 -- to the point, and I quote,
8 "Affidavits are not meticulously drawn by lawyers
9 but are normally drafted by non-lawyers in the haste
10 of a criminal investigation and should thereby be
11 viewed in a common-sense and realistic fashion."

12 And I think if you look at this affidavit
13 in a common-sense fashion, number one, if you use
14 the term "at least one," that doesn't necessarily
15 mean two. That could mean at least one -- just one,
16 not necessarily two. I don't see any misleading
17 going on there.

18 If he was going to mislead and say there
19 were two, he would have said "at least two." He
20 said "at least one." I think if you look at that in
21 a common-sense fashion, that does not mislead the
22 magistrate.

23 Secondly, he pointed out the term
24 "furthermore" used in that Attachment A. And if you
25 read the search warrant as a whole or the Attachment

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1 A as a whole, that "furthermore" simply indicates
2 that it's a summary of what had previously been
3 described.

4 So I don't think what he's getting at is
5 misleading the magistrate that there were two
6 controlled buys within that 72-hour window, Your
7 Honor. Third, with -- shall I now address the
8 return issue, Your Honor?

9 THE COURT: Yes. I understand your
10 argument on both of those. Yes, the third issue is
11 the return.

12 MR. ROSS: The return, first off, Your
13 Honor, I would note that under State versus Weaver,
14 374 South Carolina 313; and State versus Wise, 272
15 South Carolina 384, failure to comply with the
16 ten-day ministerial requirement or the ten-day
17 return requirement is only a ministerial issue.

18 THE COURT: I'm aware of that. But your
19 position is that it was within the ten days, isn't
20 it?

21 MR. ROSS: And that's our position as
22 well. So I think that's a non-issue by the defense.
23 Fourth, the letter from the CI, Your Honor, we
24 produced the CI. He stated he was in the same pod
25 as the defendant charged. The defendant figured out

1 he was the CI.

2 And obviously a reasonable person in that
3 situation is going to fill out whatever paperwork
4 his big buddy in jail wants him to fill out. I
5 certainly think it was reasonable for him to do,
6 because if he had declined it, he would probably
7 have escalated the situation and very well could
8 have been harmed.

9 He was very clear on the stand today that,
10 yes, he did buy drugs; yes, it did occur as
11 described by Agent Kirkland. And, finally, I would
12 note that this letter was written after the search
13 warrant had already been executed.

14 So I really don't see how that could
15 affect -- after the fact it's already been signed by
16 the judge, I don't see how that can invalidate the
17 case against the State.

18 I think under the good-faith exception,
19 even assuming what's written in that letter as being
20 true, I think the good-faith exception under U.S. v.
21 Leon would apply. And, finally, Your Honor, I want
22 to make the record clear that even if you read
23 ambiguities into this search warrant, at a minimum
24 you have a controlled purchase with a reliable
25 informant.

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1 You have law enforcement corroboration of
2 an anonymous tip. They corroborated that by looking
3 into who was the resident of the home, and they
4 found out that that was in line with what the
5 anonymous tip said. Again, under State versus
6 Dupree, you have a controlled purchase with an
7 untested informant.

8 That is enough to sustain probable cause.
9 And, Your Honor, I have a copy of that if you wish
10 to see it. Here in this case, we have a reliable
11 informant and a controlled purchase. So I do think
12 probable cause is here in this case, and I'd ask
13 that you uphold the search warrant.

14 THE COURT: All right, reply, Mr. Floyd?

15 MR. FLOYD: Yes, Your Honor. I don't
16 think the case hinges on what they claim -- the
17 evidence they claim that the officers had at the
18 time the warrant was issued, rather on the
19 information that was relayed to the issuing
20 magistrate.

21 And I think these inconsistencies in the
22 wording were misleading. There's no reason to use
23 the word "furthermore" unless you are implying that
24 there was additional evidence in addition to what
25 was given on the page earlier.

1 THE COURT: What difference does that
2 make? Let's take that paragraph out altogether.
3 Isn't there still probable cause?

4 MR. FLOYD: Well, conceivably that's
5 correct.

6 THE COURT: Yes. I could just take that
7 paragraph out and just disregard that paragraph if I
8 wanted to. The magistrate, based upon what goes
9 before that -- and I tend to agree with the State.
10 I think he's summarizing, and "furthermore" is an
11 ill-advised choice of words. But it's just a choice
12 of words. And if you took that whole paragraph out,
13 everything that goes before it is saying the same
14 thing.

15 MR. FLOYD: Well, that's true, although it
16 bolsters it significantly. And I'll tell you it may
17 be speculative as to whether the judge would have
18 issued it at that time or not. I don't know. We
19 weren't present, and we don't know what, because
20 that's entirely speculative.

21 THE COURT: What about the fact -- and I'm
22 curious about this. Let's skip on to the next
23 question, and that is what you've got is the
24 statement of the CI to law enforcement, the actual
25 conduct by -- first, you've got the statement to law

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1 enforcement of an anonymous tip.

2 Then you've got bringing the CI into it,
3 and the CI goes and makes a controlled buy with, I
4 assume, marked money or whatever and all that sort
5 of thing. And then for a separate charge
6 altogether, the CI is arrested on something else.

7 And he happens to be in the detention
8 center at the same time as this defendant. And
9 while in the detention center, he executes a
10 statement that that purchase wasn't right, and that
11 wasn't the truth.

12 And then today, he comes in and renounces
13 the recantation statement, is really what he does.
14 And so it really becomes a matter of credibility,
15 doesn't it, of the CI?

16 MR. FLOYD: Oh, I think it does, Your
17 Honor. In fact, you jogged my memory when you
18 mentioned one thing, the alleged transaction giving
19 rise to the issuance of the search warrant being
20 within the last 72 hours. According to the
21 statement given by the CI and contemporaneously with
22 the transaction, he said it happened on February 9,
23 2010, a year earlier.

24 THE COURT: Well, that's a pretty common
25 mistake. I've written wrong dates down a lot of

1 times. I can't put much weight in the failure to
2 put the right date down. In fact, it takes me until
3 somewhere between June and July of every year to get
4 the right date on my checks.

5 I'm still writing the previous year. So I
6 don't think that that's a major situation. And what
7 about the fact that you've got this recantation of
8 the statement. But if I recall the testimony of the
9 CI and maybe the testimony of Officer Kirkland, the
10 transaction was monitored video and audio, wasn't
11 it?

12 MR. FLOYD: Well, they had audio. They
13 did not have -- I think they had video on the road,
14 but they didn't have video in --

15 THE COURT: I mean audio of the actual
16 transaction by the CI, yes.

17 MR. FLOYD: That's correct, subject to
18 interpretation.

19 THE COURT: Okay, anything else?

20 MR. FLOYD: One other matter, Your Honor,
21 and I guess we just need to address it. I forgot to
22 argue it. They claim it was a violation of
23 44-53-370, which is not accurate. It should be
24 44-53-375, the crack statute.

25 THE COURT: But the search warrant is

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1 issued on the correct statute, is it not? It was
2 just the affidavit that was wrong.

3 MR. FLOYD: I'm not sure they had a code
4 section on the warrant.

5 THE COURT: Maybe it doesn't even refer to
6 the statute.

7 MR. FLOYD: Yes, I don't think it refers
8 to the statute.

9 THE COURT: I don't see any reference to
10 the statute at all. But the affidavit still refers
11 to a drug statute. It's just not the correct drug
12 statute, okay. All right, I've heard the testimony
13 in this matter, and I'll try to address them in the
14 order that the defense raised them.

15 First, with regard to the premises to be
16 searched, the error being that it referred to
17 Lexington in Lexington County rather than Pelion in
18 Lexington County, and that this error was carried
19 forward, as the defense pointed out, seven times.

20 In reading the warrant and the affidavit
21 and also the testimony of the officer there, to me
22 there is no substantial possibility of error in the
23 address or place to be searched.

24 The officer described the premises. The
25 same officer executed the search warrant. And I

1 don't think that there is any substantial
2 possibility that the place for which the search
3 warrant was issued is not the place that was
4 actually searched and that there can be no prejudice
5 from that matter. So the motion on that grounds
6 would be denied.

7 With regard to the wording, whether it
8 means at least once or more than once, it really
9 doesn't matter. Once is enough for probable cause
10 for a search warrant. And whether that implies more
11 than one or doesn't imply more than one, it really
12 doesn't matter.

13 One of my most favorite judges in the
14 world is former Chief Judge of the South Carolina
15 Court of Appeals, Alex Sanders, who, in addition to
16 being an outstanding judge was an outstanding wit
17 and has a great sense of humor. And I can't cite
18 the decision, but he made the statement in one of
19 his written opinions that what doesn't make any
20 difference doesn't matter.

21 And that's the way I feel about this. It
22 doesn't make any difference, so it doesn't matter.
23 The same reasoning would apply to the "furthermore."
24 I think that if you took that paragraph out
25 altogether, there is still probable cause in the

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1 other parts of the affidavit which would justify the
2 issuance of the search warrant.

3 With regard to the return, I don't think
4 there's any question that the return -- and the way
5 I would find that the evidence in this is -- and
6 it's unfortunate that we got into these two
7 different affidavits -- but I would find that what
8 happened was the officer went to the magistrate,
9 gave the first affidavit, obtained a search warrant
10 based on that, then decided to make another
11 controlled buy, which he didn't without executing
12 the first search warrant, executed the second
13 controlled buy, and then sought another search
14 warrant on February the 11th.

15 And the only amendment that he made, of
16 course, was to change the affidavit to that effect,
17 and then the search warrant was issued on that. It
18 was executed within 10 days of February the 11th,
19 having been executed on February 17, 2011, and a
20 return made that same day.

21 So all of the statutory requirements and
22 all the legal requirements for the execution of the
23 search warrant and the return are timely. With
24 regard to the statement of the CI, I have found very
25 often that statements made in the jail to other

1 inmates are often unreliable, for whatever reason.

2 The first statement made by the CI to the
3 police was not only a statement as to what he did,
4 but it was actually a monitored transaction by law
5 enforcement, who had a video of him going on, had
6 audio of him making the purchases. And his
7 statement denouncing his previous statement has
8 little or no credibility.

9 He did testify here today that that
10 statement was not correct and the reasons why he
11 made it at the time that he made it, that is, the
12 recantation statement. So I don't think the
13 recantation statement has much substance.

14 There has been some issue made about the
15 fact that the magistrates do not have copies of the
16 search warrants or the affidavits or the various
17 documents in this case, which is a little strange.
18 But at the same time, no challenge to the
19 authenticity of the documents that were presented to
20 the Court as Court's Number One and Court's Number
21 Two has been mounted.

22 And so I would find that those documents
23 are authentic and do reflect what actually occurred
24 with regard to the search warrants. Therefore,
25 having made those statements and making those

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1 findings, the motion to suppress the search and the
2 evidence seized as a result of the search is denied.

3 Let me give these back to the Court
4 Reporter. These are Court's Number One through
5 Five. All right, the next issue is the Jackson
6 versus Denno. Are we ready to go into that?

7 MR. ROSS: Yes, Your Honor.

8 THE COURT: All right, let me ask the
9 defense to state your motion on the record first,
10 please, Mr. Floyd, with regard to Jackson versus
11 Denno.

12 MR. FLOYD: Your Honor, we move to
13 suppress any alleged statements made by Mr. Mayes on
14 the grounds that if they were made -- first of all,
15 we deny they were made. If they were made, there
16 were made in contravention of his Miranda rights.

17 THE COURT: All right. So you're saying
18 that you're denying that they were made. But if
19 made, they did not comply with the terms of Miranda?

20 MR. FLOYD: That's correct.

21 THE COURT: Okay.

22 All right, Mr. Ross?

23 MR. ROSS: Agent Kirkland to the stand,
24 please.

25 THE COURT: All right, you're still under

1 oath, Mr. Kirkland.

2 MR. KIRKLAND: Yes, sir.

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MR. ROSS:

6 Q Agent Kirkland, did you execute the search
7 warrant on this case?

8 A Yes, sir.

9 Q And what date did that occur?

10 A That occurred on February the -- let me
11 make sure I get this correct. February 11th is when
12 I got it, and we executed it on February the 17th.

13 Q And when this search warrant was executed,
14 were you the first man to enter the residence?

15 A No, sir.

16 Q Okay. When did you enter the residence?

17 A I entered the residence after the entry
18 team actually announced that it was okay for outside
19 agents to come in.

20 Q And what did you do when you entered?

21 A We entered the residence, and I
22 immediately stopped in the living room of the
23 residence.

24 Q Okay. And why did you stop?

25 A Well, the entry team is actually -- they

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1 cleared the residence, so I just stopped in the
2 living room portion. I don't know, I just stopped.

3 Q Okay. Did you have a chance to introduce
4 yourself to the defendant, Douglas Mayes?

5 A Yes, sir, when he came out of the master
6 bedroom.

7 Q And how did you introduce yourself to him?

8 A I told him my name was Detective Kirkland
9 and the reason why we were there.

10 Q And what was the reason why you were
11 there?

12 A Executing a search warrant.

13 Q Okay. Did you issue him his Miranda
14 rights?

15 A I did.

16 Q And when did you do that?

17 A Prior to asking -- the very next -- after
18 I introduced myself, I Mirandized him.

19 Q Okay. How did you Mirandize him?

20 A It's a card in my pocket.

21 Q I see you holding a card right now. Is
22 that a card you use?

23 A It's been since 2002.

24 Q And is that issued to you by the Sheriff's
25 Department?

1 A No, sir, I bought this.

2 Q Okay. And does that have the Miranda
3 warnings on it?

4 A It does.

5 Q Can you read what's on it?

6 A "You have the right to remain silent.
7 Anything you say can and will be used against you in
8 a court of law. You have the right to talk to an
9 attorney and have him or her present with you while
10 you are being questioned.

11 "If you cannot afford to hire an attorney,
12 one will be appointed to represent you before any
13 questioning, if you wish. You can decide at any
14 time to exercise these rights and not answer any
15 questions or make any statements.

16 "Do you understand these rights I have
17 explained to you? Having these rights in mind, do
18 you wish to talk to an attorney?"

19 Q Okay. And those are the specific rights
20 you read to him that day?

21 A Yes, sir.

22 Q Okay. Did he appear to be under the
23 influence of any alcohol or drugs?

24 A No, sir.

25 Q Did he appear to be of sound mind?

Eric Kirkland - Second Further Dir. In-Camera 113

1 A Yes, sir.

2 Q Did you coerce or threaten him in any way
3 to talk to you?

4 A No, sir.

5 Q Did he appear to understand your
6 questions?

7 A Yes, sir.

8 Q And did you ask him about the drugs that
9 were found?

10 A I did.

11 Q And how did you ask him?

12 A Shortly after the drugs were found, I
13 think Agent Laney made a comment he needed a camera.
14 And I asked him, I said, "Do you know anything about
15 what's going on in the back room?" I said, "What's
16 going on back there?" And he said, "Everything back
17 there is mine."

18 Q Okay.

19 A That's the comment he made.

20 Q When he said that, again, did you threaten
21 him in any way?

22 A No, sir.

23 Q Did you coerce him in any way?

24 A No, sir.

25 Q Did he give any other statements?

Eric Kirkland - Second Further Dir. In-Camera 114

1 A No, sir, he didn't say anything else.

2 Q What was his general demeanor at that
3 point?

4 A He was not happy to see us. He had a bad
5 attitude. So therefore no other questions were
6 asked, because I just didn't see the need.

7 Q Did any other agents threaten or coerce
8 him in any way?

9 A No, sir -- no, sir.

10 Q If you would, please answer any questions
11 Mr. Floyd has for you.

12 A I will, sir.

13 THE COURT: Cross-examination, Mr. Floyd?

14 CROSS-EXAMINATION

15 BY MR. FLOYD:

16 Q Agent Kirkland --

17 A Yes, sir.

18 Q -- how many officers went back into the
19 back room?

20 A We had a seven-man entry man. I can't
21 tell you how many went back there. We had an entire
22 team there, sir. Who all went back there, I don't
23 know.

24 I wasn't a part of the entry. I was
25 actually on front perimeter. So collectively, how

Eric Kirkland - Second Further Cross In-Camera 115

1 many people went in that room, I couldn't tell you.

2 Q How many went into the house?

3 A Seven.

4 Q Seven went into the house?

5 A Yes, sir, that's correct.

6 Q How large a house is this?

7 A It's a mobile home, single-wide mobile
8 home.

9 Q How many bedrooms did it have?

10 A I'm guessing two or three.

11 Q And where were you when you said you had
12 contact with Mr. Mayes?

13 A In the living room. I walked in the front
14 door. After the initial command was given that it
15 was all clear, I walked into the living room area.
16 And when you walk through, I guess that's the living
17 room/den. You walk through a den, living room,
18 whatever you call it.

19 Q A great room kind of combination?

20 A Well, I guess, yes, sir.

21 Q Was he accompanied by any other officers
22 at that time?

23 A No, sir.

24 Q He was walking around freely?

25 A He had actually been brought out in

Eric Kirkland - Second Further Cross In-Camera 116

1 handcuffs, seated on the other sofa chair, and the
2 female that was in there was actually in a recliner
3 positioned in that same room, a brown recliner type
4 chair.

5 Q Were you present when they brought him
6 into the room?

7 A Yes, in the living room.

8 Q So someone brought him into the room
9 handcuffed?

10 A Yes, sir. He had been taken in
11 investigator detention out of the back room and
12 guided into the living room.

13 Q The female, was she also handcuffed?

14 A That's correct.

15 Q So you had him and the female. Was there
16 a child there also?

17 A There was.

18 Q Where was the child?

19 A I think the child was near the mother, if
20 I'm not mistaken -- I think. I can't recall. I
21 think. But certainly he wasn't handcuffed.

22 Q Do you know what was said to them in the
23 bedroom before they were brought out?

24 A No, sir.

25 Q Do you know whether or not there were any

Eric Kirkland - Second Further Cross In-Camera 117

1 threats to remove the child from the home?

2 A No, sir.

3 Q Do you know whether or not there was any
4 conversation about "If you don't take credit for the
5 drugs, we're going to arrest both of you" --

6 A No, sir.

7 Q -- or anything like that?

8 A No, sir. I don't know.

9 Q How long had they been back in the room?

10 A See, I don't know. I'm going to
11 guesstimate entry took about -- for us to --
12 probably five to ten minutes maybe. And I'm outside
13 in the yard, and my job is to actually guard the
14 front doors because we had an entry team in the
15 back. So maybe I would do the very same thing. So
16 I don't know.

17 Q And were you the only officer present in
18 the room with the two, with the defendant and the
19 female?

20 A Yes, sir. You could actually say I was
21 kind of like their security, just watching them,
22 because if there's one officer present, I just
23 happened to be that one in the living room. So I
24 stood by with them.

25 Q Did you do a written Miranda waiver?

Eric Kirkland - Second Further Cross In-Camera 118

1 A No, sir.

2 Q So there's nothing signed by the
3 defendant?

4 A No, sir.

5 Q Did you record the conversation?

6 A No, sir.

7 Q And you have no idea what was said to him
8 by the other officers before you had your
9 confrontation with him?

10 A No, sir -- no, sir.

11 Q Thank you, no further questions.

12 THE COURT: Redirect?

13 MR. ROSS: Nothing, Your Honor.

14 THE COURT: All right, thank you, sir.

15 You may step down.

16 MR. KIRKLAND: Yes, sir.

17 THE COURT: All right, any further
18 testimony on behalf of the State with regard to this
19 issue, Mr. Ross?

20 MR. ROSS: No, Your Honor.

21 THE COURT: All right, Mr. Floyd, a
22 defendant in a criminal case has a right to present
23 evidence with regard to the voluntariness of a
24 statement without waiving his Miranda rights.

25 And if there's any evidence that the

Eric Kirkland - Second Further Cross In-Camera 119

1 defendant wishes to present, either by himself or
2 other evidence with regard to the voluntariness of
3 the statement, you may do so.

4 MR. FLOYD: Thank you, Your Honor. If
5 you'll give me just a moment.

6 THE COURT: All right.

7 MR. FLOYD: We have no evidence to
8 present, Your Honor.

9 THE COURT: All right, it's your motion,
10 Mr. Floyd. I'll be glad to hear from you.

11 MR. FLOYD: Thank you, Your Honor. Your
12 Honor, it's our position that State has failed to
13 establish the voluntariness of the alleged
14 statement. All we have is that he was handcuffed,
15 and the female that was present was also handcuffed,
16 both of them in the living room. But there's no
17 testimony about what was said to them, if anything.

18 THE COURT: I don't think there's any
19 question from the State. They're not taking the
20 position it was a statement made without being in
21 custody there. You've got one situation, but I
22 don't think they contest the fact that the defendant
23 was in custody when he was made. So then it becomes
24 a Miranda issue.

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

Eric Kirkland - Second Further Cross In-Camera 120

1 THE COURT: Yes.

2 MR. FLOYD: And what's missing from their
3 testimony is what promises or threats were made to
4 him by the other officers prior to Mr. Kirkland's
5 interrogation.

6 THE COURT: All right.

7 MR. FLOYD: Thank you.

8 THE COURT: Mr. Ross?

9 MR. ROSS: Your Honor, number one, we're
10 not offering any other statements other than the
11 statement that Agent Kirkland provided. The other
12 officers are present today, and they will testify at
13 trial. And if this is an issue that the Court would
14 like us to address, we can offer them on the stand
15 and ask them whether or not they were threatened or
16 promised anything.

17 THE COURT: Of course, you've already
18 presented what you want to present with regard to
19 the issues of that statement. The only statement
20 that is at issue is that "Everything back there is
21 mine." Those were the five words.

22 And the only testimony before the Court at
23 this time is that he was handcuffed, which would put
24 him in custody and would necessitate the Miranda
25 warnings. And the only testimony that I see at this

Eric Kirkland - Second Further Cross In-Camera 121

1 point is that Miranda warnings were given and that
2 he had the opportunity at that time to indicate that
3 he was promised something.

4 And he had the opportunity to present that
5 without giving up his Fifth Amendment rights. So
6 that kind of summarizes it as far as I'm concerned.
7 He had the opportunity to say that he had been
8 promised something, and he didn't testify to that
9 effect, without giving up his Fifth Amendment
10 rights.

11 I would find that the defendant was in
12 custody at the time of the alleged statement, that
13 the custodial situation was a custodial
14 interrogation which required the State to warn the
15 defendant of his rights under the decision of
16 Miranda versus Arizona, that the State did in fact
17 give him all Miranda warnings and the appropriate
18 warnings that he did not have to make a statement,
19 that any statement that he made could and would be
20 used against him, and the other matters that are
21 contained in Miranda, and that he voluntarily and
22 without threat of anything after the Miranda
23 warnings were given, did freely and voluntarily
24 waive his right to say anything.

25 The statement would be admissible. It

Eric Kirkland - Second Further Cross In-Camera 122

1 would be up to the jury to decide whether or not he
2 actually said that if he later denies that he said
3 it. But I believe that the Miranda warnings were
4 given and were appropriate, and the officer will be
5 allowed to testify as to the statement made.

6 All right, that takes care of those two
7 issues. Now, I believe there was a third issue, Mr.
8 Floyd?

9 MR. FLOYD: That's correct, Your Honor.
10 The third issue has to do with the testimony of the
11 evidence custodian as to whether or not the drugs
12 were actually missing at some point during her
13 custody.

14 THE COURT: All right. So you're
15 challenging the chain of custody of the drugs --
16 motion to suppress based on chain of custody?

17 MR. FLOYD: That's correct, Your Honor.
18 But the issue right now before Your Honor was the
19 issue that I raised with you as to whether or not I
20 would be required to testify because of what's --

21 THE COURT: All right. So you're not
22 questioning the chain of custody as to how the drugs
23 came into the hands of the evidence custodian. What
24 you're questioning or tending is what the evidence
25 custodian would say she or he told you with regard

Eric Kirkland - Second Further Cross In-Camera 123

1 to the drugs?

2 MR. FLOYD: That's correct.

3 THE COURT: Okay. Well, let's limit the
4 hearing to that issue, Mr. Ross.

5 MR. ROSS: Yes, sir.

6 THE COURT: You can call the evidence
7 custodian for that purpose.

8 MR. ROSS: The State calls Candy Kyzer to
9 the stand.

10 And, Your Honor, Ms. Kyzer is the evidence
11 custodian.

12 THE COURT: Okay.

13 MR. ROSS: I see that she's got the rifle
14 or a rifle that was seized in this case. And I
15 believe the rules require us to notify the Court of
16 that, and I think it is already locked.

17 THE COURT: All right, that's not really
18 the issue here, the rifle, at least at this hearing
19 level. The rifle can be given to the deputy to take
20 custody of. The issue here is really a question of
21 statements, not actually what was introduced or when
22 it was introduced, but just to testify. If you need
23 one of the officers to take possession of the weapon
24 and keep custody of it till she steps down from the
25 stand, we can do that, okay.

Eric Kirkland - Second Further Cross In-Camera 124

1 (The witness was sworn.)

2 Let the record reflect for purposes of
3 this hearing and for purposes of all subsequent
4 matters that the actual evidence itself may not be
5 in the hands of the evidence custodian right now but
6 is in the hands of the deputy, security guard for
7 the Court so that there can be no question that it
8 is constructively in the hands of the evidence
9 custodian and no challenge can be made with regard
10 to the fact that the evidence is not in her
11 possession -- any of the evidence is not in her
12 possession -- at the actual time of this hearing,
13 because that's not the issue before the Court.

14 CANDY KYZER, having first been duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION (IN-CAMERA)

17 BY MR. ROSS:

18 Q Ms. Kyzer, you're one of the evidence
19 custodians at the Sheriff's Department, is that
20 correct?

21 A I am.

22 Q And did you receive evidence in this
23 particular case?

24 A I did.

25 Q And can you tell me what you received?

Candy Kyzer - Direct In-Camera

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- 1 A I received a Best kit.
- 2 Q And when did you receive that Best kit?
- 3 A When did I receive it?
- 4 Q Yes, ma'am.
- 5 A On February 17, 2011.
- 6 Q Does that Best kit have a number on it?
- 7 A It does.
- 8 Q And what's the number?
- 9 A C020453.
- 10 Q And when you received it, what did you do
- 11 with that Best kit?
- 12 A I signed it in, made sure everything as
- 13 far as paperwork-wise was in order, and made sure
- 14 that the seals were still intact. Everything was in
- 15 order, so I put the bar code labels on it and then
- 16 put it in our temporary drug lab box.
- 17 Q Who has access to that room?
- 18 A Us three custodians and our supervisor.
- 19 Q Okay. And were those drugs ever checked
- 20 out to the chemist in this case?
- 21 A They were.
- 22 Q And when were they checked out?
- 23 A They were checked out -- I signed the Best
- 24 kit out to Emily on February 22, 2011.
- 25 Q And is Emily the chemist?

1 A Yes, she is.

2 Q And did she ever return it back to you?

3 A She did. On March the 29th, she returned
4 it back.

5 Q And what did you do with it when she
6 returned it back?

7 A I put it back in our drug room at that
8 time. We store all of our drugs at that point into
9 separate boxes, mutli-case boxes. So we assign it a
10 box number, and we store it into that.

11 Q Okay. Did anyone subsequently check that
12 same Best kit out after you received it back from
13 the chemist?

14 A They did.

15 Q And who was that?

16 A Eric Kirkland.

17 Q And when did he check it out?

18 A He signed it out on September the 6th at
19 10:46.

20 Q Of what year?

21 A 2011.

22 Q He signed it out at 10:46 in the morning?

23 A Yes.

24 Q And when did he return it?

25 A He returned it September 6, 2011, at

Candy Kyzer - Direct In-Camera

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1 12:37.

2 Q So the same day just about two hours
3 later?

4 A Yes.

5 Q Okay. And what was the purpose for him
6 checking it out?

7 A I believe he had a meeting with the
8 Solicitor, getting ready, preparing for court.

9 Q Okay. And after he turned it back in, did
10 anyone else subsequently check it out?

11 A It was signed back out to Emily Homer
12 again.

13 Q And, again, that's the chemist?

14 A Yes.

15 Q And when was it signed back out?

16 A It was signed back out to her May 15,
17 2012.

18 Q And why was it signed out to her?

19 A Whenever the Solicitor's Office came over
20 to go over the case and look over the items with us,
21 she noticed that the chemical in the Best kit was
22 liquid.

23 Q Who is "she" -- the chemist or the
24 Solicitor?

25 A The Solicitor.

1 Q Okay.

2 A So at that time, I decided to call the
3 chemist, Emily, back over for her to look at it.

4 Q Okay. And did she subsequently take
5 custody of it at that point?

6 A She did.

7 Q And when did she return it?

8 A She returned it back on July 31, 2012.

9 Q Okay. And what has happened to the drugs
10 since then?

11 A They've been in our drug room box until
12 now.

13 Q Okay. Have they been repackaged in any
14 way by any other custodian?

15 A Yes, they have.

16 Q And tell me about that, please.

17 A Beth Harmon is another evidence custodian
18 with us. And she had received the Best kit back
19 from Emily back on July 31st. She put it up, and
20 later it was noticed that it was in -- I think in
21 the wrong box. And it started leaking on her, so
22 she pulled it back out and then ended up
23 heat-sealing it in a different pouch.

24 Q Okay. At any time, was this Best kit
25 lost?

Candy Kyzer - Direct In-Camera

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1 A No, it was not.

2 Q Okay. Were there other pieces of items
3 turned in to evidence --

4 A Yes.

5 Q -- on this case?

6 A Yes, it was.

7 Q Were there a set of baggies and a set of
8 digital scales turned in?

9 A Yes.

10 Q And when were those turned in?

11 A They were turned in on February 17, 2011.

12 Q And by whom?

13 A By Eric Kirkland.

14 Q And what did you do with them when they
15 were turned in?

16 A I went ahead and signed them in and placed
17 them in what we call a multi-case box, which is
18 outside in our warehouse. It's for small packages
19 of cases that we know we're not going to have big
20 items in it. So instead of putting it in a box and
21 taking up shelf space, we put it in a multi-case
22 box.

23 Q Is that a separate storage room than the
24 drug storage room?

25 A It is.

1 Q Okay. Did anyone subsequently check the
2 scales and the plastic baggies out?

3 A Yes, they were signed out.

4 Q By whom?

5 A Eric Kirkland.

6 Q And when did he sign them out?

7 A He signed them out on February 17, 2011.

8 Q No, that's when he turned them in.

9 A September 6, 2011.

10 Q Is that the same day that he signed out
11 the drugs?

12 A Yes, it is.

13 Q And what time of day did he sign out the
14 baggies and the digital scales?

15 A At 10:46 in the morning.

16 Q And when did he turn them back in?

17 A He turned them back in on September 6,
18 2011, at 12:37.

19 Q Are those the same times as when he
20 checked out and turned back in the drugs?

21 A Yes.

22 Q All right. Since he turned the baggies
23 and the digital scales back into evidence on
24 September 6, 2011, at any time were you asked to
25 place your hands on those drugs for court or on

Candy Kyzer - Direct In-Camera

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1 those baggies and digital scales for court?

2 A Yes, I was.

3 Q And tell me about that, please.

4 A We had been notified that we were going to
5 be going to court on a particular day. And we
6 received a phone call that we needed to come on
7 over. So I was told to go ahead and pull all the
8 items in that case.

9 And I went ahead and I found the gun and
10 found the drugs. And I went outside to pull the
11 plastic baggies and the scale and the paperwork and
12 could not find them.

13 Q You couldn't find the baggies and the
14 digital scales?

15 A I could not find the baggies, the digital
16 scale, and the paperwork.

17 Q Okay. So there were some papers turned
18 into evidence as well?

19 A Yes.

20 Q And how were they stored?

21 A They were also stored along with the
22 digital scale and the plastic baggies.

23 Q Okay. Were they all stapled together?

24 A Yes, they were.

25 Q Okay. You said you weren't able to find

1 the baggies, the digital scales, and this paperwork?

2 A Yes.

3 Q Did you continue looking for them?

4 A I did. I looked, searched around boxes
5 beside it, above it, below it, could not find it. I
6 went ahead and had my co-worker, Beth, to come out
7 and see if she could put her eyes on it. And she
8 couldn't locate it either.

9 Q Okay. But were these items ever found?

10 A Yes, they were.

11 Q When were they found?

12 A A couple of weeks later, my sergeant and a
13 guy that we had that was in there in the office that
14 was helping rebar-code some things, because we had
15 started a new bar-code system, was in there. And he
16 was going through some of the boxes and noticed
17 these particular items.

18 Q So he found them?

19 A Yes, he found them.

20 Q Were they subsequently placed in the right
21 box?

22 A Yes, they were.

23 Q Okay. How many total items do y'all have
24 in that storage room?

25 A In that particular storage room, it's

Candy Kyzer - Direct In-Camera

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1 approximately 9,600.

2 Q Okay. At any time did you tell Mr. Floyd
3 that the drugs were lost?

4 A No, I did not tell him the drugs were
5 lost.

6 Q You always had accountability over the
7 drugs?

8 A Over the drugs, yes, we did.

9 Q But the baggies and the digital scales,
10 they were placed in the wrong box in that storage
11 room, right?

12 A That's correct.

13 Q And you couldn't find them for court one
14 day?

15 A That's correct.

16 Q But you have subsequently found them?

17 A Yes.

18 Q Okay. Those are all my questions. If you
19 would, please answer anything Mr. Floyd has.

20 A Okay.

21 THE COURT: Mr. Floyd?

22 MR. FLOYD: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. FLOYD:

25 Q Ms. Kyzer, I think you testified that both

1 the drugs and the other items were checked out by
2 Eric Kirkland on September 6, 2011, and returned
3 later that day, is that correct?

4 A That's correct.

5 Q That was both the drugs and the scales and
6 plastic bags?

7 A And the paperwork, yes.

8 Q Okay. Now, this case came up for trial,
9 did it not, in October of 2011?

10 A That's correct.

11 Q And did y'all not come over here that day?

12 A No, we did not.

13 Q You didn't come over here that day?

14 A No, sir.

15 Q And nobody brought any evidence over here
16 that day?

17 A We were called to come, and that's when we
18 noticed that the items -- the plastic baggies, the
19 digital scales, and the paperwork we could not
20 locate.

21 Q So y'all didn't send anything over here?

22 A No, sir.

23 Q But your testimony is y'all had the drugs
24 at that time?

25 A Yes, sir.

Candy Kyzer - Cross In-Camera

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1 Q But you still didn't decide to come to
2 court to try the case, even though you had the
3 drugs?

4 A Well, we were told to not come until they
5 called us instead of sitting over here and wasting
6 our time.

7 Q Okay. Now, did I come over and see you in
8 August?

9 A Yes, sir.

10 Q And that was set up by Colleen, the former
11 Solicitor?

12 A Yes.

13 Q To go over and check the missing items, is
14 that correct?

15 A Yes.

16 Q And when we met, did I not ask you when
17 y'all found the drugs?

18 A I don't believe you asked me when we found
19 the drugs. I told you at that time that we had
20 misplaced the plastic baggies, the scales, and the
21 paperwork. But they have been since found.

22 Q And when were they found?

23 A A couple of weeks after the court date in
24 October. I don't have the exact date, but sometime
25 near the end of October.

1 Q And there's no note on when they were
2 found?

3 A I don't have record of it.

4 Q Now, when they were found, was somebody
5 looking for them or just found when they were
6 rebar-coding?

7 A They were actually in there looking for
8 those particular items. But they went ahead and
9 rebar-coded them since they found them.

10 Q Did you give a statement dated September
11 12th in connection with this matter?

12 A September of this year?

13 Q Yes.

14 A A statement to?

15 Q I'll hand you something and ask you.

16 A Yes, sir.

17 Q Is that a statement written by you?

18 A Yes, sir.

19 Q Now, in the statement don't you say that
20 "A couple of weeks later, while rebar-coding items
21 in the multi-case boxes, the numerous plastic
22 baggies, digital scales, and miscellaneous paperwork
23 were located at the top of another box"?

24 A Yes, sir.

25 Q That's what is says, isn't it? Now, did

Candy Kyzer - Cross In-Camera

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1 you give another statement later?

2 A Yes, sir.

3 Q That two-page document is your statement?

4 A Well, it's something I had typed up.

5 Q You typed it?

6 A Yes, sir.

7 Q In this statement, don't you say, "A
8 couple of weeks later, my supervisor, Sgt. Barbara
9 McMullen, and Deputy Joe Hart went outside to look
10 for it some more"?

11 A Yes, sir.

12 Q So did they go out looking for it, or was
13 it found when they were rebar-coding the items in
14 the room?

15 A At first, I thought they were out there
16 bar-coding items. And then Sgt. McMullen informed
17 me later -- because I wasn't out there when they
18 were doing it. It was just her and Deputy Hart.
19 And she informed me later that they were not out
20 there bar-coding, that they had just went out there
21 specifically to look for those items.

22 Q So the statement given September 12, 2012,
23 was not accurate?

24 A At the time, I thought it was, but it was
25 not.

Candy Kyzer - Cross In-Camera

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1 Q Well, when did you have the conversation
2 with your supervisor that showed this to be not
3 accurate?

4 A It was after September the 12th.

5 Q Of 2012?

6 A Yes.

7 Q And when were these missing items located?

8 A They were located a couple of weeks after
9 the court date in October of 2011.

10 Q So we're talking about things that
11 happened some 10 months earlier?

12 A Yes.

13 Q And for some reason, your supervisor comes
14 to you sometime after September 12th, which was 10
15 months after the alleged incident happened, to
16 correct the statement you gave?

17 A I don't think she realized -- or she
18 didn't see the statement that I had given. She
19 didn't know that I thought that they were out there
20 just for rebar-coding purposes.

21 Q Okay. No matter what, even your
22 statements -- your revised statements -- don't they
23 admit that the drugs were actually put in the wrong
24 box?

25 A The drugs were not, no.

Candy Kyzer - Cross In-Camera

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1 Q They weren't?

2 A No, sir.

3 Q All right. Doesn't it say, "On August 3,
4 2012, while putting up some cases, Beth noticed that
5 this Best kit" -- which is Best kit 020453 -- "was
6 put in the wrong drug box. So Beth picked it up,
7 and it dripped on her"? Would you like to see that?

8 A Okay. I thought you were talking about
9 the previous time, when the other items were
10 misplaced.

11 Q You do admit on at least one occasion the
12 drugs were misplaced?

13 A Well, they were in the drug room. They
14 were in a box. It was just -- they weren't in the
15 right box that they were supposed to be in.

16 Q So, yes, on at least one occasion they
17 were misplaced?

18 A They were just relocated to a different
19 box.

20 Q Well, were they placed in the right box?

21 A Not in the box that they were originally
22 signed in to.

23 Q So were they misplaced?

24 A If that's what you want to call it.

25 Q Well, were they in the wrong box or the

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1 right box?

2 A They were in the wrong box.

3 Q Okay. How long were they in the wrong
4 box?

5 A Just for a day.

6 Q How do you know it was just for a day?

7 A Well, she signed them back in on July
8 31st. And then she ended up putting the K-pack on
9 it I believe on August the 3rd.

10 Q So that was at least three days, wasn't
11 it?

12 MR. ROSS: Your Honor, I have an
13 objection.

14 MR. FLOYD: The Court will take judicial
15 notice that it was one day between July the 31st and
16 August the 1st.

17 Q Was it August 1st or August 3rd?

18 A It was August the 3rd.

19 Q Oh, the third, okay.

20 A But I'm not sure if the 31st was on a
21 Friday, when it fell, or anything like that.

22 THE COURT: What's your issue, Mr. Ross?

23 MR. ROSS: Your Honor, I think this is
24 straying from the purpose of the hearing. I think
25 the purpose of this hearing was a statement given by

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1 Ms. Kyzer to Mr. Floyd.

2 THE COURT: Yes, I think that's what we've
3 got. We are kind of off on a tangent now. We're
4 going into the --

5 MR. FLOYD: All right, I'll go back.

6 THE COURT: All right.

7 Q Ms. Kyzer, do you recall me coming over to
8 the evidence room in August or sometime?

9 A Yes.

10 Q And at that time, did you show me the
11 various items -- well, with the exception of the
12 gun. I don't think I needed to see the gun.

13 A Yes.

14 Q Now, at that time, the drugs had been
15 placed in some type of opaque envelope that I
16 couldn't see through, is that correct?

17 A We always place them in a brown envelope.
18 At that time, I believe it had been placed in a
19 K-pack.

20 Q It was heat-sealed?

21 A Yes.

22 Q Somebody's signature was on it?

23 A Yes, sir.

24 Q And I believe it was August 3, 2012, is
25 that correct?

1 A Yes, sir.

2 Q That was the date, because I wrote the
3 date down.

4 A Yes.

5 Q And that's the date that was on there.
6 With the initials MEH?

7 A That's correct.

8 Q Now, do you recall offering to show me the
9 scales and the plastic bags and me telling you I
10 wasn't interested in looking at those items?

11 A Yes, sir.

12 Q Do you recall me telling you what I was
13 interested in looking at was the drugs that had been
14 missing, and when they were discovered, and how they
15 were discovered? You don't recall.

16 A I didn't. Well, Colleen is the one that
17 set it up. But she didn't mention anything about
18 that was the reasoning why you were coming over.

19 Q Do you recall telling me they were
20 discovered on May 15, 2012? Do you remember giving
21 me that date on something?

22 A I believe I told you that's when Colleen
23 came over and looked at them.

24 Q Okay. And then, according to this recent
25 thing, that's when y'all found liquid in the Best

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1 kit?

2 A Yes, sir.

3 Q And that's when you got the chemist
4 involved again?

5 A Yes, sir.

6 Q Turned them over to the chemist again?

7 A Yes, sir.

8 MR. FLOYD: Thank you, Your Honor. I have
9 no further questions of the witness.

10 THE COURT: Anything further, Mr. Ross?

11 MR. ROSS: No, Your Honor.

12 THE COURT: All right, thank you, ma'am.
13 You may step down.

14 Mr. Floyd, what part of this witness'
15 testimony do you disagree with as to what she told
16 you or what was done?

17 MR. FLOYD: Your Honor, the part that I
18 disagree with was when I went over there, I asked
19 specifically about the misplaced drugs. I wanted to
20 know when those misplaced drugs were located, how
21 they were located --

22 THE COURT: What made you think there were
23 any misplaced drugs at all?

24 MR. FLOYD: Because that's what I had been
25 informed by the Solicitor when the case wasn't

1 called for trial in October.

2 THE COURT: All right. So what you're
3 saying is that you were informed by the Solicitor
4 that the drugs had been misplaced, and you went over
5 there and specifically asked for the drugs, and they
6 were produced?

7 MR. FLOYD: That's correct, Your Honor.
8 Well, Your Honor, basically, in October 2011, the
9 case was called.

10 THE COURT: Right.

11 MR. FLOYD: We went through pre-trial
12 motions.

13 THE COURT: I understand.

14 MR. FLOYD: At the conclusion of the
15 pre-trial motions, I was informed by the Solicitor's
16 Office of -- I think we broke for lunch, and when we
17 came back, we were supposed to try the case. I was
18 informed that they were not going to call the case
19 because they couldn't locate the drugs.

20 THE COURT: All right.

21 MR. FLOYD: I stayed in touch with the
22 Solicitor, asking, you know, "If you don't have the
23 drugs, why don't you dismiss it?" and this type of
24 thing. Eventually, I was informed that they had
25 found the drugs -

1 THE COURT: Okay.

2 MR. FLOYD: - in some other area of the
3 evidence.

4 THE COURT: All right.

5 MR. FLOYD: So then, when it looked like
6 it was going to come up for trial again, I said,
7 "Well, I'd like to at least see the drugs to make
8 sure they've been found."

9 THE COURT: All right.

10 MR. FLOYD: So I asked to be sent over to
11 the evidence room.

12 THE COURT: And they produced the drugs?

13 MR. FLOYD: And they produced the drugs
14 for me.

15 THE COURT: So how are you prejudiced by
16 what was said by the Solicitor? The case was
17 continued. I'm not saying she did say this.
18 There's a dispute as to whether she said it.

19 But she might have said, basically the
20 paraphernalia, that is, the scales and the baggies
21 and the paperwork, was misplaced. And you
22 understood that to be that the drugs were misplaced.

23 But be that as it may, the case was
24 continued, and nothing came up in connection with
25 that. And you were then informed that they did have

1 them, whatever, that they had found the baggies, and
2 the scales, and the paperwork, and that you could go
3 over and see everything. And you did go over and
4 see everything. So how are you prejudiced?

5 MR. FLOYD: Well, the way I'm prejudiced,
6 Your Honor, is they're now saying that these drugs
7 were never, ever misplaced.

8 THE COURT: What difference does it make
9 whether they were or weren't?

10 MR. FLOYD: Well, I think it goes to the
11 admissibility of the drugs on the chain of custody.

12 THE COURT: Well, that's a
13 chain-of-custody issue. And I don't see the
14 chain-of-custody issue here. The question here is
15 whether or not the Assistant Solicitor in charge of
16 the case at that time said what you think she said
17 and what you think she said as opposed to the other.

18 But I don't see, based upon what has
19 actually happened from the factual standpoint of the
20 witness' testimony as to what actually happened to
21 the drugs, that there's any connection about that.
22 It's only what you might have been told with regard
23 to the drugs.

24 MR. FLOYD: The reason I raised this
25 point, Your Honor, was because, of course, I was

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1 wanting some input on as to whether or not that does
2 not make me a witness in the case and require me to
3 withdraw as a counselor.

4 THE COURT: As to what the Solicitor told
5 you?

6 MR. FLOYD: And as to what the evidence
7 custodian told me.

8 THE COURT: You didn't say that the
9 evidence custodian told you that they didn't have
10 the drugs. You just said the Solicitor told you
11 they didn't have the drugs.

12 MR. FLOYD: No, Your Honor, I said that
13 when I went over there, I asked specifically about
14 the missing drugs and when they were discovered.

15 THE COURT: And she said, "Here's
16 everything. Here's the drugs, and here's the other
17 stuff." And she didn't say anything about, "Well,
18 they never were missing or anything of that nature."
19 She just said, "Here they are."

20 MR. FLOYD: I made notes, and I've got
21 notes here that I made.

22 THE COURT: I understand that, but I just
23 don't see how that goes to the materiality of the
24 matter. If that had come up and you had been told
25 that by the Solicitor, and the case was called at

1 that time, and you had been told by the Solicitor
2 they didn't have the drugs, and then she comes up
3 with them, that would have been an entirely
4 different situation.

5 But the fact of the matter is the case was
6 continued. So what the Solicitor said or did not
7 say is really immaterial. You were told that
8 everything was there, you could go look at it. You
9 did go look at it.

10 All right, Mr. Ross, is there anything
11 you'd like to add?

12 MR. ROSS: Your Honor, I would just take
13 the State's interest in trying this case. The case
14 was called for trial this time last year. It was
15 delayed. We've already gone through the pre-trial
16 motions once again.

17 And I think the relevance of any
18 inconsistent statement by Ms. Kyzer or Ms. Dixon,
19 who was the prior Solicitor on the case, when you
20 weigh that against our interest in having a speedy
21 trial, a timely trial, I just don't see how what Mr.
22 Floyd is talking about is even relevant to the
23 ultimate issue of guilt or innocence on the case.
24 Therefore, I would think it would be --

25 THE COURT: I think that's a collateral

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1 issue. I really don't think that it has anything to
2 do from a relevance standpoint to the issues that
3 are before the Court, and that is whether or not the
4 chain of custody was kept with the things.

5 The conversation between defense counsel
6 and prosecutors, many statements are made from time
7 to time that later prove to be not exactly accurate
8 for whatever reason. But as soon as the Solicitor's
9 Office discovers the inaccuracy and they make it
10 available, then what difference does it make?

11 Again, I don't see that there's any
12 prejudice from the fact, and I don't think that what
13 was told you by the Solicitor, if in fact that was
14 told to you by the Solicitor, at this point makes
15 any difference at all.

16 And I would not allow you to testify to
17 that fact, Mr. Floyd, because I don't think it makes
18 any difference. And if it doesn't make any
19 difference and you're not allowed to testify to that
20 fact, then I don't think that you should be
21 disqualified from trying this case because I would
22 not allow that testimony anyhow.

23 So I would respectfully deny your motion
24 to withdraw in order to testify as to that issue,
25 because I don't think it's a material issue in this

1 case.

2 MR. FLOYD: And, Your Honor, would that be
3 the same ruling you'd make on the testimony of the
4 conversation with the evidence technician?

5 THE COURT: What are you saying that she
6 told you that's inaccurate?

7 MR. FLOYD: About the drugs being missing.

8 THE COURT: About them being missing? I
9 don't believe she testified to that. I think she
10 testified that they were in the wrong box, but we've
11 got them. She didn't ever testify that they were
12 missing at any point, I don't think.

13 MR. FLOYD: What I would testify is I
14 asked her about the drugs missing and when they were
15 found.

16 THE COURT: And she said, "Here they are.
17 We have them." And I don't think she ever said that
18 they were missing, did she? I don't believe she
19 did.

20 MR. FLOYD: She didn't deny it when I
21 asked her.

22 THE COURT: Sir?

23 MR. FLOYD: She didn't deny when I asked
24 her.

25 THE COURT: Well, the same ruling.

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1 MR. FLOYD: Okay, Your Honor.

2 THE COURT: All right, anything further in
3 the way of pre-trial motions on behalf of the
4 defense before we go forward with the jury, Mr.
5 Floyd?

6 MR. FLOYD: Nothing further, Your Honor.

7 THE COURT: Mr. Ross?

8 MR. ROSS: No, Your Honor.

9 THE COURT: All right, the jury should be
10 here by now. I assume they're all here. But we'll
11 take about five or ten minutes. Let's say seven
12 minutes, five after three.

13 And if you'll tell the jury that we're
14 running about five minutes late and we'll be ready
15 to start very shortly if they're all here. And
16 we'll go forward at 3:05.

17 Also, let the record reflect that the
18 deputy has given back to the evidence custodian all
19 the evidence in this case that he took charge while
20 she was testifying.

21 (Court in recess.)

22 THE COURT: All right, back on the record
23 with regard to the matter of the State versus
24 Douglas James Mayes. Mr. Mayes is present in court
25 with his attorney. The State is present and

1 represented by Mr. Ross. The pre-trial motions
2 having been disposed of, and I'm advised by the
3 bailiff that all the jurors are present.

4 Is there anything for the record before we
5 proceed and bring them in and have them sworn, Mr.
6 Ross?

7 MR. ROSS: No, Your Honor.

8 THE COURT: Mr. Floyd?

9 MR. FLOYD: No, Your Honor.

10 THE COURT: All right, bring the jury in,
11 please.

12 (The jury returned to the
13 courtroom at 3:09 p.m. after which the following
14 proceedings were had:)

15 THE COURT: All right, good afternoon,
16 ladies and gentlemen, and thank you for your
17 promptness in being back this afternoon. We did
18 have a number of matters that we had to take care of
19 that we have taken care of. We just finished those
20 a few minutes before three, so we took a little
21 break before we started back.

22 But we worked after you left the courtroom
23 until 12:30 or 12:40, and then took a short lunch
24 recess, and were back at 1:30 and worked until 3:00
25 to get those matters resolved so that we could go

1 forward. There are a couple of things that I want
2 to say now, and then I'm going to have the Clerk
3 swear you.

4 But, first of all, I meant to tell you
5 this before you went and took the lunch recess.
6 There are no seats in the jury box that are reserved
7 except the first seat on the front row for the
8 foreperson and the first seat on the second row for
9 the alternate. At this point, we have not selected
10 a foreperson.

11 But when that foreperson is selected
12 either by you or by me, that person should always
13 sit here in the first seat on the front row. The
14 alternate should always sit in the first seat in the
15 second row where she is seated now.

16 The rest of the seats in the jury box are
17 not reserved, and it does not matter what order you
18 come and go from the courtroom, and it does not
19 matter what seat you sit in the jury box.

20 Just reserve the first seat for the
21 foreperson when that foreperson is selected and the
22 first seat on the second row for the alternate, who
23 will always sit in that seat on the second row.

24 Anything before the jury is sworn, Mr.
25 Ross?

1 MR. ROSS: No, Your Honor.

2 THE COURT: Mr. Floyd?

3 MR. FLOYD: No, Your Honor.

4 THE COURT: All right, please swear the
5 jury.

6 (The jury was sworn.)

7 THE COURT: Thank you.

8 All right, ladies and gentlemen, before we
9 begin the actual trial of this case, I thought it
10 might be helpful if I explain to you basically how a
11 trial proceeds. I know you have all seen trials on
12 television, but I think you're going to find out
13 that it's a great deal different in real life.

14 First of all, the State will make an
15 opening statement. An opening statement is not
16 evidence. It is simply an outline to help you
17 understand what the State expects the evidence will
18 show. The defendant may, if he wishes to, present
19 an opening statement, but he doesn't have to for
20 reasons that I will explain later.

21 Following the opening statement, you will
22 hear the testimony and evidence in this case. This
23 will consist of testimony from the State's witnesses
24 as well as any physical exhibits which may be
25 introduced into evidence. Following the completion

1 of the testimony, the attorneys will again have an
2 opportunity to make what is called a closing
3 statement or summation to you.

4 This is an opportunity for the attorneys
5 to summarize the case from their respective points
6 of view. Again, these arguments are not evidence.
7 Following the closing statements by the attorneys, I
8 will instruct you on the law of South Carolina as it
9 pertains to the issues that have arisen in this
10 case.

11 When I have completed my instructions to
12 you, you will be permitted to begin your
13 deliberations in order to reach a verdict. Now,
14 ladies and gentlemen, you are now the jury in this
15 case, and I want to take just a few minutes to tell
16 you something about your duty as jurors and to give
17 you some basic instructions.

18 At the end of this trial, I will give you
19 more detailed instructions, and those instructions
20 will control your deliberations. It will be your
21 duty to decide from the evidence what the facts are.
22 You, and you alone, are the judges of the facts.
23 You will hear the evidence, decide what the facts
24 are, and then apply those facts to the law which I
25 will give to you.

1 That is how you reach a verdict. In doing
2 so, you must follow the law whether you agree with
3 it or not. The evidence will consist of testimony
4 of witnesses, documents, and other things received
5 into evidence as exhibits, and any facts which the
6 lawyers may agree on which I may instruct you to
7 accept.

8 Now, you should not take anything that I
9 may say to you during this trial as indicating what
10 I think of the evidence or what your verdict should
11 be. The law does not allow me to have an opinion
12 about the facts. The same law that makes you the
13 judge of the facts makes me the judge of the law.

14 You must take the law as I give it to you,
15 regardless of what you think the law is or what the
16 law ought to be. If I'm wrong on the law, there's
17 another time and place for that error to be
18 corrected. But for this case, you must accept the
19 law as I charge it to you.

20 Now, this is a criminal case brought by
21 the State of South Carolina. The State charges the
22 defendant with three separate offenses. They are
23 contained in the indictments which I hold in my
24 hand. The defendant is charged with possession with
25 intent to distribute cocaine, trafficking in crack

1 cocaine, and possession of a weapon during the
2 commission of a violent crime.

3 Now, as I say, the indictments are not
4 evidence of anything. They are simply the
5 description of the charges made by the State against
6 the defendant. The defendant has pled not guilty to
7 these charges and is presumed innocent unless and
8 until proven guilty beyond a reasonable doubt.

9 A reasonable doubt is the kind of doubt
10 that would cause a reasonable person to hesitate to
11 act. A defendant has the right not to testify and
12 never has to prove innocence or present any
13 evidence. The burden of proof is always on the
14 State of South Carolina.

15 Now, there are certain things that are not
16 evidence, and you must not consider them as evidence
17 in deciding the facts of this case. Statements and
18 arguments of the attorneys are not evidence.
19 Questions and objections of the attorneys are not
20 evidence. And testimony that I instruct you to
21 disregard is not evidence.

22 Evidence may be direct or circumstantial.
23 Direct evidence is testimony by a witness about what
24 that witness personally saw, or heard, or did.
25 Circumstantial evidence is indirect evidence. The

1 law permits you to give equal weight to both, but it
2 is for you to decide how much weight to give to any
3 of the evidence.

4 There are rules of evidence which control
5 what can be received into court. When a lawyer asks
6 a question or offers an exhibit into evidence, and a
7 lawyer on the other side thinks that it is not
8 permitted by the rules, that lawyer may object.

9 If I overrule the objection, the question
10 may be answered or the exhibit may be received. If
11 I sustain the objection, the question cannot be
12 answered and the exhibit cannot be received.
13 Whenever I sustain an objection to a question or
14 deny a motion to admit an exhibit into evidence, you
15 must ignore the question or the existence of the
16 exhibit, and you must not guess what the answer
17 would have been or what the exhibit would have
18 shown.

19 Sometimes it may be necessary for me to
20 request that you leave the courtroom while I discuss
21 with the attorneys legal issues that come up during
22 the trial. If this occurs, you should not speculate
23 about our discussions or the reasons that you were
24 asked to leave the room. This is simply a procedure
25 that the law requires when certain legal issues

1 arise.

2 There also may be occasions when I ask the
3 attorneys to approach the bench so that I can
4 discuss a legal issue with them in private. I will
5 do this as often as possible so that you will not be
6 required to leave the courtroom more than is
7 absolutely necessary.

8 Again, if I ask the attorneys to step up
9 to the bench, or if I ask you to leave the
10 courtroom, please don't think that anybody is trying
11 to hide anything from you or keep any evidence from
12 you. This is simply a procedure used by all lawyers
13 and by all courts to determine and decide legal
14 questions.

15 Now, in deciding the facts of this case,
16 you may have to decide which witnesses to believe
17 and which witnesses not to believe. This is called
18 credibility.

19 You may believe everything a witness says,
20 or only part of it, or none of it. In deciding what
21 to believe, you may consider a number of facts,
22 including the witness' ability to see, or hear, or
23 know the things that the witness testified to; the
24 quality of the witness' memory; the witness' manner
25 or demeanor while testifying; whether the witness

1 has an interest in the outcome of the case or any
2 motive, bias, or prejudice; whether the witness is
3 contradicted by anything the witness said or wrote
4 before the trial or by any other evidence; and how
5 reasonable was the witness' testimony when
6 considered in the light of other evidence which you
7 do believe.

8 Now, just a few words to you about your
9 conduct as jurors, some of which I have already
10 mentioned to you. But they're important enough that
11 they need reiterating. First of all, do not talk to
12 each other about this case until the end of the case
13 when you go to your jury room to decide on your
14 verdict.

15 Secondly, do not talk with anyone else
16 about the case until the trial is ended following
17 your verdict and you have been discharged as jurors.
18 This means do not discuss the case with members of
19 your family, or your friends, or with anyone else.
20 You may tell them that you are a juror, but don't
21 tell them anything about the case until you have
22 been discharged by me.

23 Third, do not let anyone talk to you about
24 the case. If anyone should try to talk to you about
25 the case, get their name or their description,

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1 report it to the bailiffs or the Clerk or one of the
2 deputies. They will report it to me, and I will
3 deal with them.

4 Do not read any news stories or articles
5 or listen to any radio or television reports about
6 the case. And do not do any research about the
7 matter, such as consulting dictionaries or other
8 reference materials or the Internet. And do not
9 make any investigation into the case on your own.

10 You are not to consider as evidence
11 anything that you may see or hear when court is not
12 in session, even if what you see or hear is done or
13 said by one of the parties or one of the witnesses.
14 Now, as I say, those are just a few of the things
15 that I have already told you.

16 Now, later on in this case, I will allow
17 the 12 of you to select one of the members of the
18 principal jury as the foreperson of that jury. And
19 when I do, that foreperson would always sit in the
20 front seat on the first row.

21 Now, at the end of this case, as I said, I
22 will instruct you on the law of the case. And at
23 that point, you will be allowed to go to your jury
24 room to deliberate your verdict.

25 Are there any objections to my initial

1 remarks on behalf of the State, Mr. Ross?

2 MR. ROSS: No, Your Honor.

3 THE COURT: On behalf of the defense, Mr.
4 Floyd?

5 MR. FLOYD: No, Your Honor.

6 THE COURT: All right, the first order of
7 business, ladies and gentlemen, is for the lawyers
8 to make their opening statements to you. Again, I
9 would tell you that the statements of the attorneys
10 are not evidence in this case.

11 But the lawyers do have the right to make
12 a brief opening statement to you at this time to
13 outline what they think the evidence will show. You
14 will hear first from the Assistant Solicitor on
15 behalf of the State and then from Mr. Floyd on
16 behalf of the defense, after which we will get into
17 the testimony and evidence in this case.

18 Mr. Ross?

19 MR. ROSS: May it please the Court, Your
20 Honor?

21 THE COURT: Yes, sir.

22 OPENING STATEMENT

23 BY THE STATE

24 MR. ROSS: If it walks like a duck, it
25 quacks like a duck, ladies and gentlemen, what do

Opening Statement by the State

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1 you have? You've got yourself a duck. Sometimes
2 things really are that simple. Well, the case
3 you're about to hear against the defendant on trial
4 today, Douglas Mayes, really is that simple.

5 The facts are simple. The law is simple.
6 On February 17, 2011, narcotics officers executed a
7 search warrant at his single-wide trailer down in
8 Pelion. They knocked and announced their presence.
9 Then they went in the front door. That front door
10 is on the far right-hand side of the single-wide.

11 So when they entered, they took a left and
12 went all the way down that single-wide trailer till
13 they got to the master bedroom. And they saw a
14 female in bed with a toddler, and they kept going.
15 They went to the back bathroom that's attached to
16 the master bedroom.

17 They looked in the door. They found
18 Douglas Mayes standing there in that bathroom. And
19 right beside him was a 24-pack of Angel Soft toilet
20 paper. So they gathered everybody up. They put
21 them in the den, and then they began to search that
22 house. And it didn't take them long to find 70
23 grams of crack cocaine and three grams of powder
24 cocaine.

25 They found it in that Angel Soft 24-pack

Opening Statement by the State

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1 that was sitting right beside Douglas Mayes. But
2 that's not all they found. They also found a rifle
3 in the kitchen. They found a set of digital scales
4 on the kitchen counter. These used to weigh drugs
5 before they're sold on the streets.

6 Finally, in the kitchen cabinet, they
7 found a box with a bunch of small little plastic
8 baggies -- not the kind that you put your lunch in
9 but the kind you put drugs in before you sell them
10 on the streets. So Agent Eric Kirkland, he
11 approaches the defendant. He gives him his Miranda
12 rights, his Miranda warnings.

13 And he asked him about what was found in
14 that back bathroom. And the defendant said,
15 "Everything you found back there is mine" --
16 "Everything you found back there is mine."

17 So all this evidence was packaged up. The
18 drugs were placed in what's called a Best kit. This
19 is a sealed plastic bag, and it's got a unique
20 number on the plastic portion.

21 And that number is designed to make sure
22 what you seize on Monday is what you test over on
23 Friday. They put that number on it so you don't get
24 drugs mixed up from one case to the next. And these
25 drugs were sent to the chemist, and they tested

Opening Statement by the State

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1 positive -- 70 grams of crack cocaine, almost three
2 grams of powder cocaine.

3 Now, based on that test result, he's
4 facing the three charges that Judge King read to you
5 today -- trafficking crack cocaine, possession with
6 intent to distribute powder cocaine, and possession
7 of a weapon during the commission of a violent
8 crime.

9 Now, that term "trafficking crack
10 cocaine," "trafficking" is simply a legal term. It
11 refers to the amount of drugs in any particular
12 case. If you have nine grams of crack cocaine in
13 your possession, you are guilty of simple possession
14 of crack cocaine.

15 If you have over 10 grams of crack cocaine
16 in your possession, you're guilty of trafficking
17 crack cocaine. So what the State is going to prove
18 is nothing other than the defendant was in
19 possession of all that crack cocaine that was found.

20 That's all we're going to prove,
21 possession. Now, the powder cocaine charge adds to
22 it. We're going to prove not only did he possess
23 the powder cocaine but that he intended to
24 distribute the powder cocaine.

25 And the evidence you're going to have to

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1 come to that conclusion is going to be the scales,
2 you're going to have the plastic bags, and, finally,
3 you're going to have the weight of that powder
4 cocaine.

5 And Judge King is going to explain to you
6 at the end of the trial the significance of the
7 weight of the powder cocaine. He will explain to
8 you that if somebody has over one gram of powder
9 cocaine in their possession, you, the jury, can
10 conclude based on weight alone that he intended to
11 distribute that powder cocaine.

12 Now, the evidence you'll hear is that he
13 had three times that amount -- three times that
14 amount. The final charge is possession of a weapon
15 during the commission of a violent crime. This also
16 is very simple.

17 Trafficking crack cocaine is considered a
18 violent crime under the law. And if you possess a
19 firearm while you commit that crime, that's a crime
20 in and of itself.

21 So he's guilty of possessing that rifle
22 while he was possessing the crack cocaine and then
23 the trafficking crack cocaine charge. Now, the main
24 issue in this case is going to be possession. And,
25 again, Judge King will explain to you the two types

Opening Statement by the State

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1 of possession that exist under the law.

2 This is going to be very important. You
3 have actual possession when something is in your
4 hands or in your pockets. Then you have
5 constructive possession.

6 That's where drugs are not on your person,
7 but you exercise dominion and control over the
8 drugs, or you exercise dominion and control over the
9 place where the drugs were found.

10 For example, down in my office I've got a
11 ton of law books. Right now, I'm exercising
12 constructive possession over those books. All the
13 stuff at my house, miles away from here, I'm
14 exercising constructive possession over those items.

15 The pen on my desk here, I'm just as
16 guilty of possessing that pen now as I am now. The
17 point of me telling you that on the front end is to
18 let you know that the State does not have to put
19 those drugs in his hands. You do not have to put
20 the drugs in his pockets.

21 The evidence would show he's guilty of
22 constructive possession of all those drugs that were
23 found. This is going to be a short trial, but it's
24 an important trial. These are very serious charges.
25 You're going to hear from the officers that entered

Opening Statement by the State

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1 the residence.

2 You're going to hear about what he told
3 those officers. You're going to hear from the
4 chemist that tested the drugs. You're going to see
5 the drugs. You'll see photographs of when they were
6 taken, and you'll see them as they are now.

7 And when you see the Best kit now, it's
8 going to be very clear to you that the drugs as they
9 exist now are not in the same physical form as when
10 they were seized. And the chemist is going to
11 explain that after those drugs were tested, they
12 were put in a storage room that does not have air
13 conditioning.

14 And in Lexington, South Carolina, a room
15 without air conditioning can get pretty hot. And
16 crack cocaine can respond in the same way a candy
17 bar will respond to a very hot room in Lexington,
18 South Carolina, without air conditioning. So
19 they're going to be partially liquefied.

20 You're also going to hear from the
21 evidence custodians on this case. And they're going
22 to be very candid with you about what they did in
23 this case, about the handling procedures of the
24 drugs, the scales, and the bags. They'll be very
25 candid that at one time they tried to put their

Opening Statement by the State

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1 hands on the scales and the bags.

2 The scales and the bags were placed in a
3 second storage room, in boxes. And the evidence
4 will show that there were 10,000 -- almost 10,000
5 other pieces of evidence from other cases stored in
6 that room.

7 At one time, they were asked to find them.
8 They couldn't find them. But they looked for them.
9 They found them in the wrong box. And you're going
10 to see the same digital scales, the same plastic
11 bags that were found in Douglas Mayes' trailer in
12 Pelion.

13 After you hear all this evidence -- and,
14 again, it's going to be a short trial. After you
15 hear all this evidence, you will be firmly convinced
16 that Douglas Mayes is guilty. And that's why at the
17 end of this trial, I'm going to look you in the eye
18 and I'm going to ask you to find him guilty as
19 charged.

20 THE COURT: Mr. Floyd, does the defendant
21 care to make an opening statement?

22 MR. FLOYD: Yes, Your Honor.

23 THE COURT: You may.

24 OPENING STATEMENT

25 BY THE DEFENSE

Opening Statement by the Defense

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1 MR. FLOYD: Ladies and gentlemen of the
2 jury, this young man's name is Douglas Mayes. He's
3 the defendant in this case. He's a man about whom
4 you're going to make one of the most important
5 decisions you ever make about anybody -- and you
6 just now met him -- because you're going to decide
7 whether or not based upon the evidence you hear in
8 this room over the next couple of days, whether or
9 not he should be found guilty of what the State has
10 already told you are very serious crimes, which will
11 also create very serious consequences.

12 Now, if you've never served on a criminal
13 jury before, you almost have to set aside human
14 nature, because some of you may have the thought in
15 your mind that because Douglas was arrested -- he
16 was -- handcuffed and carried to jail -- which he
17 was -- because he now sits there before you to be
18 judged -- which he does.

19 Well, you may have the thought in your
20 mind, "Wow, he must be guilty." Well, if you've got
21 that kind of thought, you've got to erase it.
22 You've got to put it out of your mind completely.
23 Because, you see, Doug has the same rights each and
24 every one of us have.

25 One of those most important rights is what

Opening Statement by the Defense

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1 we call the presumption of innocence. So you must
2 look at Douglas Mayes, and you must say in your
3 heart and in your mind Douglas Mayes is innocent,
4 and Douglas Mayes remains innocent unless the State
5 proves his guilt beyond a reasonable doubt to each
6 and every one of you.

7 And that's all we ask. When you listen to
8 the evidence that's presented, we ask that you hold
9 the State to their standard of proof beyond a
10 reasonable doubt, because there's going to be some
11 problems with the case.

12 And we think when it's all over with,
13 you'll conclude that the only fair and just verdict
14 is one of not guilty. Thank you very much for your
15 attention. I look forward to speaking with you
16 again in what we call closing statements at the
17 conclusion of the case. Thank you very much.

18 THE COURT: All right, Mr. Ross, you may
19 call your first witness.

20 MR. ROSS: The State calls Sgt. Billy
21 Laney to the stand.

22 THE COURT: All right, Mr. Laney, come up,
23 please.

24 (The witness was sworn.)

25 CLERK OF COURT: If you'll have a seat

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1 over here, state your name, and spell your last for
2 the record, please.

3 MR. LANEY: Billy Ray Laney -- L-A-N-E-Y.

4 BILLY RAY LANEY, having first been duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ROSS:

8 Q Sgt. Laney, I saw you walking with a limp
9 up to the stand. Did you recently have surgery?

10 A Yes, sir.

11 Q When did you have that surgery?

12 A Friday morning, the 28th of September.

13 Q On what?

14 A Friday -- this past Friday.

15 Q What was operated on?

16 A My left knee.

17 Q Okay. You were the first man to enter the
18 defendant's residence on February 17, 2011, is that
19 correct?

20 A Yes, sir.

21 Q Before we get to what you did that day,
22 could you please tell me what your law enforcement
23 experience is?

24 A I've been with Lexington County Sheriff's
25 Department since 1994. I've served in the patrol

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1 division, traffic division, went to narcotics. And
2 in July of 2011, I was promoted to patrol sergeant,
3 South Region.

4 Q So at the time the search warrant was
5 executed, you were in the narcotics division?

6 A Yes, sir.

7 Q What type of cases would you investigate?

8 A All narcotics cases, vice cases,
9 prostitution, gun cases.

10 Q How many years were you a narcotics
11 officer?

12 A Six -- right at six.

13 Q Okay. Tell me what role was on February
14 17, 2011.

15 A My role on that day, I was the shield man.
16 The shield man is the first person through the door
17 with a ballistics shield to cover the other agents
18 approaching the house and once we make entry.

19 Q So you were the first one to enter?

20 A Yes, sir.

21 Q What sort of tactical gear were you
22 wearing?

23 A Tactical greens, had a ballistic helmet
24 on, ballistic vest -- big, thick vest, 4A vest with
25 a ballistic shield.

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1 Q Okay. And did you knock on the door?

2 A I did not knock.

3 Q Did somebody knock on the door?

4 A Yes, sir.

5 Q And what happened after somebody knocked
6 on the door?

7 A They knock. Sheriff's Department is
8 announced, search warrant, and we enter. And when
9 we enter, I'm screaming "Sheriff's Department,
10 Sheriff's Department, police search warrant."

11 Q Okay. And when you entered, what did you
12 do?

13 A Based on the diagram of the house, as I
14 entered the house I went left to the deep part of
15 the house, which is the most dangerous part. We
16 push deep with the shield to cover the other agents
17 coming in.

18 Q Okay. And did you find anybody?

19 A Not in the den area or the kitchen, no,
20 sir.

21 Q So you went in the den and then the
22 kitchen?

23 A Yes, sir.

24 Q And then where did you go after that?

25 A Once we got to the kitchen, we entered the

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1 bedroom door. To the left, there was a bed. We
2 located a female and a toddler on the bed. Once she
3 was taken care of and secured, I proceeded to the
4 master bedroom -- master bathroom, excuse me --
5 where I encountered a subject who was later
6 identified as Mr. Mayes.

7 Q You said you saw a female and a toddler on
8 the bed. Were they sitting on the bed like this?

9 A They were laying in bed. They were in the
10 bed.

11 Q And then you went to the bathroom?

12 A Yes, sir.

13 Q And you found the defendant?

14 A A male who was later identified as Douglas
15 Mayes, which is the defendant here, yes, sir.

16 Q How did he appear when you first found
17 him?

18 A He was awake, clothed. He was walking
19 from the left side of the bathroom towards me.

20 Q Okay. Was there any steam coming out of
21 the bathroom?

22 A No, sir, not that I remember.

23 Q Did his hair appear to be wet from coming
24 out of the shower?

25 A No, sir.

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1 Q Did he have all of his clothes on?

2 A He had clothes on. I can't tell you if it
3 was a T-shirt and shorts or complete clothing.

4 Q But he wasn't walking around without his
5 pants?

6 A No, sir, he was not naked.

7 Q Okay. Were his hands wet from washing his
8 hands?

9 A Not that I recall. I didn't go hands-on
10 with him.

11 Q Okay. Was the faucet in that bathroom
12 turned on?

13 A No, sir.

14 Q Was the commode running?

15 A No, sir.

16 Q Okay. And what did you do with him after
17 you found him?

18 A He was detained, taken out of the
19 bathroom. And once the female and Mr. Mayes were in
20 the den, a more in-depth search of the house was
21 made for other persons. And once it was deemed
22 clear, we started to search.

23 Q What county is [REDACTED] in?

24 A It's in Lexington County, South Carolina.

25 Q Okay. And that's where this search

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1 occurred?

2 A Yes, sir.

3 Q So once y'all got everybody rounded up,
4 what did you do?

5 A Again, we searched to make sure it was
6 safe -- the house was safe. And then we proceeded
7 to search our designated areas.

8 Q What was your designated area?

9 A I was searching the master bathroom.

10 Q Is that the same place where you found the
11 defendant?

12 A Yes, sir.

13 Q Okay. What did you find pursuant to that
14 search?

15 A After searching the bathroom, got across
16 the countertop from the sink area over to where the
17 bathroom area is, the toilet area, lifted up the
18 commode, sink, did not find anything, looked down.

19 I decided to look through the toilet paper
20 rolls. I tore the bag apart, and a large piece of
21 off-white rock-like substance in a baggie fell along
22 with a pill bottle.

23 Q During your career as a narcotics officer,
24 have you seen crack cocaine before?

25 A Several times, sir.

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1 Q And what fell out, did that appear to be
2 crack cocaine?

3 A Yes, sir, it appeared to be a half cookie
4 of crack cocaine to me.

5 Q Now, what is a cookie?

6 A They make crack cocaine into round shapes,
7 and it looks like a cookie.

8 Q Okay. And this was a half a cookie?

9 A Yes, sir.

10 Q What else did you find?

11 A There was a pill bottle that fell out
12 also. When that fell out, I notified, said, "Hey, I
13 found something," came back. We started to peel
14 apart the wrapping on the toilet paper.

15 We found two more baggies of crack cocaine
16 laying on top, and we started photographing those.
17 We started pulling the paper out, and we found a
18 small baggie of powdery substance behind some of it
19 inside the rolls beside each other.

20 Q Now, during your experience as a narcotics
21 officer, have you seen powder cocaine before?

22 A Yes, sir.

23 Q Did that powdery substance appear to be
24 powder cocaine?

25 A It did to me. It was packaged as a white

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1 powdery substance.

2 Q Okay. So if I'm tracking correctly, you
3 found a pill bottle. What was inside that pill
4 bottle?

5 A Small white off-white rock-like substance
6 that appeared to be crack cocaine, little pieces.

7 Q Okay. And you found a baggie of powder
8 substance?

9 A Yes, sir, a small plastic bag.

10 Q And then you found three bags of rock
11 substances?

12 A Two small baggies of off-white rock-like
13 substance and one big baggie that had large pieces
14 of it -- large pieces of it.

15 Q Did it appear to be crack cocaine?

16 A Yes, sir.

17 Q Okay. And what did you do with those
18 items?

19 A I called for a photographer who was
20 photographing everything. He came in and
21 photographed it. Once it was photographed, I
22 delivered it to our scribe, who was Agent Tucker.

23 Q Did the photographer handle those items in
24 any way?

25 A No, sir.

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- 1 Q Did he ever take custody of them?
- 2 A No, sir.
- 3 Q Okay. Did he add anything that wasn't
- 4 there?
- 5 A No, sir.
- 6 Q Okay. You said you gave all those items
- 7 to whom?
- 8 A Agent Barnes Tucker, the scribe for the
- 9 search warrant.
- 10 Q Okay.
- 11 A She was separating stuff.
- 12 Q Has Agent Barnes recently gotten married?
- 13 A No.
- 14 Q She used to go by Tucker, though, right?
- 15 A Yes.
- 16 Q Now she goes by Agent Barnes?
- 17 A Yes.
- 18 Q Okay. You gave the three baggies of rock
- 19 substance, the pill bottle, and the baggie of powder
- 20 to her?
- 21 A Correct, sir.
- 22 Q And when you gave them to her, were they
- 23 in the same condition as when you found them?
- 24 A Yes, sir, they were.
- 25 Q Did you alter or manipulate them in any

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1 way?

2 A No, sir.

3 Q Did you add anything to them that wasn't
4 there?

5 A No, sir, I did not.

6 Q Did anyone else take possession of those
7 items from the point you found them to the point
8 that you gave them to Agent Barnes?

9 A No, sir.

10 Q Sgt. Laney, I'm going to ask that you take
11 a look at what's been marked as State's Number One.
12 Do you recognize that?

13 A Yes, sir, I do.

14 Q Does that accurately reflect the location
15 of where the search warrant occurred?

16 A Yes, sir, it does.

17 Q Does this accurately reflect [REDACTED]
18 Highway here?

19 A Yes, sir.

20 Q And is this the trailer that you searched?

21 A Yes, sir.

22 Q I'm going to show you State's Number Two.
23 Is this a close-up of that same trailer?

24 A Yes, sir.

25 Q And, again, this is the trailer that you

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1 searched on February 17, 2011?

2 A Yes, sir.

3 Q And what is this right here?

4 A It's a green car with big wheels on it.

5 Q Was that car there when you did the
6 search?

7 A Yes, sir.

8 Q I'm going to show you State's Number
9 Three. Is this an accurate reflection of the floor
10 layout of that trailer?

11 A Yes, sir.

12 MR. ROSS: Your Honor, at this time we'd
13 offer State's One through Three into evidence.

14 THE COURT: Any objection, Mr. Floyd?

15 MR. FLOYD: No objection, Your Honor.

16 THE COURT: All right, all three of those
17 exhibits -- State's Number One, State's Number Two,
18 and State's Number Three -- will be admitted into
19 evidence without objection.

20 (State's Exhibit Number
21 One, Aerial Photo; State's Exhibit Number Two,
22 Aerial Photo Close-up; and State's Exhibit Number
23 Three, Floor Plan Layout, were entered in evidence.)

24 MR. ROSS: And, Your Honor, at this time
25 I'd ask for Sgt. Laney to step down, knee

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1 permitting, of course, and review these exhibits.

2 THE COURT: Yes, sir, you may step down.

3 Q If you would, please, stand on that side.

4 So this is State's Number One.

5 A Yes, sir.

6 Q Tell me which trailer is the trailer that
7 you searched.

8 A This trailer right back here.

9 Q Right here?

10 A Yes, sir.

11 Q And this is the green car that you were
12 referring to earlier?

13 A Yes, sir.

14 Q All right. And when you entered, where is
15 the front door on this trailer?

16 A That's the door we entered through. You
17 see the ramp. We knocked and announced and went
18 through the door.

19 Q Okay.

20 COURT REPORTER: Judge, I can't hear him.

21 THE COURT: All right, let's speak up.

22 She's got to hear you, and so have I.

23 MR. LANEY: I apologize.

24 A We went up the ramp. The front door is to
25 the right side of the trailer. We knocked and

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1 announced and made entry into the trailer at that
2 time.

3 THE COURT: All right.

4 Q I'm going to show you State's Number Two.
5 Tell me about this photograph.

6 A It's a more close-up photo. It shows the
7 ramp where you enter, knocked on the front door.
8 The green car is there.

9 Q Okay.

10 A It's just a close-up photo of the same
11 picture we saw.

12 Q Now let me show you State's Three. Tell
13 me about this.

14 A Diagram of the actual trailer. It shows
15 the ramp where we entered.

16 Q So you went up this ramp?

17 A Yes, sir. The entire team went up the
18 ramp, staged, and they knocked and announced. As
19 soon as they knocked and announced, the door was
20 breached. I came in with the shield, and I
21 immediately went left to go back to the deepest part
22 of the house.

23 Q So you went this way?

24 A Yes, sir, I went through the den.

25 Q All right. And was there anybody on this

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1 couch here?

2 A No, sir.

3 Q Anybody on the recliner?

4 A No, sir.

5 Q All right. And then you went where?

6 A Continued on through the kitchen. And
7 once we got to the master bedroom, as soon as
8 someone got behind me and tapped, we went through
9 this door.

10 Q And what does that mean? Tell the jury
11 what that means for somebody to get behind you and
12 tap you.

13 A You never enter a room by yourself. You
14 go in twos. So if we get to an obstacle we can't
15 breach it and go through the door, we wait till we
16 get tapped and then we move on so we know we have
17 people behind us.

18 Q Okay. So that's indicating that you've
19 got cover behind you?

20 A Yes, sir.

21 Q Okay.

22 A We made entry into the room. When I came,
23 walked in, I noticed that there was a female and a
24 child on the bed. They were no threat to me.
25 Another officer went to them, and I proceeded to the

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1 unknown at that time, which was the master bathroom.

2 Q Okay. And is this where the door was?

3 THE COURT: Mr. Ross, excuse me. I think
4 it would help the Court Reporter if she could see
5 the witness, because I know a large part of what
6 they take down is --

7 MR. ROSS: Yes, Your Honor.

8 THE COURT: -- is lip-reading as well.
9 All right, go ahead.

10 Q Is that the door to the master bathroom?

11 A Yes, sir. It's the doorway leading into
12 the master bathroom.

13 Q Okay. And you entered that door?

14 A Yes, sir, I entered -- when I got to the
15 master bathroom here, I encountered Mr. Mayes, who's
16 right here coming towards me.

17 Q Okay. If you would, please, I'm going to
18 give you a pen, and I would like for you to mark on
19 this exhibit with an "x" where exactly he was
20 standing. And is that approximately the same
21 location -- why don't you tell me where the Angel
22 24-pack was.

23 Q The Angel pack was beside the commode.

24 Q Okay. So you have a commode here?

25 A Yes, sir.

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1 Q And what is this right here? What does
2 that indicate?

3 A That's the bathroom sink area, the
4 countertop.

5 Q Okay. And between commode and sink was
6 what?

7 A Toilet tissue.

8 Q Okay. And, again, this is where the
9 defendant was?

10 A Yes, sir.

11 Q Okay. That giant "x" that you put on
12 there?

13 A Yes, sir.

14 Q If you could, please return to your seat.
15 Sgt. Laney, I'm going to show you what's been marked
16 as State's Number Four through Nine. If you could,
17 please take a look at these photographs.

18 A Yes, sir.

19 Q Have you had a chance to look at them?

20 A Yes, sir.

21 Q Do they accurately reflect the drugs that
22 you seized that day?

23 A Yes, sir, they do.

24 MR. MOSS: Your Honor, at this time I'd
25 move for four through nine be admitted into

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1 evidence.

2 THE COURT: Any objection, Mr. Floyd?

3 MR. FLOYD: No objection, Your Honor.

4 THE COURT: All right, State's Numbers
5 Four through Nine will be admitted into evidence
6 without objection.

7 (State's Exhibits Four
8 through Nine, Photos, were entered in evidence.)

9 MR. ROSS: And, Your Honor, I'd ask to
10 publish them on this projector.

11 THE COURT: All right, that motion will be
12 granted.

13 Ladies and gentlemen, let me tell you what
14 that means. When the lawyers ask that something be
15 published, that's just simply a legalistic term
16 meaning show the jury the particular exhibits. And
17 I will grant that motion to the State.

18 They will have the right to hand you these
19 exhibits as we go through, and you can pass them
20 around while you're sitting there in the jury box.
21 Do not be concerned if you do not have the time to
22 look at them that you would like to have.

23 Anything that is introduced into evidence
24 will go with you to the jury room when you retire to
25 deliberate your verdict. But the lawyers do have

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1 the right to pass the exhibits around to you at this
2 time. You all do it with technology over here. In
3 Sumter County, we haven't quite gotten to that stage
4 yet. All right, go ahead.

5 Q This is Exhibit Four, Sgt. Laney. Let me
6 see if I can't get that in better focus. Why don't
7 you just tell me, what is this item right here?

8 A Large quantity of off-white rock-like
9 substance.

10 Q You were talking about a half cookie.
11 That's a half cookie?

12 A Yes, sir.

13 Q And that's how it appeared after it fell
14 out of the Angel Soft bag?

15 A Yes, sir.

16 Q And the same question with the pill
17 bottle, is that how it appeared after it fell out of
18 the bag?

19 A Yes, sir.

20 Q All right. And what is this here?

21 A That is the Angel Soft package that I
22 pulled apart.

23 Q Okay. Now I'm going to show you State's
24 Five. Tell me what I'm pointing to here.

25 A It's called bag containing off-white rock-

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1 like substance.

2 Q Okay. Is this the same bag of toilet
3 paper that we just saw on Exhibit Four?

4 A Yes, sir, it is.

5 Q All right. And is that how it appeared
6 when you opened the bag?

7 A Yes, sir.

8 Q Now, can you see a second bag here on this
9 toilet roll?

10 A I see a piece of plastic that looks a
11 little different than the top plastic.

12 Q Okay. Let me ask you this. What is this
13 thing right here?

14 A That appears to be a child's infant
15 toilet.

16 Q Okay. And is that an adult toilet?

17 A Yes, sir, that is.

18 Q Okay. Now we're going to go to number
19 six. Again, is this the same Angel Soft bag?

20 A Yes, sir, it is.

21 Q And tell me what is visible right in that
22 area.

23 A That is another smaller baggie of off-
24 white rock-like substance.

25 Q So we've got one, two, and three?

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1 A Correct, sir.

2 Q Now, going back to State's Number Five --
3 and I'm going to ask you a question about this --

4 A Okay.

5 Q -- bag there. Is it visible in State's
6 Number Five?

7 A No, sir, due to the packaging on top.

8 Q So this piece of plastic is preventing the
9 view?

10 A Correct, sir.

11 Q Now I'm showing you State's Number Seven.
12 And, again, can you tell me what are these items
13 here in the corner?

14 A Rolls of toilet tissue we pulled out of
15 the pack.

16 Q Okay. And what is that?

17 A That is one of the plastic baggies of off-
18 white rock-like substance.

19 Q These are the same bags we just talked
20 about?

21 A Yes, sir.

22 Q That's the same pill bottle we just talked
23 about?

24 A Yes, sir.

25 Q What is this, State's Number Eight?

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1 A That's pieces of off-white rock-like
2 substance that were located within the pill bottle.

3 Q What does that appear to you to be, those
4 off-white rock-like substance?

5 A Crack cocaine.

6 Q Now we've got State's Number Nine. Can
7 you tell me what's in the corner there?

8 A That is a small plastic baggie of powdery
9 white substance believed to be cocaine at the time,
10 powder cocaine.

11 Q Now, all the baggies that are in State's
12 Numbers Four through Nine and the pill bottle, who
13 did you give these to?

14 A They were photographed, and I gave them to
15 Agent Barnes.

16 Q Okay. And when you gave them to Agent
17 Barnes, were they in the same condition as when you
18 found them?

19 A Yes, sir, they were.

20 Q And that's the three bags?

21 A Three bags of crack cocaine, a plastic
22 baggie filled with a white powdery substance, and a
23 pill bottle filled with off-white rock-like
24 substance.

25 Q These items were in your possession from

Billy Laney - Direct

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1 the point you seized them to the point you gave them
2 to Agent Barnes?

3 A Yes, sir.

4 Q Are they in the same condition from the
5 point of seizure as the point of you turning them
6 over?

7 A Correct -- yes, sir.

8 Q Is the individual you found in that
9 bathroom in court today?

10 A Yes, sir, he is.

11 Q Could you point him out to me, please?

12 A Sitting at the table to your right, my
13 left, next to Mr. Floyd.

14 Q He's wearing a suit with no tie?

15 A Yes, sir.

16 Q Is that the defendant you're pointing at?

17 A Yes, sir.

18 MR. ROSS: Your Honor, I'd ask that the
19 record reflect that the officer has identified the
20 defendant.

21 THE COURT: The record will so reflect.

22 MR. ROSS: No further questions, Your
23 Honor.

24 Sir, please answer anything that the
25 defense has for you.

Billy Laney - Direct

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1 MR. LANEY: Yes, sir.

2 THE COURT: Cross-examination, Mr. Floyd?

3 MR. FLOYD: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. FLOYD:

6 Q Good afternoon, Agent Laney.

7 A How are you doing, sir?

8 Q What time did you arrive at the residence?

9 A It was morning hours. I do not know an
10 exact time.

11 Q Day -- was it daylight?

12 A Day morning. It was between seven and
13 nine in the morning.

14 Q Between seven and nine?

15 A Yes, sir.

16 Q It was daylight?

17 A Yes, sir.

18 Q Now, the search warrant itself, wasn't it
19 for [REDACTED], Lexington, South Carolina?

20 A I was told 7004 --

21 MR. ROSS: Your Honor, I would object to
22 that.

23 THE COURT: Wait just a moment.

24 Yes, sir, what's your objection?

25 MR. ROSS: May I approach?

Billy Laney - Cross

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1 THE COURT: Yes, sir.

2 The answer to the question was no, and
3 that's the end of the matter.

4 Q Now, I believe this was Exhibit Three,
5 that's correct?

6 A Yes, sir.

7 Q You testified you went in through the
8 front door --

9 A Correct, sir.

10 Q -- and proceeded immediately to the master
11 bedroom?

12 A Yes, sir.

13 Q You were the first one in?

14 A Yes, sir.

15 Q There was nobody in the house at all until
16 you got to the master bedroom?

17 A Correct, sir.

18 Q Now, when you got to the master bedroom,
19 is the bed indicated on here in the correct place?

20 A Yes, it's to the left. I can't say
21 geographically it's exactly where the bed was at,
22 but it was to the left when we went into the master
23 -- when through the door, yes, sir.

24 Q And in the bed was a female and a child?

25 A And a young child, yes, sir.

- 1 Q You then went directly to the master
2 bathroom?
- 3 A Yes, sir.
- 4 Q And in it, you found someone you say was
5 Mr. Mayes?
- 6 A He was later identified as Mr. Mayes, yes,
7 sir.
- 8 Q Now, where exactly was he in that
9 bathroom?
- 10 A As I went into the bathroom, he was to my
11 left.
- 12 Q Okay.
- 13 A Maybe two steps, three steps in as I came
14 in, I immediately saw him.
- 15 Q Okay. Was he just standing there?
- 16 A Walking back towards the door.
- 17 Q Walking back towards where?
- 18 A I don't know if he was standing there or
19 walking to the door. When he saw me, he stopped.
- 20 Q Didn't try to flee from you --
- 21 A No, sir.
- 22 Q -- or anything like that?
- 23 A No, sir.
- 24 Q And you don't recall how he was dressed,
25 you say?

Billy Laney - Cross

197

- 1 A No, sir.
- 2 Q Did you handcuff him?
- 3 A No, sir, I did not.
- 4 Q That would have been someone else?
- 5 A Correct. I had a ballistic shield in my
6 hand and a pistol.
- 7 Q Okay. So you basically just said, "Here
8 we are."
- 9 A I had someone behind me, yes, sir.
- 10 Q Okay. And then they would have removed
11 anyone from the room --
- 12 A Correct, sir.
- 13 Q -- and then you do the search?
- 14 A Correct, sir.
- 15 Q So he wasn't apparently trying to flee
16 from you, wasn't trying to be aggressive towards you
17 in any fashion?
- 18 A No, sir -- not at all.
- 19 Q And you don't recall -- do you remember if
20 he had on shoes?
- 21 A No, sir, I couldn't tell you if he had on
22 shoes.
- 23 Q And all of the items that you seized were
24 found in this toilet paper pack there between the
25 toilet -- next to the toilet?

Billy Laney - Cross

198

1 A Correct, sir.

2 Q In plain sight?

3 A When I pulled the toilet paper open, they
4 were. They were hidden.

5 Q You don't know who put them in there?

6 A No, sir.

7 Q Thank you. I have no further questions.

8 THE COURT: Redirect?

9 MR. ROSS: Yes, Your Honor, briefly.

10 REDIRECT EXAMINATION

11 BY MR. ROSS:

12 Q I'm not going to ask you to step down
13 again, Sergeant. But this is the door?

14 A Correct, sir.

15 Q And that's where you were?

16 A Yes, sir.

17 Q He was right here?

18 A Yes, sir.

19 Q If he had of tried to fled, would he have
20 made it very far?

21 A No, sir.

22 MR. ROSS: Nothing further, Your Honor.

23 THE COURT: Recross?

24 MR. FLOYD: Nothing further, Your Honor.

25 THE COURT: All right, thank you, sir.

Billy Laney - Redirect

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1 You may step down.

2 All right, Mr. Ross, you may call your
3 next witness.

4 MR. ROSS: Your Honor, may Sgt. Laney be
5 excused?

6 THE COURT: Any objection, Mr. Floyd?

7 MR. FLOYD: No objection.

8 THE COURT: All right, you are excused.

9 Thank you for coming.

10 MR. LANEY: Thank you, sir.

11 MR. ROSS: The State calls Agent Ronnie
12 Hinson to the stand.

13 THE COURT: All right.

14 (The witness was sworn.)

15 CLERK OF COURT: If you'll have a seat
16 over here and state your name, please, for the
17 record.

18 MR. HINSON: I'm Special Agent Ronnie
19 Hinson with SLED, last name H-I-N-S-O-N.

20 RONNIE HINSON, having first been duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ROSS:

24 Q Agent Hinson, you were on the entry team
25 in this case, is that right?

Ronnie Hinson - Direct

200

1 A Yes, sir.

2 Q Before we get into what you did on this
3 case, can you please tell me what your present job
4 duties are?

5 A I'm a narcotics officer with the State Law
6 Enforcement Division.

7 Q Where do you investigate cases?

8 A All over the state.

9 Q On February 17, 2011, where were you
10 employed?

11 A I was employed with SLED, but I was
12 assigned to the Narcotics Enforcement Team with
13 Lexington County.

14 Q Okay. What types of cases would you
15 investigate?

16 A Any illegal narcotics cases, alcohol
17 cases.

18 Q How many total years in narcotics do you
19 have?

20 A Almost six years.

21 Q Tell me what happened on February 17,
22 2011.

23 A I was assigned to the entry team of the
24 search warrant that we were there serving. I'm not
25 sure exactly where I was in the stack. Stack means

Ronnie Hinson - Direct

201

1 the line, the group of guys that are going in to
2 serve the warrant.

3 We served the warrant, went in the long
4 side of a trailer. And at that time, we saw Mr.
5 Mayes. He was taken into custody, and we began our
6 search.

7 Q Okay. And did you participate in the
8 search?

9 A Yes.

10 Q Did you find anything?

11 A Yes. I was tasked with searching the
12 laundry room area just right off the kitchen. And
13 after I finished that, I helped search in the
14 kitchen area.

15 Q Okay. What did you find?

16 A In the laundry room area, I found a rifle
17 -- I think it was a .22 caliber rifle -- next to the
18 washing machine.

19 Q Okay. What else did you find?

20 A And in the kitchen area in a hutch area in
21 a cabinet, there was a box which contained a
22 quantity of small baggies, empty baggies.

23 Q Referring to State's Number Three, can you
24 step down and show me the location of where you
25 found these items, just to be clear?

Ronnie Hinson - Direct

202

1 A The washer/dryer area, like I said, was
2 right here near the kitchen -- obviously, a washer,
3 dryer, and then the rifle was found in between the
4 wall and the washer. And then there's a cabinet
5 right here in the kitchen. It's pretty high up.
6 That's where I found the box that contained the
7 small baggies.

8 Q Okay. If you'll please have a seat.
9 Agent Hinson, I'm going to show you what's been
10 marked as State's Ten and Eleven. If you could,
11 take a look at those photographs, please. Do these
12 accurately reflect what you seized that day?

13 A Yes, sir.

14 MR. ROSS: Your Honor, I'd move them into
15 evidence.

16 THE COURT: Any objection?

17 MR. FLOYD: No objection, Your Honor.

18 THE COURT: State's Ten and Eleven
19 admitted without objection.

20 (State's Exhibits Number
21 Ten and Eleven, Photos, were entered in evidence.)

22 MR. ROSS: And also at this time, to
23 publish on the projector.

24 THE COURT: Permission granted.

25 Q All right, Agent Hinson, this is State's

Ronnie Hinson - Direct

203

1 Number Eleven. What is this that we see here?

2 A That's the .22 rifle that I found in the
3 laundry area.

4 Q Is that how it was sitting when you found
5 it?

6 A It was actually in between the washer
7 there and that little wall. That's just where we
8 pulled it out just to get a good picture of it.

9 Q Okay. But it was sitting upright?

10 A Sitting upright, yes, sir.

11 Q Okay. Now I'm going to show you State's
12 Ten. Is this a box that you found in the cabinet?

13 A Yes, sir.

14 Q And let me ask you this. Was this box
15 open or closed when you first seized it?

16 A It was open.

17 Q All right. And is this a photograph of
18 the box in the cabinet or somewhere else?

19 A That's after we pulled it down from the
20 high cabinet and sat it on the kitchen table.

21 Q Okay. So tell me what this is right here.

22 A It looks like some kind of ID.

23 Q Okay.

24 A It was sitting on the table.

25 Q So this was sitting on the table, and then

Ronnie Hinson - Direct

204

1 you placed the box on the table, too?

2 A Yes, sir.

3 Q All right. Tell me what all these little
4 items are that you see in here?

5 A Those are little small Zip-loc type
6 baggies with some kind of design on them.

7 Q Okay. Now, how many years have you been a
8 narcotics officer?

9 A Almost six years.

10 Q And can you tell me what the relevance of
11 all of these little bags are?

12 A Normally what we see in our line of work,
13 that's the way illegal narcotics are packaged in
14 these types of bags in order to sell on the street.

15 Q Okay. Can you fit a sandwich, a PB&J, in
16 there?

17 A No, sir.

18 Q Now I'm going to you show you number ten
19 again. This is the baggies. What is this laying
20 underneath the bags?

21 A Looks like some kind of bill, some type of
22 bill, maybe a cell phone bill or something.

23 Q Okay. Who did you turn the weapon over
24 to?

25 A I turned it over to Agent Barnes.

Ronnie Hinson - Direct

205

1 Q And when you turned it over to her, was it
2 in the same condition as when you seized it?

3 A Yes, sir.

4 Q Did anybody else come into possession from
5 the point you seized it to the point you gave it to
6 her?

7 A No, sir.

8 Q Was it in the same condition when you
9 seized it as when you gave it to her?

10 A Yes.

11 Q Now let me ask you about the plastic
12 baggies. What did you do with those?

13 A We gave them to Agent Barnes, also.

14 Q Okay. Were they in the same condition
15 when you gave them to Agent Barnes as when you
16 seized them?

17 A Yes.

18 Q Did you add any bags that weren't there?

19 A No.

20 Q Did anybody else take possession of them
21 from the point you seized them to the point you gave
22 them to her?

23 A No.

24 Q They were in the same condition from point
25 A to point B?

Ronnie Hinson - Direct

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1 A Correct.

2 Q No further questions, Agent. Please
3 answer anything Mr. Floyd may have.

4 THE COURT: Cross-examination, Mr. Floyd?

5 MR. FLOYD: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. FLOYD:

8 Q Agent Hinson, you searched the living
9 room/den area, kitchen area?

10 A Yes, the laundry room area, and I helped
11 with the kitchen area after I finished the laundry
12 room.

13 Q And y'all found no drugs in those areas,
14 did you?

15 A Not that I can recall.

16 Q You said you found a weapon or a gun?

17 A Yes, sir.

18 Q Did you check to see if it worked?

19 A I didn't check to see if it worked.

20 Q You found what appeared to be a gun?

21 A Yes, sir, it was a gun.

22 Q You found some bags?

23 A Yes, sir.

24 Q And there are things you can put in those
25 bags that aren't illegal, aren't there?

Ronnie Hinson - Cross

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1 A I'm assuming you could.

2 Q And that's it?

3 A Yes, sir.

4 Q Thank you, no further questions.

5 THE COURT: Redirect, Mr. Ross?

6 REDIRECT EXAMINATION

7 BY MR. ROSS:

8 Q You can put legal items in those bags.

9 But in your experience, have you seen illegal items
10 in those bags?

11 A Yes.

12 MR. ROSS: That's all I have, Your Honor.

13 THE COURT: Recross?

14 RECROSS EXAMINATION

15 BY MR. FLOYD:

16 Q Well, you can put illegal items in
17 anything, can't you?

18 A You can.

19 Q You can put them in a woman's pocketbook,
20 in a purse?

21 A You can.

22 Q Thank you, no further questions.

23 THE COURT: All right, thank you, sir.

24 You may step down.

25 MR. HINSON: Thank you.

1 THE COURT: All right, Mr. Ross, you may
2 call your next witness.

3 MR. ROSS: The State calls Agent Dennis
4 Tracy to the stand.

5 THE COURT: All right.

6 (The witness was sworn.)

7 CLERK OF COURT: If you'll have a seat and
8 state your name, please, for the record.

9 MR. TRACY: Agent Dennis Tracy -- T-R-A-C-
10 Y.

11 DENNIS TRACY, having first been duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ROSS:

15 Q Agent Tracy, you were on the entry team in
16 this case, weren't you?

17 A Yes, sir.

18 Q Before we get to what you did in this
19 case, can you tell me about your experience in law
20 enforcement?

21 A I've been in law enforcement for 15 years.
22 I've been assigned to narcotics for the past 12
23 years. I'm currently employed with Lexington County
24 Sheriff's Department as a narcotics investigator.

25 Q Okay. And during those 12 years of

Dennis Tracy - Direct

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1 narcotics experience, what type of cases do you
2 investigate?

3 A Narcotics cases, vice cases, that's
4 basically what we work, anything that has a
5 narcotics nexus to it.

6 Q Okay. Do you have any other formal
7 training in narcotics, specialized training?

8 A At last count, I have about 435 hours of
9 advanced narcotics investigation training.

10 Q Okay. Who did you get that training with?

11 A Different state and federal agencies,
12 different federal and state training facilities.

13 Q Such as?

14 A Such as the Drug Enforcement
15 Administration classes. We take classed down in
16 Meridian, Mississippi, which are put on by the
17 National Guard down there. There's a whole bunch of
18 avenues of training for law enforcement.

19 Q Are you an instructor, as well?

20 A I am an instructor, as well.

21 Q And what do you teach?

22 A I teach a DEA-approved block of
23 instruction in parcel interdiction.

24 Q What is DEA?

25 A Drug Enforcement Administration.

Dennis Tracy - Direct

210

1 Q And what is that?

2 A That's the legal branch of the Department
3 of Justice that enforces drug laws.

4 Q Okay. Tell me what you did on February
5 17, 2011.

6 A On that day, I was assigned as an entry
7 team member. I participated in the entry of the
8 residence. After the research was secured, I was
9 also the assigned photographer for the case.

10 Q Okay. And what did you take pictures of?

11 A Anytime anybody would locate anything of
12 evidentiary value, they would call me. I would take
13 a picture of it before it was turned over to the
14 scribe for logging it into the evidence.

15 Q So all these pictures that we've just
16 through, State's One through Eleven, you took these
17 pictures?

18 A Yes, sir.

19 Q Did you personally seize anything that
20 day?

21 A I did.

22 Q And tell me what that was.

23 A In between taking pictures, I helped
24 searching of the kitchen area. I located a set of
25 digital scales in the kitchen area, which I did

Dennis Tracy - Direct

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1 seize.

2 Q Now, what are digital scales?

3 A Small electronic scales used primarily in
4 our field for weighing out narcotics for
5 distribution.

6 Q Okay. So is that relevant to what you do
7 as a narcotics officer?

8 A It is.

9 Q And can you elaborate upon that?

10 A Digital scales -- narcotics are sold
11 obviously in increments that people are ordering or
12 whatever facilitates the distribution. So crack
13 cocaine is usually broken into smaller pieces.

14 Those pieces are weighed so that a .2 gram
15 piece of crack cocaine would sell for \$20, or larger
16 amounts would sell for larger quantities of cash.
17 But the digital scales would be an important part of
18 that transaction.

19 Q Were these particular digital scales --
20 did they have any other legitimate use to them?

21 A They're sold for jewelers primarily, but
22 that's about the only other thing I've ever seen
23 these small-weight digital scales used for. They're
24 not used for anything like cooking or anything like
25 that.

Dennis Tracy - Direct

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- 1 Q When you say jewelers, you mean like --
- 2 A A professional jeweler.
- 3 Q Okay.
- 4 A Like at a jewelry store weighing out dram
- 5 weight of -- dram weight or gram weight of gold or
- 6 jewels.
- 7 Q Did y'all find any diamonds in the house?
- 8 A Not that I'm aware of.
- 9 Q Did you find any jewels in the house?
- 10 A Not that I'm aware of.
- 11 Q Did you take a photograph of the digital
- 12 scales?
- 13 A I did not. It was an oversight on my
- 14 part.
- 15 Q Okay. Did you find anything else in that
- 16 trailer?
- 17 A We found some Pyrex dishes by the kitchen.
- 18 Q Okay. I'm going to show you State's
- 19 Number Twelve. If you would, please take a look at
- 20 this.
- 21 A Yes, sir.
- 22 Q Does that accurately reflect the Pyrex
- 23 dishes that you found?
- 24 A It does.
- 25 Q Okay.

Dennis Tracy - Direct

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1 MR. ROSS: Your Honor, I'd move this into
2 evidence at this point.

3 THE COURT: Any objection, Mr. Floyd?

4 MR. FLOYD: No objection to the picture,
5 Your Honor.

6 THE COURT: All right, admitted into
7 evidence as State's Number Twelve without objection.

8 (State's Exhibit Number
9 Twelve, Photo, was entered in evidence.)

10 Q Agent Tracy, I'm going to refer again to
11 State's Number Three. If you could, please step
12 down. If you could, please stand right there.
13 Could you please point out where you found the
14 digital scales?

15 A I believe the digital scales were on this
16 side of the counter.

17 THE COURT: All right, speak up.

18 A I believe that the digital scales were on
19 the left side of the counter.

20 Q Okay. And where was the Pyrex dish?

21 A The Pyrex dish was on the right side of
22 the heavy sink.

23 Q Okay. And this is the Pyrex dish that you
24 found?

25 A It is.

Dennis Tracy - Direct

214

1 Q Okay. Can you tell the jury the relevance
2 of this Pyrex dish? Why was it important for you to
3 take a photograph of it?

4 A Pyrex dishes are commonly used in the
5 changing of powder cocaine into crack cocaine form,
6 or what we refer to as cooking cocaine or cooking
7 crack.

8 Q So powder cocaine is cooked into crack
9 cocaine?

10 A Yes, sir.

11 Q How does that happen?

12 A Cocaine by nature is an acid. It's
13 cocaine hydrochloride. Cocaine hydrochloride is a
14 powder form. That powder form, you can't smoke it.
15 It basically burns instead of melting. So very
16 rarely is it used in smokable form.

17 That's why people, when they snort
18 cocaine, they get that burning sensation in their
19 nose. It's the hydrochloride, it's the acid to
20 that.

21 To make cocaine more marketable and easier
22 to distribute, they take a recipe of cocaine and
23 mixing it with baking soda and distilled water, and
24 they turn it into a sludge. When heat is put to
25 that solution, usually in something like a thick

Dennis Tracy - Direct

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1 glass dish like Pyrex, that solution is allowed to
2 cool and the water that was in there, the distilled
3 water, is burned off.

4 That's what gives it the cookie shape,
5 because it's in the bottom of a Pyrex dish. And now
6 what you've got is you've got a mixture now that is
7 four parts of cocaine and one part baking soda,
8 which they can cut.

9 It is now a base, which means that it's
10 easier to smoke. They can cut it into cubes. They
11 can stick it into a pipe. And instead of burning,
12 that solution now when heat is added will melt,
13 which will allow them to inhale the cocaine base
14 into their system as opposed to snorting cocaine or
15 however else they would get the cocaine into their
16 system.

17 Q So when you said cookie, a cookie would
18 take the form of the bottom of this dish?

19 A Of whatever they are cooling it in,
20 whether it be a Pyrex dish, which is very common, or
21 whatever they're actually cooling it in. But
22 normally it's going to be some kind of a round
23 vessel, and that's where we get the shape of the
24 cookie from.

25 Q When you gave the digital scales to Agent

Dennis Tracy - Direct

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1 Barnes, were they in the same condition as when you
2 found them?

3 A Yes, sir.

4 Q Did you alter or manipulate them in any
5 way?

6 A No, sir.

7 Q Did anyone else take possession of them?

8 A No, sir.

9 MR. ROSS: No further questions, Your
10 Honor.

11 THE COURT: Cross-examination, Mr. Floyd?

12 MR. FLOYD: Just a few questions, Your
13 Honor.

14 CROSS-EXAMINATION

15 BY MR. FLOYD:

16 Q So your job is to take photographs of
17 everything that might be relevant in the case or
18 important to the case?

19 A Yes, sir.

20 Q But you didn't take any photographs of the
21 digital scales?

22 A That was an oversight on my part, yes,
23 sir.

24 Q These digital scales, they can be used in
25 the kitchen, can they not?

Dennis Tracy - Cross

217

1 A They can be used in a kitchen?

2 Q Uh-huh.

3 A These were being used in the kitchen.

4 Q What I mean is they can be used for
5 cooking?

6 A No, sir. I've never seen those kind of
7 digital scales be used for cooking. They don't have
8 anything to weigh -- they don't have -- they're a
9 flat-top scale that if you put anything on it, it
10 would fall off. If you tried to weigh out any
11 powder or anything, it would just fall off. There's
12 no edges to it.

13 Q Are you trying to say you can't just pour
14 out a cup of --

15 A If you're asking me to speculate, you
16 could probably do anything with them. But in my
17 experience, I've seen them used to weigh out
18 narcotics.

19 Q Are you trying to say you couldn't put
20 four ounces of beef on there and weigh it?

21 A No, sir. They weren't big enough to put
22 four ounces of beef on there.

23 Q Two ounces of beef?

24 A It's possible. If you were creative and

Dennis Tracy - Cross

218

1 were able to stack steak on there, then you could
2 probably do it.

3 Q So how big were the scales?

4 A If I recall correctly, I don't think the
5 surface, the top of them, was more than maybe that
6 big.

7 Q Two by two, three by three?

8 A Two by two, three by three, something like
9 that.

10 Q But we don't have a picture of them?

11 A We do not, but they are in evidence, which
12 will be introduced later.

13 Q Now, you've got a Pyrex dish on here, and
14 that could be used for things that are legal, is
15 that correct?

16 A Of course.

17 Q And you have a picture of it here. Did
18 you seize it?

19 A We did not.

20 Q So if you didn't seize it, it must not
21 have been significant, important, or relevant, is
22 that correct?

23 A Due to the amount of narcotics that we
24 seized in the location, we thought that the

Dennis Tracy - Cross

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1 trafficking charge held more weight than a
2 manufacturing charge, so we didn't take it.

3 Q You're saying you left evidence on the
4 scene?

5 A It was Pyrex dishes that were left on the
6 scene, yes, sir. They were not taken into evidence.

7 Q So they never were tested or anything?

8 A If they were not taken into evidence, no,
9 sir, they were not tested.

10 Q So for all you know, this Pyrex dish has
11 never been used for anything other than legal
12 purpose?

13 A Since they were not tested, I cannot
14 testify to the fact they were tested for anything
15 illegal.

16 Q But y'all still want to put it into
17 evidence against this man, even though you have no
18 evidence it was for illegal purposes, is that
19 correct?

20 A They were not taken into evidence. You
21 can draw your own conclusion from that, Mr. Floyd.

22 MR. FLOYD: No further questions.

23 THE COURT: Redirect?

24 MR. ROSS: Yes, Your Honor.

Dennis Tracy - Redirect

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1 REDIRECT EXAMINATION

2 BY MR. ROSS:

3 Q If you could, please step down, Agent
4 Tracy. What is this?

5 A That is what appears to be --

6 THE COURT: Speak up, please.

7 A That appears to be a couple of -- at least
8 one -- cookie of crack cocaine.

9 Q Now, tell me what shape that is right
10 there.

11 A Semicircular.

12 Q Okay. Is that similar to -- tell me, what
13 shape is this?

14 A Semicircular.

15 THE COURT: What are you referring to, Mr.
16 Ross?

17 MR. ROSS: State's Number Twelve versus
18 State's Number Four.

19 THE COURT: Okay.

20 MR. ROSS: That's all the questions I have
21 for him.

22 THE COURT: All right, recross?

23 MR. FLOYD: Thank you.

24 RECROSS EXAMINATION

25 BY MR. FLOYD:

Dennis Tracy - Recross

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1 Q Agent Tracy, I just have one question for
2 you. You were just showed this, right here?

3 A Yes, sir.

4 THE COURT: What are you referring to?

5 MR. FLOYD: Exhibit four.

6 THE COURT: Okay.

7 Q You've got something that's semicircular?

8 A Yes, sir -- yes, sir.

9 Q That could be in anything, made in
10 anything semicircular?

11 A Yes, sir.

12 Q Is that correct?

13 A Yes, sir.

14 Q Any number of glasses, coffee cups, Pyrex
15 dishes, whatever?

16 A Yes, sir.

17 Q Anywhere in the county?

18 A Yes, sir.

19 Q Anywhere in the state?

20 A Yes, sir.

21 Q And there's no evidence whatsoever it came
22 out of that Pyrex dish, is there?

23 A No, sir.

24 Q Thank you, no further questions.

25 THE COURT: Anything further of this

Dennis Tracy - Recross

222

1 witness?

2 MR. ROSS: No, Your Honor.

3 THE COURT: All right, you may be excused.

4 Would you like to have the witness
5 excused? Did you want him excused, Mr. Ross, or no?

6 MR. ROSS: I don't plan on calling him
7 again, sir.

8 THE COURT: You do?

9 MR. ROSS: I do not.

10 THE COURT: All right, any objection to
11 this witness being excused, Mr. Floyd?

12 MR. FLOYD: No, Your Honor.

13 THE COURT: All right, you are excused.
14 Thank you for coming.

15 MR. TRACY: Thank you, Your Honor.

16 THE COURT: All right, you may call your
17 next witness.

18 MR. ROSS: The State calls Agent Paige
19 Barnes to the stand.

20 THE COURT: All right, Agent Barnes.

21 (The witness was sworn.)

22 CLERK OF COURT: If you could have a seat
23 and state your name, please, for the record.

24 MS. BARNES: Paige Barnes -- B-A-R-N-E-S.

25 PAIGE BARNES, having first been duly

Dennis Tracy - Recross

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1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ROSS:

4 Q Agent Barnes, you were involved in the
5 search warrant in this case, is that correct?

6 A That's correct.

7 Q Can you tell me what your role was?

8 A I was the outside perimeter during the
9 entry, and after that I was the scribe.

10 Q What does that mean, the scribe?

11 A Any evidence that's located inside of the
12 residence is brought to me. I bag it, I label it,
13 and I write it on the search warrant for all the
14 items we remove from the house.

15 Q Okay. So you essentially document
16 everything that's seized?

17 A That's correct.

18 Q Okay. And what happened when you entered
19 the house that day on February 17, 2011?

20 A The residence had already been cleared. I
21 came into the living room, where Agent Kirkland was
22 with the defendant. I searched the female to make
23 sure she didn't have any weapons or contraband on
24 her. And then I set up at the kitchen table.

25 Q Did you find anything on the female?

Paige Barnes - Direct

224

1 A Negative.

2 Q Okay. And then you moved to the kitchen
3 table?

4 A That's correct.

5 Q All right. What happened at that point?

6 A I set up with all my bags and permanent
7 markers. And anyone who located any evidence would
8 bring it to me, and I would document it on the
9 search warrant as well as also label it and bag it.

10 Q Okay. And tell me what was brought to
11 you.

12 A Agent Laney brought me numerous bags of
13 crack cocaine, as well as cocaine. Agent Tracy
14 brought to me digital scales. Agent Hinson brought
15 to me a rifle, as well as bags.

16 Q Did you document the serial number on that
17 rifle?

18 A I did.

19 Q What was the serial number?

20 A If I can refer to --

21 Q Would that refresh your memory? What was
22 the serial number?

23 A The serial number on the Remington Model
24 522 was 3193839.

25 Q Okay.

Paige Barnes - Direct

225

1 And, Your Honor, at this time I'm going to
2 introduce the rifle.

3 THE COURT: All right.

4 MR. ROSS: It is locked.

5 THE COURT: I would ask law enforcement to
6 make sure it's safe.

7 BAILIFF: It's been properly checked, and
8 it's safe, Your Honor.

9 THE COURT: All right, fine.

10 Q Agent Barnes, I'm handing you State's
11 Number Thirteen. Can you take a look at that,
12 please? Can you locate the serial number on this
13 weapon?

14 A I can.

15 Q And what's the serial number on that
16 weapon?

17 A 3193839.

18 Q Is that the same weapon that you received
19 on February 17, 2011?

20 A It is.

21 Q Does it appear to be in the same condition
22 as when you received it?

23 A Actually, no, because I had cleared the
24 weapon, made sure there was no ammunition, it was
25 not loaded, and I put a lock through it.

Paige Barnes - Direct

226

1 Q Okay.

2 MR. ROSS: Your Honor, at this time I'd
3 offer State's Number Thirteen into evidence.

4 THE COURT: Any objection, Mr. Floyd?

5 MR. FLOYD: Your Honor, I object to the
6 relevance at this point, because I don't think until
7 they can prove to me that it is a working weapon
8 it's relevant.

9 THE COURT: You object on the basis of
10 relevance, why?

11 MR. FLOYD: Because they have not yet
12 proved it's a working weapon. I think the statute
13 requires that it be a working weapon.

14 THE COURT: All right, we'll withhold
15 ruling on that pending. Don't publish it or go any
16 further with it at this point, and we'll talk about
17 that a little bit later.

18 Q What did you do with the digital scales
19 that Agent Tracy gave you?

20 A I labeled the bag of where it was located,
21 who located it, and placed them in another bag.

22 Q Okay. The digital scales were placed in a
23 bag?

24 A Yes.

25 Q Did you label that bag?

Paige Barnes - Direct

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1 A Yes.

2 Q And who did you give it to?

3 A Agent Kirkland.

4 Q Was it in the same condition when you gave
5 it to him as when you first received it from Agent
6 Tracy?

7 A Yes.

8 Q Did anybody else come into possession of
9 those digital scales?

10 A No.

11 Q Let me ask you about the numerous plastic
12 bags. Who did you receive those from?

13 A Agent Hinson.

14 Q And how did you receive them?

15 A He actually handed them to me in a
16 cardboard box.

17 Q Okay. And did you remove the bags from
18 that box?

19 A I did.

20 Q And what did you do with those bags?

21 A I labeled them. I placed them in another
22 bag, labeled them, who located them, where they were
23 located, and then gave it to Agent Kirkland.

24 Q Were they in the same condition when you
25 gave them to Eric Kirkland as when you received them

Paige Barnes - Direct

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1 from Agent Hinson?

2 A Yes, sir.

3 Q Did anyone take possession of them from
4 the point that you received them to the point you
5 gave them to Agent Kirkland?

6 A No, sir.

7 Q Okay. Now let me ask you about the drugs
8 that were seized. Can you tell me specifically what
9 Agent Laney gave you?

10 A He gave me three bags. I need to refer to
11 my search warrant, if you don't mind.

12 Q Would that refresh your memory?

13 A That would be great.

14 Q Do you have it with you?

15 A I do.

16 Q Okay.

17 A He gave me one plastic bag containing a
18 large quantity of white rock-like substance. He
19 gave me one plastic bag containing smaller white
20 rock-like substance, one plastic bag containing
21 white powder substance, and one plastic bag
22 containing numerous white rock-like substance.

23 Q So in total, he gave you three plastic
24 bags of rock-like substances?

25 A Correct.

Paige Barnes - Direct

229

1 Q And one plastic bag of powder substance?

2 A Correct.

3 Q And what did you do with those items?

4 A I placed them into another Zip-loc bag,
5 labeled them, where they were located, who located
6 them, turned them over to Agent Kirkland.

7 Q Okay. Were they in the same condition
8 when you gave them to Agent Kirkland as when you
9 received them from Agent Laney?

10 A They were.

11 Q Did anyone else take possession of them
12 during that intervening time period?

13 A No, sir.

14 Q Did you alter or manipulate those items in
15 any way?

16 A No, sir.

17 Q Did Agent Laney give you anything else?

18 A One white bottle with a green lid
19 containing numerous white rock-like substance.

20 Q And what did you do with that?

21 A I bagged it, I labeled it, and turned it
22 over to Agent Kirkland.

23 Q Okay. Was it in the same condition when
24 you turned in to Agent Kirkland as when you received
25 it from Agent Laney?

Paige Barnes - Direct

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1 A Yes, sir.

2 Q Did anyone else take possession of that
3 item from the point Agent Laney gave them to you to
4 the point you gave them to Agent Kirkland?

5 A No, sir.

6 Q All of these items that we've talked
7 about, were they in the same condition when you
8 received them to the point that you turned them in
9 to Agent Kirkland?

10 A Yes, sir.

11 Q Did you alter or manipulate them in any
12 way?

13 A No, sir.

14 Q Nothing further. If you would, please
15 answer anything Mr. Floyd has for you.

16 THE COURT: Cross-examination, Mr. Floyd?

17 MR. FLOYD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q Agent Barnes, did you make a list of the
21 items in some fashion, or did you just use the
22 return on the warrant?

23 A I wrote them on the return.

24 Q You wrote them on the return?

25 A Yes, sir.

Paige Barnes - Cross

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1 Q So your record would be the return to the
2 warrant that we've got a copy of?

3 A Yes, sir.

4 Q I know we're looking at the same thing.
5 Is this it?

6 A Yes, sir.

7 Q Now, your name doesn't appear on here
8 anywhere, does it?

9 A No, sir.

10 Q But this is your work, your writing?

11 A Yes, sir.

12 Q So you, yourself, did not recover any
13 items? When you got in the house, was Mr. Mayes
14 still back in the bedroom area?

15 A No, sir.

16 Q Was he already in the front room?

17 A He was in the living room.

18 Q Was he handcuffed?

19 A Yes, sir.

20 Q How was he dressed?

21 A I can't recall. He had on clothing. He
22 wasn't nude.

23 Q But you don't recall what kind of
24 clothing?

25 A No, sir.

Paige Barnes - Cross

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1 Q And the female, was she handcuffed also?

2 A At that time, yes, sir.

3 Q So by the time you got inside, they were
4 both in the living room, handcuffed?

5 A Yes, sir.

6 Q And I got a little confused. Can you tell
7 me how many plastic bags were turned over to you?
8 Not the box of bags, I mean the plastic bags that
9 had substances in them.

10 A How many plastic bags were turned over to
11 me?

12 Q Uh-huh.

13 A With the crack in it and the cocaine?

14 Q Total, yes, of each.

15 A There were three plastic bags of crack
16 turned over to me and one plastic bag of cocaine.

17 Q Now, did one of those plastic bags which
18 you say are crack, does that contain the pill
19 bottle?

20 A No, sir. The pill bottle was turned in
21 separately.

22 Q As a separate item. Did you then place it
23 in plastic?

24 A I did.

25 Q Okay, that's where I was confused. So you

Paige Barnes - Cross

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1 actually placed the pill bottle in the plastic bag?

2 A Correct.

3 Q Thank you, Agent Barnes. I have nothing
4 further.

5 THE COURT: Redirect?

6 MR. ROSS: Nothing from the State, sir.

7 THE COURT: All right, thank you, Agent
8 Barnes. You may step down.

9 All right, Mr. Ross, you may call your
10 next witness.

11 MR. ROSS: Your Honor, may I approach?

12 THE COURT: Sure.

13 Come up, Mr. Floyd.

14 All right, ladies and gentlemen, I have
15 been advised by the State that the next witness is
16 going to be rather lengthy and will run us a little
17 bit beyond our usual quitting time.

18 Especially in view of the fact that this
19 is not the best weather out there today, I think
20 it's an appropriate time for us to stop for the
21 afternoon. So we are going to do that, and I'm
22 going to allow you to go to your homes and families.

23 There are two or three things that I want
24 to tell you before I turn you loose for the
25 afternoon. First of all, when you come back in the

1 jury room tomorrow morning, what I would like for
2 you to do is the 12 members of the principal jury --
3 the alternate should not participate in this process
4 -- but the 12 members of the principal jury should
5 select from among yourselves one person to be the
6 foreperson of the jury.

7 Notify the bailiff who that foreperson is,
8 and then that foreperson sit in the first seat on
9 the front row when you return to the courtroom
10 tomorrow morning. I want you to be here -- of
11 course, we're going to start court promptly at 9:30
12 -- so if you could be here a few minutes before 9:30
13 in time to discuss and decide who you would like to
14 be the foreperson of the jury.

15 But don't make this decision until all 12
16 of you are present in the jury room, decide who you
17 would like to elect as the foreperson. And that
18 foreperson should sit in the front seat.

19 Again, I would tell you over the evening
20 recess do not discuss the case with anyone. Do not
21 allow anyone to discuss the case with you. And,
22 again, do not discuss the facts of this matter while
23 you're reassembling in the jury room.

24 It's still premature for you to begin any
25 discussion of this case tomorrow until I tell you it

1 is appropriate for you to do so. So, in effect,
2 what I'm asking you to do is simply forget about the
3 matter until in the morning.

4 Please be back in the jury room by 9:30
5 but a little bit earlier than that if you can so you
6 can select the foreperson of the jury, and we can be
7 ready to start on the record in the morning at 9:30.

8 With those admonitions, then, I am going
9 to excuse you now. Have a pleasant evening. I'll
10 see you tomorrow. Thank you. You may go with the
11 bailiff.

12 (The jury left the
13 courtroom at 4:48 p.m.)

14 THE COURT: Mr. Ross, I know that the
15 answer to this question depends somewhat on the
16 length of the cross-examination. But I'm just
17 trying to get some ideas for scheduling purposes.
18 When do you think the State will conclude its side
19 of the case?

20 MR. ROSS: I would say, Your Honor, there
21 is a greater than 50-percent chance that we will be
22 done by lunch tomorrow.

23 THE COURT: Okay, all right, apart from
24 lunchtime. All right, that's fine. From your
25 standpoint and from the State's standpoint, what

1 would you all like to do with the jury panel?

2 MR. ROSS: As far as?

3 THE COURT: The remainder of the panel,
4 the message for the Clerk. You want to bring them
5 back tomorrow afternoon, or you want them to call
6 back, say, maybe --

7 How long does it take you to get the panel
8 here from the time they pick up the message?
9 Lexington County is fairly spread out. If we have
10 them call back between twelve and one, could we get
11 them back here, say, by 2:30 or 3:00?

12 In other words, should we have them call
13 back again, or should we just delay it until
14 tomorrow night? You all tell me your thoughts on it
15 and how you all usually do it here in Lexington
16 County.

17 You have got a bigger county than we've
18 got and more traffic and everything. We can usually
19 get the jurors to court in about an hour.

20 MR. ROSS: Judge, I'm thinking the
21 earliest we could close on this case would be
22 sometime in mid-afternoon tomorrow. So it may be
23 stretching it to pick another jury --

24 THE COURT: Tomorrow?

25 MR. ROSS: -- for a second case tomorrow.

1 THE COURT: All right.

2 MR. ROSS: But I'd be interested to see
3 what Ms. Counts -- what her opinion is on that.

4 CLERK OF COURT: I would suggest that the
5 message tonight tell them to report Wednesday. Are
6 you all planning to call another case for trial?

7 MR. ROSS: Yes, we've got two behind this
8 one.

9 THE COURT: So just go ahead and have them
10 report Wednesday and night call back tomorrow night?

11 MR. ROSS: Yes.

12 THE COURT: I think we ought to be
13 finished with this case and everything by then.

14 MR. ROSS: Yes, Your Honor.

15 THE COURT: We could do that. If we
16 finish tomorrow afternoon --

17 CLERK OF COURT: I guess it really depends
18 on how long the next trial is.

19 THE COURT: How long do you anticipate?

20 MR. ROSS: My understanding is the next
21 trial is going to be very short. It's a failure to
22 stop case, Your Honor.

23 THE COURT: Okay, all right. Then the
24 message to the jury, then -- if it's agreeable to
25 the State, the message to the remainder of the panel

1 will be to report Wednesday morning at 9:30, okay?

2 All right, Mr. Floyd, while we've got some
3 time this afternoon and so we can save perhaps a
4 little bit of time tomorrow, I would like at this
5 time to discuss your client's Fifth Amendment rights
6 with him at this time, if you would have him stand.

7 MR. FLOYD: Yes, sir, he's standing.

8 THE COURT: Okay, just a moment.

9 (The defendant was sworn.)

10 THE COURT: All right, Mr. Mayes, you may
11 be called as a witness to testify in your own
12 behalf. I now advise you that you have the right to
13 invoke the protections given to you by the Fifth
14 Amendment to the Constitution of the United States
15 and a similar counterpart provision of the
16 Constitution of the State of South Carolina.

17 The Fifth Amendment to the Constitution of
18 the United States provides in part that no person
19 shall be compelled in any criminal case to be a
20 witness against himself. This provision of
21 constitutional law means that you cannot be
22 compelled or required to testify in this case.

23 This is a right and a privilege which the
24 law extends to you. It is a personal privilege, and
25 no one can waive this right except you. You have

1 the right not to testify, but you also have the
2 right to testify.

3 The Court will grant you the right to
4 consult with your lawyer before you make a decision.
5 If you elect not to testify, your election not to
6 testify cannot be used by the State as an inference
7 of guilt, and your failure to testify cannot be
8 considered by the jury in its deliberations.

9 If you elect to testify and waive the
10 privileges extended to you by the Constitution of
11 the United States and a similar counterpart
12 provision of the Constitution of the State of South
13 Carolina, I advise you that you would then assume
14 the role of a witness in this case, and you would
15 waive or give up your constitutional privilege
16 against self-incrimination.

17 This means that if you voluntarily take
18 the witness stand and testify, you will then subject
19 yourself to the same rules that govern other
20 witnesses, and you may be examined and cross-
21 examined on any relevant issues in this case, and
22 you may be impeached to the same extent as any other
23 witness, all of which is subject to the rules of law
24 and the rules of evidence.

25 I would further advise you that if you

1 elect to take the witness stand and testify that
2 this decision on your part must be made freely,
3 voluntarily, intelligently, and with knowledge of
4 the protections given to you by the Fifth Amendment
5 to the Constitution of the United States and with
6 knowledge of the consequences of your election to
7 testify.

8 Now, I will not require that you give me
9 an answer now. It's not appropriate that you give
10 me an answer at this time. And I will allow you to
11 consult with your lawyer before you make a decision
12 regarding your Fifth Amendment rights.

13 However, I would ask you at this time, do
14 you understand what I have advised you about your
15 Fifth Amendment rights?

16 MR. MAYES: Yes, sir.

17 THE COURT: Okay. And do you have any
18 questions that you want to ask me about your Fifth
19 Amendment rights?

20 MR. MAYES: No, sir.

21 THE COURT: All right, with that
22 understanding, then, I'm not going to require an
23 answer at this time but will allow you to consult
24 with your lawyer and make the decision at the
25 appropriate time. Thank you, sir. You may be

1 seated.

2 Mr. Ross, is the defendant incarcerated?

3 Is bond not an issue here today?

4 MR. ROSS: Sir, bond is not an issue. He
5 is incarcerated.

6 THE COURT: Okay, he's incarcerated. All
7 right, anything, then, before we recess for the
8 afternoon, is there anything further, Mr. Ross?

9 MR. ROSS: Nothing from the State, Your
10 Honor.

11 THE COURT: Is there anything from the
12 defense?

13 MR. FLOYD: No, Your Honor.

14 THE COURT: All right, we'll be in recess,
15 then, until 9:30 tomorrow morning, and we'll see
16 everybody at that time.

17 Let me see the individuals interested in
18 the 403 certifications in my chambers for just a
19 minute before we go. Thank you, come on back,
20 please.

21 Mr. Ross, the other thing I would ask, if
22 you will get me a copy of 16-23-490. That's the
23 possession of the weapon charge. The latest update
24 in this code section back here is 2007, and I need
25 the latest update.

1 MR. ROSS: Yes, Your Honor.

2 THE COURT: So I need the latest thing on
3 that.

4 (Court in recess for the
5 day at 4:55 p.m.)

1 Tuesday, October 2, 2012

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 THE COURT: All right, back on the record
6 with regard to the matter of the State versus Mayes.
7 Mr. Mayes is present in the courtroom with his
8 counsel. Let's tend to a couple of housekeeping
9 matters before we get started.

10 I have been given a note by the bailiff
11 that the jury has selected juror number 124 as the
12 foreperson of this jury, and he will be allowed to
13 serve. That's Mr. Steven McConnell. I'll make sure
14 he's in the right seat when they come in.

15 Now, just so that the record accurately
16 reflects the Court's ruling of yesterday, I want to
17 make sure that I have put into the record exactly
18 what my feeling was and what my ruling was with
19 regard to the Jackson versus Denno motion to
20 suppress the statement.

21 It is axiomatic (PH) that a defendant in a
22 criminal case is entitled to an independent
23 evidentiary hearing to determine the voluntariness
24 of a statement made by him or allegedly made by him
25 prior to the submission of such statement to the

1 jury. And, of course, we did have an evidentiary
2 hearing.

3 Where there is conflicting evidence about
4 a statement, the Court must first make a finding as
5 to the validity of the statement. If the statement
6 is found to be valid by the Court, it should be
7 submitted to the jury.

8 In making such a determination, the trial
9 judge should examine the totality of the
10 circumstances, including the background, experience,
11 and conduct of the accused surrounding the utterance
12 to determine whether the State has met its burden of
13 proof so as to warrant the admission of the
14 confession.

15 The test of admissibility of a statement
16 is whether it was knowingly, intelligently, and
17 voluntarily made. A confession may not be extracted
18 by any sort of threats or violence or obtained by
19 any direct or implied promises, however slight, or
20 by the exertion of improper influence.

21 Part of the State's burden during a
22 hearing is to prove by a preponderance of the
23 evidence that the statement was voluntarily made and
24 taken in compliance with the requirements of Miranda
25 versus Arizona.

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1 The State bears the burden of proof, even
2 where the defendant has signed a waiver of rights
3 form. Although custody is a factor to be considered
4 in determining voluntariness, the defendant need not
5 show that he was in custody at the time the
6 statement was made in order to request a Jackson
7 versus Denno hearing on the voluntariness of the
8 statement.

9 The Court has reviewed all of the evidence
10 in the case and did review prior to my ruling, and
11 the Court finds that the statement was knowingly,
12 intelligently, and voluntarily made, that the
13 defendant was in custody at the time the statement
14 was given, and that it was in accordance with the
15 requirements of Miranda versus Arizona and confirms
16 the ruling earlier made that the statement is
17 therefore valid and admissible into evidence.

18 Now let's address the matter with regard
19 to the weapon that was offered into evidence. Did
20 you get me a copy of that statute?

21 MR. ROSS: Yes, Your Honor.

22 THE COURT: The updated statute. All
23 right, Mr. Floyd, I believe your objection was that
24 there was no showing that it was an operable weapon?

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

1 THE COURT: I'll be glad to hear from you
2 with regard to that in view of the language of the
3 statute. 16-23-490 is the applicable statute.

4 MR. FLOYD: That's correct.

5 THE COURT: All right, sir.

6 MR. FLOYD: Your Honor, it's our position
7 that you start off with a person displays a firearm
8 -- the person possessing the firearm or displays
9 what appears to be a firearm. So I think the
10 statute is making a distinction between just
11 possessing something and presenting something. If
12 they present something, I don't think it needs to be
13 capable --

14 THE COURT: There's a separate statute
15 entirely on presentment. This is the possession.

16 MR. FLOYD: I understand that, Your Honor.
17 But I'm saying the language in there implies that
18 for there to be a firearm, it must be usable,
19 because it says if he's in possession of a firearm
20 or visibly displays what appears to be a firearm.

21 THE COURT: Correct.

22 MR. FLOYD: If you go down to the
23 definition down in subsection (d), any machine gun,
24 automatic rifle, revolver, pistol, any weapon which
25 will or is designed to or may readily be converted

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1 to expel a projectile. And, Your Honor, I think
2 that means it must be able to expel a projectile. I
3 think they have an obligation to test the weapon to
4 see if it works.

5 THE COURT: All right, Mr. Ross?

6 MR. ROSS: Your Honor, the weapon is in
7 evidence.

8 THE COURT: No, it's not in evidence yet.
9 It's ID. This is what we were going to decide.
10 He's objecting to the admission into evidence of the
11 weapon.

12 MR. ROSS: I think ultimately if you have
13 what appears to be an operating weapon, there's
14 nothing on this weapon that on its face appears to
15 make it not able to be readily converted to an
16 operational weapon, as defined in section (d).

17 I think ultimately this is a question for
18 the jury, and that's something Mr. Floyd can argue
19 to the jury. But if you have what appears to be an
20 operational weapon, that's something that the jury
21 can determine on their own.

22 THE COURT: All right, section 16-23-490
23 provides, subsection (a) -- and I'm going to cut out
24 the part of the statute that is not relevant to the
25 issue here -- "If a person visibly displays what

1 appears to be a firearm," and there would be no
2 question that there was a visible display of what
3 appeared to be a firearm in this case, "or is in
4 possession of a firearm."

5 "A person is in possession of a firearm or
6 visibly displays what appears to be a firearm," and
7 I think it means that requirement. And then go down
8 to determine what a firearm is.

9 And section (d) says, "A firearm means any
10 machine gun, automatic rifle, revolver, pistol, or
11 any weapon which will or is designed to or may
12 readily be converted to expel a projectile." I
13 don't think there can be any question that the rifle
14 in this case is a weapon designed to expel a firearm
15 [sic] or either may be readily converted.

16 I don't think it has to be readily
17 converted in this case. Whether it will or not,
18 that's an alternative, "will or is designed to."
19 And there's no question that it is designed to expel
20 a firearm [sic], and I do think that it is a jury
21 question. The rifle will be admitted into evidence
22 subject to the objection of Mr. Floyd.

23 Mr. Ross, would you make sure -- has it
24 already been given a --

25 MR. ROSS: It's already been.

1 THE COURT: It doesn't need to be re-
2 marked?

3 MR. ROSS: No, sir.

4 THE COURT: All right, admitted into
5 evidence. What number is it?

6 COURT REPORTER: It's State's Number
7 Thirteen.

8 THE COURT: State's Number Thirteen is
9 admitted into evidence over the objection of the
10 defendant, subject to the objection of the
11 defendant.

12 MR. FLOYD: Thank you. Your Honor, may I
13 add one more thing to this argument?

14 THE COURT: Yes, sir.

15 MR. FLOYD: We interpret the statute
16 designed to mean designed in its current state, not
17 as originally designed by the manufacturer. And my
18 understanding is they sent this weapon over to ATF
19 to see if the feds wanted to be involved. My
20 speculation is it was tested by ATF and doesn't
21 work. So they sent it back and declined to take the
22 case.

23 THE COURT: All right, that may be. And
24 that will be a matter of proof. If you want to
25 enter proof to that effect and then argue that, then

1 you have the right. But my interpretation of the
2 statute says as is designed by the manufacturer, and
3 that would be the Court's ruling.

4 MR. FLOYD: Thank you, Your Honor.

5 THE COURT: All right, anything before we
6 bring the jury in on behalf of the State, Mr. Ross?

7 MR. ROSS: Yes, Your Honor, one minor
8 issue. We listed Marie Wearing from the Department
9 of Motor Vehicles as a potential witness in this
10 case. The purpose of her testimony is going to
11 simply be to lay the foundation to get in business
12 from the DMV establishing residence at [REDACTED] [REDACTED]

13 [REDACTED].

14 I spoke with Ms. Wearing last night after
15 court, and she says today is her day off. And there
16 is a replacement custodian that can lay the same
17 foundation for those records. Ms. Wearing is on
18 subpoena, Your Honor. I would hate to bring her
19 into court on her day off when there is a
20 replacement here. There shouldn't be any material
21 difference in --

22 THE COURT: Well, let's find out one thing
23 first before we even get to the witness question.
24 Mr. Floyd, is there any doubt as to the authenticity
25 of these records, and is there any necessity of

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1 bringing a custodian in here to authenticate the
2 records?

3 MR. FLOYD: I'm not sure what records
4 they're talking about, Judge.

5 THE COURT: Well, have they showed them to
6 you?

7 Show them to him and see if he can agree
8 to them. If he can agree to the --

9 MR. ROSS: The records are in the
10 possession of the custodian.

11 THE COURT: When is she going to be here?

12 MR. ROSS: I've been told she's on her
13 way. What I'm going to introduce, Your Honor, is a
14 photograph connecting him to [REDACTED] [REDACTED] [REDACTED], a
15 document --

16 THE COURT: Well, I can't ask him to
17 consent to it without looking at them. So when she
18 gets here, we'll rule on this. I was going to try
19 to avoid having to bring her in, but we'll address
20 the question as to whether this witness can testify
21 in place of the other witness who was named.

22 And I can take care of that at the
23 appropriate time. But it seems like to me that this
24 is a pretty routine matter of authenticating
25 records. And if Mr. Floyd can look at the records

1 and say that -- I think it's 1001 of whatever it is
2 of the rules of evidence, that he does not have any
3 question as to the authenticity of the records and
4 does not object to their admission, we don't need
5 the witness.

6 So when she gets here, let's get the
7 records from her and let me know, and before you
8 call the witness, we can take the appropriate break
9 and give Mr. Floyd a chance to look at the records.

10 MR. ROSS: Yes, Your Honor.

11 THE COURT: All right, anything else, Mr.
12 Floyd, before we bring the jury in?

13 MR. FLOYD: Not at this time, Your Honor.

14 THE COURT: All right, Mr. Bailiff, if
15 you'll bring the jury in for me, please.

16 (The jury returned to the
17 courtroom at 9:45 a.m. after which the following
18 proceedings were had:)

19 THE COURT: All right, good morning,
20 ladies and gentlemen. Thank you for your promptness
21 in being back here this morning, and we now are
22 ready to resume.

23 You are Mr. McConnell, is that correct?
24 All right, Mr. McConnell is juror number 124. Mr.
25 McConnell has been selected by the jury to be the

1 foreperson of this jury.

2 Mr. McConnell, you will always sit in the
3 seat where you are seated. And, of course, the
4 alternate will always sit in the seat where she is
5 seated.

6 The rest of you may sit in any seats in
7 the jury box. I need to ask you now if anyone has
8 contacted you or attempted to contact you about this
9 case in any manner whatsoever over the evening
10 recess. I would need to know about it now.

11 Negative response, and that's good. If
12 anyone has read any newspaper articles or anything
13 in the news media, broadcast or print, concerning
14 this matter over the evening recess, I would also
15 need to know about that now.

16 Again, negative response, and that's good.
17 All right, when we adjourned yesterday afternoon, we
18 were in the State's case, and the State is still
19 presenting the testimony to you. And we will
20 continue with the State's presentation.

21 Mr. Ross?

22 MR. ROSS: Thank you, Your Honor. The
23 State calls Agent Eric Kirkland to the stand.

24 THE COURT: All right, Mr. Kirkland.

25 (The witness was sworn.)

1 CLERK OF COURT: If you'll have a seat and
2 state your name for the record, please.

3 MR. KIRKLAND: Agent Eric Kirkland -- K-I-
4 R-K-L-A-N-D.

5 ERIC KIRKLAND, having first been duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ROSS:

9 Q Agent Kirkland, you were the lead
10 investigator on this case, is this right?

11 A That's correct, sir.

12 Q Before we get into your investigation and
13 the execution of this search warrant, can you please
14 tell the jury about your years of experience in law
15 enforcement?

16 A Certainly. I started law enforcement and
17 corrections in 1992. I actually started working at
18 Barnwell Detention Center. From there, I went to
19 the Orangeburg Department of Public Safety in '94.
20 From '96 until 2003, I was an Orangeburg County
21 Sheriff's Deputy.

22 I left in 2003 with the rank of
23 lieutenant. I came here to Lexington County in '03.
24 In '04, I actually got promoted to the rank I
25 currently am now.

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- 1 Q And what is that rank?
- 2 A Narcotics investigator.
- 3 Q And so you've been in narcotics since '04?
- 4 A Yes, sir, a total of eight years.
- 5 Q What type of cases do you investigate?
- 6 A All narcotic drug investigations, vice,
- 7 are just some of the stuff that warrants us getting
- 8 into.
- 9 Q Now, were you involved in the search
- 10 warrant in this case?
- 11 A I was, sir.
- 12 Q And where was that search warrant
- 13 executed?
- 14 A [REDACTED].
- 15 Q And what county is that in?
- 16 A Lexington County.
- 17 Q South Carolina?
- 18 A Correct, South Carolina.
- 19 Q And whose residence is [REDACTED]
- 20 [REDACTED]?
- 21 A Douglas James Mayes.
- 22 Q Who else lives there?
- 23 A Kaylie Tharp.
- 24 Q And what is the relationship between those
- 25 two?

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1 A They actually share a child in common.

2

3 Q Okay. Tell me what happened on February
4 17, 2011.

5 A We arrived at the residence that morning
6 somewhere between eight and nine. The execution of
7 the search warrant was an entry team, seven-man
8 entry team. They made entry into the residence. I,
9 myself, was on perimeter. I was outside in the
10 yard.

11 They penetrated, made entry into the
12 residence. I, of course, stayed outside doing a
13 360-degree radius to make sure everything outside
14 was okay, along with about three or four other
15 agents. Once they gave the okay to come inside, I
16 ventured inside when I heard the all-clear.

17 Q So why were you on the outside while the
18 agents on the entry team went in?

19 A The case agent is actually something like
20 a supervisor. He acts like a supervisor and makes
21 sure everything goes as planned. Since you're the
22 operational planning guy, you actually don't put
23 yourself in the middle of the raid, because you
24 can't very well supervise and see what's going on if
25 you are right smack dab in the middle. So you have

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1 to take yourself out of it.

2 Q Okay. And you heard the all-clear, and
3 then what did you do?

4 A I actually ventured inside and went to the
5 living room area.

6 Q Okay. And what happened next?

7 A In the living room area, I stay stagnated
8 for about maybe three to five minutes. At that
9 point in time, Mr. Mayes came out in handcuffs along
10 with Ms. Tharp and the little child, who was not
11 handcuffed. But all three came out into the living
12 room area.

13 Q Now, this little child, was that the child
14 that they have in common?

15 A That's correct, sir.

16 Q Okay. And what happened at that point?

17 A At that point in time, I actually
18 introduced myself to Mr. Mayes, told him who I was
19 and why we were there. And then I proceeded to give
20 him his Miranda warnings.

21 Q How did you give him his Miranda warnings?

22 A Off a card that I had.

23 Q What type of card is that?

24 A It's right here. It's the one I've had
25 for the last 10 or so years.

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1 Q Is that issued to you by the Sheriff's
2 Department?

3 A No, sir, I bought this.

4 Q Okay. Can you read the rights that you
5 read to Mr. Mayes?

6 A Sure. "You have the right to remain
7 silent. Anything you say can and will be used
8 against you in a court of law. You have the right
9 to talk to an attorney and have him or her present
10 with you while you are being questioned.

11 "If you cannot afford to hire an attorney,
12 one will be appointed to represent you before any
13 questioning, if you wish. You can decide at any
14 time to exercise these rights and not answer any
15 questions or make any statements.

16 "Do you understand each of the rights I've
17 just explained to you? Having these rights in mind,
18 do you wish to talk to us now?"

19 Q Okay. Now, when you introduced yourself
20 to Mr. Mayes, did you tell him why y'all were there?

21 A Yes, sir.

22 Q And what did you tell him?

23 A Execution of a search warrant.

24 Q For what reason?

25 A Narcotics.

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1 Q Okay. So after you introduced yourself,
2 you read him his rights, what did you do at that
3 point?

4 A Basically, I stayed there about two or
5 three minutes more. And I heard one of the agents
6 from the back side of the living room call out they
7 needed a camera, they had found something.

8 Q Which agent was that?

9 A That was Agent Laney.

10 Q And he testified yesterday?

11 A That's correct, sir.

12 Q And why did he need the camera?

13 A He had found some narcotics.

14 Q Okay. And then what happened?

15 A The camera guy went back to the back, took
16 the photographs, and pretty soon they actually came
17 back out. I can't remember who came out and told me
18 that they had found some drugs, what appeared to be
19 narcotics, in the tissue paper in the bathroom.

20 Q Okay. And what did you do next?

21 A I asked Mr. Mayes did he know anything
22 about what was back there. And his reply was, "It's
23 mine. Everything back there is mine."

24 Q Okay.

25 THE COURT: All right, let me introduce

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1 you for just a moment, Mr. Ross, and give a little
2 instruction to the jury.

3 Ladies and gentlemen, there has been
4 admitted into the record of this case a statement
5 alleged to have been made by the defendant. Before
6 you may consider the statement as evidence for any
7 purpose, you must determine four questions.

8 Did the defendant make the statement? Was
9 the defendant warned of his constitutional rights?
10 Did the defendant knowingly and intelligently waive
11 his constitutional rights? And was the statement
12 given voluntarily?

13 Now, while the Court determines the
14 admissibility of the statement, you, the jury, must
15 determine the existence, voluntariness, and weight
16 of any alleged statement made by the defendant. You
17 must make the ultimate determination of whether or
18 not the defendant in fact made the alleged
19 statement.

20 If you determine that the defendant made
21 the statement, you must then determine whether the
22 statement was made voluntarily. And, finally, you
23 will decide what weight, if any, should be given to
24 the alleged statement.

25 You must determine whether the alleged

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1 statement was a product of an essentially free and
2 unconstrained choice by its maker. The State must
3 prove the voluntariness of the statement beyond a
4 reasonable doubt.

5 If you determine beyond a reasonable doubt
6 that the statement was given freely and voluntarily,
7 then you may give the statement such further
8 consideration as you deem proper. If you determine
9 the alleged statement was not freely and voluntarily
10 given or was not the free and voluntary willed
11 expression of the defendant, then you should not
12 consider the statement as evidence.

13 In determining whether a defendant's will
14 was overcome in obtaining a statement, the law
15 requires you to consider what is known as the
16 totality of the circumstances. You should consider
17 both the characteristics of the defendant and the
18 circumstances surrounding any question of
19 interrogation.

20 Some of the factors the law says you may
21 consider are the age of the defendant, the
22 defendant's educational background, the defendant's
23 mental ability or capacity, and the defendant's
24 background along with all other facts and
25 circumstances surrounding the making of the

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1 statement.

2 In determining the voluntariness of the
3 alleged statement, you should consider whether the
4 defendant was advised of and understood his
5 constitutional rights. The law requires that before
6 making any interrogation or questioning of a person
7 in custody may begin, law enforcement must advise
8 the accused of what we refer to as Miranda rights.

9 This means that the authorities must
10 advise the accused that the accused has the right to
11 remain silent, that the statement could be used
12 against the accused in a court of law, that the
13 accused has the right to have a lawyer present, that
14 if the accused cannot afford a lawyer, then a lawyer
15 would be appointed to represent him without any
16 cost, and that the accused could stop making the
17 statement at any time.

18 Other factors to be considered are the
19 place and length of any detention and the nature of
20 the questioning. You must carefully scrutinize all
21 of the surrounding circumstances before you give any
22 weight to an alleged statement.

23 You must be satisfied beyond a reasonable
24 doubt that the statement was made by the defendant
25 uninfluenced by promise or reward or threat of harm.

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1 If you find beyond a reasonable doubt that the
2 alleged statement was given voluntarily, then you
3 must decide what weight, if any, should be given to
4 the statement.

5 If you find the statement was not
6 voluntary, then in that event you must not consider
7 the statement as evidence for any purpose.

8 All right, Mr. Ross.

9 MR. ROSS: Thank you, Your Honor.

10 Q Agent Kirkland, I'm going to refer to
11 Exhibit Number Three, the floor plan.

12 A You need me to come down, sir?

13 Q If you could, please. And if you could
14 stand there. Tell me how you entered the residence
15 after you heard the all-clear.

16 A Actually, I was positioned here on the
17 outside. I came around, walked up the ramp, went
18 through the front door, and actually stopped here in
19 this area.

20 Q Okay. And at what point did you ask the
21 defendant about what was found back here?

22 A As soon as I heard Agent Laney say that --

23 THE COURT: All right, keep your voice up.
24 You're away from the microphone, please, sir.

25 MR. KIRKLAND: Yes, sir.

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1 A As soon as I heard Agent Laney call out
2 that narcotics were found and he needed a camera, I
3 came back outside and said, "We found something."

4 Q Okay.

5 A He said it was possibly narcotics.

6 Q And where was the defendant when you asked
7 him about that?

8 A Seated on this couch right here.

9 Q Right here?

10 A Right here.

11 Q Was there anyone seated right here?

12 A Yes. The female, Ms. Kaylie Tharp, was
13 seated right here in the recliner.

14 Q And that's a female that he holds a child
15 in common?

16 A That's correct.

17 Q Okay. And where were you positioned when
18 you asked him about that?

19 A Here, near the entrance of the door.

20 Q And, again, what were you referring to
21 when you asked them about what was found?

22 A I was referring to the narcotics that had
23 been found.

24 Q Okay.

25 A The alleged narcotics that had been found.

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1 Q And, again, what did he tell you?

2 A He said, "It's mine. Everything back
3 there is mine."

4 Q Okay. Was there any confusion as to what
5 he was talking about?

6 A No, sir.

7 Q Okay. If you could have a seat back. So
8 what did you do after he gave you that statement?

9 A After that statement was made, I think all
10 conversation ceased at that point. I didn't ask any
11 other questions.

12 Q Okay. Did you process the crime scene?

13 A Yes. Agent Barnes was actually in charge
14 of collecting evidence. So basically what I did was
15 actually just wait on her to finish doing what she
16 did and for her to release everything over to me.

17 Q And what did she release to you?

18 A She released -- can I refer to my notes to
19 be accurate?

20 Q Yes.

21 A Okay. She released three bags of crack
22 cocaine or white rock-like substance consistent with
23 crack, one pill bottle of white rock-like substance
24 consistent with crack, and one bag of powder
25 consistent with cocaine.

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1 Q And what did you do with those items?

2 A They were actually placed in what's called
3 a Best kit and later delivered to the Lexington
4 County Sheriff's Department evidence room.

5 Q Okay. And did this Best kit come with a
6 number?

7 A It does.

8 Q And what was the number of this particular
9 Best kit?

10 A It was C020453.

11 Q Did you personally put those drugs in the
12 Best kit?

13 A I did.

14 Q And did you seal the Best kit?

15 A I did.

16 Q And did you personally deliver it to the
17 evidence room at the Sheriff's Department?

18 A I did.

19 Q And how did you do that?

20 A I did that in my vehicle and actually
21 walked in the evidence room and strategically placed
22 it in the locker.

23 Q And when you placed it in that locker, was
24 the evidence -- was the Best kit sealed?

25 A Yes, correct.

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1 Q All right. And from the point you
2 received those drugs from Agent Barnes to the point
3 you placed the sealed Best kit in the locker, were
4 those drugs within your care, custody, and control
5 the whole time?

6 A They were.

7 Q Did anyone else come into possession of
8 those drugs?

9 A No, sir.

10 Q Did you alter or manipulate them in any
11 way?

12 A No, sir.

13 Q I'm going to hand you -- we're talking
14 about Best kits, and I'm going to hand you a sample
15 Best kit. If you could, please step down and show
16 the jury what exactly you're talking about when you
17 talk about placing drugs in a Best kit. What is
18 exactly in this thing, and how does it work? Just
19 stand right here.

20 A A Best kit is actually everything we use
21 after we obtain narcotics. We actually have proper
22 paperwork that we fill out, and that paperwork
23 consists of the name, the agency that we're with,
24 where we got the drugs from.

25 If we're lucky enough to get a suspect,

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1 the suspect's name goes on there, along with the
2 location, as well as a description of the narcotics
3 that were found. There's also a spot on here that
4 shows where we delivered it to, which would be
5 evidence, and the agency would be the Lexington
6 County Sheriff's Department.

7 And then we sign it, and it has a control
8 number up top. This next piece of actually a Form
9 C. If we receive drugs from someone else, like
10 maybe a detention officer that we got it out of the
11 detention center, it would have the same thing.

12 The only thing is they would have to sign
13 and release those drugs to us. We would take
14 possession of it. And then from there, we would
15 actually put it in evidence. This last one is the
16 analysis.

17 The analysis is actually pretty much the
18 same thing, and it's actually the description of the
19 drugs that were found. And this one actually goes
20 to evidence, and it gives a brief description of the
21 drugs that were found.

22 With those three pieces of paper in mind,
23 we actually get into this portion. On the front of
24 it, we have the agency, we have the date that we
25 obtained it, the person's signature, the person's

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1 printed name.

2 We actually tear this portion off after we
3 fill it out. This is for our records. It's
4 actually a name, a date, and a brief description of
5 the drugs that were found. That goes with our
6 records.

7 We actually -- once we place everything
8 strategically inside, we actually lay this flat,
9 peel that off, discard it [inaudible] this, fold it
10 down, seal it, tamper-resistant.

11 Q Now, after this is sealed, if I were to
12 try and open this bag, would you be able to open it
13 without the chemist knowing?

14 A No, you can't open that without the
15 chemist knowing. She would know, yes, sir.

16 Q If you would, please have a seat. So
17 that's the type of bag you placed the drugs found at
18 [REDACTED] in?

19 A Yes, sir, it is.

20 Q Okay. And when you placed them in that
21 bag, you sealed the bag?

22 A Yes, sir.

23 Q And you turned it in to evidence?

24 A I did.

25 Q What else did you turn in to evidence?

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1 A The other stuff I turned in was -- give me
2 one minute -- actually turned in a Remington Model
3 522 Viper, Serial Number 3193839.

4 Q Let me interrupt you.

5 A Yes, sir.

6 Q I'm showing you State's Number Thirteen.
7 Is this the rifle you turned in to evidence?

8 A 3193839 -- yes, sir.

9 MR. ROSS: Your Honor, at this point I
10 would offer State's Number Thirteen into evidence.

11 THE COURT: All right, subject to the
12 objection -- I think I have already ruled on that --
13 of the defendant, State's Number Thirteen is
14 admitted into evidence.

15 (State's Exhibit Number
16 Thirteen, Rifle, was entered in evidence.)

17 Q Did you seize any drug paraphernalia?

18 A Yes, sir. We actually seized numerous
19 plastic bags. A set of digital scales were also
20 obtained.

21 Q Okay. And who did you receive those from?

22 A I actually got those bags from actually
23 Agent Ronnie Hinson, along with that shotgun. And
24 the scales were given to me by Agent Tracy.

25 Q Okay. Was Agent Barnes involved in the

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1 scales and the plastic bags?

2 A Yes, she was.

3 Q Okay. How was she involved?

4 A Originally, those items went to her. She
5 was actually seated at the kitchen table, and she
6 was actually processing, labeling, and placing those
7 items where they needed to be before properly being
8 turned over to me.

9 Q Okay. So Agent Tracy and Agent Hinson
10 originally found these items and turned them over to
11 Agent Barnes?

12 A Yes, they did.

13 Q And from there, Agent Barnes gave them to
14 you?

15 A That's correct.

16 Q Okay. What did you do with them after you
17 received them from Agent Barnes?

18 A After I got everything from Agent Barnes,
19 all that stuff was actually later delivered to the
20 Lexington County Sheriff's Department, yes, sir.

21 Q Who delivered them to the Sheriff's
22 Department?

23 A I did.

24 Q And where in the Sheriff's Department did
25 you deliver them to?

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1 A Evidence.

2 Q Okay. And when you turned them in to
3 evidence, were they in the same condition as when
4 Agent Barnes gave them to you?

5 A They were.

6 Q Did anyone else take possession of these
7 items in any way?

8 A No, sir.

9 Q Now, when you received them from Agent
10 Barnes, had she labeled on the plastic bags exactly
11 what she was giving to you?

12 A Yes, sir.

13 Q And she did that with these plastic
14 baggies and the digital scales?

15 A Yes, sir.

16 Q Okay. After you took possession or after
17 you delivered the Best kit, and the baggies, and the
18 digital scales to the evidence room, did you
19 subsequently check that evidence out?

20 A I did again.

21 Q And when was that?

22 A I checked that evidence out again on --
23 let me refer to my date -- 9/6/2011.

24 Q And why did you check them out?

25 A I needed to discuss this case with the

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1 Solicitor before you.

2 Q Okay. So you were checking them out to go
3 over the case with the Solicitor?

4 A That's correct.

5 Q Okay. So you were checking them out to go
6 over the case with the Solicitor?

7 A That's correct.

8 Q Okay. And at that point, had the drugs
9 already been tested?

10 A That's correct.

11 Q All right. And did you notice anything
12 out of the ordinary with respect to the drugs in the
13 Best kit?

14 A No, sir.

15 Q Did they appear to be in rock form at that
16 point?

17 A They were.

18 Q What did you do with the Best kit after
19 you checked it out to go to talk to the Solicitor?

20 A I returned it.

21 Q And when did you return it?

22 A Probably about two hours later. I think
23 our meeting lasted about two hours or so, and I
24 returned it directly after.

25 Q And when you returned it, where did you

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1 return it to?

2 A Back to the evidence room.

3 Q And when you returned it, was it in the
4 same condition as when you checked it out?

5 A It was.

6 Q Did you alter or manipulate those items in
7 any way?

8 A No, sir.

9 Q Did anyone else come into possession of
10 those items outside your presence?

11 A No, sir.

12 Q Did anyone else alter or manipulate those
13 items?

14 A No, sir.

15 Q Tell me about the digital scales and the
16 bags. When you checked them out to go talk to the
17 Solicitor, did you alter or manipulate those in any
18 way?

19 A No, sir.

20 Q Did the Solicitor alter or manipulate
21 those in any way?

22 A No, sir.

23 Q Were they in the same condition when you
24 turned them back in to the evidence room as when you
25 checked them out that day?

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1 A Yes, sir, they were.

2 Q Were photographs taken of the drugs seized
3 that day?

4 A Yes, photographs were taken.

5 Q Can you see Exhibit Seven from where
6 you're sitting?

7 A Yes, sir.

8 Q And what is this?

9 A Turn it around.

10 Q If you want to step down, it may be
11 easier.

12 THE COURT: Identify it by exhibit number
13 each time you ask him.

14 Q We're looking at Exhibit Number Seven.
15 Can you tell the jury what's in that photograph?

16 A That appears to be a half cookie of crack
17 cocaine as well as another little small piece of
18 crack cocaine, and a pill bottle with a green top.

19 Q Okay. I'm showing you State's Number
20 Eight.

21 A That is the pill bottle with the contents
22 inside of off-white rock-like substance consistent
23 with crack inside.

24 Q Now, during your years of experience as a
25 narcotics officer, have you seen crack cocaine

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1 before?

2 A Yes, sir.

3 Q Does that appear to be consistent with
4 crack cocaine?

5 A Yes, sir.

6 Q Now I'm going you State's Number Six. Can
7 you tell me what this item is right here on top of
8 that roll of toilet paper?

9 A Looks like a clear piece of plastic, but I
10 can't identify that.

11 Q Right here.

12 A Looks like more crack.

13 Q Okay.

14 A Yes, sir.

15 Q Is this the crack that you seized and
16 turned in to evidence that day?

17 A It is.

18 Q What's the significance of these plastic
19 bags in State's Number Ten?

20 A In our line of work, over the years that
21 I've seen, those are consistent with packaging and
22 selling of illegal narcotics.

23 Q Have you seen illegal drugs on the streets
24 contained in these type of packages?

25 A I have.

Eric Kirkland - Direct

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1 Q If you could, please have a seat. Now,
2 what was the significance of the digital scales in
3 this case?

4 A The digital scales are right in line with
5 weighing illegal narcotics to make sure you --
6 weighing and selling illegal narcotics, yes, sir.

7 Q How much on the street would 70 grams of
8 crack cocaine be worth?

9 A A hundred dollars a gram. That's \$7,000.

10 Q So if I were to sell 70 grams of crack
11 cocaine, I could earn \$7,000?

12 A Yes, sir.

13 Q Is that consistent with distribution or
14 personal use, 70 grams of crack cocaine?

15 MR. FLOYD: Your Honor, I object. That's
16 a statement.

17 THE COURT: All right, that's a matter for
18 the jury to determine, and the statutory
19 implications will be there. I'm going to sustain
20 the objection.

21 Q We were talking earlier about the
22 individual being talked to about the drugs found at
23 ████████████████████. Is that individual in court
24 today?

25 A He is.

Eric Kirkland - Direct

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1 Q Can you point him out to me, please?

2 A Seated right next to Mr. Floyd.

3 Q Is that the defendant you're pointing at?

4 A That's correct, sir.

5 Q And is that the individual who said,

6 "Everything back there is mine"?

7 A It is.

8 MR. ROSS: Your Honor, let the record

9 reflect that he --

10 THE COURT: All right, the record will so
11 reflect.

12 MR. ROSS: No further questions for this
13 witness.

14 THE COURT: All right, cross-examination,
15 Mr. Floyd?

16 MR. FLOYD: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. FLOYD:

19 Q Investigator Kirkland --

20 A Yes, sir.

21 Q -- maybe I misunderstood something
22 yesterday. Did Agent Barnes put them in the Best
23 kit, or did you put them in the Best kit?

24 A Agent Barnes put them in a plastic bag. I
25 put them in the Best kit.

Eric Kirkland - Cross

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1 Q Okay. Now, you mentioned there were some
2 digital scales. And are those digital scales
3 capable of weighing things that are not drugs?

4 A They are. But what I testified to is they
5 are consistent with -- in my line of work, they are
6 consistent with illegal narcotics and distribution
7 thereof.

8 Q And they are consistent with legal use
9 also, are they not?

10 A Yes, sir.

11 Q And the plastic bags, are they designed
12 for drug dealers?

13 A I don't know what else you could use
14 scales for. I don't know, but I guess they could
15 be, sir.

16 Q How about the plastic bags?

17 A Plastic bags that small? Yes, sir, I
18 imagine they could be, yes, sir.

19 Q They could be used for something other
20 than drugs, can they not?

21 A Yes, sir, uh-huh.

22 Q Now, you didn't discover or recover the
23 drugs yourself, did you?

24 A No, sir.

25 Q And you first saw Mr. Mayes when he was

Eric Kirkland - Cross

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1 handcuffed in the living room, is that correct?

2 A That's correct, sir.

3 Q How was he dressed?

4 A I can't remember what he had on. I really
5 can't. It was early in the morning, but I do not
6 remember exactly what clothing he had on.

7 Q And Kaylie Tharp, she was in the living
8 room handcuffed, also?

9 A Yes, sir, correct.

10 Q And where was the child?

11 A The child was right next to Kaylie. It
12 clinged to the mother.

13 Q Now, isn't it true that you told them that
14 if one of them didn't claim the drugs, you were
15 taking both of them to jail?

16 A That's not true, sir.

17 Q You never intended to take both of them to
18 jail?

19 A I never told them that. I only arrested
20 him when he claimed the ownership. I asked him one
21 question, and that's why I gave Miranda warnings --
22 asked him one question and one question only. There
23 was no dire need to take her to jail at that point.

24 Q And nobody ever told him that if he didn't
25 take responsibility for the drugs, Kaylie was going

Eric Kirkland - Cross

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1 to jail, too?

2 MR. ROSS: Objection. There's no factual
3 basis for this question.

4 THE COURT: It's cross-examination. I'll
5 allow it, leeway on cross.

6 A Again, sir? I'm sorry.

7 Q Are you telling me nobody ever said that
8 "If you don't take responsibility for the drugs,
9 we're going to take Kaylie to jail, also"?

10 A I never heard that statement, Mr. Floyd.
11 And I certainly didn't make it.

12 Q You weren't back in the room where they
13 all were?

14 A No, sir, I was not.

15 Q And I think you testified you were waiting
16 outside about -- did you say five minutes before
17 they brought them in?

18 A It was five to ten minutes. A mobile home
19 that size for us to tactically go in and actually
20 permanently secure, it takes about five to minutes.
21 I'm guesstimating.

22 It could have been less time than that.
23 But when you're on an operation of that magnitude,
24 time flies. So it could have been less than that.
25 I'll say five to ten to give myself that much time.

Eric Kirkland - Cross

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1 Q Now, isn't it true that if you had in fact
2 taken both Mr. Mayes and Ms. Tharp to jail that you
3 would have had to get DSS involved and turn the
4 child over to DSS?

5 A No, sir. DSS is always a last resort. We
6 have an actual family member that would actually do
7 placement. I would have actually went as far as to
8 find out if Kaylie or Mr. Mayes had family members
9 that would come get the child.

10 You never want to place a child in DSS.
11 You bring more harm to do it sometimes when you have
12 adequate family members that are quite capable of
13 taking care and caring for a child. So DSS is
14 always the last resort.

15 Q Are you telling us that the Sheriff's
16 Department would take the responsibility of perhaps
17 turning a child over to a child molester?

18 A No. I am telling you that if an adequate
19 family member came down, per say her mother, and she
20 consented over it. Because, see, in South Carolina,
21 he has no rights. They aren't married.

22 They share a child in common. So I would
23 ask her if she wanted her mother, the grandmother of
24 that child -- if she wanted the grandmother to go
25 home. I'm telling you if Kaylie agreed to it, I

Eric Kirkland - Cross

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1 would release the child to the grandmother. That's
2 what I'm telling you.

3 Q Even without any investigation as to
4 whether or not the grandmother was fit?

5 A If she consented for the child to go to
6 the grandmother, I would actually let the child go
7 with the grandmother.

8 Q And you're saying you would have no
9 obligation to report that to DSS?

10 A No, sir.

11 Q Because isn't DSS the one that makes the
12 decision about whether or not it's okay to turn it
13 over to the grandmother?

14 A If they're involved. They're not involved
15 at this point. If the grandmother wants to get that
16 child and the mother consents to it, yes, sir,
17 that's what I'm telling you.

18 Q Are you saying that law enforcement
19 doesn't have an obligation when a child is in a home
20 that has what you believe to have suspected drugs in
21 it, and you arrest both the father and the mother,
22 you don't have an obligation to report that to DSS
23 for their decision on what to do with the child?

24 A What I'm telling you is, sir, for the
25 third time, if we have something like a meth lab and

Eric Kirkland - Cross

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1 there is a dire need that a child might have been
2 exposed, yes, DSS would get involved. In this case,
3 if she had consented over the custody to the
4 grandmother, yes, sir, I would allowed the child to
5 go with her.

6 Q And to your knowledge, you don't know
7 whether anybody ever told her and him that if they
8 were both arrested, the child would be turned over
9 to DSS?

10 MR. ROSS: Objection, asked and answered.

11 THE COURT: All right. Yes, we're going
12 over the same thing, Mr. Floyd. Let's move on to
13 something else. The objection is sustained.

14 Q Agent Kirkland, does that weapon work?

15 A I don't know, sir.

16 Q Was it turned over to ATF to test?

17 A It was. It wasn't turned over to ATF to
18 test. This entire investigation was.

19 Q You don't know whether ATF tested it to
20 see if it worked?

21 A I do not.

22 Q They returned it back to you, didn't they?

23 A We got it back when the Solicitor's Office
24 actually took this case. So I don't know.

25 Q So you've never tested it to see if it

Eric Kirkland - Cross

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1 worked?

2 A No, sir. That's not my field of
3 expertise, sir, sorry.

4 Q So for all you know, it doesn't work?

5 A And for all I know, it might, sir. I
6 don't know.

7 Q You don't know?

8 A Yes, sir.

9 Q Did you arrest Kaylie Tharp?

10 A No, sir.

11 Q So after you got this alleged statement,
12 you took the handcuffs off her?

13 A Yes, sir.

14 Q Allowed her and the child to remain?

15 A Yes, sir. That's correct, sir.

16 Q And took Mr. Mayes --

17 A Yes, sir.

18 Q -- to jail?

19 A Yes, sir.

20 Q Thank you.

21 No further questions, Your Honor.

22 THE COURT: Redirect, Mr. Ross?

23 MR. ROSS: Your Honor, may I approach?

24 THE COURT: Yes, sir.

25 Come up, Mr. Floyd.

Eric Kirkland - Cross

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1 All right, ladies and gentlemen, we have
2 an evidentiary question that I need to take up
3 outside of your presence and on the record. So I'm
4 going to ask that you go to your jury room for a few
5 minutes while we take up this evidentiary question.

6 Please do not discuss the case among
7 yourselves. Just relax for a few minutes and let us
8 take care of this legal matter, and we'll send for
9 you very shortly. Thank you. You may go with the
10 bailiff.

11 (The jury left the
12 courtroom at 10:23 a.m.)

13 THE COURT: All right, Mr. Ross, put on
14 the record what you would like to do and what we
15 discussed at the sidebar.

16 MR. ROSS: We discussed, Your Honor, I
17 believe in that last question by Mr. Floyd that Mr.
18 Floyd has opened the door to prior bad acts.

19 THE COURT: All right. What was the last
20 question you're referring to?

21 MR. ROSS: The last question was, "You did
22 not arrest Kaylie Tharp, did you?" I think the
23 State has a right to ask him why he didn't arrest
24 Kaylie Tharp. And after prepping this case with
25 Agent Kirkland, I know what I suspect the answer

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1 will be.

2 He didn't arrest Kaylie Tharp because
3 Kaylie Tharp never sold drugs to a confidential
4 informant, which served as the basis for obtaining
5 the search warrant in the first place.

6 THE COURT: Position, Mr. Floyd?

7 MR. FLOYD: Your Honor, of course, we
8 would strongly object to bringing out any prior bad
9 acts. That would be highly prejudicial to the
10 defendant. I don't think I opened it up at all.
11 Your Honor, all I was getting from him was since he
12 claimed responsibility --

13 THE COURT: Why can't he just answer the
14 question as "Because we had no evidence that she was
15 involved with the drugs"? I mean, that's the same
16 thing. You can ask him why not.

17 Well, the statement for one thing, the
18 defendant had taken responsibility for the drugs,
19 and that's in evidence. And so why can't he just
20 answer that question by saying that "We had no
21 evidence that she was involved in the drug
22 transactions"?

23 It seems like to me that accomplishes your
24 same purpose as to the reason for him not arresting
25 her. And if you want to get into the business about

Eric Kirkland - Cross

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1 the prior bad acts and the sale of drugs and
2 everything, I think you're going to have to do that
3 with the people that actually were involved in the
4 sale of the drugs by the defendant to them.

5 And that would probably only come up if
6 the defendant takes the stand. But I've got to
7 think about that. I'm going to sustain the
8 objection as far as him answering it and saying
9 anything about the confidential informant and what
10 the confidential informant did. He can answer the
11 question by saying that he had no evidence that the
12 drugs were hers or that she was involved in any drug
13 transactions.

14 MR. ROSS: Thank you, Your Honor.

15 THE COURT: All right. Now, while we've
16 got the jury out, let's go ahead and resolve this
17 issue with regard to the records. Get the records
18 from the evidence custodian, show them to Mr. Floyd,
19 and let's see what we've got.

20 Mr. Floyd, let's go back to that previous
21 ruling. You don't have any problem if he answers
22 the question that way, do you?

23 MR. FLOYD: No, Your Honor, that would be
24 acceptable.

25 THE COURT: All right.

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1 All right, Mr. Floyd, what's your
2 position with regard to these records?

3 MR. FLOYD: Your Honor, there are three
4 documents. Two of them we don't object to. I don't
5 think he's going to offer the third one.

6 THE COURT: All right, can you separate
7 them and tell me what you all can agree to?

8 MR. ROSS: Yes, Your Honor. We'll just go
9 ahead and mark these two right now.

10 THE COURT: All right, go ahead and mark
11 those two. Tell me what they are, Mr. Ross.

12 MR. ROSS: The first one is a DMV address
13 history document.

14 THE COURT: Okay.

15 MR. ROSS: And the second one is a DMV
16 photograph.

17 THE COURT: All right. So the DMV address
18 document --

19 COURT REPORTER: Would be State's Number
20 Fourteen, Your Honor.

21 THE COURT: -- will be State's Number
22 Fourteen without objection -- admitted without
23 objection.

24 (State's Exhibit Number Fourteen, DMV
25 Address History, was entered in evidence.)

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1 COURT REPORTER: And fifteen would be the
2 DMV photo.

3 THE COURT: And the DMV photo will be
4 admitted as State's Number Fifteen without
5 objection.

6 (State's Exhibit Number
7 Fifteen, DMV Photo, was entered in evidence.)

8 MR. ROSS: And, Your Honor, I would still
9 like to call Ms. Cornelius to the stand, just simply
10 to introduce them through her to the jury. And
11 maybe she can explain exactly what these documents
12 are, as well.

13 THE COURT: All right, any objection to
14 the witness, even though it's not the witness that
15 was named in the voir dire to the jury? We simply
16 have a records custodian here who is going to
17 explain what the records are. I don't know that the
18 photograph needs any explanation, but the other one
19 might.

20 Any objection to that?

21 MR. FLOYD: No, Your Honor.

22 THE COURT: All right. And the other
23 documents you do not propose to offer, is that
24 correct?

25 MR. ROSS: Your Honor, we won't offer

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1 these documents.

2 THE COURT: Okay. So the question of
3 admissibility is resolved, but we will have the
4 witness testify, or the State can call the witness
5 to testify, to publish the documents if necessary,
6 if they desire. All right, fine, thank you.

7 And you do propose to ask this witness
8 some questions on redirect, Mr. Ross?

9 MR. ROSS: Yes, Your Honor. I'm going to
10 ask him about why he did not arrest Kaylie Tharp,
11 and I expect him to answer in the light that you
12 just proposed.

13 THE COURT: You understand that you cannot
14 say anything about the sale of drugs to the
15 confidential informant as that being the reason that
16 you didn't do it. But the fact was that you had no
17 evidence that she was involved with the drugs.
18 That's basically what it would amount to.

19 MR. KIRKLAND: Thank you, sir.

20 THE COURT: All right, bring the jury back
21 in.

22 Be careful on recross, Mr. Floyd. If you
23 go into this answer, you still could open the door.
24 Even though I normally do not allow a third
25 examination -- a third direct examination -- if you

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1 do open the door, I would allow it.

2 (The jury returned to the
3 courtroom at 10:31 a.m. after which the following
4 proceedings were had:)

5 THE COURT: All right, thank you, ladies
6 and gentlemen. And we are now ready to go forward.
7 We have resolved the legal issues in connection with
8 this matter. I do notice that some of you may be
9 having a little trouble with the temperature in the
10 courtroom.

11 I will tell everybody this, that I have
12 been, as I said earlier, in 43 of the 46 courthouses
13 in this state. Some of them have multiple
14 courtrooms, and I have found that there are only two
15 temperatures in the courtroom, too hot or too cold.

16 And it doesn't matter where we go or how
17 modern the facility is. But, be that as it may,
18 we're ready to go forward, and I'll allow Mr. Ross
19 to examine this witness on redirect examination.

20 MR. ROSS: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. ROSS:

23 Q You said you didn't arrest Kaylie Tharp?

24 A That's correct, sir.

25 Q Why didn't you arrest Kaylie Tharp?

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1 A I had no evidence she was involved with
2 the drugs.

3 Q Okay. Did Kaylie Tharp confess to those
4 drugs?

5 A No, sir.

6 Q Did he, Douglas Mayes?

7 A Yes, correct -- he did, yes.

8 Q When he gave that statement, did you offer
9 him any promises?

10 A No, sir.

11 Q Did you threaten him in any way?

12 A No, sir.

13 Q Did you coerce him in any way?

14 A No, sir.

15 Q And tell me again what he told you.

16 A He said something along the lines of
17 "Everything back there is mine. It's mine," yes,
18 sir.

19 Q Nothing further. If you would, please
20 answer anything for Mr. Floyd.

21 THE COURT: Recross, Mr. Floyd?

22 MR. FLOYD: No further questions, Your
23 Honor.

24 THE COURT: All right, thank you, sir.
25 You may step down.

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1 MR. KIRKLAND: Yes, sir.

2 THE COURT: All right, Mr. Ross, you may
3 call your next witness.

4 MR. ROSS: The State calls Shirley
5 Cornelius to the stand.

6 THE COURT: All right, Ms. Cornelius, come
7 around, please.

8 Ladies and gentlemen, let me tell you
9 before Ms. Cornelius takes the stand that she was
10 not named in the list of witnesses that was
11 originally given to you when I was determining
12 whether you would know any of the witnesses in this
13 case.

14 That's because she is appearing here as an
15 employee of the State and as a custodian of the
16 records. The person that was named as the custodian
17 of the records is not available today. And so I
18 have allowed this witness to testify in her place.

19 But I would ask if there's any member of
20 the jury that knows this witness or has any
21 knowledge of her whatsoever that would in any way
22 affect your ability to weigh her testimony, I need
23 to know about that now. Negative response, and
24 that's good.

25 All right, you may proceed, Mr. Ross.

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1 (The witness was sworn.)

2 CLERK OF COURT: If you'll have a seat
3 over here, state your name and spell for your last,
4 please, for the record.

5 MS. CORNELIUS: Shirley Cornelius --
6 C-O-R-N-E-L-I-U-S.

7 SHIRLEY CORNELIUS, having first been duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ROSS:

11 Q Ms. Cornelius, you work at the DMV, is
12 that correct?

13 A Yes, sir.

14 Q And you brought some records to court
15 today, is that correct?

16 A Yes, sir.

17 Q I'm going to show you what's already been
18 marked as State's Number Fourteen. Can you tell me
19 what this document is?

20 A It's a driver history.

21 Q Does that show the residential history of
22 Douglas Mayes?

23 A Yes, sir.

24 Q And what's his present residence?

25 A [REDACTED], Pelion, South

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1 Carolina.

2 Q And when did he enter that as his
3 residence?

4 A July 27, 2010.

5 Q I'm going to show you right here, what is
6 the effective date?

7 A May 28, 2010.

8 Q Okay. So when did he list this residence
9 as his residence?

10 A He listed it on May 28, 2010.

11 Q Okay. And now I'm going to show you
12 State's Number Fifteen. What is that?

13 A A driver photo?

14 Q Okay. And who is that a photograph of?

15 A Mr. Douglas Mayes.

16 Q And what is the address on that
17 photograph?

18 A [REDACTED] Pelion.

19 Q Okay.

20 Your Honor, at this time I'd like to
21 publish these to the jury.

22 THE COURT: Permission granted. They're
23 in evidence.

24 Q All right, can you read that, Ms.
25 Cornelius? It's a little bit difficult. What does

Shirley Cornelius - Direct

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1 this line here say?

2 A I can't see that.

3 THE COURT: I can't see it either. When
4 you get past 20, you have to --

5 MR. ROSS: Oh, I understand, Your Honor.
6 I'm legally blind without my glasses.

7 THE COURT: That's better.

8 Q All right, this line here, what am I
9 looking at?

10 A The customer address history.

11 Q And who is the customer named?

12 A Douglas James Mayes.

13 Q And what is his address listed here?

14 A It's [REDACTED] [REDACTED] [REDACTED] in Pelion, South
15 Carolina.

16 Q And effective date, what does that mean?

17 A That's the date that his address was
18 changed.

19 Q Okay.

20 A That's the date that it was changed, that
21 day.

22 Q So if you update your address, this is
23 going to be your present address right here?

24 A Yes, sir.

25 Q Okay. What is State's Number Fifteen that

Shirley Cornelius - Direct

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1 I'm showing?

2 A I'm sorry?

3 Q State's Number Fifteen, what are you
4 looking at here?

5 A A photo.

6 Q And who is that a photograph of?

7 A Douglas James Mayes.

8 Q Okay. And, again, the address listed?

9 A Is [REDACTED] Pelion, South
10 Carolina.

11 Q Now, what does this print date mean?

12 A Oh, that's the date it was printed out.

13 Q So that's just the date this document was
14 printed?

15 A Yes, sir.

16 Q Okay.

17 Nothing further for this witness, Your
18 Honor.

19 THE COURT: All right, cross-examination,
20 Mr. Floyd?

21 MR. FLOYD: No questions, Your Honor.

22 THE COURT: All right, thank you. You may
23 step down. Would you like to have this witness
24 excused, Mr. Ross?

25 MR. ROSS: Please, Your Honor.

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1 THE COURT: Any objection, Mr. Floyd?

2 MR. FLOYD: No, Your Honor.

3 THE COURT: All right, you are excused.

4 Thank you for coming.

5 All right, you may call your next witness.

6 MR. ROSS: The State calls Candy Kyzer to
7 the stand.

8 THE COURT: All right, Ms. Kyzer, come
9 around, please.

10 (The witness was sworn.)

11 CLERK OF COURT: If you'll have a seat and
12 state your name, please, spelling your last for the
13 record.

14 MS. KYZER: Candy Kyzer -- K-Y-Z-E-R.

15 CANDY KYZER, having first been duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ROSS:

19 Q Ms. Kyzer, you're an evidence custodian at
20 Lexington County, is that right?

21 A Yes, I am.

22 Q How long have you been working there?

23 A I've been at the Sheriff's Department for
24 17 years.

25 Q And did you receive the evidence in this

Candy Kyzer - Direct

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1 particular case?

2 A Yes, I did.

3 Q Before we get to what you did in this
4 particular case, can you tell me about the
5 generalized procedures that y'all have with regards
6 to drugs being turned in to evidence?

7 A Whenever a deputy comes in, any kind of
8 items, whether it's drugs or not, it's usually
9 either in a gray box or in a locker that they put it
10 in. And then they have to push a button that locks
11 it from their side. So that means the only -- the
12 evidence custodians can actually get into the locker
13 from the other side.

14 And then when we come in in the morning,
15 we check the lockers and proceed to get the evidence
16 out and check the paperwork, make sure everything is
17 in order, and proceed to sign it in.

18 Q So when an officer turns drugs in to a
19 locker and locks that locker, who else can open it
20 at that point?

21 A The only people that have access to the
22 other side, which is in the office, is the three
23 evidence custodians and our supervisor.

24 Q Okay. Now, once y'all receive the
25 evidence out of that locker, what do you usually do

Candy Kyzer - Direct

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1 with the drugs in that case?

2 A We go ahead and we make sure everything is
3 in order. In this case, in our Best kit, we make
4 sure that the seals are still intact in the Best
5 kit. Then we go ahead and sign it in, print out
6 bar-code labels, put it in -- and with the Best kit,
7 it's waiting to go to the chemist. We put in what
8 we call our drug lab temp box.

9 Q Okay. Now, if you were to receive other
10 items with that case, say drug paraphernalia, would
11 you store those in the same room as the drugs
12 themselves?

13 A No, we would not.

14 Q Okay. Now, once you store the drugs in a
15 temporary storage room, what happens next?

16 A Whenever the chemist is ready to actually
17 get the Best kit, we end up doing paperwork and
18 calling her over to come pick them up. At that
19 time, I sign it out to the chemist for her to test.

20 Q Okay. And you document that when you sign
21 it out?

22 A Yes, we do.

23 Q And do you receive it back from the
24 chemist after she does her testing?

25 A We do.

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1 Q And do you document that?

2 A Yes, we do.

3 Q And do you check the seals, as well?

4 A We do.

5 Q Okay. Did you receive a Best kit in this
6 particular case?

7 A I did.

8 Q And what was the Best kit number?

9 A It's Best kit number C020453.

10 Q And when did you receive that Best kit?

11 A I received it on February 17, 2011.

12 Q Who turned it in?

13 A Eric Kirkland.

14 Q And where did you receive it from?

15 A From a locker.

16 Q And what did you do with it after you
17 received it?

18 A I signed it in, made sure all the seals
19 and everything were intact, and then I stored it in
20 the temporary drug lab box.

21 Q Were the seals intact?

22 A Yes, they were.

23 Q And what happened after you stored it in
24 the temporary drug room?

25 A A couple of days later, we ended up

Candy Kyzer - Direct

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1 signing out Best kits to the chemist. This one was
2 particularly signed and given to her.

3 Q When was it signed out?

4 A On February 22, 2011.

5 Q And did you personally sign that out?

6 A I did.

7 Q And when you signed it out, was it in the
8 same condition as when you received it on February
9 17, 2011?

10 A It was.

11 Q Had it been altered or manipulated in any
12 way?

13 A No.

14 Q Did anyone else come into possession of it
15 between February 17, 2011, and February 22, 2011?

16 A No, they didn't.

17 Q All right. And who is the chemist that
18 you signed it out to?

19 A It's Emily Homer.

20 Q And did Ms. Homer bring it back to you?

21 A She did.

22 Q And when did she do that?

23 A On March 29, 2011.

24 Q And what did you do with the item at that
25 point?

Candy Kyzer - Direct

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1 A At that point, since it had been tested,
2 we automatically go ahead and sign it in to a
3 regular drug box that we put miscellaneous drug
4 cases in. So then I signed it in and put it in a
5 particular drug box.

6 Q Okay. Did anyone else sign it out after
7 you placed it in that particular drug box?

8 A Yes, they did.

9 Q And who was that?

10 A Eric Kirkland.

11 Q When did he sign that out?

12 A He signed it out on September 6, 2011.

13 Q What time did he sign it out?

14 A He signed it out at 10:46 in the morning.

15 Q And did he return it back to you?

16 A Yes, he did.

17 Q And when did he return it back to you?

18 A September 6, 2011, at 12:37.

19 Q Why did he check it out?

20 A I believe he had a meeting with the
21 Solicitor for getting ready, preparing for court.

22 Q Okay. Did anyone else check that item
23 out?

24 A It was signed out again.

25 Q And when was that?

Candy Kyzer - Direct

305

1 A On May 15, 2012.

2 Q And who signed it out at that point?

3 A It was signed out to Emily Homer again.

4 Q And can you tell me some of the
5 circumstances surrounding that?

6 A At the time the Solicitor, Colleen Dixon,
7 came over to view the evidence before we went to
8 trial, she at that time noticed that there was
9 liquid inside the Best kit.

10 Q Okay. Where does Ms. Dixon work right
11 now?

12 A She is going to another Solicitor's
13 Office. I believe it's Berkeley County.

14 Q So she moved down to Berkeley?

15 A Yes.

16 Q Okay. So she noticed that there was
17 liquid in the Best kit. What happened at that
18 point?

19 A At that point, I called Emily to come over
20 and for her to look at it and let her and the
21 Solicitor see what they wanted to do.

22 Q So what happened? You signed it out to
23 Ms. Homer?

24 A I did.

25 Q And that was on what date, again?

Candy Kyzer - Direct

306

1 A It was May 15, 2012.

2 Q Did she subsequently return it to you?

3 A She did not return it back to me. She
4 returned it back.

5 Q So who did she return it back to?

6 A To Beth Harmon.

7 Q And who is Beth Harmon?

8 A She's another custodian, evidence
9 custodian.

10 Q So she does the same job you do?

11 A Yes.

12 Q Okay. Did you bring that Best kit to
13 court today?

14 A I did.

15 Q And may I see it, please?

16 COURT REPORTER: I've marked State's
17 Sixteen, Your Honor.

18 THE COURT: All right.

19 Q Ms. Kyzer, I'm showing you State's Number
20 Sixteen. Is that the Best kit we were just talking
21 about?

22 A It is.

23 Q Whose initials are --

24 THE COURT: It's not in evidence at this
25 point. She can't testify to it until it's in

Candy Kyzer - Direct

307

1 evidence.

2 MR. ROSS: Yes. I'm asking her to lay
3 some foundation.

4 THE COURT: Oh, okay, all right, then lay
5 the foundation.

6 Q Whose initials are these right here?

7 A That's Beth Harmon's initials.

8 Q And how many years have you worked with
9 Ms. Harmon?

10 A Probably seven.

11 Q So you would recognize her initials on
12 sight?

13 A Yes.

14 Q Tell me the circumstances surrounding why
15 these initials got placed on the Best kit.

16 A Whenever Beth signed it back in, she --
17 somehow it got placed in the wrong drug box, and she
18 ended up noticing that whenever it somehow leaked on
19 her. And so it got pulled out, and she put it in a
20 K-pack bag.

21 Q So this plastic bag surrounding the manila
22 envelope and the other plastic bag, that's a K-pack
23 bag?

24 A Yes.

25 Q And what is K-pack?

Candy Kyzer - Direct

308

1 A It's a thicker bag type substance thing --

2 Q Okay.

3 A -- that you can put -- usually, it's for
4 like fire debris and stuff like that.

5 Q Okay. And what appears to be the date on
6 those beside the initials?

7 A August 3, 2012.

8 Q Were there any baggies and digital scales
9 turned in to evidence in this case, as well?

10 A It was.

11 Q And when were those turned in?

12 A They were turned in February 17, 2011.

13 Q And who received them?

14 A I signed them in.

15 Q Okay. And you documented that?

16 A Yes, I did.

17 Q And what did you do with them at that
18 point?

19 A We have -- they're like banker boxes that
20 we put miscellaneous items in for cases that we know
21 are not going to be big cases. Instead of taking up
22 a shelf with a big box with just small items, we put
23 cases in these banker boxes. And at that time,
24 that's where I placed it.

25 Q When you say "big cases," are you

Candy Kyzer - Direct

309

1 referring to the amount of evidence received?

2 A Yes.

3 Q Is this a different storage room than
4 where you place drugs?

5 A It is.

6 Q Okay. Who has access to that storage
7 room?

8 A The evidence custodians and my boss.

9 Q Okay. Did anyone subsequently check out
10 the digital scales and the plastic bags?

11 A Yes, they did.

12 Q And who is that?

13 A It was Eric Kirkland.

14 Q And when did he check those out?

15 A On September 6, 2011, at 10:46.

16 Q Is that the same time as he checked out
17 the Best kit C020453?

18 A It was.

19 Q And when did he return the baggies and the
20 digital scales?

21 A On September 6, 2011, at 12:37.

22 Q And what did you do with them at that
23 point?

24 A Placed them back in the box that they
25 should have been in.

Candy Kyzer - Direct

310

1 Q Okay. Did you bring those baggies and the
2 digital scales to court?

3 A I did.

4 Q May I see them, please? And it appears
5 that the baggies and the digital scales are stapled
6 together?

7 A They were -- they are.

8 Q And I'll remove the staples.

9 I'm going to have this one marked as the
10 next number.

11 THE COURT: Number seventeen, Ms. Thomas?

12 COURT REPORTER: I've marked State's
13 Seventeen, Your Honor.

14 THE COURT: All right.

15 MR. ROSS: And then I'd ask that this one
16 be marked as eighteen.

17 COURT REPORTER: State's Number Eighteen.

18 Q I'm showing Ms. Kyzer State's Number
19 Seventeen. Are those the plastic bags that were
20 turned in that we were talking about?

21 A Yes.

22 Q And State's Number Eighteen, are these the
23 digital scales we were talking about?

24 A Yes.

25 Q Now, were you previously asked to bring

Candy Kyzer - Direct

311

1 these items to court --

2 A Yes.

3 Q -- the digital scales and the plastic
4 bags?

5 A Yes, I was.

6 Q And were you able to find them?

7 A No, I was not.

8 Q Can you tell me about that, please?

9 A Back October of 2011, I had been notified
10 that this case was getting ready to go to court and
11 had gotten a phone call stating that I needed to
12 come on over to testify. At that time, I went ahead
13 and pulled all the evidence that we had, pulled the
14 drugs and found them and the gun.

15 And at that time, I went to go outside to
16 pull the plastic baggies and the scale and
17 everything and could not locate it in the box that
18 it was supposed to be in.

19 Q Okay. And what did you do at that point?

20 A I ended up looking around in the other
21 boxes beside it, on top of it, anywhere that I could
22 look, and still could not locate it.

23 Q Were these items ever located?

24 A Yes, they were.

25 Q When were they located, and by whom?

Candy Kyzer - Direct

312

1 A A couple of weeks later, my sergeant,
2 Barbara McMullen, and Deputy Joe Hart had went
3 outside. At that time, I thought it was to
4 rebar-code label packages because we had started a
5 new computer system at that time and returned --

6 MR. FLOYD: I'm going to object to any
7 hearsay, if she's going to testify as to what they
8 said.

9 THE COURT: All right. I don't think this
10 part is being offered for the truth of what was
11 offered. So at this point, it's not hearsay.

12 You can't tell him what anybody told you,
13 but you can tell what you saw or observed, okay? Go
14 ahead.

15 A I was -- they went outside and then was
16 looking for the packages. And it ended up Deputy
17 Joe Hart found it.

18 Q And why was Deputy Joe Hart --

19 MR. FLOYD: Your Honor, I object. The
20 only way she would know that is by hearsay, which
21 you just ruled she couldn't do.

22 THE COURT: All right. Ask her if she has
23 any personal knowledge of him finding it, and if so,
24 how, other than what he told her.

25 Q What is your personal knowledge of how he

Candy Kyzer - Direct

313

1 found that?

2 A He came back in the office and had the
3 bags in his hand.

4 Q Okay. Did you see that?

5 THE COURT: All right, that's admissible.

6 A I did see whenever he came back in the
7 office with them, yes.

8 Q And did he subsequently place those items
9 in the correct box?

10 A Yes.

11 Q How many pieces of items do y'all have
12 stored out there in that storage room?

13 A In that one storage room, we have
14 approximately 9,600 cases or items, and our total is
15 like 35,000.

16 Q Now, these two pieces of evidence which
17 are seventeen and eighteen, these have been -- once
18 Eric Kirkland turned them back in, have they been
19 within the custody of the Lexington County evidence
20 room?

21 A Yes, they have.

22 Q Okay. The whole time?

23 A Yes.

24 Q Okay.

25 MR. ROSS: Your Honor, at this point we

Candy Kyzer - Direct

314

1 would offer seventeen and eighteen into evidence.

2 THE COURT: Mr. Floyd?

3 MR. FLOYD: Your Honor, we object. I
4 don't think the chain has been properly -- a
5 foundation has been properly established.

6 THE COURT: Where is the gap?

7 MR. FLOYD: They admit they lost both of
8 the items at some point in time. They were in the
9 wrong boxes.

10 THE COURT: That's right. Is there any
11 evidence that they were not in the custody of the
12 evidence department the entire time?

13 MR. FLOYD: There's no evidence that they
14 were either, Your Honor. It's just speculation that
15 we don't think it was anywhere else. But both of
16 these items --

17 THE COURT: Well, you've got a different
18 rule as to fungible goods as opposed to non-fungible
19 goods, and these are non-fungible goods where
20 identity is not an issue like the possibility of
21 drugs or things that can be mixed up.

22 But if this witness can testify that these
23 are the same ones that she had originally and
24 they're the same now as they were then, and they
25 were brought back to her from this individual, where

Candy Kyzer - Direct

315

1 is the gap in the custody?

2 MR. FLOYD: The gap is nobody can say
3 where they were when they were missing.

4 THE COURT: All right, I'm going to
5 overrule the objection. The missing is not missing
6 from the evidence room but missing from being able
7 to locate it within the evidence room.

8 There is no evidence that they ever left
9 the evidence department, if there was any evidence
10 whatsoever that they left the evidence department.
11 It was simply the testimony is they could not be
12 found within the Lexington County evidence
13 department, and they were misplaced there and found
14 still within the department.

15 And that's the way I understood the
16 testimony, and I don't think that that is a gap in
17 the chain of custody. The objection is overruled.
18 The evidence will be admitted subject to the
19 objection of the defendant.

20 MR. ROSS: Thank you, Your Honor.

21 Seventeen and eighteen.

22 THE COURT: Seventeen and eighteen.

23 (State's Exhibit Number
24 Seventeen, Plastic Bag of Plastic Bags; and State's
25 Exhibit Number Eighteen, Plastic Bag, Scales, were

Candy Kyzer - Direct

316

1 entered in evidence.)

2 Q Was there a rifle turned in in this case,
3 as well?

4 A Yes, it was.

5 Q And did you document that?

6 A Yes.

7 MR. ROSS: No further questions for this
8 witness, Your Honor.

9 THE COURT: Cross-examination?

10 MR. FLOYD: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q Officer Kyzer, when this case was to be
14 called to trial back in October 2011, you couldn't
15 find some of the evidence, is that correct?

16 A That's correct.

17 Q And what couldn't you find?

18 A The plastic baggies, the digital scales,
19 and the miscellaneous paperwork.

20 Q And what kind of room was that evidence
21 stored in -- or supposed to be stored in?

22 A It's now a climate-controlled room that we
23 store all of our multi-case boxes and computers in.

24 Q Now, I believe you testified that the
25 items had been checked out to Agent Kirkland on

Candy Kyzer - Cross

317

1 September the 6th -- let me check the date --

2 September the 6th and returned September the 6th?

3 A That's correct.

4 Q Who were they returned to?

5 A They were returned to me.

6 Q Once they were returned to you, what did
7 you do with them then?

8 A I signed them back in. And then we put
9 all of our items on a cart, and we take them all out
10 to the warehouse at one particular time.

11 Q And did you place them back in the box at
12 that time?

13 A They were placed in a box at that time.

14 Q Did you place them in the correct box at
15 that time?

16 A I can't say. I don't know if I was the
17 one that placed them in the box or if my co-workers
18 were the ones that did it, because on the cart we
19 all take out the items that are on the cart and all
20 just pick up items and place them back where they're
21 supposed to be. So at that time, I don't know which
22 one of us did it.

23 Q But in any event, when you went back
24 several weeks later, the items were not in the box
25 they were supposed to be?

Candy Kyzer - Cross

318

1 A That's correct.

2 Q Now, you have no idea, do you, where they
3 were between those times except that they weren't
4 where they were supposed to be, then they were in
5 another box later?

6 A That's correct.

7 Q They could have been moved around several
8 times, for all you know?

9 A They could have been.

10 Q Because you have no knowledge of where
11 they were from September the 6th until several weeks
12 after October when you went to go to court, is that
13 correct?

14 A That's correct.

15 Q Now, let's go to the drugs themselves,
16 okay? Now, were those checked out also to Agent
17 Kirkland on September the 6th?

18 A Yes, they were.

19 Q And they were returned on September the
20 6th, is that correct?

21 A That's correct.

22 Q Now, the drugs themselves, would you
23 describe the room they're stored in?

24 A Would I --

25 Q Would you describe the room the drugs are

Candy Kyzer - Cross

319

1 stored in in the evidence?

2 A The drug room is a room that is in our
3 office. It is not air-conditioned. It has a fan
4 that pulls the air through the room and circulates
5 it back out.

6 And in our drug room, we have lots of
7 multi-case boxes where we store Best kits like this
8 instead of taking up a space with a big box that has
9 just a little package in it.

10 Q So this Best kit would have been stored in
11 a box with other Best kits?

12 A That's correct.

13 Q Any idea how many other Best kits would
14 have been in that box?

15 A Approximately 30 to 40 Best kits.

16 Q Okay. And in that room, the climate
17 control in that room is by way of a fan, is that
18 correct?

19 A That's correct.

20 Q That's in the same building as the
21 Sheriff's Department?

22 A It's actually located outside of the
23 Sheriff's Department in our evidence office.

24 Q Is it connected to the evidence office?

25 A Yes, it is.

Candy Kyzer - Cross

320

1 Q And your evidence office, that's
2 air-conditioned, is it not?

3 A Yes, it is.

4 Q Are there other rooms in that building
5 that are air-conditioned?

6 A We also have our gun room that's in there
7 that is air-conditioned.

8 Q And the drug room is how big?

9 A I would say maybe 12 by 6.

10 Q Now, did you actually handle the Best kit
11 that the alleged drugs were in on September the 6th
12 whenever it was checked out and returned?

13 A Yes, I did.

14 Q Were they in the same shape as when they
15 had been checked in to evidence?

16 A They were.

17 Q Now, when you went to go to court in
18 October and you couldn't find some items, are you
19 testifying that the drugs were still there?

20 A They were.

21 Q And were they in the same shape?

22 A Yes, they were.

23 Q Now, then in May, is that when Ms. Dixon
24 came over to look at the drugs again?

25 A It was.

Candy Kyzer - Cross

321

1 Q And at that time, you noticed liquid in
2 your Best kit, is that correct?

3 A She had noticed liquid in it, yes.

4 Q That was not in the same shape any more
5 then, as they were, is that correct?

6 A That's correct.

7 Q Now, did you check all the other drugs to
8 see whether there was liquid in them in the Best
9 kits?

10 A We looked at the drugs that were around
11 there, and they were all in the same shape that they
12 were supposed to be in.

13 Q And this was the only one?

14 A This was the only one that we noticed,
15 yes.

16 Q That had liquid in it?

17 A Yes.

18 Q Now, these Best kits, they're supposed to
19 be tamper-proof, are they not?

20 A They are tamper-proof.

21 Q They're all supposed to be waterproof, are
22 they not?

23 A I guess so. I've never actually heard
24 that being asked before.

25 Q Well, can stuff leak out of them?

Candy Kyzer - Cross

322

1 A No, they're not supposed to, I don't
2 think.

3 Q So when you saw that the drugs had changed
4 and they now had liquid in them, is that when y'all
5 decided to get the chemist back involved?

6 A Yes, it was.

7 Q And you turned them over to the chemist on
8 May 15th?

9 A That's correct.

10 Q And returned from the chemist on July 31,
11 2012, is that correct?

12 A That's correct.

13 Q Now, when they were turned in on July
14 31st, were they put in the correct box?

15 A To my knowledge, they were not. I'm not
16 the one that signed them back in.

17 Q Okay. So what happened on August the 3rd,
18 some three days later?

19 A From what I was told, my co-worker was in
20 the drug room and a package had leaked on her. And
21 she pulled it out, and that's when it was noticed
22 that it was in the wrong box. And she pulled it out
23 and then heat-sealed it in a K-pack container.

24 Q Okay. So now we've got the drugs in the
25 wrong box like we had the other items in the wrong

Candy Kyzer - Cross

323

1 box, is that correct?

2 A That's correct.

3 Q Now, when you say it leaked on her, you
4 mean she's walking around in there, and she gets hit
5 with moisture?

6 A I'm not really sure. I wasn't there that
7 day.

8 Q There's no question, is it, that the drugs
9 -- or the alleged drugs -- in their original state
10 were not liquid, were they?

11 A No, they weren't.

12 Q So there's no question but that whatever
13 you've got inside that bag now is different than the
14 way it was when y'all took custody of it, is that
15 correct?

16 A It's in a different state.

17 Q It's different, isn't it?

18 MR. ROSS: Objection, Your Honor. I think
19 this goes outside of her expertise.

20 THE COURT: I think she's answered as best
21 she can.

22 Q Now, State's Exhibit Six --

23 A Yes.

24 Q -- I'm sorry, sixteen. Is that what
25 you're saying now contains the original Best kit?

Candy Kyzer - Cross

324

1 A Yes.

2 Q Of course, you can't see the Best kit
3 through the manila envelope, can you?

4 A No, sir.

5 Q And it appears to have moisture --

6 A Yes.

7 Q -- damage, moisture damage here?

8 A Yes.

9 Q And that's different than the way it was
10 when it was turned in, is that correct?

11 A It was not liquid when it was turned in.

12 Q Now, we know by admission that the scales
13 and the bags were not where they were supposed to be
14 for several weeks, is that correct?

15 A They were not in the drug box or the box
16 that they were supposed to be in for several weeks.

17 Q So you don't really know where they were
18 for those several weeks, do you?

19 A No, sir.

20 Q So we have several weeks in there where
21 nobody knows where those items were, is that
22 correct?

23 A No, sir.

24 Q Why is not correct?

25 A Well, it is correct.

Candy Kyzer - Cross

325

1 Q Okay. And we have at least three days
2 when you cannot testify with certainty where the
3 drugs were located, is that correct?

4 A They were in another drug box, but I'm not
5 the one that signed them back in or discovered that.

6 Q Okay. What your records show is that when
7 they were returned to the lab -- I mean returned
8 from the lab on July 31st, they were next discovered
9 on August the 3rd somewhere where they shouldn't be,
10 is that correct?

11 A They were in another drug box in the drug
12 room.

13 Q But you can't tell us it's where they
14 were --

15 MR. ROSS: Objection, calls for
16 speculation.

17 THE COURT: All right, I'm going to allow
18 him to ask the question. He can ask the question.
19 If you have an objection, make your objection after
20 the question is asked.

21 Q So you can't tell us where they were on
22 August the 1st, can you?

23 MR. ROSS: Objection, Your Honor. She's
24 already testified that another evidence custodian
25 received it in, so that's outside of her personal

Candy Kyzer - Cross

326

1 knowledge.

2 THE COURT: All right, that would be her
3 answer if that is the answer. I'm going to allow
4 her to answer the question.

5 A I'm not really sure. I'm not the one that
6 actually received it on the 31st of July, and I'm
7 not the one that discovered it on August the 3rd.

8 Q Is that individual in court?

9 A Yes, she is.

10 Q Now, when you originally gave a statement
11 concerning the misplaced bags and scales, wasn't
12 your testimony that they were discovered -- or your
13 statement at that time that those were discovered by
14 someone when they were rebar-coding?

15 A Yes. We had just gotten in a new computer
16 system and were having to change out our bar-code
17 labels to adjust for the new system. And I had
18 thought that my supervisor and Deputy Joe Hart had
19 went outside at that time to rebar-code the packages
20 in the multi-case boxes. It was told to me later
21 that they had actually went out there to look for
22 those items.

23 Q Which was different than the original
24 statement?

25 A Yes.

Candy Kyzer - Cross

327

1 Q Now, as to the gun, the weapon --

2 A Yes.

3 Q -- isn't it true that that was at some
4 point released to ATF?

5 A It was.

6 Q Do you know what ATF is?

7 A Yes, I do.

8 Q Will you tell the jury what ATF is?

9 A They do -- they handle all the guns for
10 the country.

11 Q And can you tell us when it was released
12 to ATF and when it was returned?

13 A It was released to ATF on June 13, 2011.

14 Q Returned?

15 A We got it back on September 6, 2011.

16 Q Thank you, Officer Kyzer. No further
17 questions.

18 THE COURT: Redirect, Mr. Ross?

19 MR. ROSS: Yes, sir.

20 REDIRECT EXAMINATION.

21 BY MR. ROSS:

22 Q Ms. Kyzer, you testified that Agent
23 Kirkland checked these items out to go discuss the
24 case with the Solicitor, is that correct?

25 A That's correct.

Candy Kyzer - Redirect

328

1 Q You also testified that the Solicitor came
2 by on May 15, 2012, to look at the drugs, is that
3 correct?

4 A That's correct.

5 Q Now, is it the regular practice for the
6 prosecuting attorney to come by and view the
7 evidence before he takes a case to trial?

8 A It is.

9 Q Is that anything out of the ordinary?

10 A No, it's not.

11 Q Now, the drugs are now partially
12 liquefied, is that correct?

13 A That's correct.

14 Q This isn't the only case in Lexington
15 County over at the Sheriff's Department where drugs
16 have melted within the past few months, is that
17 correct?

18 A I'm not really sure. I don't know.

19 Q Okay. And Mr. Floyd asked you about the
20 weeks after you were initially called to bring these
21 items into court. And I believe you responded that
22 you didn't know where these items were, correct?

23 A That's correct.

24 THE COURT: What are you referring to?

25 MR. ROSS: I'm referring to State's

Candy Kyzer - Redirect

329

1 Seventeen and Eighteen --

2 THE COURT: Okay.

3 MR. ROSS: -- the bags and the scales.

4 THE COURT: All right.

5 Q You knew they were in the storage room,
6 right?

7 A Yes.

8 Q So it's just where in the storage room,
9 that's the issue?

10 A That's correct.

11 Q Okay. And these are the same bags and the
12 same digital scales that were turned in?

13 A Yes.

14 MR. ROSS: That's all the questions I have
15 for her, Your Honor.

16 THE COURT: Anything further, Mr. Floyd?

17 RECROSS EXAMINATION

18 BY MR. FLOYD:

19 Q Did you see any other Best kits in the box
20 where these were discovered that were liquid?

21 A I didn't see any that were liquid, but my
22 sergeant is the one that actually went through and
23 looked.

24 Q Well, have you had any that were liquid
25 other than this?

1 A Not that I'm aware of.

2 Q Thank you. I have no further questions.

3 THE COURT: All right, thank you, ma'am.
4 You may step down.

5 All right, ladies and gentlemen, it's
6 about the middle of the morning. I think it's
7 appropriate that we take our midmorning break at
8 this time, and we're going to do that. It's about
9 11:20, so we're going to take about ten minutes and
10 allow you to go to your jury room and relax for a
11 few minutes.

12 Please do not discuss the case among
13 yourselves. It's still premature for you to begin
14 any discussion of the case among yourselves. But
15 relax, and we'll send for you very shortly. Thank
16 you. You may go with the bailiff.

17 (The jury left the
18 courtroom at 11:20 a.m.)

19 THE COURT: All right, before we adjourn,
20 let me go on the record for just a moment with
21 regard to the ruling of the Court with regard to
22 State's Exhibits Number Seventeen and Eighteen.

23 At this point, those are the plastic
24 baggies and the digital scales. The State has not
25 yet offered State's Sixteen, which is the Best kit,

1 so we'll debate that at the appropriate time.

2 I'm sure there will probably be some
3 objection to that, and we'll debate that at the
4 proper time. But I just want to say for the record
5 that in my view, there is a difference between
6 chain-of-custody arguments with regard to non-
7 fungible items.

8 For example, if you've got a burglary, and
9 let's say a clock is stolen from someone's house.
10 And that individual later goes to a pawnshop or
11 somewhere and finds a clock and identifies that
12 clock as the clock that was stolen.

13 There is no requirement that that piece of
14 evidence be in somebody's custody the whole time,
15 because they can identify that as being the same
16 one. That's what we have with the plastic baggies
17 and the digital scale here.

18 The witness has testified that these
19 plastic bags and these digital scales are the same
20 ones that were originally brought to her, and they
21 are non-fungible items. And therefore I think that
22 the proper identification of them has been made and
23 the admission into evidence was appropriate, and
24 that was the reason for the Court's rulings.

25 We will get into the matter with the drugs

1 at the appropriate time that they are offered. All
2 right, let's take ten minutes, counsel, and we'll be
3 ready to go forward.

4 (Court in recess.)

5 THE COURT: Back on the record, then, now
6 with regard to the State versus Mayes. Mr. Mayes is
7 present and in the courtroom with his attorney.

8 Anything before we go forward with the
9 next witness from the State, Mr. Ross?

10 MR. ROSS: No, Your Honor.

11 THE COURT: Anything before we bring the
12 jury in?

13 MR. ROSS: No, sir.

14 THE COURT: All right, Mr. Floyd?

15 MR. FLOYD: No, Your Honor.

16 THE COURT: All right, bring the jury in,
17 please.

18 (The jury returned to the
19 courtroom at 11:42 a.m. after which the following
20 proceedings were had:)

21 THE COURT: All right, thank you very
22 much, ladies and gentlemen. And we are now ready to
23 go forward, and the State may continue presenting
24 their case.

25 Mr. Ross?

333

1 MR. ROSS: The State calls Beth Harmon to
2 the stand.

3 THE COURT: All right, come around,
4 please.

5 (The witness was sworn.)

6 CLERK OF COURT: If you'll have a seat and
7 state your name, please, for the record.

8 MS. HARMON: Margaret Elizabeth Harmon --
9 H-A-R-M-O-N.

10 MARGARET ELIZABETH HARMON, having first
11 been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ROSS:

14 Q Ms. Harmon, you're an evidence custodian
15 at the Sheriff's Department, right?

16 A I am.

17 Q And you work with Ms. Kyzer, is that
18 right?

19 A I do.

20 Q And did you handle the Best kit in this
21 case?

22 A Yes, I did.

23 Q And just to make sure we're talking about
24 the same thing, let me show you State's Number
25 Sixteen.

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1 A Yes.

2 Q Is that the Best kit you handled?

3 A It is.

4 Q Now, I see you looking at the top of that
5 Best kit. And does it have the Best kit number
6 documented on this white bar code here?

7 A It does. I was looking at the control
8 number, though.

9 Q Okay. What is the Best kit number right
10 here?

11 A The Best kit number is Best kit number
12 C020453.

13 Q Can you tell me how you came to handle
14 this Best kit?

15 A This Best kit was returned back from Emily
16 Homer on July 31, 2012, at 10:11 in the morning, and
17 I received it then. I placed it in a bag. However,
18 I did misfile it. Our drug room temp box is in a
19 drug lab or, I'm sorry, a drug room.

20 That drug room has several different
21 multi-case boxes, approximately a hundred or more.
22 Each one of those boxes can contain 30 to 60
23 different cases, and I accidentally misfiled it.
24 They're all filed by numerical order.

25 Q And is this a different room than where

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1 drug paraphernalia such as scales and bags would be
2 stored?

3 A It is.

4 Q Okay. So you filed it in the drug room.
5 Did you ever come into contact after that?

6 A Yes, I did. That Friday, on August --
7 yes, August the 3rd, I was placing other items into
8 Best kit boxes -- multi-case boxes in the drug room.
9 And while I was placing those items, I noticed that
10 this one was misfiled.

11 Q Okay. And what did you do with it at that
12 point?

13 A I took it out and went to file it in its
14 correct location.

15 Q And what happened?

16 A It leaked on me.

17 Q Okay. How did it leak on you?

18 A The Best kit itself inside the K-pack bag
19 that I placed it in is in another plastic bag. That
20 bag is then placed into an envelope. The seal on
21 that when it was examined by myself, my supervisor,
22 and the narcotics lieutenant, it was noted that it
23 had a crease in the seal. That crease allowed the
24 liquid to seep out.

25 Q And the seal that you're talking about, is

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1 that the seal that the original narcotics officer
2 places on it or the chemist?

3 A The chemist.

4 Q So you said there was a little bit of a
5 crease?

6 A Yes.

7 Q Can you describe that?

8 A As you know, when you're sealing any type
9 of plastic, when you're heat-sealing it, if there's
10 any type of crease in it, that heat seal is made
11 over that crease, which will allow a slight air
12 pocket to form.

13 Q So there was an air pocket?

14 A Yes.

15 Q Okay. And that's from where the liquid
16 seeped onto you?

17 A Yes.

18 Q Okay. And what did you with it at that
19 point?

20 A Once it seeped on me, I called my
21 supervisor. She was in our warehouse. I called
22 her. She then called the lieutenant of the
23 narcotics division. Both of them came over,
24 examined the package, examined me, and we heat-
25 sealed it in a K-pack bag. And I was sent to get a

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1 new uniform --

2 Q Okay.

3 A -- because I couldn't wear that one
4 anymore.

5 Q Now, what is a K-pack bag?

6 A A K-pack bag is just a bag similar -- K-
7 pack is the brand, I believe. It's just a plastic
8 bag that allows us to seal stuff.

9 Q So this is another type of heat-sealed
10 bag?

11 A It is.

12 Q And we're looking at State's Sixteen, this
13 outer plastic bag containing contents. The outer
14 plastic bag is the K-pack bag you're referring to?

15 A That's correct.

16 Q And did you initial the heat seal?

17 A I did. I initialed my seal in red.

18 Q Okay. Are these your initials right here?

19 A They are.

20 Q And is the date that you initialed them?

21 A It is.

22 Q And why did you do that?

23 A We initial all of our seals so that we
24 know who sealed it and so that we can identify if
25 that seal has been broken.

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1 Q Okay. Has the seal been broken?

2 A It has not.

3 Q Is State's Number Sixteen in the same
4 condition now as when you sealed it?

5 A It is.

6 Q And how do you know that?

7 A Because the seal is still intact, my
8 initials are still there.

9 Q Okay. Now, inside State's Number Sixteen,
10 what is this manila envelope here?

11 A That's just a packaging envelope that we
12 place the items in when we store them.

13 Q Okay. Now, is there another plastic bag
14 inside of it?

15 A There is.

16 Q I'm going to ask you about the drug
17 storage room. Is it air-conditioned?

18 A It is not. It has a vent fan in that
19 pulls air from the outside, circulates it in that
20 small room, and it goes out of an exhaust fan.

21 Q Have you had other cases within the past
22 several months where it's been discovered that crack
23 cocaine has melted?

24 A I know of one personally.

25 Q And that's personally in addition to this

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1 case?

2 A That is correct.

3 Q And was it stored in that same storage
4 room?

5 A It was in the same storage room. It was
6 not in the same box.

7 Q Okay. So different -- it depends on the
8 case. Sometimes it may melt, sometimes it may not?

9 A Yes.

10 Q This wasn't the only time or the only case
11 of crack cocaine melting out there in that storage
12 room?

13 A No, sir.

14 MR. ROSS: Nothing further for this
15 witness, Your Honor.

16 THE COURT: Cross-examination, Mr. Floyd?

17 MR. FLOYD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q Officer Harmon, how many different bags,
21 Best kits, of drugs do you have in the drug room?

22 A There are thousands in there.

23 Q Thousands?

24 A Yes, sir.

25 Q And you say you know of one other time

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1 where there's been a melting?

2 A Yes, sir, I personally know of one other
3 time.

4 Q Now, at one time wasn't this brown bag
5 sealed, also?

6 A No, sir. We don't seal those.

7 Q That never was sealed?

8 A No, sir. They have a clasp on the back
9 that we close, but it's not a tamper-evident seal or
10 a tamper-resistant seal.

11 Q It never was sealed with your initials and
12 closed?

13 A The envelope itself, no.

14 Q So you first became involved in connection
15 with these items, with Exhibit Number Sixteen, was
16 it July 31st that was your first involvement, or did
17 you have some before that?

18 A Just July 31, 2012, at 10:11 in the
19 morning.

20 Q And that's when you checked the drugs back
21 in from the chemist?

22 A That's correct.

23 Q And they had been in the chemist's control
24 since May 15th?

25 A To my knowledge, yes.

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1 Q You didn't have any contact with them back
2 on May 15th when the liquid was first discovered?

3 A Yes, sir.

4 Q Now, from July 31st to August the 3rd, you
5 say the drugs were in the wrong box?

6 A Yes, sir, I misfiled them.

7 Q And you specifically remember misfiling
8 them?

9 A No, I don't remember misfiling them. But
10 it was quite obvious because I found them in the
11 wrong box.

12 Q Okay. Well, what you now is you found
13 them in the wrong box?

14 A Yes, sir, and I know that I'm the one that
15 placed them in the drug room when I received them
16 back from the chemist.

17 Q Okay. Well, I thought y'all put them on a
18 tray or something, and all of y'all went back in
19 there.

20 A No, sir. Things that go outside we do put
21 on a cart. Things that go inside we put away
22 ourselves.

23 Q Okay. So you assume that they were there
24 from July 31st through August the 3rd?

25 A No, sir, I don't assume that. I know that

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1 they were in the drug room. I know that I placed
2 them in the drug room on July 31st. However, due to
3 human error, I placed them in the wrong box. I
4 found that error on August the 3rd and corrected it
5 upon notation of it.

6 Q Do you know for a fact it was in that box
7 on August 1st?

8 A In the box that I found it in, yes, sir.

9 Q How do you know that?

10 A It had to be. Nobody else has access to
11 that room other than myself and my co-workers. We
12 don't just randomly go and pick up cases and move
13 them.

14 Q Did the supervisor go back in there?

15 A No, sir. My supervisor is in her office
16 the majority of the day. She does come out and
17 assist us with cases if we have an extensive case
18 load. However, primarily Candy Kyzer and I are the
19 ones responsible for entering evidence.

20 Q Well, we had some other items that were
21 missing, and they were discovered supposedly by a
22 supervisor, McMullen, and a Deputy Hart, is that
23 correct?

24 A To my knowledge, they found them.

25 Q So other people do go in the drug room?

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1 A Those items were not in the drug room,
2 sir.

3 Q You're saying no one else has ever been in
4 the drug room?

5 A I'm not saying no one's ever been in the
6 drug room. I'm saying at that time, I'm the one
7 that notated the error, and I corrected my own
8 error.

9 Q Okay, I understand that you got them back
10 July 31st, and you discovered them in the wrong box
11 August 3rd --

12 A Yes, sir.

13 Q -- is that correct? And you just assume
14 they were in that wrong box --

15 MR. ROSS: Objection, asked and answered.

16 THE COURT: Sustained, not as asked and
17 answered, but she's already said that she's not
18 making an assumption. You can reword it if you're
19 not going to ask the same question. But don't ask
20 her to assume anything.

21 Q Did you check the box August 1, 2012?

22 A No, sir, I did not.

23 Q Did you check the box August 2, 2012?

24 A No, sir, I did not.

25 Q Did you check the box the afternoon of

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1 July 31, 2012?

2 A No, sir, I did not.

3 Q The box that you found them in --

4 A Yes, sir.

5 Q -- did you see any other boxes or any
6 other Best kits leaking?

7 A I did not go through each item in that
8 box, sir.

9 Q But did you see any?

10 A I did not pull out each one.

11 Q But did you see any that were in there?

12 A If I didn't pull out each one, I can't
13 tell you if I saw one that was leaking or not.

14 Q Did you see moisture on the bottom of the
15 box?

16 A The box itself?

17 Q Yes.

18 A I didn't pull the box out.

19 Q And the Best kits are not supposed to
20 leak, are they?

21 A They're not waterproof.

22 Q What are they made of?

23 A Plastic.

24 Q So water would leak through them?

25 A It has an opening. So, yes, anything that

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1 has an opening can leak.

2 Q How about through the plastic material
3 itself? Is it waterproof?

4 A Plastic material itself? I'm not familiar
5 with how plastic is made, so I can't tell you for
6 sure if all plastic is waterproof or not.

7 Q The material that the Best kit is made out
8 of, would water leak through it?

9 A From my knowledge from a Best kit, it says
10 on there that it is tamper-evident. It does not say
11 anywhere on there that it's waterproof.

12 Q Thank you. I have no further questions.

13 THE COURT: Redirect?

14 MR. ROSS: No, Your Honor.

15 THE COURT: All right, thank you. You may
16 step down.

17 All right, you may call your next witness.

18 MR. ROSS: The State calls Emily Homer to
19 the stand.

20 THE COURT: All right, Ms. Homer, come
21 around, please.

22 (The witness was sworn.)

23 CLERK OF COURT: If you'll have a seat
24 over here, state your name, spelling your last for
25 the record.

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1 MS. HOMER: Emily Homer Conrad -- H-O-M-E-
2 R C-O-N-R-A-D.

3 EMILY HOMER CONRAD, having first been duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ROSS:

7 Q Ms. Homer, you're the chemist at the
8 Sheriff's Department, is that right?

9 A Yes.

10 Q Can you tell me about your qualifications
11 to hold this job?

12 A I have a bachelor's in chemistry from
13 University of South Carolina and a master's in
14 organic chemistry from USC.

15 Q Do you have any training at any law
16 enforcement agencies?

17 A Yes, I trained at SLED and with the DEA to
18 do forensic drug analysis.

19 Q What is forensic drug analysis?

20 A Drug analysis for the purposes of criminal
21 court.

22 Q Okay. How long have you been the chemist
23 with the Sheriff's Department?

24 A This coming November will be seven years.

25 Q Okay. And how many cases have you tested

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1 in those seven years, approximately?

2 A Over 2,000 cases.

3 Q Okay. Have you ever been qualified as an
4 expert in State Circuit Court before?

5 A I have.

6 Q How many times?

7 A In state court, 18 times, once federal.

8 Q Okay.

9 Your Honor, at this point we would offer .
10 Ms. Homer as an expert in drug analysis.

11 THE COURT: All right, Mr. Floyd, any voir
12 dire with regard to qualifications?

13 MR. FLOYD: No voir dire, Your Honor.

14 THE COURT: All right, any objection to
15 qualification of the witness as an expert?

16 MR. FLOYD: No, Your Honor.

17 THE COURT: All right, the Court will
18 qualify Ms. Homer as an expert in the field of
19 chemistry and drug analysis.

20 And, ladies and gentlemen of the jury, let
21 me tell you what that means. Ordinarily, a witness
22 who is not testifying as an expert is limited in
23 their testimony to opinions or inferences that are
24 rationally based on the perception of a witness,
25 that is, one of the five senses, and are helpful to

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1 a clear understanding of the witness' testimony and
2 do not require special knowledge, skill, experience,
3 or training.

4 However, if scientific, technical, or
5 other specialized knowledge will assist the trier of
6 fact -- and that's you in this case -- to understand
7 the evidence or to determine a fact in issue, then a
8 witness qualified as an expert by knowledge, skill,
9 experience, training, or education may testify in
10 the form of an opinion.

11 So basically the difference between an
12 expert witness and a non-expert witness is that an
13 expert witness is allowed to give opinion in their
14 qualified field, whereas a non-expert witness would
15 not be allowed to give an opinion. And I have
16 qualified this witness as an expert in the field of
17 chemistry and drug analysis.

18 All right, you may proceed.

19 Q Ms. Homer, did you test the drugs in this
20 particular case?

21 A I did.

22 Q Before we get to the testing that you ran,
23 can you tell me about the general handling
24 procedures that you have in place over at the
25 Sheriff's Department as far as handling drugs from

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1 the evidence custodian to the point you test them,
2 to the point you turn them back in?

3 A Well, I let the evidence room know when
4 I'm ready to accept cases. I have a safe within the
5 lab that I store evidence that I'm working on.

6 Then when it's time for me to pick, I
7 actually take the cases by hand from the evidence
8 custodian's and carry it back to the lab. The
9 evidence never leaves the lab at that point till I
10 finish analyzing it. It stays -- either I'm working
11 on it at the bench, or I keep it in a safe when I'm
12 not working on it.

13 Q Who has access to that safe?

14 A Only I do.

15 Q Okay. Did you receive the Best kit in
16 this case?

17 A I did.

18 Q And did you open that Best kit up?

19 A It's C020453, right?

20 Q Yes. Is that the one you opened up in
21 this case?

22 A Yes.

23 Q What tests did you run on it when you
24 opened the bag?

25 A I did two separate confirmatory tests on

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1 the evidence and presumption screening.

2 Q Okay. And what were the results of those
3 tests?

4 A Item 1.1 was 64.06 grams of cocaine base
5 crack; 1.2 was 1.89 grams of cocaine base crack;
6 Item 1.3 was cocaine, 2.96 grams; 1.4 was 4.29 grams
7 of cocaine base crack. Keep going?

8 Q Yes, please.

9 A Item 1.5 was .14 grams of cocaine base
10 crack, and that's it.

11 Q Okay. From the point you received the
12 Best kit to the point you did these tests, were
13 these drugs within your care, custody, and control
14 the whole time?

15 A Yes.

16 Q Did anyone else come into possession of
17 them?

18 A No.

19 Q Did you alter or manipulate these drugs in
20 any way?

21 A Only in taking samples that I needed to
22 test.

23 Q Only for the tests themselves?

24 A Uh-huh.

25 Q And what physical form were these drugs

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1 in? Were they liquid, solid, or gas?

2 A Some of them were in rock substance,
3 solid, they were all solid. There's powder
4 substance, it was a solid, and another rock
5 substance that was solid.

6 Q So did you notice any liquid at that time?

7 A No, I did not.

8 Q Okay. Did you reduce your tests to a
9 report?

10 A Yes.

11 Q Is it your regular business practice to
12 write a report when you test drugs?

13 A Yes, it is.

14 Q And do you keep a copy of this report in
15 your records?

16 A Yes.

17 Q Did you bring a copy to court today?

18 A Yes.

19 Q May I see it, please?

20 I'm going to ask that this be marked as
21 the next number.

22 COURT REPORTER: State's Number Nineteen,
23 Your Honor.

24 Q I'm showing you State's Number Nineteen.
25 Is this the report that you completed in this

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1 particular case?

2 A Yes, it is.

3 Q And you are the custodian of that record,
4 is that right?

5 A Yes.

6 MR. ROSS: Your Honor, at this time I'd
7 ask for State's Number Nineteen to be introduced
8 into evidence.

9 THE COURT: Mr. Floyd?

10 MR. FLOYD: Your Honor, we object to the
11 introduction at this point until we get through the
12 testimony --

13 THE COURT: I'm sorry, I can't hear you.

14 MR. FLOYD: Your Honor, we object to the
15 introduction of the report at this stage. It's our
16 position that that should be considered once the
17 Court rules on whether or not the substances
18 themselves can be placed into evidence.

19 THE COURT: All right, I'll withhold
20 ruling at this time.

21 Q What did you do with the Best kit after
22 you ran --

23 THE COURT: You can, of course, excuse the
24 witness and recall her if that becomes necessary
25 after I get to that stage.

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1 MR. ROSS: Yes, sir.

2 THE COURT: Okay.

3 Q What did you do with the drugs after you
4 tested them?

5 A After I test them, the drugs go back into
6 my safe until a report is handed out to the officers
7 and Solicitors. And then I have to coordinate a
8 time with the evidence room where they can accept
9 the evidence back from me.

10 Q And did you coordinate a time to do that?

11 A Uh-huh.

12 Q And did you return the Best kit to the
13 evidence room at that point?

14 A I did.

15 Q Prior to returning that best kit, what do
16 you do to the Best kit as far as sealing it to give
17 it back to them?

18 A I take the original Best kit, and I fold
19 it so that you can see the seal through -- I put the
20 original Best kit and my drugs and separate them,
21 and I put them into what's called a K-pack bag. And
22 then I seal that, and then it gets sent back over to
23 the evidence room.

24 Q And did you do that in this case?

25 A Yes.

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1 Q From the point that you first received the
2 Best kit from the evidence custodian prior to
3 testing it to the point that you returned the sealed
4 -- resealed Best kit in a K-pack, was it within your
5 care, custody, and control the whole time?

6 A Yes.

7 Q Did anyone else come into possession of
8 these items?

9 A No.

10 Q Other than the testing that you ran to
11 figure out whether or not the substances were
12 positive, did you alter or manipulate those drugs in
13 any way?

14 A No.

15 Q Okay. Did you subsequently -- after you
16 turned that Best kit in to evidence, did you
17 subsequently come into possession of it again?

18 A I did. I didn't mark down the date. I
19 think the evidence room has that on record. Colleen
20 Dixon called me over to the evidence room to look at
21 the evidence.

22 Q And who is that?

23 A That was -- she at the time was the
24 Assistant Solicitor handling the case.

25 Q Okay. And is that unusual for you to

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1 discuss a case with a Solicitor prior to trial?

2 A No.

3 Q Okay. What did you do when you got there?

4 A I looked at the K-pack bag, the evidence
5 that was inside the K-pack bag that I turned in.

6 Q And how did it appear?

7 A It looked like there was liquid inside of
8 it.

9 Q Okay. Is that --

10 A Some of it was slurry, like part of it was
11 still solid, but other parts of it were liquid.

12 Q Okay. Is that how it appeared when you
13 ran your tests?

14 A No.

15 Q Okay. Have you had other cases where
16 drugs have melted out in the storage room?

17 A I have.

18 Q So did you take possession of the Best kit
19 at that point?

20 A I did.

21 Q And what did you do with it?

22 A I took it back to the lab and placed it
23 into my safe.

24 Q All right. And you're the only person
25 that has access to that safe?

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1 A I am.

2 Q Did you ever return it to the evidence
3 room?

4 A I did. Colleen had asked me to take the
5 evidence from the evidence room and keep it in the
6 safe until which time she would contact me and tell
7 me what to do with it at that point.

8 Q Okay.

9 A So I didn't hear anything. And as a
10 general practice, I don't store evidence in the
11 safe.

12 Q Okay. And you subsequently gave it back
13 to the evidence room?

14 A I did.

15 Q And when you gave it back to the evidence
16 room, was it in the same condition as when you first
17 -- when you received it?

18 A It was in the same condition as when I
19 received it the second time.

20 Q Okay. Did anyone else come into
21 possession of that item?

22 A No.

23 MR. ROSS: Your Honor, at this point I'd
24 move for State's Sixteen into evidence, the Best
25 kit."

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1 THE COURT: Mr. Floyd?

2 MR. FLOYD: Your Honor, we still have the
3 same objection.

4 THE COURT: All right, I'll withhold it at
5 this time. We'll rule on it in a few minutes, and
6 I'll hear your full objection on it. Do you want to
7 ask the witness about some things in the Best kit?
8 All right, it's been offered, and I'm assuming let's
9 at least narrow down the objection.

10 What is your objection to number sixteen,
11 Mr. Floyd, just legal objection without an argument
12 on the record?

13 MR. FLOYD: Your Honor, the alleged drugs
14 are obviously not in the same form as they were at
15 the time they came into the custody of the Lexington
16 County Sheriff's Office.

17 THE COURT: All right.

18 MR. FLOYD: They have been altered in some
19 fashion.

20 THE COURT: All right.

21 MR. FLOYD: That would be tampering,
22 whatever the reason would be.

23 THE COURT: I'm saying that I don't need
24 an argument. But you're saying it's not admissible
25 because they're not in the same form. Any other

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1 objections?

2 MR. FLOYD: Not at this point, Your Honor.

3 THE COURT: Well, at what point will there
4 be any other objections? He's offering them into
5 evidence, and I want to know what your objections
6 are -- your legal objections are.

7 MR. FLOYD: Well, my legal objections are
8 the drugs are not in the same form they were in at
9 the time they came into the custody of the Lexington
10 County Sheriff's Department.

11 THE COURT: All right.

12 MR. FLOYD: They have been altered.

13 THE COURT: I understand that objection.
14 Any other objections?

15 MR. FLOYD: No other objections.

16 THE COURT: All right. Okay, we'll take
17 that up in a little bit.

18 Mr. Ross?

19 Q So you went and you looked at the Best kit
20 with the evidence custodian and the other Solicitor
21 on the case, and you saw that it was partially
22 liquefied, is that correct?

23 A Yes. There was liquid in the bag.

24 Q Okay. What is your expert opinion as to
25 how that occurred?

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1 A Well, again, you know, this is --

2 MR. FLOYD: Your Honor, I'm going to
3 object. She's an expert. She's been qualified as
4 an expert on analyzing drugs.

5 THE COURT: No, sir, she's been qualified
6 as an expert as a chemist, as well.

7 A Well, drugs are an organic substances. A
8 characteristic of organic substances is that they
9 don't withstand heat very well. And depending on
10 how impure that substance is will actually lower
11 what are called the physical property of a fixed
12 point at which it will melt.

13 There's states of matter. We have gas,
14 liquid, and solid. So unfortunately I wasn't always
15 in possession. It was stored in another location
16 which was not climate-controlled, or, as my
17 understanding, at some point in time it also, you
18 know, went through other people and left the
19 evidence room to come to the Solicitor's Office and
20 go back to the evidence room. Any time that --
21 there's certain points of temperatures at which a
22 substance can melt. And the less pure a substance
23 is, the lower that temperature will be required for
24 it to melt.

25 Q Let me interrupt you. What do you mean by

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1 the less pure the substance is? What are you
2 referring to?

3 A The more adulterants that are added to it,
4 the more -- it's a principle of the solute
5 principle. You know, when you're -- the more of a
6 solute particples are added to a pure substance,
7 the lower the melting point, the lower the point at
8 which, the temperature at which it will melt or the
9 temperature which something could boil.

10 Just like when you're making pasta, you
11 want your water to boil quickly so you add little
12 bit of salt to your water. That lowers the boiling
13 point temperature to water so you can get the water
14 to boil faster.

15 Q So what type of adulterants could be added
16 to cocaine or crack cocaine that would lower that
17 melting point?

18 A Examples of adulterants are lidocaine,
19 benzocaine. Those are frequently used because it's
20 still in cocaine -- it's still in the cain family,
21 but it's not really a cocaine -- and other things
22 such as baking soda.

23 Q Would the percentage of adulterants --
24 would you say that that would lower -- the higher
25 the percentage of adulterants, the lower the melting

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1 point would be?

2 A Yes, yes.

3 Q So if you have two substances in the same
4 room and they both have a different amount of
5 adulterants, whether or not one melts or the other
6 would depend on the amount of adulterants?

7 A Yes.

8 Q And the amount of adulterants you have in
9 crack cocaine, that's not visible upon plain sight,
10 right?

11 A Right. No, you can't, and more I wouldn't
12 have a job.

13 Q Now, you saw the Best kit, and you saw the
14 fact that it's partially slushy or liquefied. Does
15 that affect your report and your conclusion in any
16 way?

17 A No.

18 MR. ROSS: I have no further questions for
19 this witness, Your Honor.

20 THE COURT: Cross-examination?

21 MR. FLOYD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q Ms. Homer --

25 A Yes, sir.

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1 Q -- when you were called on May 15th, did
2 you go to the evidence room at that time about the
3 liquid?

4 A Was that the date that Colleen called me?

5 Q Yes, that's the date.

6 A Yes, uh-huh.

7 Q And you saw liquid in the Best kit at that
8 time?

9 A Yes.

10 Q Now, was that the only one you looked at
11 at that point?

12 A Was that the only Best kit? Yes.

13 Q Now, let me back up. When you did your
14 testing back sometime between February 22nd and
15 March 29th, how much of the substance is used to
16 conduct your tests?

17 A Each test that I run I take a separate
18 sample.

19 Q How large is the sample that you take?

20 A Usually about -- well, it depends on how
21 many tests I ran -- usually about a tenth of a gram
22 each test.

23 Q Okay, a tenth of a gram. Now, can you
24 tell the jury how much a gram is?

25 A How much a gram is? A gram is a metric

Emily Homer - Cross

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1 unit of weight.

2 Q Can you tell them in a way that they could
3 put a handle on it?

4 A A gram is about 15.42 grains. I mean, a
5 gram is less than kilogram. A kilogram is a
6 thousand grams.

7 Q All right, let's --

8 A It's about .0353 ounces.

9 Q All right, it's how much ounces? How did
10 you refer to that?

11 A One gram is .0353 ounces.

12 Q So a gram is less than three one-
13 hundredths of an ounce, would that be right?

14 A Yes, one gram is .03, so about three-
15 hundredths of an ounce, uh-huh.

16 Q We're talking a very small quantity. A
17 gram is a very small quantity, isn't it?

18 A I don't really think of things in terms of
19 small.

20 Q I've got you.

21 A A gram is a gram.

22 Q And the amount that you test is what part
23 of a gram?

24 A Well, I take -- it depends on how many
25 tests. Some of these have three and four tests, so

Emily Homer - Cross

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1 it's about, you know, about .03 grams, but, you
2 know. And then some of them have several color
3 tests at about a tenth of a gram each color test.

4 Q So you're testing a very small sample of
5 what you're testing?

6 A I take a random sample of the actual
7 material.

8 Q I understand. But overall it's a very
9 small portion of the substance?

10 A It's an adequate portion, according to
11 SLED and DEA.

12 Q But is it a small portion?

13 A No, I don't classify things as small.

14 Q You don't classify it as small. Is it a
15 very small ratio to the whole?

16 A I don't classify things as small. I mean,
17 it's a part of the whole. As long as the entire
18 whole substance is the same type of mixture, I take
19 a tenth of a gram per test. You know, sometimes it
20 can be I can use .5 grams, a total of a half a gram,
21 depending on how many tests that I run.

22 Q Okay. For example, you said that one of
23 the samples -- and I believe you said 64 grams or
24 something to that effect?

25 A 64.06.

Emily Homer - Cross

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1 Q And you would have taken how much of that
2 to test?

3 A I actually used close to a gram.

4 Q You used close to a gram --

5 A Uh-huh.

6 Q -- so one sixty-fourth of it?

7 A Uh-huh.

8 Q Okay. Would that be about the same ratio
9 as to the other samples?

10 A The other samples, I did -- let's see -- I
11 used three-tenths of a gram and 1.2 again. I used a
12 tenth of a gram, 1.4.

13 Q How about the 4.29?

14 A There is no 4.29.

15 Q Do you have one that's in the fours?

16 THE COURT: I can't hear you, Mr. Floyd.

17 MR. FLOYD: I'm sorry.

18 Q Did you have one that was four something?
19 Did I write that down wrong when you said it?

20 A Well, 4.29 grams and 1.4, and there I used
21 close to a tenth of a gram.

22 Q Okay. Now, when you came back in contact
23 with the substances on May 15th, did you do any
24 testing then?

25 A Colleen asked me to pull it to take the

Emily Homer - Cross

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1 evidence at that time.

2 Q Did you do testing then?

3 A No, huh-uh.

4 Q Okay. And so you don't know what type of
5 adulterants were in the substance, do you?

6 A I never test for what type of adulterants.

7 Q Okay, I understand. But you're testified
8 that adulterants could contribute to the melting
9 temperature?

10 A Yes, they do.

11 Q But you didn't test this substance to see
12 what adulterants or what percentage of adulterants
13 there were?

14 A No. The State of South Carolina does not
15 test for percentage of adulterants because we're
16 quantitative, not qualitative analysts.

17 Q The more adulterants that there would be,
18 the less the purity of the substance, is that
19 correct?

20 A Yes.

21 Q Well, have you ever brought it to the
22 attention of the Sheriff's Department that they
23 should air-condition or climate-control the evidence
24 room?

25 MR. ROSS: Objection to relevance, Your

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1 Honor.

2 THE COURT: All right, I don't see the
3 relevance, but I'll allow him to ask it. I don't
4 think there's any harm.

5 And the question was, have you ever
6 brought it to anybody's attention that there should
7 be climate control in the evidence room.

8 A Yes, I have.

9 Q And was that before this incident?

10 A Yes -- well, I'm a little confused. It
11 was before the last court hearing where we had
12 another evidence that had melted. But it was after
13 this evidence.

14 Q So it's happened twice, to your knowledge?

15 A Yes, it has happened twice.

16 Q Now, if the drugs at some point in time
17 had been placed in a different environment that was
18 even less climate-controlled than the fan, could
19 that have contributed to them melting?

20 A Well, I mean, if you place it in an
21 environment that has gotten warmer than that area,
22 yes.

23 Q Exhibit Sixteen, is it in the same form
24 now as it was when you first examined it back in
25 2011?

1 A If we could see in the bag, I mean it
2 probably -- from the last I viewed it in May, it was
3 not. Some of it was liquid. But, again, I'm not
4 looking through a bag, you know. I see the envelope
5 right now.

6 Q I'll hand it up there, if that helps you.

7 A I still can't see through it.

8 Q Well, can you feel it and tell me whether
9 or not it's in the same form as it was back in 2011
10 when you first examined it?

11 MR. ROSS: Objection, Your Honor.

12 THE COURT: All right, I am going to
13 sustain the objection. I think she testified that
14 the second time she saw it, it was not in the same
15 form as it was the first time.

16 So what is it today doesn't really matter,
17 without opening it up. She's already testified that
18 the second time that she saw it, it was in a
19 different form. Isn't that correct?

20 MS. CONRAD: Yes.

21 THE COURT: All right.

22 MR. FLOYD: Thank you. I have no further
23 questions, Your Honor.

24 THE COURT: All right, Mr. Ross?

25 MR. ROSS: Judge, may I approach first?

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1 THE COURT: Yes, sir.

2 All right, ladies and gentlemen, there is
3 again another legal matter that I need to take up
4 with the lawyers. First of all, I'm going to ask
5 this witness to step down.

6 You are not excused yet, though, Ms.
7 Homer, but if you would step down. Give the exhibit
8 back to the Court Reporter and step down.

9 And then, ladies and gentlemen, as soon as
10 Ms. Homer gets down, I'm going to excuse you for
11 just a few minutes while we take up this question of
12 evidence, this legal question that we need to take
13 up at this time. And I'm going to do that, and I
14 have to do it on the record and outside of your
15 presence.

16 Please do not discuss the case among
17 yourselves. Go to your jury room, relax, and I'll
18 send for you just as quickly as I can get this issue
19 resolved.

20 (The jury left the
21 courtroom at 12:27 p.m.)

22 THE COURT: All right, I believe, Mr.
23 Ross, your position at this time is that you are
24 offering Exhibit Number Sixteen, which is the Best
25 kit containing the alleged drugs, into evidence and

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1 offering number nineteen, which is the chemist's
2 report, into evidence, isn't that correct?

3 MR. ROSS: Yes, Your Honor.

4 THE COURT: Okay.

5 All right, let's address those matters,
6 Mr. Floyd, and I'll hear from you in just a minute.
7 But first of all, let's go to Exhibit Number
8 Nineteen, which is the report. Let me hear from you
9 with regard to what your objection is about that.

10 MR. FLOYD: Your Honor, it's our position
11 that the report cannot come in unless the drugs
12 themselves come in.

13 THE COURT: What's the basis for that?

14 MR. FLOYD: Because the drugs themselves
15 are the best evidence. They are the substances --

16 THE COURT: But isn't her testimony and
17 isn't her test on those drugs made before there was
18 any change in the chemical composition of the drugs?
19 In other words, they were checked out to her when
20 they were still in cookie form or rock form, and her
21 test was based on that.

22 So what difference does it make whether
23 the Best kit comes in at this point at all if her
24 test was made and there's no question in the
25 testimony that her analysis was made on the basis

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1 that they were in the correct form at the time that
2 she made the test?

3 MR. FLOYD: Your Honor, it is our position
4 that the drugs themselves must come into evidence in
5 order to make the case. And if the drugs themselves
6 can't come into evidence, then the test of them
7 would be irrelevant.

8 THE COURT: Are you telling me that if
9 there had been a fire in the Sheriff's Department
10 and the evidence had been destroyed that her test
11 results couldn't come in?

12 MR. FLOYD: I would argue that, Judge.

13 THE COURT: Okay.

14 Mr. Ross, let me hear from you on that.

15 MR. ROSS: Your Honor, I think that the
16 only thing we have to show is what was seized was
17 properly handled from the point of seizure to the
18 point they were tested and the results of that test.

19 He said the drugs are the best evidence in
20 this case, but we've heard that the drugs have since
21 melted. The best evidence is the drugs as they were
22 before when they were seized and when they were
23 tested shortly thereafter. So I think the best
24 evidence actually is the report itself.

25 THE COURT: All right. I would look at

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1 another further analysis on this, Mr. Floyd, is that
2 without objection, even without the report, the
3 witness testified as to what she found without
4 objection. So that evidence is really already,
5 before the jury as to what she found when she ran
6 her test.

7 The written report simply supplements or
8 corroborates her earlier testimony. So it's my view
9 that the report is admissible for two reasons.
10 Number one, she's already testified as to the
11 results of her test and given her verbal testimony
12 as to the results of her test without objection.

13 There has been no objection made to the
14 chain of custody before she testified as to the
15 results of the test, and that she took possession
16 and tested the drugs before they were misplaced and
17 also before there was any change in the chemical
18 analysis.

19 So the ruling would be that Exhibit Number
20 Nineteen is admissible into evidence, being the
21 chemist's report and will be so admitted. All
22 right, now let me hear from you with regard to
23 Exhibit Number Sixteen, which is the Best kit, Mr.
24 Floyd.

25 MR. FLOYD: Thank you, Your Honor. We

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1 object to the introduction of Exhibit Sixteen, the
2 Best kit, for the obvious reason that it is in a
3 different form than it was at the time it came into
4 the custody of the Lexington County Sheriff's
5 Department. It was in a solid form.

6 According to the testimony, it is now in a
7 liquid or a slurry form, which by their own
8 testimony is a different form, a different nature
9 than it was at the time it was seized. And
10 accordingly we would move that it not be allowed
11 into evidence because there has been a change in its
12 condition.

13 THE COURT: Well, let me just ask you a
14 couple of hypotheticals, and this is one I think
15 about that comes off-hand, and I'm going to ask you
16 another one. Suppose that, for whatever reason,
17 salt or sugar was obtained as evidence in a case,
18 taken to the evidence room, and because of moisture,
19 that salt or sugar which was in granular form became
20 solid because of moisture. Does that make it
21 inadmissible?

22 MR. FLOYD: Well, I think granular form is
23 also solid, Your Honor.

24 THE COURT: Sir?

25 MR. FLOYD: Granular form is also solid,

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1 Your Honor, so there wouldn't be a change in the
2 physical nature of it.

3 THE COURT: All right, suppose it was
4 heated to the point where it became liquid. Does
5 that make it inadmissible?

6 MR. FLOYD: That would be a change, and I
7 think it would be inadmissible. You know, they're
8 custodians of the evidence. They have to -- you
9 know, they have to protect it, they have to take
10 care of it.

11 THE COURT: Well, agreed if they tampered
12 with it. But what if it was a spontaneous chemical
13 reaction? Isn't that what we have here, a
14 spontaneous chemical reaction without anybody's
15 fault?

16 MR. FLOYD: Well, that's the question.
17 Whose control was it? Who had the responsibility of
18 protecting it and maintaining its physical
19 condition? That would be the Sheriff's Department.

20 Now, there's a speculation on their part
21 that it had to be melted by heat, but that's pure
22 speculation. They didn't do any testing on it to
23 see what was the reason for the change in nature of
24 the substance. They just speculated.

25 THE COURT: Well, I think the witness has

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1 testified basically it was a change in environment.

2 Mr. Ross?

3 MR. ROSS: Your Honor, I think it should
4 come in. I think we have the right to tell the jury
5 what happened in the case. And this is a matter
6 really of evidence preservation, and I think the
7 precedent that's helpful in determining this is
8 State versus Cheeseborough and a recent case, State
9 versus Bland.

10 And both of these cases involve handling
11 of the evidence and the defense objections to the
12 handling of the evidence. Really the rule in place
13 here is that the defense has to show that the
14 evidence was -- in the Cheeseborough case, it was a
15 weapon that was destroyed pending trial.

16 It was a murder weapon destroyed pending
17 trial. And the Court -- the Supreme Court -- says
18 you have to show that the State acted in bad faith
19 or that the evidence possessed an exculpatory value
20 apparent before the evidence was destroyed.

21 Your Honor, in this case, (a) the evidence
22 hasn't been destroyed. It's still there. It's
23 changed in form. So I really don't see a legal
24 precedent for allowing what Mr. Floyd is arguing.

25 I think we've explained how it got from

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1 point A to point B and everything in between. And
2 the jury is going to want to take a look at it and
3 see for themselves, and I think they've got a right
4 to do so.

5 THE COURT: Okay.

6 All right, Mr. Floyd, do you want to be
7 heard from any further?

8 MR. FLOYD: Your Honor, there's no way
9 around the fact that it's in a different form. I
10 mean, that's --

11 THE COURT: But is there anything in the
12 law that you can point to me that makes it
13 inadmissible because it's in a different form?

14 MR. FLOYD: Your Honor, I think --

15 THE COURT: Through no tampering with the
16 evidence. And I won't say "fault," but no tampering
17 with the evidence by anyone with the State. I think
18 you've got an entirely different situation if you
19 could show there was some tampering of the evidence.

20 MR. FLOYD: Well, everybody in the chain
21 -- the case law is clear. Everybody in the chain
22 has to say the drugs, the substance, whatever type
23 of evidence they're attempting to introduce, is the
24 same.

25 "The substance is the same as when I got

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1 it. When I got it back, it was the same. It had
2 not been tampered with in any way." That's the law
3 on the whole chain. Nobody can say it here,
4 although what they can say is it was the same up
5 until May 15th or sometime discovered on May 15th.

6 THE COURT: But haven't they explained,
7 uncontradictedly explained, the reason for the
8 change and not being in bad faith or fault on the
9 part of the State?

10 MR. FLOYD: No, Your Honor. They've
11 speculated that it could have melted because of
12 adulterants. That's a speculation.

13 THE COURT: Well, that's the opinion of
14 the expert, and her testimony is unchallenged on
15 that point.

16 MR. FLOYD: Well, I think it was
17 challenged. I asked if she tested it for any
18 adulterants, and she didn't. So it's pure
19 speculation on her part.

20 THE COURT: Okay, all right. Well, first
21 of all, I would note for the record that the
22 objection of the defense in this case to the
23 introduction of Exhibit Number Sixteen, which is the
24 Best kit containing the drugs, is not on the basis
25 of the chain of custody.

1 There has been no objection made to the
2 chain of custody of this particular exhibit. And so
3 the issue is that they are not in the same form, and
4 that's the reason or the basis for the objection.

5 To me, it's very clear that the drugs that
6 were left in the evidence room were accounted for at
7 all times, and they left the custody of the evidence
8 custodian only when they were properly signed out.

9 It's also very clear that while they were
10 in the custody of the evidence custodian, they were
11 internally misplaced but never left the custody and
12 control of the evidence custodian except those
13 instances where they were properly signed out. And
14 therefore that's why I make my ruling.

15 And then, of course, there was no
16 objection made with regard to the chain of custody.
17 But that's the way that I see that. But the
18 objection is now that they're not in the same form,
19 and therefore Exhibit Sixteen is not admissible.

20 The evidence is that there was a
21 spontaneous chemical change, not that there was any
22 wrongdoing on the part of anybody in tampering with
23 the evidence to effect that change, not that they
24 were tampered with.

25 As I say, I can equate this to sugar or

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1 salt or any substance that temper or moisture or
2 anything intangible makes a change in its physical
3 composition the longer you have it or that it might
4 have just as a result of time.

5 It's also been explained by the chemist
6 that the reason for this would be that some of them
7 would do this way and some of them would not. Some
8 of them would melt -- cookies or crack would melt,
9 and others would not because of the amount of
10 adulterants, which they have no way of measuring the
11 amount of adulterants, and that different amounts of
12 adulterants could cause a physical change in the
13 substance in some of them and not in others.

14 So that's we had here, was a chemical
15 change that was not caused by any person or object
16 but simply a change in the environment. In my view,
17 along with the evidence in this case as to the way
18 that the drugs were handled, the way that the change
19 came about, not as a result of any misfeasance or
20 malfeasance on the part of the evidence personnel
21 but simply as a result of a change in environment
22 that was really uncontrollable that there is no
23 question that the evidence is appropriate and this
24 is the same evidence simply in a different form that
25 came about as a result of time or environment and

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1 without fault of the State. Exhibit Sixteen is
2 admitted subject to the objection of the defendant.

3 All right, now, having said that, Mr.
4 Ross, do you want to recall the witnesses?

5 MR. ROSS: Just to do some redirect with
6 Ms. Homer. That's the only witness I intend to
7 call.

8 THE COURT: Okay, all right.
9 Bring the jury back in, then, please.

10 Ms. Homer, you can come back around.

11 (The jury returned to the
12 courtroom at 12:43 p.m. after which the following
13 proceedings were had:)

14 THE COURT: All right, thank you, ladies
15 and gentlemen. We are ready to proceed with
16 redirect examination by the State.

17 MR. ROSS: Thank you, Your Honor. Your
18 Honor, at this time I'd move for the --

19 THE COURT: Exhibits Fifteen and Sixteen
20 have been admitted into evidence.

21 MR. ROSS: Sixteen and nineteen, Your
22 Honor.

23 THE COURT: You're right, sixteen and
24 nineteen.

25 (State's Exhibit Number

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1 Sixteen, Best Kit; and State's Exhibit Number
2 Nineteen, Forensic Report, were entered in
3 evidence.)

4 MR. ROSS: And I'd ask to publish nineteen
5 to the jury.

6 THE COURT: All right, you may do so.

7 REDIRECT EXAMINATION

8 BY MR. ROSS:

9 Q All right, Ms. Homer, is this your report?

10 A Yes.

11 Q And what is this number up here in the
12 right-hand corner that I'm referring to?

13 A That's a lab number that I assign for each
14 Best kit.

15 Q Okay. So you assign a number in addition
16 to the actual Best kit number?

17 A Yes.

18 Q Okay. And what is Item 1?

19 A Zip-loc bag. And it contains all the sub-
20 items beneath.

21 Q Okay. So inside the Zip-loc bag are all
22 these other items here?

23 A Yes.

24 Q Okay. And what was the result of Item
25 1.1? How many grams of crack cocaine?

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1 A There was 64.06 grams.

2 Q And how about Item 1.2?

3 A I'm having a hard time reading it from

4 here.

5 Q All right, let me zoom in a little bit.

6 Is that better?

7 A Yes.

8 Q How about now?

9 A I guess it's the paper background, but the

10 -- can I hold it?

11 Q Sure.

12 A That was nice. I don't have to have it

13 stapled.

14 Q Can you read in the amounts of crack

15 cocaine?

16 A 1.1 is 64.06 grams of cocaine base crack.

17 1.2 is the 1.89 grams of cocaine base crack. 1.3 is

18 2.96 grams of cocaine, and that 1.4 is 4.29 grams of

19 cocaine base crack, and 1.5 is 0.14 grams of cocaine

20 base crack.

21 Q And the pill bottle, Item 1.4, was that

22 placed in a plastic bag?

23 A It's a plastic container.

24 Q Okay. Was Item 1.4 the plastic container?

25 A Yes.

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- 1 Q And that was placed into Item 1?
- 2 A One, uh-huh.
- 3 Q And what is Item 1?
- 4 A A Zip-loc bag.
- 5 Q So the pill was placed into a Zip-loc bag?
- 6 A Uh-huh.
- 7 Q Okay.
- 8 A Well, not pill.
- 9 Q The pill bottle.
- 10 A It would be the plastic container, I
- 11 guess.
- 12 Q Okay. And the date of this report is
- 13 when?
- 14 A March 17, 2011.
- 15 Q Okay. And you testified that you looked
- 16 at the contents of the Best kit, and they have since
- 17 melted?
- 18 A Yes, on March 15, 2011. I usually don't
- 19 generate the report the same day that I'm analyzing
- 20 the drugs.
- 21 Q So you tested them on March 15th, and you
- 22 did your report on March 17th?
- 23 A Yes.
- 24 Q Okay. Does the fact that this is no
- 25 longer a completely rock substance -- the fact that

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1 it's melted, does that change this report in any way
2 whatsoever?

3 A No.

4 Q Is this report true today?

5 A Yes.

6 MR. ROSS: No further questions for this
7 witness, Your Honor.

8 THE COURT: Recross?

9 RE CROSS EXAMINATION

10 BY MR. FLOYD:

11 Q Ms. Homer --

12 A Yes, sir.

13 Q -- how many occasions have you seen the
14 evidence melt?

15 A One other occasion in Lexington County and
16 one occasion with the ATF.

17 Q One other occasion in Lexington County?

18 A One other occasion in Lexington County and
19 one occasion with the ATF when they had evidence
20 that was not stored in a climate-controlled space.

21 Q And how many, if you know, or give us a
22 guess -- how many different drug samples have been
23 stored in Lexington County over the last seven years
24 that you've worked there?

25 A How many different? I don't know. I

Emily Homer - Recross

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1 don't always get all of the evidence that is
2 collected.

3 Q How many do you examine personally each
4 year?

5 A Each year? About 500, close to 500, some
6 years 400.

7 Q And on two occasions, this and one other,
8 you've seen liquid?

9 A It may have happened other occasions.
10 These are just the only two occasions I've had where
11 it's gone to court.

12 Q Now, there's no question that Exhibit
13 Sixteen is in a different form now than it was when
14 you examined it back in March?

15 A Yes.

16 Q And according to your testimony, the more
17 adulterant there is in the substance, the lower the
18 melting point?

19 A Yes, it can.

20 Q The more adulterant there is, the less
21 pure it is, is that correct?

22 A Yes.

23 Q So, for example, you could have something
24 that weighs 64 grams, but it could have a very small
25 quantity of crack in it, is that correct?

1 A Again, I don't read for small, medium,
2 large. And, you know, the statute states any
3 mixture thereof.

4 Q Okay, I understand that. But only a
5 portion of that 64 grams would actually be crack,
6 isn't that correct?

7 A I don't do qualitative analysis.

8 Q Would all of it be pure crack?

9 MR. ROSS: Objection, Your Honor. I don't
10 think that --

11 THE COURT: All right, if she knows --
12 overruled. Go ahead. He asked you could it be pure
13 crack?

14 A Could it be pure crack?

15 THE COURT: Yes, that's what his question
16 was.

17 A I mean, I don't -- all I -- I don't do --
18 I don't figure out what the percentage of
19 adulterants are.

20 Q Well, if it was pure crack, it wouldn't
21 have any adulterants, would it?

22 A I actually keep standards of pure forms of
23 the drugs in the lab, and I've never had a sample
24 that has completely been absolutely matched to my
25 pure standards in the lab, never.

Emily Homer - Recross

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1 Q Well, we know this wasn't pure because it
2 melted, is that correct?

3 A Correct.

4 Q You just can't tell us how impure it was?

5 A I don't figure out how impure. I just
6 know that they are impure.

7 Q Thank you, no further questions.

8 THE COURT: All right, thank you, Ms.

9 Homer. You may step down.

10 All right, Mr. Ross?

11 MR. ROSS: Your Honor, the State rests.

12 THE COURT: All right.

13 All right, ladies and gentlemen of the
14 jury, you have heard the State announce that they
15 have rested their case. That means that you have
16 heard all the evidence that you will hear at this
17 time from the State.

18 There are certain matters of law that I
19 now need to take up, and also it's approaching the
20 lunch hour. So we're going to go ahead, and we're
21 going to work for a little bit longer here while I
22 deal with those matters of law.

23 But that has to be done on the record and
24 outside of your presence. So I am going to excuse
25 you and allow you to go to lunch, ask that you

1 please come back to your jury room at 2:30. We
2 should have all of those matters taken care of by
3 that time.

4 When you're reassembling in the jury room,
5 do not discuss the case among yourselves. It's
6 still premature for you to begin any discussion of
7 this matter. Also while you're away from the
8 courthouse, do not talk with anyone else about the
9 case and do not allow anyone to discuss it with you.

10 Simply forget about the case for the next
11 hour and a half or so and come back at 2:30. And
12 we'll be ready to go forward this afternoon. With
13 those admonitions and instructions, I'll excuse you
14 now and allow you to get your lunch. Thank you.
15 You may go with the bailiff.

16 (The jury left the
17 courtroom at 12:53 p.m. for lunch recess.)

18 THE COURT: All right, Mr. Floyd, I'll be
19 glad to hear from you by way of motions.

20 MR. FLOYD: Thank you, Your Honor. Your
21 Honor, at this time we would move for a directed
22 verdict of acquittal. It's our position the
23 evidence, even taken in a light most favorable to
24 the State, fails to establish the proof of the guilt
25 of this defendant, Mr. Douglas Mayes, beyond a

1 reasonable doubt.

2 Your Honor, at this time we would also
3 renew all the motions we made during the
4 presentation of the State's case and our objection
5 to evidence coming into play. It's our position,
6 one, that the charge of possession of a weapon
7 during the commission of a violent crime --

8 THE COURT: Mr. Ross, move this thing.
9 It's right in front of Mr. Floyd here. I like to
10 look at people when they're talking.

11 All right, go ahead.

12 MR. FLOYD: As to the charge of possession
13 of a firearm in connection with a violent crime, it
14 is our position that the State must prove that the
15 weapon was capable of being fired or capable of
16 expelling a projectile I think would be the wording
17 in the statute.

18 And they have failed to do so. So we'd
19 move that that charge be dismissed. And, of course,
20 we would also renew our objection --

21 THE COURT: Doesn't the statute just say
22 "is designed to"? It doesn't require it to be
23 capable of. The statute just says a firearm means
24 any rifle, which this is, it says, which will or is
25 designed to. And is there any question that this

1 exhibit -- I don't remember the number -- is
2 designed to expel a projectile?

3 MR. FLOYD: Well, it depends on what they
4 mean by design. We would say at this current time,
5 no, it's not designed to do it, because there is
6 something in there -- there's something happened to
7 that weapon that has changed the design that makes
8 it inoperable.

9 THE COURT: Okay. I don't think that
10 changes the design. That may change the
11 composition, but it doesn't change the design. I
12 understand.

13 All right, let me hear from you, Mr. Ross,
14 first with regard to the drugs.

15 MR. ROSS: Your Honor, with regard to the
16 drugs, we've established that the drugs were found
17 in his house, undisputed that it was his house,
18 right beside him in a box of toilet paper. And when
19 questioned about it, he admitted that they were his.
20 So I think we have established the burden of proof
21 that's required under the directed verdict standard.
22 And I'll be happy to --

23 THE COURT: Mr. Floyd, let me ask a couple
24 of questions. Is it your position for your directed
25 verdict motion that there's no evidence of

1 possession or no evidence that they were drugs?

2 MR. FLOYD: Your Honor, it's our position
3 that the State's proof falls on the question of,
4 first, possession, whether or not it's actually the
5 drugs of this defendant, Mr. Douglas Mayes. All
6 they have is the fact they say that's his address.
7 That's all they have.

8 THE COURT: Okay. Well, how about his
9 statement?

10 MR. FLOYD: And his statement, which we
11 contest is questionable, the manner in which it was
12 provided.

13 THE COURT: But that's a fact question,
14 isn't it, for the jury to determine?

15 MR. FLOYD: Yes, that's for the jury.
16 That's for the jury. I agree with you there, Your
17 Honor.

18 THE COURT: So there is evidence in the
19 record, then, and which under a Rule 19 motion for
20 directed verdict is what I have to look at, because
21 the rule provides that the Court shall direct a
22 verdict of the defendant's failure of any offense
23 charged in the indictment after the evidence on
24 either side is closed if there is a failure of
25 competent evidence tending to prove the charge in

1 the indictment.

2 In ruling on this motion, the trial judge
3 shall consider only the existence or non-existence
4 of the evidence and not its weight. I have long
5 contended that the use of the term "competent
6 evidence" in the record, as used in the rule, is
7 unfortunate, because it implies a weighing of the
8 evidence, which the second sentence there goes on to
9 show that's exactly what the trial judge should not
10 do.

11 He considers only the existence or non-
12 existence of the evidence. Several years ago, I
13 headed a task force for revision of the criminal
14 rules. We have submitted our proposed revisions to
15 the Supreme Court, and they are pending before the
16 Supreme Court.

17 And one of the things that we did change
18 was in the use of the word "competent," because it
19 does lead to an argument that we hear many times
20 about the sufficiency of the evidence and not its
21 existence. But it's clear that the rule only
22 requires that I evaluate the existence or non-
23 existence of the evidence.

24 And in this case, there is evidence in the
25 record of the possession by virtue of where it was

1 found, that it was his residence, that he made a
2 statement. Some of it is circumstantial. Some of
3 it is direct.

4 But I would deny the motion on the basis
5 of the failure to prove the possession of the
6 substance at this point, because there is evidence
7 in the record regarding that. Now I'll hear from
8 you with regard to the substance itself.

9 MR. FLOYD: Your Honor, in that regard,
10 there are two motions that I make. First of all, we
11 renew our objection to the Court's introduction into
12 evidence of the plastic bags and the scales. I
13 think the evidence clearly established there was a
14 break in the chain of custody of those two items
15 since they went missing for a certain amount of
16 time.

17 THE COURT: Well, let's assume that they
18 were missing for a certain amount of time,
19 completely missing. And I disagree with you that
20 that's what the evidence says. The evidence says
21 they were misplaced. There's no evidence that they
22 were missing.

23 There's no evidence that they ever left
24 the evidence room. But let's assume that they did.
25 With non-fungible goods, with that make any

1 difference?

2 In other words, let's say that my house is
3 broken into, and they steal my gun. And I go to the
4 pawnshop, and I find that gun, three months later.
5 Three months later I find it.

6 And I come into court, and I say, "That's
7 my gun," but I can't say where it's been in those
8 last three months. It's non-fungible. I can
9 identify that as being the item that was taken from
10 my house.

11 And this witness in this case said, "These
12 scales were the ones that we took possession of.
13 These scales are the same one today." When they're
14 non-fungible, what difference does it make where
15 they've been in the meantime?

16 MR. FLOYD: Well, Your Honor, the only way
17 they can say that is by looking at the container
18 they're in and saying "Yes, that's got to be the
19 same."

20 THE COURT: That's one way.

21 MR. FLOYD: There's no way -- the items
22 themselves are not serial-numbered, so they're
23 non-identifiable on their own.

24 THE COURT: Are you saying there's not a
25 different rule with regard to fungible and

1 non-fungible goods?

2 MR. FLOYD: No, no, I think there's a
3 different rule.

4 THE COURT: Okay.

5 MR. FLOYD: But I think for many fungible
6 goods or non-fungible goods, you have ways to
7 identify them. But whether like in your
8 illustration, you know, it's your gun, you know it,
9 so you can identify it, or there's something that's
10 a serial number or something that you have a picture
11 of or whatever.

12 THE COURT: But the witnesses in this case
13 testified "These are the same scales that I took
14 from the house," or "These are the same baggies that
15 I took." They were unchallenged on that. All
16 right, let me hear from you on --

17 MR. FLOYD: And the last point, Your
18 Honor, as to --

19 THE COURT: That's regarding the plastic
20 bags and the scales. What about the drugs
21 themselves?

22 MR. FLOYD: Your Honor, of course, we
23 object to the drugs themselves because -- and it's
24 clear they're in a different form now. They have
25 changed from when they were seized.

1 THE COURT: But that's only with regard to
2 the admission of Exhibit Sixteen.

3 MR. FLOYD: That's correct.

4 THE COURT: What about the fact that the
5 chemist testified, regardless of the admissibility
6 of Exhibit Sixteen, that she testified that when
7 they were in the rock form, it was crack cocaine,
8 and it was cocaine, and there was "x" number of
9 grams of each substance? I don't see how that
10 affects the directed verdict motion.

11 MR. FLOYD: Well, it's our position, Your
12 Honor, that they still have to introduce the drugs
13 themselves. They have to get them into evidence, or
14 the case fails. It doesn't matter what the chemist
15 said earlier, Your Honor. They still have to get
16 the drugs in.

17 THE COURT: So you're saying again -- I'm
18 playing the devil's advocate here. So you're saying
19 that the drugs were turned in to the evidence
20 custodian, who documents them all the way up to a
21 certain point.

22 They're signed out to the chemist. The
23 chemist tests them, brings them back to the evidence
24 custodian. And Lexington County has a disastrous
25 fire, and the drugs are destroyed. The case has to

1 be thrown out? Are they not admissible? The
2 results are not admissible because they are no
3 longer available?

4 MR. FLOYD: Oh, I agree. I think they
5 have to be available for trial, Your Honor, because
6 the defense has a right to test them if they so
7 choose.

8 THE COURT: Okay, all right. The Court
9 finds that, again, on the motion for directed
10 verdict, the test is the existence or non-existence
11 of the evidence, not its weight or its
12 believability. That is a matter for the jury to
13 determine.

14 I think there is evidence in the record
15 for both the drugs themselves as well as the
16 paraphernalia, which is the scales and the baggies,
17 and I would respectfully deny the motion for a
18 directed verdict. Now, counsel, let's talk about a
19 couple more things.

20 Mr. Floyd, immediately after lunch --
21 we're going to break for lunch at this time, but I'm
22 going to come back before the jury comes back. I'm
23 going to need a decision from your client regarding
24 whether or not he does or not does not wish to
25 testify in this matter. And I will go through that

1 colloquy with him immediately after lunch.

2 However, Mr. Ross, it's my view that one
3 of the things that impacts on that decision is what
4 you believe would be admissible against him for
5 impeachment purposes under 609, because he has a
6 right to know what those are before he makes that
7 decision. What do you contend is admissible under
8 Rule 609?

9 MR. ROSS: Your Honor, I have a 2006
10 habitual traffic offender that carries over a year
11 and as such is admissible.

12 THE COURT: What year?

13 MR. ROSS: 2006. I've got a 2009
14 possession with intent to distribute crack cocaine.

15 THE COURT: All right, let's go back to
16 the 2006. What was that for?

17 MR. ROSS: Habitual traffic offender.

18 THE COURT: Trafficking of what?

19 MR. ROSS: No, an HTO -- habitual traffic
20 offender.

21 THE COURT: Habitual traffic offender,
22 okay. HTO, that's a 2006. What else?

23 MR. ROSS: Possession with intent to
24 distribute crack cocaine.

25 THE COURT: What year is that?

1 MR. ROSS: That's May 2009.

2 THE COURT: 2009 is PWID crack.

3 MR. ROSS: 2009, I've also got a failure
4 to stop for a blue light. 2009, I've got a
5 trafficking crack cocaine. And 2009, I've got a
6 manufacturing marijuana.

7 THE COURT: All right, those are the
8 things that you would say are admissible under the
9 Rules of Evidence 609?

10 MR. ROSS: Yes, sir.

11 THE COURT: All right, I'll hear from you,
12 Mr. Floyd.

13 MR. FLOYD: Your Honor, I think if they
14 have proof of these convictions, yes, they would be
15 admissible.

16 THE COURT: Okay.

17 MR. FLOYD: And, of course, we would argue
18 as to whether or not the nature of the convictions
19 would be appropriate to be brought out if he
20 testified - the convictions themselves would be
21 admissible.

22 THE COURT: All right, I'm not sure I
23 understand your position. You're saying that
24 obviously under 609(e), I believe it is -- 609(b),
25 they are all within the 10-year period. You don't

1 argue that?

2 MR. FLOYD: Oh, we don't argue that, Your
3 Honor.

4 THE COURT: Okay.

5 MR. FLOYD: What we argue is that it would
6 be more prejudicial than probative to bring out the
7 nature --

8 THE COURT: Let's deal with each one of
9 them, then. Tell me which ones you think are more
10 prejudicial than probative.

11 MR. FLOYD: The crack, the PWID crack, the
12 trafficking crack, and the manufacturing marijuana
13 -- because those would all be drug offenses for
14 which he's --

15 THE COURT: All right. And you don't
16 object to the -- you think that under 609, the 2006
17 conviction for habitual traffic offender and failure
18 to stop for a blue light are properly impeachable
19 offenses?

20 MR. FLOYD: Yes, Your Honor.

21 THE COURT: All right.

22 Let me hear from you with regard to his
23 argument under 609(a)(1), Mr. Ross, which provides
24 that for the purpose of attacking the credibility of
25 a witness, that an accused has been convicted of a

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1 crime shall be admitted if the Court determined that
2 the probative value of admitting this evidence
3 outweigh its prejudicial effect on the accused.
4 What do you think regarding the probative value
5 vis-a-vis prejudicial effect?

6 MR. ROSS: Judge, I think credibility is
7 going to be the heart of this case. Credibility is
8 going to be the main issue in this case. If he
9 takes the stand and he says, "I was standing by
10 crack cocaine, and I didn't know it was there," or
11 "Somebody else planted them, put them there," then I
12 think we would have a right to let the jury know,
13 "Hey, you've been convicted of this type of stuff in
14 the past." So I think the credibility issue --

15 THE COURT: All right, so it's probative
16 of credibility.

17 MR. ROSS: I would submit the probative
18 value is how credible a witness is he going to be?
19 How credible is that testimony going to be in light
20 of his prior convictions?

21 THE COURT: All right, counsel, I'll
22 advise you about what I think of this, of what I
23 think is impeachable before I require Mr. Mayes to
24 make a decision regarding testimony in this matter.
25 But I'll do that after lunch. I want to think about

1 the probative value for a few minutes before I make
2 that ruling.

3 All right, now, counsel, I have prepared
4 some proposed verdict forms that I want you to think
5 about. And, of course, what I prepared is the
6 verdict form for Indictment Number 1303. This is
7 with regard to the possession with intent to
8 distribute cocaine.

9 "We, the jury, by unanimous agreement,
10 find the defendant, Douglas James Mayes, on the
11 charge of possession with intent to distribute
12 cocaine on Indictment Number 2011-GS-32-1303" either
13 guilty or not guilty.

14 Do you see any other issues that should go
15 to the jury on the PWID cocaine, Mr. Floyd?

16 MR. FLOYD: Yes, Your Honor. We would
17 think simple possession of cocaine would be an
18 appropriate lesser included.

19 THE COURT: What's your position?

20 MR. ROSS: No objection from the State,
21 Your Honor.

22 THE COURT: All right. So you have no
23 objection to simple possession?

24 MR. ROSS: Of powder cocaine.

25 THE COURT: Of powder, all right. And

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1 what about on Indictment Number 2011-GS-32-1304 with
2 regard to trafficking in crack cocaine? Again, I've
3 got the form is that "We, the jury, by unanimous
4 agreement, find the defendant, Douglas James Mayes,
5 on the charge of trafficking in crack cocaine"
6 guilty or not guilty. What's your position on that,
7 Mr. Floyd?

8 MR. FLOYD: Your Honor, we would also
9 request a lesser included of possession of crack.

10 THE COURT: Mr. Ross?

11 MR. ROSS: Your Honor, I would object to
12 that. The only evidence in this case is that he
13 possessed over the 10-gram threshold for trafficking
14 and over the 28-gram threshold for the trafficking
15 charge we've presented. There's no evidence that he
16 could have possessed one of those items of crack
17 cocaine or the others.

18 And I think this type of situation has
19 already been ruled on in State versus Raffaltdt --
20 R-A-F-F-A-L-D-T -- 456 Southeastern Second 390. And
21 that essentially stands for the proposition where
22 the evidence is that an individual has in his
23 possession over that trafficking threshold, then a
24 lesser included charge of either possession or
25 possession with intent to distribute is not proper.

1 And, Judge, I could pass that case up if
2 you'd like.

3 THE COURT: Yes, sir, let me see it,
4 please.

5 MR. FLOYD: Your Honor, the jury doesn't
6 have to accept the State's version of what the
7 weight of the crack --

8 THE COURT: But there's no evidence
9 otherwise.

10 MR. FLOYD: They haven't even tested it.

11 THE COURT: How can they make a decision
12 when there's no evidence? If there was evidence
13 that it was less, I can see what your point would
14 be. Let me look at this.

15 All right, State versus Raffaltdt --
16 R-A-F-F-A-L-D-T -- 318 South Carolina 110-456 S.E.
17 Second 390 holds that "All of the evidence indicated
18 that Raffaltdt was dealing in quantities of cocaine
19 of at least a certain amount. Accordingly, he was
20 only entitled to charges on trafficking, not
21 distribution or possession."

22 Citing State versus Gilmore, 314 SC
23 453-445 SE Second 454 and also State versus Grandy,
24 606 South Carolina 224-411 Southeastern Second 207,
25 which held that "The defendant is not entitled to a

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1 charge on lesser included offense when evidence does
2 not warrant such a charge."

3 In my view, the evidence in this case does
4 not warrant such a charge, and I will not charge the
5 lesser included offenses on the trafficking. I will
6 on the possession with the intent to distribute
7 cocaine because the State concurs.

8 Now, with regard to the final indictment
9 of 2011-GS-32-1305, my verdict form reads as
10 follows, "If you find the defendant guilty of
11 trafficking in crack cocaine pursuant to Indictment
12 Number 2011-GS-32-1304, you may consider the charge
13 of possession of a weapon during the commission of a
14 violent crime. If you find the defendant not guilty
15 of trafficking in crack cocaine, do not consider
16 this charge and notify the bailiff that you have
17 concluded your deliberations."

18 And under that, I have written "Verdict on
19 the charge of possession of a weapon during the
20 commission of a violent crime: We, the jury, by
21 unanimous agreement, find the defendant" either
22 guilty or not guilty.

23 Mr. Ross, do you agree that they've got to
24 find him guilty of trafficking in order to find him
25 guilty of the possession of a weapon during the

1 commission of a violent crime?

2 MR. ROSS: Yes, sir, I do.

3 THE COURT: All right. And you would
4 agree with that as well, Mr. Floyd? I know you
5 disagree with the fact that the weapon -- you
6 disagree with the weapon charge altogether, but I'm
7 not asking you about that. I'm talking about to
8 even consider it, they've got to find him guilty of
9 the trafficking first.

10 MR. FLOYD: That's correct.

11 THE COURT: Okay, all right. All right,
12 I'll make that one change in the verdict form with
13 regard to the possession with intent to distribute
14 powder, and we'll make that change. And we'll deal
15 with the issue of the witness testifying after
16 lunch.

17 Okay, let's take about an hour and be back
18 here at 2:15 to deal with those matters, my ruling
19 on the impeachable offenses, and the defendant's
20 decision with regard to the presentation of
21 testimony.

22 Mr. Floyd, I'm not asking you to comment
23 on the position with regard to testifying. But
24 regardless of that, do you anticipate any other
25 testimony on the part of the defendant, if there is

1 any other evidence on the part of the defendant?

2 MR. FLOYD: No, Your Honor.

3 THE COURT: Okay.

4 MR. FLOYD: It would be the defendant and
5 no more.

6 THE COURT: Okay. All right, if you go
7 that way, we'll talk about that at the time.

8 All right, let's be in recess until about
9 2:15.

10 MR. ROSS: Your Honor, has there been a
11 ruling on the weapons charge on his directed verdict
12 motion?

13 THE COURT: I thought I did rule on that.
14 I'm denying his motion for a directed verdict on the
15 weapons charge, and I am going to do that.

16 MR. ROSS: Thank you.

17 (Court in recess.)

18 THE COURT: All right, back on the record
19 with regard to the State versus Douglas James Mayes.
20 Mr. Mayes is present in court with his counsel, Mr.
21 Floyd. The issue before the Court at this time is
22 what matters the State could use for impeachment
23 purposes if the defendant were to testify.

24 The State proposes to impeach with a 2006
25 habitual traffic offender offense, which the

1 defendant does not contest as being admissible for
2 impeachment purposes; a 2009 possession with intent
3 to distribute, which he does contest as being
4 admissible for impeachment purposes; a 2009 failure
5 to stop for a blue light, which he does not contest
6 as being admissible for impeachment purposes; a 2009
7 trafficking in crack, which he does contest as being
8 admissible; and a 2009 manufacturing marijuana
9 charge, which he does contest as being admissible.

10 So the issue before the Court is the 2009
11 possession with intent to distribute, the 2009
12 trafficking in crack, and the 2009 manufacturing of
13 marijuana. The controlling rule is Rule 609 of the
14 South Carolina Rules of Evidence. And as I had
15 previously put on the record, there is a different
16 rule with regard to a witness as opposed to an
17 accused.

18 Rule 609(a)(1) deals with both, but the
19 first part of it deals with a witness, and the
20 second part of it reads that "It is admissible for
21 impeachment purposes that an accused has been
22 convicted of such a crime shall be admitted if the
23 Court determines that the probative value of
24 admitting such evidence outweighs its prejudicial
25 effect to the accused."

1 Thus, the Court is in a situation of
2 applying a balancing test between the prejudicial
3 effect and the probative value. The prejudicial
4 effect, of course, is that the jury would infer that
5 his prior drug convictions make him guilty of the
6 current offense.

7 The probative value, as I see it, there
8 are a number of probative values. One, of course,
9 is the probative value as to the credibility of the
10 defendant considering the proximity in time of the
11 issue of the case here only being in the last couple
12 of years or being very close together in time. It's
13 probative on the issue of knowledge of illegal
14 substances.

15 It's probative of the issue as to whether
16 he made the statement attributed to him. It's also
17 probative of the issue of voluntariness of the
18 statement. His inference throughout this trial was
19 that he was promised something. It's also probative
20 that the drugs in this case were not just for his
21 personal use.

22 And I think it's also probative of the
23 fact that they were his drugs and not someone
24 else's, specifically his girlfriend. In my view,
25 after weighing the probative value of the various

1 things against the prejudicial effect, I find the
2 testimony of all five convictions is admissible for
3 impeachment purposes.

4 All right, now, Mr. Floyd, let me again
5 talk with Mr. Mayes.

6 Mr. Mayes, if you'll stand for just a
7 moment for me, please. Yesterday I discussed with
8 you your rights under the Fifth Amendment to the
9 Constitution of the United States and the similar
10 counterpart provision of the Constitution of the
11 State of South Carolina.

12 And I advised you that you did not have to
13 take the stand. You did not have to testify in this
14 matter, that you have a constitutional privilege
15 against that, and that the jury would be instructed
16 that they could not infer from your failure to take
17 the witness stand and your election not to testify,
18 they could not infer anything from that.

19 At that time, you advised me that you
20 understood what I had told you about your Fifth
21 Amendment rights. Is that correct?

22 MR. MAYES: Yes, sir.

23 THE COURT: Have you also had a chance to
24 talk with your lawyer about your Fifth Amendment
25 rights?

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1 MR. MAYES: Yes, sir.

2 THE COURT: Have you understood your
3 discussions with your lawyer?

4 MR. MAYES: Yes, sir.

5 THE COURT: And do you understand your
6 rights under the Fifth Amendment to the Constitution
7 from both your lawyer and from me?

8 MR. MAYES: Yes, sir.

9 THE COURT: Do you have any questions of
10 either your lawyer or me regarding your Fifth
11 Amendment rights?

12 MR. MAYES: No, sir.

13 THE COURT: Have you made a decision as to
14 whether you do or do not wish to testify in this
15 case?

16 MR. MAYES: I have.

17 THE COURT: Okay, and what is that
18 decision?

19 MR. MAYES: I choose not to testify.

20 THE COURT: You do not wish to testify.
21 Is that decision on your part made freely and
22 voluntarily?

23 MR. MAYES: Yes, sir.

24 THE COURT: All right, the Court would
25 find, then, for the record that the defendant in

1 this case has freely, voluntarily, and knowingly
2 elected not to testify in this case, that he has
3 made that decision after having been advised by the
4 Court and his attorney of the constitutional
5 privilege, and the waiver on his part is freely,
6 voluntarily, intelligently, and knowingly made --
7 not the waiver but the exercise of the
8 constitutional right on his part is freely,
9 voluntarily, intelligently, and knowingly made.

10 Thank you, sir. You may be seated.

11 Mr. Floyd, I believe you told me before
12 lunch, then, that the defense would not offer any
13 other testimony. Is that correct?

14 MR. FLOYD: That's correct, Your Honor.

15 THE COURT: So the defense would, then, in
16 effect rest at this time?

17 MR. FLOYD: That's correct.

18 THE COURT: Okay.

19 All right, counsel, that being the case,
20 let's talk about the verdict forms. I have revised
21 the verdict form on the two drug charges, the first
22 one to read: "We, the jury, by unanimous agreement,
23 find the defendant, Douglas James Mayes, on the
24 charge contained in Indictment Number
25 2011-GS-32-01303, guilty of possession with intent

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1 to distribute cocaine or guilty of simple possession
2 of cocaine or not guilty and on the charge of
3 trafficking in crack cocaine on Indictment Number
4 2011-GS-32-1304, guilty or not guilty."

5 I know, Mr. Floyd, you disagree with that.
6 You think that there should be a lesser included
7 charge included on that verdict form. But I have
8 made that decision, and I don't think there's any
9 evidence in the record that would justify a lesser
10 included on that charge. And so those will be the
11 forms that will go to the jury.

12 And we've already discussed the other
13 verdict form, that they've got to find him guilty of
14 the trafficking charge before they can find him
15 guilty of the possession of a weapon. I agree, Mr.
16 Floyd, that the record is protected that you don't
17 think that the possession of the weapon charge
18 should even be going to the jury, that you ought to
19 have a directed verdict on that because there's no
20 evidence in the record that the weapon was
21 operative. But other than that, you do agree that
22 they've got to find him guilty of the crack before
23 they can even consider that, right?

24 MR. FLOYD: That's correct.

25 THE COURT: Okay. All right, counsel,

1 that being the case, let me hear from you with
2 regard to any special requests to charge.

3 (Whereupon, a charge conference was had.)

4 THE COURT: All right, having not
5 presented any testimony, Mr. Floyd, you have the
6 right to argue last.

7 So, Mr. Scott, about how much time do you
8 need?

9 MR. ROSS: Mr. Ross, sir.

10 THE COURT: I'm sorry, Ross.

11 MR. ROSS: Probably 15 to 20 minutes.

12 THE COURT: Mr. Floyd?

13 MR. FLOYD: About the same, Your Honor.

14 THE COURT: All right, so let's say 30
15 minutes. I'll tell you all -- and you have probably
16 already gotten this message -- but I'll tell you
17 like I always tell my preacher, that anything over
18 20 minutes is lost anyhow.

19 So if you can keep it short, I'm sure the
20 jury is able to keep focused on it better. Do you
21 need a few minutes before we actually call the jury
22 in and go into arguments, or are you prepared to go
23 forward?

24 Mr. Ross, you've got to go first.

25 MR. ROSS: Judge, I'm ready.

1 MR. FLOYD: I'm ready, Your Honor.

2 THE COURT: All right, bring the jury in.
3 Hold them right there just a minute. Don't have
4 them go back to the room. I just want to ask the
5 lawyers one more question.

6 Mr. Floyd, one thing we didn't talk about
7 in the question of charges, do you want me to
8 instruct the jury again -- and I will, if you
9 request it -- regarding the voluntariness of the
10 statement?

11 MR. FLOYD: Yes, Your Honor.

12 THE COURT: Okay. So we'll add that to
13 the charges. I think that it is appropriate that
14 the jury consider that as well.

15 All right, now you can bring the jury in.

16 (The jury returned to the
17 courtroom at 2:45 p.m. after which the following
18 proceedings were had:)

19 THE COURT: All right, thank you very
20 much, ladies and gentlemen. Before we went to
21 lunch, you heard the State announce that they have
22 rested their case. Now the defense will have the
23 right to present any evidence to you that it may
24 wish to present.

25 Does the defense wish to present any

1 evidence, Mr. Floyd?

2 MR. FLOYD: Your Honor, the defense rests.

3 THE COURT: All right. That means, ladies
4 and gentlemen, that you have heard all of the
5 evidence that you will hear in this case. And there
6 are only two matters that remain to be done.

7 Those are the arguments of counsel and the
8 instructions on the law by the Court. I will tell
9 you now, as I did at the first of this case, that
10 the arguments of counsel are not evidence in this
11 case.

12 They are simply the lawyers' views of what
13 they think the evidence shows. You will decide this
14 case based upon the evidence that you have heard
15 from this witness stand and on any exhibits that
16 have been introduced into evidence.

17 But the lawyers do have the right -- not
18 only the right but the duty -- of behalf of their
19 clients to address you now and to give you their
20 views of what they think the evidence shows.

21 And when they have concluded their
22 arguments to you, I will then instruct you on the
23 law of South Carolina as it applies to the issues
24 that have arisen in this case. And then, based on
25 that law, you will be allowed to go to your jury

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1 room and apply that law to the facts as you may find
2 those facts to be and arrive at a verdict in this
3 case.

4 You will hear first from the Solicitor,
5 Mr. Ross, on behalf of the State and then from Mr.
6 Floyd on behalf of the defendant.

7 Mr. Ross?

8 CLOSING ARGUMENT

9 FOR THE STATE

10 MR. ROSS: Thank you, Your Honor, may it
11 please the Court?

12 THE COURT: Yes, sir.

13 MR. ROSS: I go down the street to the BP
14 station, and I go to the candy aisle, pick up a
15 candy bar, put it in my pocket, and I walk out the
16 door without paying for it. I have just stolen that
17 candy bar.

18 And if I go to my car, put that candy bar
19 down on the front seat, drive home, park the car in
20 the driveway, and get out and leave the candy bar
21 sitting there, what do you think is going to happen
22 to that candy bar?

23 A sunny day like today, a sunny day like
24 you get in the summertime in Lexington County, South
25 Carolina, that candy bar is going to melt. When

Closing Argument for the State

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1 that candy bar melts, does that mean I am no longer
2 guilty of stealing that candy bar?

3 Does that give me a get-out-of-jail-free
4 card for stealing a candy bar if it melts in my car?
5 Mr. Floyd wants to sell y'all that. He wants to
6 sell y'all a get-out-of-jail-free card. What do
7 y'all think about that?

8 I told you when this case started that the
9 facts are simple, the law is simple. The law that
10 he is accused of violating is trafficking crack
11 cocaine. And I'm a little bit old-fashioned, but I
12 want to figure out, if somebody has violated the
13 law, I'd like to take a look at it.

14 So this is the actual statute that he's
15 accused of violating, and Judge King is going to
16 explain this to you as well. But you'll recall all
17 we're going to prove is that the defendant, Douglas
18 Mayes, was in actual or constructive possession of
19 10 grams or more -- in this case, 28 grams or more
20 -- of cocaine base, crack cocaine -- possession.

21 That's all trafficking crack cocaine is,
22 is possession. And the judge is also going to
23 explain constructive possession. I talked about
24 this in my opening statement as well. You don't
25 have to have drugs on you to be guilty of

Closing Argument for the State

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1 possession.

2 If you exercise dominion and control over
3 those drugs or dominion and control over the area
4 where the drugs are found, you're guilty of
5 possession of those drugs, which makes sense,
6 because we all have stuff -- we can't carry
7 everything we own on our person.

8 That doesn't mean you're not in possession
9 of those items. So consider the evidence in this
10 case. Is he guilty of possession of those drugs?
11 Well, number one, it is his house. That is
12 unquestioned. It is his house.

13 Without a doubt, this is the man right
14 over there that lives at [REDACTED] [REDACTED] [REDACTED] in
15 Pelion. How often do you have drugs in your house
16 and you not know about it? Is that common
17 experience?

18 "Oops, some drugs in my house." Not only
19 in his house, right there in his bathroom -- right
20 here. Right here, look where they're found -- right
21 beside where he does his business in the morning.
22 That's where the drugs were found, right beside this
23 little baby's potty where the drugs are found.

24 He's going to say they're not his, in the
25 most intimate area of our home? That's where

Closing Argument for the State

420

1 they're found. They're not his? How about where
2 was he when the police officers rushed in?

3 You remember Sgt. Laney came in. He was
4 the first guy to enter. He limped up. He had
5 surgery last week, and he came to court to testify.
6 He entered this room right here, this door, knocked
7 and announced, said "Police," and then he went in.

8 He came all the way down here. This is
9 where he finds Douglas Mayes. This is where he
10 finds the drugs. He's right there caught red-
11 handed. There's no space in between here. There's
12 no way to get out of that. He is caught red-handed
13 right beside where the drugs are found.

14 Sgt. Laney testified as to how long it
15 took him to get back in there. He knocked, and he
16 went in. He didn't wait for somebody to come answer
17 the door. And there's a reason why they do that,
18 because you can flush them down that commode.

19 If you wait on somebody to answer the
20 door, they're going to flush them down the commode.
21 Douglas Mayes didn't have time to do that. They
22 were up in there. They were back in that bedroom in
23 no time. He didn't have time to flush them down the
24 commode.

25 Take a look at this pill bottle. He had

Closing Argument for the State

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1 three bags of crack, one bag of powder, and he's got
2 this pill bottle. He doesn't have the time to open
3 this pill bottle up, shake out the drugs, before the
4 police came back there.

5 It's easy to figure out what happened in
6 this case. He heard "Sheriff's Department, search
7 warrant," "Sheriff's Department, search warrant."
8 He grabbed his stuff, and he stashed it. Well, why
9 else would he not flush those down the commode?

10 That's \$7,000. All these little rocks,
11 all these little rocks in here, that's as good as
12 gold on the street, \$100 a gram. Now, I didn't
13 major in math. I was never good in math. But \$100
14 a gram at 70 grams, \$7,000.

15 So that's why he didn't flush them. And
16 you can also take the value of the drugs in
17 consideration to figure out whose drugs they were,
18 who was in possession of them. If someone else wee
19 in possession of these drugs, if this is some sort
20 of conspiracy or somebody else put them there, is
21 that really a good practice for a drug dealer?

22 I don't know much about business. I'd
23 probably starve if I had to get a real job. But do
24 you think that is a smart business practice to stash
25 \$7,000 of your product in somebody else's bathroom?

Closing Argument for the State

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1 Do you think that's what's going on here, that
2 there's some other guy that stashed those drugs in
3 that bathroom without him knowing about it?

4 They snuck into his single-wide, went into
5 his bathroom, and stashed them there? How else do
6 you know that he was in possession of these drugs?
7 Well, there's the elephant in the room. He
8 confessed to them. And it makes you think, "Well,
9 duh. Of course he was in possession of them."

10 Well, duh, they asked him about these
11 drugs, and he knows he's caught red-handed, and he
12 can't talk his way out of it. So he says, "Yes,
13 everything back there was mine."

14 Now, they're going to try and say there's
15 some confusion in that statement, that you really
16 can't tell what he was talking about when he says,
17 "Everything back there is mine." But when narcotics
18 officers enter your house with a search warrant for
19 drugs, and they said they found drugs, do you think
20 they're talking about the mouthwash in his bathroom?

21 You think they're talking about the soap?
22 You think those narcotics officers were there to
23 talk about building codes? Of course not. They
24 were there for one reason. You know it, and he
25 knows it. They were there for drugs, and he flat-

Closing Argument for the State

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1 out confessed to it.

2 The second charge is PWID, possession with
3 intent to distribute, cocaine. That's for the
4 powder cocaine. So in addition to the possession
5 element that we're going to prove and we have
6 proven, you've got intent to distribute.

7 How can you figure this one out? You can
8 just look at the drug paraphernalia that was found
9 in the home. Look at all these little suckers.
10 What do you think these things are for? There are a
11 lot of them in here.

12 What do you think these are for in his
13 kitchen cabinet? And he didn't know about what was
14 found in the bathroom? You think -- there was a
15 toddler there. You think this was for the toddler's
16 lunch? Can you fit a little small sandwich in here?
17 Can you fit lunch in here?

18 What can you fit in here? What can you
19 fit in here? Something about that size. That's not
20 the only drug paraphernalia that was found in that
21 house. Right here, right on the kitchen counter,
22 this little sucker, these little digital scales
23 here.

24 Those were found on the kitchen counter in
25 his house, right in plain view, right for everybody

Closing Argument for the State

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1 to see. They didn't really have to look for them.
2 You walk in the door, they're right there like it's
3 a can of mustard. If you walk in my house, you're
4 probably going to find some mayonnaise that's
5 spoiled sitting out on the kitchen counter.

6 If you walk into Douglas Mayes' house, you
7 find digital scales. Now, Mr. Floyd cross-examined
8 the narcotics officers that seized these items on
9 what could this thing be used for. They talked
10 about maybe putting some beef on here, maybe a small
11 hamburger to weigh it.

12 My mama, bless her heart, she's on Weight
13 Watchers, and she does those little Weight Watchers
14 points. And she's always got some sort of scale.
15 She will weigh out a dadgum rice cake. You think he
16 was weighing out his Weight Watchers points? You
17 think he was trimming up for bathing suit season?

18 You think he was weighing something like
19 this? You think he used this to weigh his product
20 out before he packaged them in this for his
21 customers? How else can you figure out intent to
22 distribute? That's pretty damning.

23 But the weight of the actual powder, like
24 I said, is going to come into play. And listen to
25 Judge King when he tells you, when he instructs you

Closing Argument for the State

425

1 on the law, about the weight of the substance is an
2 element to determining whether or not he intended to
3 distribute the powder cocaine.

4 He's going to be very clear if you have in
5 your possession over a gram of powder cocaine, you,
6 the jury, based on just the weight alone, without
7 even taking this into consideration, or this into
8 consideration, or all this other stuff, based on the
9 weight of that powder alone, you can conclude he
10 intended to distribute it.

11 Well, here he had three grams, three times
12 that one-gram inference weight, three times that
13 threshold, three times, not just barely over. He
14 crushed it. He crushed that ceiling, three times
15 the ceiling.

16 Also consider the crack cocaine there,
17 \$7,000 worth of crack cocaine. Do you think that's
18 all for him? Even without even looking at all that
19 evidence over there, \$7,000 worth, is that all his?
20 He was going to sell that.

21 Was he going to cook that powder cocaine
22 to sell it, to put into those bags, put it out on
23 the streets? The last charge is the easiest one of
24 all, the weapons charge. He's guilty of trafficking
25 crack cocaine, and he was in possession of this

1 weapon.

2 Trafficking crack cocaine is considered a
3 violent offense under the law. He had this weapon
4 in his possession, sitting out in his kitchen, while
5 he's committing that offense. Now, Mr. Floyd talked
6 about -- asked the officers on cross-examination
7 whether or not this is operational.

8 And, again, listen to what the actual law
9 is on this point. And Judge King will tell you
10 about this. The standard is, is this a weapon that
11 is designed to fire? Mr. Floyd wants to take this
12 sucker out and do a little target practicing in the
13 middle of the trial, but we don't really do that in
14 the middle of a trial, because it's designed,
15 capable to be fired.

16 I'm not a weapons expert, don't claim to
17 be. I don't think you need to be. Just take a look
18 at it. So what does one do when confronted with a
19 mountain of evidence like we have in this case?
20 What is the card you can play?

21 You've only got one option out. You've
22 got to attack the police. You've got to put the
23 police on trial. That's really what they did in
24 this case. That's his only way out. He thinks
25 that's his get-out-of-jail-free card.

Closing Argument for the State

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1 How did they attack the police? Well,
2 they talked about that melted crack cocaine. They
3 think that that's a get-out-of-jail-free card. But
4 do you really need to be an expert to know what that
5 is? Did you need to bring in the chemist to explain
6 this?

7 I think one look at it and you can figure
8 out what this substance is. And the chemist was
9 clear. She did her report not long after these
10 drugs were seized. They were in rock form. They
11 hadn't melted -- an absolute ton of cocaine in that
12 house.

13 And we asked her, "Well, how can it go
14 from rock to liquidized in essence?" It's the same
15 way that candy bar goes from Hershey's milk
16 chocolate candy bar to liquid chocolate right there
17 in your hands. You add a little heat, a little
18 temperature, something's going to melt.

19 That doesn't mean it's no longer crack
20 cocaine or it wasn't cocaine in the first place. It
21 just means that it physically changed forms. We
22 flat asked her how that happened, and it's because
23 of the adulterants, the adulterants that are placed
24 in the crack cocaine, what you cut it with.

25 Different people cut it with different

1 stuff. So if you have different levels of
2 adulterants in your crack cocaine, and you put in
3 the same storage area, some can melt, and others
4 won't. That's just the laws of physics. It's the
5 laws of chemistry.

6 Different adulterants in crack cocaine
7 seized from Pelion, South Carolina, versus crack
8 cocaine seized from somewhere else, pure versus
9 impure, one's going to melt, and one's not going to
10 melt. So that's why you have some cases melt out
11 there in that storage room and most of them don't.

12 And, again, the bottom line, when that
13 chemist got up on the stand, did it alter this in
14 any way? Did it alter her final report? No.
15 Should it alter your decision? No.

16 How else did they attack the police?
17 Well, they jumped on the evidence custodians. They
18 attacked -- little Candy Kyzer came up and testified
19 on the stand. They lit into her. Really? They
20 handle 10,000 pieces of evidence in that storage
21 room.

22 They put these two items in that storage
23 room, these two needles in a haystack. And one time
24 they were called to court, to come bring these to
25 court and couldn't put hands on them. They went out

Closing Argument for the State

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1 there and looked in another box, there they were.
2 Does that mean these were never in that box? Does
3 it mean that these somehow grow legs and walk out
4 the door?

5 What it means is we're all human. Those
6 evidence custodians are human. It's amazing that
7 something like this doesn't happen more often when
8 you've got 10,000 needles sitting out there in that
9 haystack. So all this talk about what the police
10 did wrong, let's talk about what the police did
11 right.

12 They took some initiative in this case.
13 They busted a drug den, and they seized \$7,000 of
14 crack cocaine, took it off the streets. That's what
15 they did right, and they should be commended for
16 that. They shouldn't be attacked.

17 They caught this man red-handed, and they
18 gave him a chance to explain himself. And he
19 explained himself, "Everything back there is mine."
20 They gave him the opportunity. He knew he was
21 caught. He still knows he's caught.

22 Finally, ladies and gentlemen, I want to
23 talk to you about the presumption of innocence and
24 reasonable doubt. Judge King and Mr. Floyd have
25 already gotten in that a little bit, but I'll talk

Closing Argument for the State

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1 to you a little bit about it as well.

2 The presumption of innocence, that really
3 is nothing new. That's been the law in this country
4 for as long as we've been a country. That's the
5 American way. The State wouldn't have it any other
6 way. And it's simple.

7 It means everybody that walks through
8 those courthouse doors -- everybody -- when you walk
9 in to start a case, you're presumed innocent. At
10 the start of the trial, you are presumed innocent.
11 Everybody gets their day in court.

12 Mr. Mayes has had his day in court. He's
13 had a few days in court. And the evidence is in.
14 And that presumption of innocence is gone. He can't
15 get around all this evidence. He can't get around
16 that.

17 The trial is over. That presumption of
18 innocence has left the building. You're also going
19 to hear about reasonable doubt from the judge. And
20 reasonable doubt, that's not really -- those aren't
21 magical words, reasonable doubt.

22 Judge King is going to explain to you
23 reasonable doubt simply means, are you firmly
24 convinced that Douglas Mayes is guilty? Are you
25 firmly convinced that Douglas Mayes is guilty?

Closing Argument for the State

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1 That's it.

2 It's not guilt beyond all doubt. It's not
3 guilt beyond every doubt, because nothing in this
4 world is beyond all doubt. Nothing in this world is
5 beyond all doubt. It's are you firmly convinced.
6 After all this evidence, are you firmly convinced
7 that he's guilty?

8 So if I were to tell you that somebody --
9 that the narcotics officers found \$7,000 of crack
10 cocaine in somebody's bathroom, would you start to
11 get firmly convinced that he's guilty? If I were to
12 tell you that there was open drug paraphernalia
13 throughout that house, are you starting to get
14 firmly convinced yet?

15 If I were to tell you he was found right
16 beside where the drugs were, are you firmly
17 convinced that he's guilty? If I were to tell you
18 that he admitted to this officer that he was guilty,
19 are you starting to get firmly convinced yet?

20 Now, before I sit down and give the floor
21 to Mr. Floyd, I do want to thank you for coming in
22 to serve on this jury panel. Yesterday when we came
23 in, there was a lot of people here for jury duty.
24 And I know all of y'all had something you could have
25 been doing.

Closing Argument for the State

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1 You could have been out with your family,
2 could have been with your friends, could have been
3 working to put some food on the table. You took
4 time out of your schedule that you didn't have to.

5 You should be commended for that, because
6 nothing the police ever do could ever come to
7 fruition without 12 honest citizens standing in
8 judgment of somebody else. And that ain't an easy
9 thing to do. It is never easy to sit in judgment of
10 somebody else.

11 But it's necessary. It is necessary to do
12 so. It is necessary to hold people accountable for
13 their actions. So there's only one thing left to
14 do. Let's hold Douglas Mayes accountable for his
15 actions. Hold him accountable for what he is, a
16 drug trafficker. Find him guilty as charged.

17 THE COURT: Mr. Floyd?

18 CLOSING ARGUMENT

19 FOR THE DEFENSE

20 MR. FLOYD: Thank you, Your Honor.

21 Mr. Foreman and ladies and gentlemen of
22 the jury, before I get into my closing argument, I'd
23 like to thank each of you for the attention you have
24 given to this matter. It's the most important day
25 in the life of Douglas Mayes. The decision that you

Closing Argument for the Defense

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1 make about him, well, it's going to affect him for a
2 long time. So we appreciate the attention that you
3 have given to us.

4 Now, I'm going to repeat something that's
5 been said to you, and it's not that I think you
6 forgot it. It's just that it's the most important
7 thing for you to hear. And that is what we call the
8 presumption of innocence, because, you see, Douglas
9 Mayes come into court with the same rights each of
10 us have.

11 One of those most important rights is what
12 we call the presumption of innocence. So you must
13 look at Douglas Mayes, and you must say in your
14 heart and in your mind, "Douglas Mayes is innocent."
15 And he remains innocent unless the State proves his
16 guilt to each one of your satisfaction beyond a
17 reasonable doubt.

18 And what do we mean by that? Now, when we
19 lawyers quit talking to you -- I'm going to be the
20 last one to talk to you -- Judge King will read to
21 you the law. He'll explain to you the law. And if
22 I say something to you about the law -- I'm about to
23 say something about it -- you listen to what he
24 says, and you make sure you go by the way he tells
25 you the law is, because he's the judge of the law.

Closing Argument for the Defense

434

1 Ladies and gentlemen, one way to define
2 proof beyond a reasonable doubt is reasonable doubt
3 is that doubt which would cause a reasonable person
4 to hesitate to act -- that doubt which would cause a
5 reasonable person to hesitate to act.

6 So if you could somehow take all the
7 evidence you've heard in this case and put it in the
8 shape of this piece of paper, because of one piece
9 of that evidence or the lack of one piece of that
10 evidence, you would hesitate before you would vote
11 to find him guilty, well, your objection as a juror
12 is to return a verdict of not guilty, even if
13 there's other evidence in the case that makes you
14 suspicious of the guilt.

15 Because when you vote guilty or not
16 guilty, you're not voting on whether or not you
17 think he did it. What you're voting on is whether
18 the State has proven his guilt beyond a reasonable
19 doubt. Now, why should you have some doubt in this
20 case?

21 Let's talk about the evidence a moment.
22 The State says you should convict him because he
23 lived there, because he said everything in the
24 bathroom was his [inaudible]. Let's talk about that
25 a minute. Let's analyze that just a moment.

Closing Argument for the Defense

435

1 First, the judge will tell you about a
2 statement, when someone gives a statement. And you
3 must first, when you consider that statement,
4 consider whether or not you think it was given
5 freely and voluntarily or whether or not there may
6 have been some coercive factor involved in that
7 statement before you give it any weight.

8 What were the circumstances of the
9 statement? What do we know? Douglas Mayes was
10 sitting in the living room handcuffed. Kaylie
11 Tharp, the mother of his child, was sitting in the
12 room handcuffed with a small baby next to her.
13 Ladies and gentlemen, what do you think was said?

14 What do you think was said? Does it sound
15 reasonable what was said was, "If you don't admit
16 it, if you don't take responsibility, y'all are both
17 going to jail"? Otherwise, they both wouldn't have
18 been handcuffed. You know that's probably what
19 happened, because what happened next?

20 He gave them what they wanted. Oh, the
21 handcuffs come off of Kaylie Tharp. The baby stays
22 there. It's not a situation where both go to jail,
23 what's going to happen to the baby? Is he going to
24 get DSS involved with it? Or does he go ahead and
25 claim responsibility so that that won't happen?

Closing Argument for the Defense

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1 So can you use the basis of that to
2 convict somebody on, or does it make you hesitate a
3 little bit? Now, what else is there? His driver's
4 license has his address. Let me ask you this. Does
5 anybody else live there? Is there anybody else
6 other than Kaylie Tharp? Does Kaylie Tharp live
7 there?

8 Or is there anybody else in addition to
9 Kaylie Tharp that lives there? Have you heard any
10 evidence on that point? Did anybody prove to you
11 that there's nobody else that lives there? Have you
12 heard anything on that? Not a thing, have you?

13 Now, then they say, "Wow, he's got to be
14 guilty because he's in the bathroom, and that's
15 where the drugs are." Ladies and gentlemen, let me
16 tell you something. The way we see that the way I
17 think is logical is that more goes to prove he's not
18 guilty. That's more proof that he's not guilty.
19 You know why?

20 What you've here, you add it all up, you
21 have all those drugs. You've got maybe 70 grams of
22 product. You know what that is? Less than three
23 ounces, 28 grams in an ounce. Less than three
24 ounces of product. Now, you're not allowed to see
25 it, you see, because something has happened here,

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1 and, you know, it's now liquid. So you can't really
2 see the exact size.

3 That's not our fault. But you can't the
4 exact size of what you're dealing with, less than
5 three ounces. Now, what does that mean? That means
6 if it was Douglas Mayes' drugs, if Douglas Mayes
7 knew that those drugs were in the bathroom, don't
8 you think he would have flushed them down the toilet
9 when he heard them bust down his door, saying
10 "Police, police, police"?

11 One flush, three ounces of product,
12 because they didn't find any other drugs anywhere,
13 did they? Doesn't it make you hesitate, because
14 isn't that a more logical explanation? One flush,
15 if he'd have known they were there, that's all he
16 had to do, was reach in there and throw them in the
17 toilet and flush them.

18 The police are out there, breaking in the
19 door, yelling "Police, police," running through the
20 house. In fact, when they confronted Mr. Mayes, he
21 wasn't doing anything suspicious, was he? He didn't
22 seem nervous, did he? Have you heard anybody say
23 anything about that?

24 He didn't seem like he was trying to hide
25 anything. Are they seeing a normal person? Have

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1 you heard anything unusual about his appearance,
2 about his manner, about his demeanor? No, there
3 wasn't any, was there? Doesn't that stay more in
4 line with the fact he didn't know what was in there?

5 And even if he said, "Whatever is in there
6 is mine," he didn't know. There's been no evidence
7 that anybody ever confronted him before he went into
8 the living room and said, "Hey, look what's here.
9 Look what's here." He had no idea what they were
10 talking about.

11 And now I'm going to shut up and sit down.
12 I see you suppressing those sighs of relief. It's
13 been a long two days. I've been up here talking a
14 long time, too. See, there's a reason for that,
15 because once I sit down, I don't get to say anything
16 before you on behalf of Douglas Mayes.

17 The system we have doesn't allow us to
18 communicate with each other. I'm not allowed to ask
19 you what part of this evidence do you need me to
20 discuss. You're not allowed to ask me, "Well,
21 Wayne, what about this piece of evidence? What
22 about this piece of evidence? What do you have to
23 say about that?"

24 There's no dialogue like that permitted in
25 our rules. So we lawyers end up standing up here

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1 trying to talk about every possible thing we can, in
2 hopes that we don't overlook something that may be
3 of importance to you. All we can ask is when you
4 get back in that room, if something comes up, think
5 how we could have responded to it.

6 When you go to make that question of
7 guilty or not guilty, remember what you've heard in
8 here. Does the evidence prove the guilt beyond a
9 reasonable doubt? And when you go to consider that
10 point, you think about that. You think about what
11 makes more sense.

12 Did he know the drugs were there, or he
13 didn't know the drugs were there? Because, see,
14 that's part of the question. It's not enough -- his
15 mere presence and at the scene where the scene where
16 the drugs were found is not enough for guilt. If
17 you listen to the judge, he'll tell you that.

18 His mere presence there is not enough.
19 They must prove he had knowledge of it and the
20 intent to control it. So the question on whether he
21 had knowledge of it goes to what happened when the
22 police came in that house, because if he had
23 knowledge of it, if he knew it was there, it
24 wouldn't have been there by the time the police got
25 back there.

1 And he would still have been looking
2 furtive, he would still have been looking guilty.
3 There would have been something about what was going
4 on as he's rushing out of the bathroom that would
5 make you think he just tried to hide the drugs or
6 get rid of them. Thank you for your attention here.
7 We feel comfortable placing Mr. Mayes in your hands.
8 Thank you very much.

9 THE COURT: All right, counsel, let me see
10 you sidebar for just a moment before I start talking
11 with the jury.

12 (Conference at the bar.)

13 CHARGE OF THE COURT

14 All right, Mr. Foreman and ladies and
15 gentlemen of the jury, please give me your
16 attention. You have followed very patiently and
17 attentively to the presentation of the evidence and
18 the able arguments made by the Solicitor, Mr. Ross,
19 on behalf of the State and Mr. Floyd on behalf of
20 the defendant, and I thank you for that.

21 It now becomes the duty of the trial judge
22 under the constitution of this state to charge and
23 instruct you in the law applicable to this case.
24 And it is your duty as jurors to accept and apply
25 the law as the Court will now state it to you. And

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1 as jurors, it is your exclusive duty to determine
2 and decide all issues of fact in this case and for
3 that purpose to determine the effect, the value, the
4 weight, and the truth of the evidence.

5 Both the State and the defendant have the
6 right to expect that you will conscientiously
7 consider and evaluate the evidence and apply the law
8 of the case thereto, to the end that both the State
9 of South Carolina and the defendant will receive and
10 obtain a fair and impartial trial.

11 Now, when I use the word "defendant" in
12 these instructions, I refer, of course, to Mr.
13 Douglas James Mayes. The State of South Carolina by
14 the three bills of indictment in this case charge
15 the defendant with three different offenses.
16 Indictment Number 1303 charges the defendant with
17 possession with intent to distribute powder cocaine
18 on February 17, 2011.

19 Indictment Number 2011-GS-32-1304 charges
20 the defendant with trafficking in crack cocaine, and
21 Indictment Number 1305 charges the defendant with
22 possession of a weapon during the commission of a
23 violent crime. To these charges and to these
24 indictments, the defendant has entered a plea of not
25 guilty.

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1 This plea of not guilty by the defendant
2 places the burden of proof on the State to prove by
3 evidence the guilt of the defendant beyond a
4 reasonable doubt before you can find the defendant
5 guilty. The defendant, Mr. Mayes, is presumed in
6 the law innocent of the charges contained in these
7 indictments.

8 It is a cardinal and fundamental rule of
9 the law of evidence that a defendant, irrespective
10 of the enormity of the charges against him, will
11 always be presumed innocent of the crime for which
12 he is indicted unless and until the guilt of the
13 defendant has been proven by evidence which
14 satisfies you, the jury of his guilt beyond a
15 reasonable doubt.

16 The presumption of innocence is not a mere
17 legal theory. It is not just a legal phrase. The
18 presumption of innocence is a substantial right to
19 which every accused is entitled. Our Supreme Court
20 has declared that the presumption of innocence is
21 like a robe of righteousness placed about the
22 shoulders of this defendant, and it remains with him
23 and assigns to him that class, the innocent, until
24 that presumptive robe of righteousness has been
25 stripped from his person by evidence satisfying you,

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1 the jury, of the guilt of the defendant beyond a
2 reasonable doubt.

3 The presumption of innocence accompanies
4 the defendant from the time of his arraignment and
5 appearance in this Court and continues with the
6 defendant after you retire to the jury room to
7 deliberate your verdict. The presumption of
8 innocence continues in existence to the benefit of
9 the defendant until you, the jury, reach the
10 conclusion that the State has proven the guilt of
11 the defendant beyond a reasonable doubt.

12 Now, the State is not required to prove
13 the guilt of the defendant beyond all doubt or
14 beyond every doubt but beyond a reasonable doubt.
15 What is a reasonable doubt? It is not an imaginary
16 or fanciful doubt or a weak doubt. It is a
17 substantial doubt.

18 It is a doubt for which you can give or
19 assign a reason based on the testimony and the
20 evidence in this case. A reasonable doubt is not
21 any sort of a doubt. You and I know from everyday
22 life experiences that you may have a sort of a doubt
23 about any matter that arises, no matter how trivial
24 it may be or how serious it may be.

25 A reasonable doubt is a doubt which makes

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1 an honest, sincere, conscientious juror in search of
2 the truth hesitate to act. Proof beyond a
3 reasonable doubt is proof which leaves you firmly
4 convinced of the defendant's guilt.

5 If you have a doubt for which you can give
6 or assign a reason as to the guilt of the defendant,
7 then he is entitled to a verdict of not guilty.

8 Reasonable doubt may arise from evidence which is in
9 the case or from the lack of evidence in the case.

10 You, the jury, must make the determination
11 of whether or not reasonable doubt exists as to the
12 guilt of this defendant. The very fact, however,
13 that the jury engages in a full and free discussion
14 of the issue of guilt or non-guilt in a case with a
15 normal conversational ebb and flow on these issues
16 do not automatically mean that reasonable doubt
17 exists in this case or in any other case.

18 I charge you that the defendant is
19 entitled to every reasonable doubt arising in the
20 whole case or arising in any defenses asserted by
21 the defense. If upon any issue of fact essential to
22 conviction and a verdict of guilty you have a
23 reasonable doubt as to how that issue should be
24 resolved, it would be your duty to resolve that
25 doubt in favor of the defendant.

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1 A defendant, ladies and gentlemen, is not
2 required to prove his innocence, but the State is
3 required by law to prove every essential element of
4 the offense charged against the defendant by
5 evidence which satisfies you, the jury, of his guilt
6 beyond a reasonable doubt before you can convict the
7 defendant and find him guilty.

8 If then upon the whole case you have a
9 reasonable doubt as to the guilt or innocence of the
10 defendant, he is entitled to that reasonable doubt
11 and would be entitled to an acquittal and a verdict
12 of not guilty. But on the other hand, if upon the
13 whole case you find the State has proven by evidence
14 which satisfies you, the jury, of the guilt of the
15 defendant beyond a reasonable doubt, then in such
16 circumstances it would equally be your duty to
17 convict the defendant and find him guilty.

18 Now, if you find the defendant guilty but
19 you have a reasonable doubt as to whether the
20 defendant be guilty of the greater crime charged or
21 the lesser crime charged, then you would resolve
22 that reasonable doubt in favor of the defendant and
23 write a verdict of guilty only as to the lesser
24 charge.

25 But, of course, you could not write a

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1 verdict of guilty to any charge unless you find that
2 all elements of the charge have been proven by the
3 State beyond a reasonable doubt. Now, as I said at
4 the first of this case, I instruct you that the
5 indictments in this case which I hold in my hand are
6 not evidence.

7 They are simply the formal written
8 instruments which contain the charges against the
9 defendant, and they serve as the formal document by
10 which this case is brought to trial. During this
11 trial, each of us, you and I, have certain duties to
12 perform. As the trial judge, it is my
13 responsibility to preside over the trial of this
14 case, and I also have the duty to rule upon or pass
15 upon the admissibility of evidence offered during
16 the progress of this trial.

17 You are to consider only the competent
18 evidence before you, and you are to disregard and
19 disabuse from your mind any testimony ordered
20 stricken from the record of this case during the
21 progress of the trial, if there be any. And you are
22 to consider only the testimony which has been
23 presented from the witness stand, together with any
24 exhibits admitted into the record of this case and
25 any stipulations of counsel made in the record, if

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1 there be any.

2 I have the additional duty to charge you
3 the applicable law in this case. As the presiding
4 judge, I am the sole judge of the law in this case.
5 And it is your duty to accept and apply the law as I
6 now state it to you. If you have a preconceived
7 idea as to what the law is or what the law ought to
8 be, and it does not agree with what I tell you the
9 law is, you are obligated under your oath to abandon
10 this preconception on your part because you are
11 sworn to accept the law precisely as I give it to
12 you.

13 In every case tried in this Court before a
14 jury, the jury becomes the sole and exclusive judge
15 of the facts of the case. You, the jury, are the
16 judge of the facts in this case. The Court is the
17 judge of the law. The constitution of this state
18 has declared that the trial judge shall not
19 intimate, state, comment upon, or make any statement
20 to a trial jury about the facts in the case.

21 Since you are the sole judge of the facts,
22 you are not to infer from anything that I have said
23 during the progress of this trial in ruling upon the
24 admissibility of evidence of otherwise, or anything
25 that I say to you now during the course of these

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1 instructions to you, that I have any opinion about
2 the facts of this case. I do not.

3 The law does not permit me to have an
4 opinion about the facts of the case. That is a
5 matter solely for you to determine. You, the jury,
6 must determine the facts, as I have stated that to
7 you, and you, the jury, must give and determine what
8 effect, what value, what weight, and what truth
9 should be attributed to the evidence presented
10 during the course of this trial.

11 Necessarily then, you must assess the
12 credibility of the witnesses who have testified in
13 this case. Credibility is simply a legalistic term
14 which means believability. It becomes your duty to
15 analyze and evaluate the evidence and to determine
16 that evidence which convinces you of its truth.

17 I charge you that in determining the
18 question of credibility or believability of the
19 witnesses, you may believe one witness as against
20 several witnesses, or you may believe a part of the
21 testimony of a witness and reject the remaining part
22 of the testimony of the same witness.

23 You may believe the testimony of a witness
24 in its entirety or reject the testimony of a witness
25 in its entirety. You may consider whether any

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1 witness has exhibited any interest, any bias, or any
2 prejudice in the case. And you may consider the
3 demeanor a witness, that is, the appearance of a
4 witness from the witness stand.

5 And you may consider the opportunity for
6 knowledge concerning those things about which the
7 witness testified. These considerations you do not
8 exercise arbitrarily but if in your good judgment
9 there is sound reason in the record for so doing,
10 because your objective, ladies and gentlemen, is to
11 find the truth, whether it comes from one or more
12 witnesses.

13 And in doing so, in exercising your mental
14 processes and in determining what you consider to be
15 true, the law simply requires that you exercise your
16 good judgment, your common sense, your sense of
17 logic and reason, and your experiences in life.

18 You then apply these attributes of ability
19 to the evidence and determine what you consider to
20 be the truthful evidence. And to these true state
21 of facts, you take and apply the law as I now state
22 it to you and thus arrive at a true verdict in this
23 case.

24 Now, as I said, there are three
25 indictments in this case, and the defendant is

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1 charged in one indictment with trafficking in crack,
2 in another indictment with possession with intent to
3 distribute powder cocaine, and the other with
4 possession of a weapon during the violent crime. I
5 now want to define these offenses for you.

6 First, trafficking in crack cocaine.
7 Section 44-53-375(c) of the South Carolina Law reads
8 as follows: "A person who knowingly sells,
9 manufactures, delivers, purchases, or brings into
10 this state or who provides financial assistance or
11 otherwise aids, abets, attempts, or conspires to
12 sell, manufacture, deliver, purchase, or bring into
13 this state or who is knowingly or in actual or
14 constructive possession or who knowingly attempts to
15 become in actual or constructive possession of 10
16 grams or more of cocaine base is guilty of a crime
17 known as trafficking in cocaine base."

18 There are three elements to the offense of
19 trafficking in crack cocaine that the State must
20 prove beyond a reasonable doubt. First, that the
21 substance involved was in fact crack cocaine.
22 Second, that the defendant had possession of that
23 crack cocaine, either actual possession or
24 constructive possession. And, third, that there
25 were in fact 10 grams or more of crack cocaine

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1 involved.

2 Section 44-53-210(b) (4) of the code
3 provides that cocaine in any form is a controlled
4 substance under the law of South Carolina. Section
5 44-53-110 states -- and I quote -- "Cocaine base
6 means an alkaloidal cocaine or free base form of
7 cocaine which is the end product of chemical
8 alteration whereby the cocaine in salt form is
9 converted to a form suitable for smoking. Cocaine
10 base is commonly referred to as rock or crack
11 cocaine."

12 The substance must be crack cocaine. The
13 defendant must have actual or constructive
14 possession of the crack cocaine, and the amount
15 involved must be 10 grams or more of crack cocaine.
16 The State must prove that the substance involved is
17 in fact crack cocaine.

18 The State must further prove the defendant
19 had actual or constructive possession of the crack
20 cocaine. What does possession of crack cocaine mean
21 under the law? The law says cocaine in any form is
22 a controlled substance. Possession means more than
23 simply having a controlled substance in one's
24 possession.

25 There must be knowing possession. The

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1 State must prove possession of crack cocaine by the
2 defendant and the further fact that the defendant
3 knew he had the crack cocaine in his possession.
4 The State must demonstrate beyond a reasonable doubt
5 that the defendant was in possession of crack
6 cocaine, that he knew he had it in his possession,
7 and that he knew the item was a controlled substance
8 under the law of this state.

9 The State is not required to show the
10 purpose for which the defendant may have had
11 possession of the crack cocaine. This is not a part
12 of the State's required degree of proof. The State
13 must show beyond a reasonable doubt that there was
14 possession of the crack cocaine and that the
15 defendant knew he had crack cocaine in his
16 possession.

17 Now, there are two kinds of possession
18 recognized in the law, actual possession and
19 constructive possession. Actual possession occurs
20 when the controlled substance is found to be in the
21 actual physical control of the person charged with
22 the possession.

23 Constructive possession is when a person
24 has dominion or control or the right to exercise
25 dominion and control over either the object or the

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1 premises upon which the object is located.

2 Possession may be inferred from the circumstances,
3 and it may be imputed to anyone who has the power
4 and intent to control and use the object.

5 In other words, possession of an object or
6 premises gives rise to an inference that the person
7 charged has both the power and intent to control the
8 use and disposition of the object. Actual knowledge
9 of the presence of the controlled substance is
10 strong evidence of intent to control the disposition
11 or use.

12 Mere presence of a person in an area where
13 an object is found is not enough in and of itself to
14 give rise to the necessary inference. Proof of
15 possession requires more than proof of mere presence
16 in the place where the controlled substance is
17 found.

18 The State must prove the defendant had
19 both, one, the power, that is, either actual or
20 constructive control; and, two, the intent to
21 control its disposition or use. Now, actual control
22 occurs when the controlled substance is found to be
23 in the actual physical custody of the person
24 charged.

25 Constructive control occurs when the

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1 person charged with possession has dominion and
2 control over either the controlled substance or the
3 premises upon which the controlled substance is
4 found. Constructive control means the defendant's
5 knowledge and possession may be inferred if the
6 controlled substance was found on premises under the
7 defendant's control.

8 This is a permissive inference. The jury
9 is free to accept or reject this permissive
10 inference of knowledge and possession depending upon
11 your view of the evidence. Constructive control may
12 be established by circumstantial evidence as well as
13 by direct evidence.

14 And constructive control may be jointly
15 shared by two or more individuals. Where the actual
16 knowledge of the presence of a controlled substance
17 is such strong evidence of intent to control its
18 disposition or use, that knowledge may be equated
19 with or substituted for the initial element.

20 So in summary, before you can find the
21 defendant guilty of trafficking in crack cocaine,
22 the State must prove the following elements beyond a
23 reasonable. First, the substance was in fact crack
24 cocaine, a controlled substance under the law of
25 this state.

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1 Secondly, the defendant had possession of
2 the controlled substance. That would be possession
3 either or constructive possession of the controlled
4 substance. And, third, the amount of controlled
5 substance was 10 grams or more of crack cocaine.

6 Now, the next indictment that you must
7 consider is the indictment for possession of cocaine
8 with intent to distribute. Section 44-53-370(a)(1)
9 of the South Carolina Code of Laws provides that
10 "Except as authorized by this article, it shall be
11 unlawful for any person to possess with intent to
12 distribute a controlled substance."

13 There are three elements of that offense
14 of possession of cocaine with intent to distribute
15 that the State must prove beyond a reasonable doubt.
16 First, that the substance was in fact cocaine.
17 Second, that the defendant had possession of that
18 cocaine, either actual possession or constructive
19 possession. And, third, that the defendant
20 possessed the cocaine with intent to distribute.

21 Of course, the State has first got to
22 prove the fact that the substance was cocaine. And,
23 second, the State must prove beyond a reasonable
24 doubt that the defendant had actual or constructive
25 possession of the cocaine. And, again, I'm not

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1 going to go through the entire colloquy as to what
2 actual and constructive possession is.

3 I charged you that in connection with the
4 trafficking charge. But the two kinds of possession
5 recognized in the law are actual possession and
6 constructive possession. And possession may be
7 inferred from the circumstances and may be imputed
8 to anyone who has the power and intent to control
9 the disposition and use of the object.

10 In other words, possession of an object or
11 premises gives rise to an inference that the person
12 charged has both the power and intent to control the
13 use and disposition of the object. Actual presence
14 of the controlled substance is strong evidence of
15 intent to control the disposition.

16 And, again, I would tell you, as I did in
17 connection with the trafficking charge, that mere
18 presence by the defendant where the controlled
19 substance is found is insufficient in and of itself
20 to give rise to possession of the controlled
21 substance. Possession requires more than mere
22 presence.

23 Now, the State must prove the defendant
24 possessed the cocaine with intent to distribute.
25 Under this charge, the State is not required to

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1 prove a distribution or sale. The State is only
2 required to show an intent to distribute. What is
3 intent within the law?

4 Criminal intent is a state of mind which
5 operates jointly with an act of omission in the
6 commission of a crime, and criminal intent is a
7 mental state of conscious wrongdoing. So I will
8 tell you that, in summary, before you can find a
9 defendant guilty of possession of cocaine with
10 intent to distribute, the State must prove the
11 following elements beyond a reasonable doubt.

12 First, that the substance was cocaine, a
13 controlled substance. Second, that the defendant
14 had actual or constructive possession of the
15 cocaine. And, third, that the defendant possessed
16 the cocaine with intent to distribute.

17 However, I would further charge you that
18 there's a provision in the law with regard to
19 possession with intent to distribute, and that is
20 Section 44-53-370(d)(4), which creates a permissive
21 inference that possession of more than one gram of
22 cocaine constitutes possession of cocaine with
23 intent to distribute.

24 Thus, this code section provides that
25 possession of more than one gram of cocaine gives

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1 rise to a permissive inference that the defendant
2 possessed the cocaine with intent to distribute.
3 The inference is a violation of the law by
4 possession of more than one gram of cocaine and may
5 be drawn from proof of the quantity of the drugs.

6 The resulting implication only permits
7 rather than requires the jury to infer a violation
8 of the law. This is another piece of evidence for
9 you to consider and evaluate. The permissive
10 inference does not relieve the State from actually
11 proving beyond a reasonable doubt the element of
12 intent to distribute cocaine.

13 Now, on the theory that the greater
14 offense includes a lesser offense, another option
15 that you will have on that charge will be the
16 offense of simple possession of cocaine. And,
17 again, South Carolina law provides that it is
18 unlawful to possess a controlled substance or what
19 is known as cocaine. And if you conclude that he
20 did not possess the cocaine with intent to
21 distribute the cocaine, then your verdict would be
22 one of simple possession of cocaine.

23 Now, the final charge in this case is the
24 charge of possession of a weapon during the
25 commission of a violent crime. Let's go back to the

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1 simple possession for just a minute. The code
2 section does provide that it is unlawful for any
3 person knowingly or intentionally to possess a
4 controlled substance unless the substance was
5 obtained directly from or pursuant to a valid
6 prescription of a practitioner while acting in the
7 course of the practice.

8 And, of course, there the State would have
9 to prove two elements, that is, that the controlled
10 substance was in fact cocaine and that the defendant
11 had actual or constructive possession of the
12 cocaine. Now, let's talk for just about the charge
13 of possession of a weapon during the commission of a
14 violent crime.

15 Our law provides that if a person is in
16 possession of a firearm or visibly displays what
17 appears to be a firearm during the commission of a
18 violent crime and is convicted of committing or
19 attempting to commit a violent crime, then he is
20 guilty of the crime of possession of a firearm
21 during the commission of a violent crime.

22 Firearm is defined as any machine gun,
23 automatic rifle, revolver, pistol, or any weapon
24 that will or is designed to or may readily be
25 converted to expel a projectile. Section 16-1 of

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1 the Code of
2 Laws of South Carolina provides that the crime of
3 trafficking in crack cocaine is a violent crime.

4 For you to find the defendant guilty of
5 the separate offense of possession of a firearm
6 during the commission of a violent crime, you must
7 first find the defendant guilty of committing the
8 violent crime, which in this case is trafficking in
9 crack cocaine.

10 If you find the defendant guilty of
11 trafficking in cocaine, you must then determine
12 whether the State has proven beyond a reasonable
13 doubt that the defendant was in possession of a
14 firearm or visibly displayed what appeared to be a
15 firearm during the commission of a violent crime.

16 Now, those are the charges for which the
17 defendant has been charged in this case. But there
18 are two or three other principles of law that I want
19 to state to you. First of all, that there are
20 generally two types of evidence that are presented
21 during a trial, direct evidence and circumstantial
22 evidence.

23 Direct evidence is testimony of a person
24 who asserts or claims to have actual knowledge of a
25 fact, such as an eyewitness. Circumstantial

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1 evidence is proof of a chain of facts and
2 circumstances indicating the existence of a fact.
3 The law makes absolutely no distinction between the
4 weight or value to be given to either direct or
5 circumstantial evidence, nor is a greater degree of
6 certainty required of circumstantial evidence than
7 of direct evidence.

8 You should weigh all the evidence in this
9 case. And after weighing all of the evidence, if
10 you are not convinced of the guilt of the defendant
11 beyond a reasonable doubt, you would find the
12 defendant not guilty. Also, the Court has admitted
13 into evidence in this case the testimony of an
14 expert witness.

15 Although lay witnesses are limited to
16 testifying about facts within their knowledge and
17 are not allowed to give opinions, certain witnesses
18 who by their training, education, or experience are
19 considered experts in a particular field may give
20 their opinions in that field based on the facts of a
21 matter and their conclusions.

22 These opinions constitute evidence to be
23 considered by you in connection with all of the
24 evidence and testimony in this case. You may
25 consider the expert's opinion just as you do all

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1 other evidence in this case. It is for you, the
2 jury, to give it such weight as you in your
3 experience and discretion may determine.

4 You must weigh such evidence and accept or
5 reject it in the same manner that you treat all
6 other evidence in this case. Now, I want to state
7 to you now and I want to emphasize to you now this
8 principle of law with regard to the defendant not
9 testifying.

10 The defendant in this case has not
11 testified. This is his constitutional right. It is
12 not a circumstance you can take into consideration
13 or even allow to enter into your discussions in the
14 jury room. Under the Constitution of South Carolina
15 and the United States, it is the defendant's
16 constitutional right not to testify.

17 The burden of proof is on the State of
18 South Carolina to establish the guilt by competent
19 evidence beyond a reasonable doubt. The fact that
20 the defendant did not take the witness stand and
21 testify in his own behalf does not create any
22 inference against him. And you, the jury, must not
23 permit this fact to weigh in the slightest degree
24 against the defendant, nor should that fact enter
25 into your discussions or deliberations in the jury

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1 room.

2 Now, ladies and gentlemen, I have about
3 finished my instructions to you. But I would tell
4 you that you are not partisans or advocates for the
5 State of South Carolina or for this defendant. It
6 has been said that when you serve on the jury, you
7 have no friends to reward and no enemies to punish.

8 Obviously, such a perverted system of
9 justice would be intolerable. You have been
10 selected by both the State and this defendant as
11 fair and impartial jurors. It is your duty, then,
12 by your joint deliberations to determine the truth
13 in this case, giving to the defendant the benefit of
14 each and every reasonable doubt on each and every
15 issue. And then to the facts that you determine to
16 be true, you then take and apply the law which has
17 been given you by this Court and thus arrive at a
18 verdict which does speak the truth.

19 The word "verdict," ladies and gentlemen,
20 has a Latin derivative. It comes from the Latin
21 verb "veredicto," meaning to speak the truth or
22 truth saying. And when you have accomplished these
23 responsibilities, you will have satisfied your oath
24 as jurors, and you will have discharged your duty to
25 this Court.

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1 Now I want to instruct you on the forms of
2 verdict in this case. And, of course, there will be
3 a separate verdict for each of the three charges.
4 If the State has failed to prove the guilt of the
5 defendant beyond a reasonable doubt, your verdict
6 would be two words, not guilty.

7 If the State has proven the guilt of the
8 defendant beyond a reasonable doubt, your verdict
9 would be one word, guilty. The verdict that you
10 render in this case must be the verdict of each and
11 every juror. It must be your unanimous verdict.
12 All 12 jurors must agree on the verdict which you
13 authorize the foreperson to write.

14 Now, Mr. Foreman, I have prepared verdict
15 forms on two sheets of paper that will go with you
16 to the jury room. The sequence in which I have
17 stated the possible verdicts on this case is not
18 suggestive of any verdict on your part. You should
19 not infer from the sequence or the order in which I
20 have put the possible verdicts on this verdict form
21 that I have any opinion as to what your verdict
22 should be. I do not.

23 The law does not allow me to have an
24 opinion. But, obviously, when setting something up
25 on a piece of paper, I had to put something first

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1 and put something second. But the verdict in this
2 case is to be determined by you, the jury, and not
3 by this Court.

4 Now, on the two drug charges, they are
5 contained in one verdict form. And across the top,
6 we simply have the State of South Carolina, the
7 County of Lexington, in the Court of General
8 Sessions, the State of South Carolina versus Douglas
9 James Mayes, the defendant, and the two indictment
10 numbers, 1303 and 1304.

11 Verdict on 1303, "We the jury by unanimous
12 agreement find the defendant, Douglas James Mayes,
13 on the charge contained in Indictment Number
14 2011-GS-32-1303 guilty of possession with intent to
15 distribute cocaine or guilty of simple possession of
16 cocaine or not guilty." So there are three possible
17 verdicts on that particular one -- guilty of PWID
18 cocaine, guilty of possession of cocaine, or not
19 guilty.

20 Now, on Indictment Number 2011-GS-32-1304,
21 which is the one that deals with the crack cocaine,
22 trafficking in crack cocaine in that indictment, "We
23 find the defendant guilty or not guilty." And then
24 you would find one of the three on the first charge
25 and one of the two on the second charge and then

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1 sign your name and date it.

2 Now, the other form that you would only
3 consider this charge if you find the defendant
4 guilty of trafficking in crack cocaine. In fact,
5 the instructions say across the top, "If you find
6 the defendant guilty of trafficking in crack cocaine
7 pursuant to Indictment Number 1304, you may consider
8 the charge of possession of a weapon during the
9 commission of a violent crime. If you find the
10 defendant not guilty of trafficking in crack
11 cocaine, do not consider this charge and notify the
12 bailiff that you have concluded your deliberations."

13 But if you find that he is guilty of
14 trafficking, you consider this. And on the charge
15 of possession of a weapon during the commission of a
16 violent crime, "We, the jury, by unanimous
17 agreement, find the defendant guilty or not guilty."
18 Again, sign your name and date it.

19 And when you have reached a verdict, if
20 you will knock on the door, we will return you to
21 the courtroom as quickly as possible. The bailiff
22 will be outside your jury room door to provide
23 security during the course of your deliberations.

24 In just a few minutes, I'm going to send
25 you to the jury room. I will have the bailiffs

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1 bring you the evidence in this case. I will also
2 have them bring you the verdict forms. But I'm
3 going to ask that you go to your jury room now, with
4 the exception of the alternate. I'm going to ask
5 that she stay with me.

6 But if you'll go to your jury room, but do
7 not begin your deliberations just yet. If it's not
8 necessary for me to bring you back into the
9 courtroom for additional instructions, then the
10 bailiff will bring you the verdict forms and the
11 evidence and tell you to begin your deliberations.
12 But do not begin your deliberations until he tells
13 you to do so.

14 So with the exception of the alternate, if
15 the 12 members of the principal jury will go with
16 the bailiff to the jury room. But do not begin your
17 deliberations just yet. Thank you.

18 (The jury left the
19 courtroom at 4:06 p.m. to deliberate their
20 verdicts.)

21 THE COURT: Are there any additions or
22 exceptions on behalf of the State, Mr. Ross?

23 MR. ROSS: No, sir.

24 THE COURT: On behalf of the defense, Mr.
25 Floyd?

1 MR. FLOYD: Your Honor, the only exception
2 that I take to the charge is we object to the use of
3 the word "inference," that if there's an inference
4 created by the mere fact that he possessed the
5 premises or owned the premises. We think that's a
6 burden-shifting kind of charge.

7 THE COURT: Well, it used to be when it
8 was presumption that the Supreme Court has changed
9 that basically to make it an inference, a permissive
10 inference. And I told the jury, of course, that
11 they could disregard it as a permissive inference,
12 and I think that is the law. But your exception is
13 noted.

14 MR. FLOYD: Thank you, Your Honor.

15 THE COURT: All right, counsel, come up
16 and check the exhibits to make sure that -- I don't
17 think there was anything that was excluded. I think
18 it's one through nineteen?

19 COURT REPORTER: Yes, sir.

20 THE COURT: One through nineteen, and that
21 should be all the exhibits.

22 MR. ROSS: And, Judge, you're not sending
23 the indictments back?

24 THE COURT: I do not send the indictments
25 back. I send the verdict forms and the exhibits.

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1 And if you will assemble the exhibits and take them
2 back to the jury and tell them to begin their
3 deliberations. All right, give those to the bailiff
4 and the verdict forms and tell the jury to begin
5 their deliberations.

6 MR. ROSS: And, Your Honor, thirteen is
7 good to go back with them?

8 THE COURT: Yes, sir. It's safe. It's
9 been marked as safe, and it can go back as well.

10 Madam Alternate, the law does not permit
11 me to have more than 12 jurors. I can only have the
12 12 jurors. We draw an alternate in the event that
13 somebody becomes ill or is unable to conclude their
14 service and so that we would not have a mistrial.

15 But, fortunately, everyone has remained
16 healthy and is prepared to make the decision in this
17 case. So you've heard all the evidence, but you're
18 not going to participate in the decision.

19 So I'm going to excuse you from any
20 further service on this case. I will tell you that
21 once you've been discharged as a juror, it is not
22 illegal for you to talk with anyone about your
23 service on this case.

24 It is not illegal for anyone to talk to
25 you about your service on this case. It is a

1 practice of which I strongly disapprove and I
2 strongly discourage, but it's not illegal. You have
3 a right to talk with anyone or not talk with anyone.

4 But if anyone should want to talk to you
5 and you don't want to talk about it and they
6 continue to harass you or bother you, you let the
7 court personnel know, and we'll deal with them.

8 I would ask that you not discuss it with
9 anyone until after this jury has returned a verdict,
10 which will be sometime later on this evening. So I
11 would ask that you not talk with anyone about it
12 until at least tomorrow. But other than that, it
13 would be your call as to whether you wish to do so.

14 Now, the rest of your fellow jurors have
15 been asked to report back in the courtroom tomorrow
16 morning at 9:30. And I'm going to excuse you now
17 and ask you to come back to the courtroom tomorrow
18 morning at 9:30. But you are free to go on this
19 case.

20 MS. CANNON: I come back in the morning?

21 THE COURT: Yes, ma'am, come to the
22 courtroom.

23 MS. CANNON: Okay.

24 THE COURT: Not to your jury room, to the
25 courtroom. Before you go, hold on just a minute.

1 Let me ask the Solicitor something.

2 Come up, please.

3 MR. ROSS: Yes, sir.

4 THE COURT: And, Ms. Counts, come up just
5 a moment.

6 I'm going to cut you loose for the rest of
7 the week. You don't need to come back.

8 MS. CANNON: Okay.

9 THE COURT: You're done. Next week
10 sometime you will receive a small check from the
11 Clerk's Office. It won't compensate you for the
12 time that you've been up here this week. It will be
13 a small token of appreciation on behalf of the
14 county for your services this week.

15 We've got enough jurors that are coming
16 back tomorrow to try the next case, so I'm going to
17 excuse you from any further service this week.
18 Thanks for your service.

19 MS. CANNON: Okay.

20 THE COURT: Okay, thank you.

21 All right, we'll be at ease till we hear
22 from the jury.

23 (Court in recess.)

24 THE COURT: Back on the record in the
25 matter of the State versus Mayes. Mr. Mayes is

1 present and in court. We have a note from the jury
2 which I'm going to give to the Court Reporter and
3 have her mark it as the next Court's exhibit.

4 I have shared this note with the attorneys
5 involved. And the note is, "What does the law state
6 about the possession of a firearm pursuant to
7 trafficking crack cocaine," and signed by the
8 foreman.

9 I propose, counsel, to reinstruct the jury
10 on that one charge only of possession of a weapon
11 during the commission of a violent crime. I think
12 that's what the law says about it, and I think
13 that's what would be the appropriate charge.

14 Is that agreeable with the State?

15 MR. ROSS: Yes, sir.

16 THE COURT: With the defense?

17 MR. FLOYD: Yes, Your Honor. Does that
18 charge include they have to find him guilty of the
19 crack in order to find him guilty of it?

20 THE COURT: Yes, sir, it does.

21 MR. FLOYD: Thank you.

22 THE COURT: All right, bring the jury in.

23 (Court's Exhibit Number
24 Six, Jury Note, was marked for identification.)

25 COURT REPORTER: It's Court Exhibit Number

1 Six, Your Honor.

2 THE COURT: Okay, thank you.

3 The verdict form also contained that same
4 statement in the way of instructions.

5 (Jury in at 5:27 p.m. for recharge.)

6 THE COURT: All right, ladies and
7 gentlemen, I have your note, and the note being
8 "What does the law state about the possession of a
9 firearm pursuant to trafficking crack cocaine?" And
10 in that connection, I will try to give you the law
11 on possession of a firearm during the commission of
12 a violent crime.

13 As I have previously said, the defendant
14 is charged with possession of a firearm during the
15 commission of a violent crime, and the South
16 Carolina Code of Law provides as follows.

17 If a person is in possession of a firearm
18 or visibly displays what appears to be a firearm
19 during the commission of a violent crime and is
20 convicted of committing the violent crime, then he
21 is guilty of this crime of possession of a firearm
22 during the commission of a violent crime.

23 Firearm is defined as any machine gun,
24 automatic rifle, revolver, pistol, or any weapon
25 which will or is designed to or may readily be

1 converted to expel a projectile. Section 16-1-60,
2 which is a different code section, provides that the
3 offense of trafficking in crack cocaine is a violent
4 crime.

5 For you to find the defendant guilty of
6 the separate offense of possession of a firearm
7 during the commission of a violent crime, you must
8 first find the defendant guilty of either committing
9 a violent crime or attempting to commit a violent
10 crime, in this case trafficking in crack cocaine.

11 If you find the defendant guilty of
12 trafficking in crack cocaine, you must then
13 determine whether the State has proven beyond a
14 reasonable doubt that the defendant was in
15 possession of a firearm or visibly displayed what
16 appeared to be a firearm during the commission of
17 the violent crime.

18 Possession means more than simply having
19 an object in one's possession. Conviction of
20 possession requires proof of possession, either
21 actual or constructive, coupled with knowledge of
22 the firearm's presence.

23 Possession can be shown by either actual
24 possession or constructive possession. As I have
25 said before, actual possession occurs when the

1 firearm is in the actual physical custody of the
2 person charged with possession.

3 Proof of constructive possession, along
4 with knowledge of the presence of the firearm, is
5 sufficient to support a conviction for possession of
6 a firearm. To prove constructive possession, the
7 State must show the defendant had dominion or
8 control or the right to exercise dominion or control
9 over the firearm.

10 Constructive possession may be established
11 through direct or circumstantial evidence, and
12 possession may be shared. Possession requires more
13 than mere presence. Possession may be inferred from
14 the circumstances and may be imputed to anyone who
15 has the power and intent to control the disposition
16 and use of the firearm.

17 That's what the law says about the
18 possession of a weapon during the commission of a
19 violent crime. And I hope that that is helpful to
20 you, and I will ask you to return to your jury room
21 and deliberate further. Thank you very much.

22 (Jury out at 5:32 p.m. to deliberate.)

23 THE COURT: Any objection to the
24 additional instructions on behalf of the State, Mr.
25 Ross?

1 MR. ROSS: No, Your Honor.

2 THE COURT: On behalf of the defense?

3 MR. FLOYD: No, Your Honor.

4 THE COURT: All right, we'll be at ease
5 until we hear further from the jury. Let me give
6 this note back to the Court Reporter before it gets
7 lost up here in my mess. And we'll be at ease until
8 we hear from the jury. Thank you.

9 (Court in recess.)

10 THE COURT: All right, counsel, I've been
11 advised that the jury has reached a verdict. Before
12 we bring the jury in, let me just make a couple of
13 comments.

14 First of all, of course, I do not know
15 what the verdict of the jury is. But I am going to
16 require that order and decorum be maintained in the
17 courtroom when the verdict is announced. If there
18 is any demonstrations or exhibitions of any kind of
19 emotion and everything, I will have to consider
20 those in contempt of court.

21 If there's anyone who thinks they cannot
22 sit quietly while the verdict is published, I would
23 ask that you leave now. And the record will reflect
24 the defendant is present along with his counsel.

25 One other thing just administratively, Mr.

1 Solicitor, before I bring the jury in. I think
2 we've got the panel coming back tomorrow morning at
3 9:30. You want me to dismiss this jury or bring
4 them back and make them a part of the remaining
5 panel for the case tomorrow?

6 MR. ROSS: I don't have any problems with
7 dismissing them, Your Honor, provided that we have
8 enough for tomorrow.

9 THE COURT: How many do we have, Ms.
10 Counts?

11 CLERK OF COURT: I really don't know.

12 THE COURT: How can we get that number?
13 Because I need to know what to tell this jury,
14 whether to report back or not. I've got my
15 documents, and we initially had 82.

16 CLERK OF COURT: Right.

17 THE COURT: I dismissed at the
18 qualification stage about six, and we did have one
19 juror who had a conflict for Thursday and Friday.

20 CLERK OF COURT: Right.

21 THE COURT: So we need to leave her off.
22 So that would be about 20 out of 82. That should
23 still leave us 60 jurors.

24 CLERK OF COURT: Yes, sir.

25 THE COURT: And that's plenty.

1 MR. ROSS: That should be plenty, yes,
2 sir.

3 THE COURT: All right, I'll just turn them
4 loose. Do you have a third case, or do you
5 anticipate just one more case?

6 MR. ROSS: There is a third case, but I
7 can't imagine calling two I guess in the three
8 remaining days.

9 THE COURT: Maybe I ought to tell them to
10 call tomorrow night, which would be Wednesday, just
11 in case something goes haywire tomorrow.

12 MR. ROSS: Yes, Your Honor.

13 THE COURT: Okay, I'll tell them they
14 won't have to report tomorrow but to call Wednesday
15 night. All right, thank you. Anything before I
16 bring the jury in?

17 MR. ROSS: No, sir.

18 THE COURT: All right, on behalf of the
19 defense?

20 MR. FLOYD: No, Your Honor.

21 THE COURT: All right, bring the jury in,
22 please.

23 (The jury returned to the
24 courtroom at 5:55 p.m. with their verdicts.)

25 THE COURT: Mr. Foreman, I understand you

1 have reached a verdict, is that correct?

2 MR. McCONNELL: Yes, sir.

3 THE COURT: Would you hand it up to the
4 bailiff, please?

5 All right, from the standpoint of the
6 form, the verdict appears to be correct.

7 Madam Clerk, you may now publish the
8 verdicts.

9 Mr. Floyd, if you and your client would
10 stand, please.

11 MR. FLOYD: Yes, Your Honor.

12 (Counsel and the Defendant
13 complied.)

14 VERDICTS OF THE JURY

15 CLERK OF COURT: The State of South
16 Carolina versus Douglas James Mayes, "We, the jury,
17 by unanimous agreement, find the defendant, Douglas
18 James Mayes, on the charge contained in Indictment
19 2011-GS-32-1303, guilty of simple possession of
20 cocaine."

21 As to the charge of trafficking crack
22 cocaine on Indictment 2011-GS-32-1304, "We, the
23 jury, find the defendant guilty." On the charge of
24 possession of a weapon during the commission of a
25 violent crime, "We, the jury, by unanimous

1 agreement, find the defendant, Douglas James Mayes,
2 not guilty." It is so signed.

3 Ladies and gentlemen, if these were your
4 verdicts, please indicate by raising your right
5 hand.

6 THE COURT: Thank you. You may be seated.
7 Anything before the jury is excused, Mr.
8 Floyd?

9 MR. FLOYD: Your Honor, we request
10 polling.

11 THE COURT: All right, if you would poll
12 the jury, please, ma'am.

13 POLLING OF THE JURY

14 CLERK OF COURT: When I call your name,
15 I'll ask you if these were your verdicts, and are
16 they still your verdicts. If you would, just
17 indicate by responding yes and raising your hand.

18 THE COURT: If you would, stand so that we
19 know which juror is responding.

20 Okay.

21 CLERK OF COURT: Juror number 25, Benjamin
22 Brooks, were these your verdicts, and are they still
23 your verdicts?

24 MR. BROOKS: Yes, ma'am.

25 CLERK OF COURT: Thank you.

1 Juror number 192, Shefornia Smith, were
2 these your verdicts, and are they still your
3 verdicts?

4 MS. SMITH: Yes.

5 CLERK OF COURT: Juror number 67, Roy
6 Farr, were these your verdicts, and are they still
7 your verdicts?

8 MR. FARR: Yes.

9 CLERK OF COURT: Juror number 124, Steven
10 McConnell, were these your verdicts, and are they
11 still your verdicts?

12 MR. McCONNELL: Yes.

13 CLERK OF COURT: Juror number seven,
14 Sheila Asmond, were these your verdicts, and are
15 they still your verdicts?

16 MS. ASMOND: Yes.

17 CLERK OF COURT: Juror number 186, Donna
18 Smith, were these your verdicts, and are they still
19 your verdicts?

20 MS. SMITH: Yes, ma'am.

21 CLERK OF COURT: Juror number 35, James
22 Clarke, were these your verdicts, and are they still
23 your verdicts?

24 MR. CLARKE: Yes.

25 CLERK OF COURT: Juror number 73, Tiffany

1 Gartmon, were these your verdicts, and are they
2 still your verdicts?

3 MS. GARTMON: Yes.

4 CLERK OF COURT: Juror number 177, Donald
5 Sell, were these your verdicts, and are they still
6 your verdicts?

7 MR. SELL: Yes.

8 CLERK OF COURT: Juror number 219, Rita
9 Williams --

10 MS. WILLIAMS: Yes.

11 CLERK OF COURT: -- were these your
12 verdicts, and are they still your verdicts?

13 MS. WILLIAMS: Yes.

14 CLERK OF COURT: Juror number 207, George
15 Turner, were these your verdicts, and are they still
16 your verdicts?

17 MR. TURNER: Yes, ma'am.

18 CLERK OF COURT: Juror number 208, Brandon
19 Ulmer, were these your verdicts, and are they still
20 your verdicts?

21 MR. ULMER: Yes.

22 CLERK OF COURT: Thank you.

23 All jurors are polled, Your Honor.

24 THE COURT: All right, the jury has been
25 polled, and the verdict stands.

1 Anything before the jury is discharged
2 now, Mr. Floyd?

3 MR. FLOYD: No, Your Honor.

4 THE COURT: All right, ladies and
5 gentlemen, I am going to excuse you now from any
6 further service on this case. And I want to thank
7 you for your service. I do appreciate the attention
8 that you have given to matter and to this case.

9 I make it a practice never to comment on
10 the verdict of the jury, even after the jury has
11 returned a verdict. In my view, the jury's role in
12 the fact-finding process is so important that the
13 judge should not comment on the verdict of a jury,
14 even after they have returned a verdict.

15 And I make it a practice never to comment
16 on the verdict of a jury. I will tell you that
17 there is evidence in the record by which you could
18 have reached the decision that you did. This will
19 conclude your services on this case.

20 And I will tell you that once you've been
21 discharged as a juror in this case, there is nothing
22 illegal about your talking with anyone about your
23 service on this case. There is nothing illegal
24 about anybody talking to you about your service on
25 this case.

1 It is a practice of which I strongly
2 disapprove and I strongly discourage, but it's not
3 illegal. You have the right to talk with anyone or
4 the right not to talk with anyone. It's your call.

5 But if you don't want to talk about it and
6 someone continues to bother you or harass you about
7 it, you let the court personnel know, and I will
8 deal with them. But it is up to you as to whether
9 you want to discuss it with anybody.

10 Now, I will tell you that your fellow
11 jurors are going to report back in the morning, but
12 we have enough jurors to try the case that we're
13 going to try tomorrow without the necessity of your
14 coming back here tomorrow.

15 So you will have at least tomorrow off.
16 I'm going to ask that you call that number that you
17 have after 6:00 tomorrow night, Wednesday night.
18 And I'll let you know whether it's going to be
19 necessary that we bring you back for Thursday.

20 Very possibly, we will not need you any
21 more this week, but I don't know that just yet. So
22 I'm going to ask that you call that number that you
23 have after 6:00 tomorrow night and get your
24 reporting instructions for Thursday. That would be
25 the day that we would need you at the earliest.

1 So with those parting instructions, I'm
2 going to allow you to go. I will tell you now that
3 we have one other thing that we need to do, and that
4 is to go into the sentencing phase of this case.
5 And we're going to do that right now.

6 And I know that very often jurors are
7 anxious to know what the ultimate outcome of the
8 case is. And you are welcome to stay for the
9 sentencing phase if you would like. If you do, what
10 I would do is ask you to go out this way, come
11 around and have a seat in the back of the courtroom.

12 And I will assure you that I will excuse
13 you before anyone else is excused from the
14 courtroom. But you don't have to stay. That's a
15 matter that's totally up to you.

16 But if you would like to stay for the
17 sentencing phase which we will go into right now,
18 just go out this way, give your badges to the
19 bailiffs, and come back around and have a seat in
20 the back of the courtroom.

21 And we'll go into that. That will
22 probably take us some 15 or 20 minutes. And I know
23 for a lot of you, it's getting toward dinner time or
24 things that you have to do at 6:00. But,
25 nonetheless, you're welcome to stay if you would

1 like to, but you don't have to. Thank you. You are
2 excused.

3 Mr. Foreman, you stay with us. You need
4 to sign the indictments, if you would, please, for
5 just a moment.

6 (The jury was dismissed
7 from the trial of this case and left the courtroom
8 at at 6:04 p.m.)

9 THE COURT: All right, Mr. Floyd, motions
10 of behalf of the defendant?

11 MR. FLOYD: At this time, Your Honor, we
12 would move for a new trial in connection with that
13 motion. We will renew all the motions we made
14 during both pre-trial and the trial of the case, to
15 include our objection to the -- our motion to
16 suppress the drugs pursuant to the defects of the
17 search warrant process, our motion to suppress the
18 drugs pursuant to the change in the form of the
19 drugs during the time they were in the custody of
20 the Lexington County Sheriff's Department, the
21 denial of our motion for a directed verdict at the
22 conclusion of the State's case, the initial motion
23 for a continuance -- not a continuance but to allow
24 me to withdraw from the case to testify because of
25 the various questions concerning the chain of the

1 drugs, the denial of that motion, our objection to
2 the --

3 THE COURT: Let me stop you right there
4 just a minute. Okay, that's right. What you're
5 saying is it was a defect in the chain of the drugs
6 because they were lost, but the State's position was
7 that it was not the drugs that were ever misplaced.
8 It was the paraphernalia, so to speak.

9 MR. FLOYD: That's correct, Your Honor.

10 THE COURT: Okay.

11 MR. FLOYD: Your Honor, my objection, of
12 course, to Your Honor's charge saying that there was
13 an inference from control of the premises that could
14 be held against the defendant, Your Honor's refusal
15 to charge the lesser included of possession of crack
16 to the trafficking charge, and also Your Honor's
17 decision to allow the State to impeach the defendant
18 to preclude three prior drug offenses if he had
19 chosen to testify. For all these reasons, we move
20 for a new trial.

21 THE COURT: All right. One question I
22 have, do you have any authority for the inference
23 issue that you're raising?

24 MR. FLOYD: Your Honor, I can't give you a
25 case off the top of my head. There are -- I think

1 there's been a movement over the last decade or so.
2 Years ago, we used to have the presumption.

3 THE COURT: Right.

4 MR. FLOYD: And they moved away from the
5 presumption --

6 THE COURT: Right.

7 MR. FLOYD: -- to the inference. And I
8 think there's been a movement away from the
9 inference. A lot of the proposed charges any more
10 -- for example, in your charge books -- don't carry
11 the inference in them any more. I think there's
12 some authority that's kind of a comment on the
13 evidence.

14 THE COURT: Do you know of a South
15 Carolina case that says that an inference is not
16 permissible?

17 MR. FLOYD: I don't know one that says it
18 definitely is not, no, sir.

19 THE COURT: Okay.

20 All right, Mr. Ross?

21 MR. FLOYD: And, Your Honor, also --

22 THE COURT: I'm sorry.

23 MR. FLOYD: -- in connection with all of
24 this, in connection with the sentencing also, we
25 would ask Your Honor to vacate the bench warrant

1 that was issued, because that's going to hold him up
2 in SCDC.

3 THE COURT: Oh, yes, sure, we'll take care
4 of that.

5 All right, any comment on the motions,
6 response on behalf of the State, Mr. Solicitor?

7 MR. ROSS: Your Honor, regarding the
8 inference --

9 THE COURT: Yes, sir, any of them.

10 MR. ROSS: -- the only thing I would say
11 is I believe the case law is pretty clear that the
12 language the Appellate Courts use is that a jury can
13 infer based on weight alone that they intended to
14 distribute.

15 And I think that's kind of the line of
16 cases that Mr. Floyd is referring to. So we've got
17 the Appellate Court saying the jury can infer
18 something. That's the same thing as an inference.

19 THE COURT: Well, I think that it has been
20 an inference always at least, I'm sure.

21 MR. FLOYD: Of course, that's a statute.

22 THE COURT: I'm sure that that's the law
23 up until 2007 or later, because that's what my good
24 friend Judge Ralph King Anderson has in his charge
25 book and has had in his charge book.

1 I'm just wondering if there have been any
2 cases that either of you are aware of in the last
3 two or three years, i.e. the South Carolina Supreme
4 Court or the South Carolina Court of Appeals, which
5 says that's no longer the law. And I don't know of
6 any cases.

7 MR. ROSS: I'm not aware of any case, Your
8 Honor.

9 THE COURT: All right, I appreciate the
10 motions, and I understand the grounds for all the
11 motions. The Court is of the view that the initial
12 ruling by the Court of all of those issues was the
13 correct ruling.

14 I feel that I gave them a lot of thought
15 with regard to the search warrant, the drugs,
16 everything that was involved. And I do feel that
17 the rulings of the Court were correct.

18 I also feel that the charges of the Court
19 were correct as well. I believe the matter was a
20 jury issue. It's evident from the verdict that the
21 jury gave careful thought to the charges that were
22 involved, because it was not a rubber stamp.

23 They did not find him guilty of all three
24 charges that the State had charged him with. In
25 fact, they found him guilty of the lesser include

1 offense of possession of powder cocaine and did not
2 find him guilty of the possession of a weapon during
3 the commission of a violent crime.

4 So it is clear that the jury gave very
5 careful consideration to the instructions given by
6 the Court as well as the evidence in the case and
7 the fact that it was a jury issue. And so the Court
8 would respectfully deny all motions for a new trial
9 or a motion in arrest of judgment.

10 All right, now let's talk about the
11 sentencing and the maximum sentences for just a
12 moment, Mr. Solicitor. I understand these are not
13 first offenses and that you take the position that
14 there's some enhancements?

15 MR. ROSS: Yes, Your Honor. These are
16 both third offenses. And I will read his prior
17 record because that's obviously the most relevant
18 thing to sentencing.

19 THE COURT: All right, let me ask Mr.
20 Floyd to start with. Maybe we don't need to go into
21 that before we go into the record. But let me ask
22 you, Mr. Floyd, do you take issue with the fact that
23 both the possession of cocaine as found by the jury
24 and the trafficking in crack as found by the jury
25 are enhanced third offenses?

1 MR. FLOYD: Your Honor, I agree that the
2 record that I have been furnished says that.

3 THE COURT: You do what, now?

4 MR. FLOYD: The record, the criminal
5 record, that I have been furnished says that. I
6 have not seen certified copies of the convictions.
7 The record certainly shows it.

8 THE COURT: All right, well, take a look
9 at them. I need to know if you've got any issue as
10 to whether sentencing is -- I know you don't agree
11 with the sentence -- but at this phase, whether the
12 sentence is or is not appropriate as third offenses
13 on both of those charges.

14 MR. FLOYD: Yes, sir.

15 MR. ROSS: And, Judge, I'll read these
16 indictments on these prior offenses. I've got 2008-
17 GS-2-1610, this is out of Aiken County, trafficking
18 in crack cocaine. He was convicted of that in April
19 of 2009.

20 According to his sentencing sheet, he was
21 represented by Tommy Thomas. I'm showing this to
22 Mr. Floyd. His second previous drug conviction is
23 2007-GS-32-2210. That was here in Lexington County.
24 That was possession with intent to distribute crack
25 cocaine.

1 He was represented by an attorney. I
2 cannot read the attorney's name on this sheet, but
3 it's S.C. Bar Number 73595. I'm showing this to Mr.
4 Floyd. I've also got a certified conviction for
5 manufacturing marijuana, but my reading of the
6 statute is marijuana can no longer be used to
7 enhance a non-marijuana charge.

8 THE COURT: I agree.

9 MR. ROSS: I would like to introduce these
10 prior certified convictions, indictments, and
11 sentencing sheets to the Court as a Court's exhibit.

12 THE COURT: All right, allow Mr. Floyd to
13 look at them.

14 MR. FLOYD: I've looked at them, Your
15 Honor.

16 THE COURT: All right, they would be prior
17 convictions for the crack cocaine. Those are the
18 ones you want to introduce? The ones you want to
19 use for enhancements are which two?

20 MR. ROSS: They are trafficking crack
21 cocaine and PWID crack cocaine, two separate dates
22 from two separate counties.

23 THE COURT: All right. The trafficking is
24 Indictment Number --

25 MR. ROSS: 2008-GS-2-1610.

1 THE COURT: Okay. And that's what county?

2 MR. ROSS: That's Aiken County. It's GS-
3 2-1610, county number two.

4 THE COURT: Oh, two, Aiken County. You're
5 right, okay. And that's the trafficking?

6 MR. ROSS: Trafficking out of Aiken.

7 THE COURT: Okay.

8 MR. ROSS: Then the other one is out of
9 Lexington, 2007-GS-32-2210, PWID crack cocaine.
10 That was a conviction from May 2009.

11 THE COURT: All right. I'm not asking you
12 to tell me any more, Mr. Floyd, except that the
13 question I would ask you is, do you would agree that
14 those are properly before the Court as enhancement
15 of the present charges?

16 MR. FLOYD: Yes, Your Honor.

17 THE COURT: Okay, all right. That being
18 the case, then, referring to it as far as your
19 sentencing sheet is concerned, Mr. Ross, you're
20 going to I assume use the trafficking CDR code of
21 3039?

22 MR. ROSS: On mine, I've got 0349,
23 trafficking crack cocaine.

24 THE COURT: Well, that's 28 to 100.

25 MR. ROSS: Yes, Your Honor.

1 THE COURT: 3039 is 10 to 28 grams. And
2 that's all right, because as I read the code
3 section, 3039 is 25 to 30 years and \$50,000 as is
4 0349 is also 25 to 30 and \$50,000. The punishment
5 is the same either way, whether it's 10 or 28.

6 Do you agree with that, Mr. Floyd?

7 MR. FLOYD: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. FLOYD: And I think we all agree that
10 the jury did not reach a verdict as to the amount --

11 THE COURT: Right.

12 MR. FLOYD: -- just that it was
13 trafficking.

14 THE COURT: Yes. And we've discussed this
15 in chambers that all it needed to show was 10 or
16 more than 10. It may make some difference down the
17 line somewhere, but it would be my view that since
18 your indictment, if I recall -- I think I gave the
19 indictment back to the Clerk -- says plus 10, 10
20 plus and not 28 plus.

21 MR. ROSS: I think it was 28 plus, Your
22 Honor.

23 CLERK OF COURT: Twenty-eight to 100.

24 THE COURT: It does say 28 to 100?

25 CLERK OF COURT: Right.

1 THE COURT: Okay, all right. So you show
2 0349, all right, minimum of 25, maximum of 30 and
3 \$50,000.

4 You agree with that, Mr. Floyd?

5 MR. FLOYD: Are we going under the 28 to
6 100 or the 10 to 28?

7 THE COURT: It doesn't matter, does it?

8 MR. FLOYD: Well, I don't know if it --

9 THE COURT: From a punishment standpoint.

10 MR. FLOYD: I don't know whether it
11 matters in the Department of Corrections or not.
12 But I think since the jury did not find a particular
13 weight, we would have to go under the 10 to 28.

14 THE COURT: Do you have any objection to
15 using a CDR code of 3039 rather than 0349, 3039
16 being 10 to 28 as opposed to 0349 being 28 to 100?

17 MR. ROSS: Do I, sir?

18 THE COURT: Yes, sir.

19 MR. ROSS: You say you're going under 0147
20 or --

21 THE COURT: I'm using the crack
22 trafficking now.

23 MR. ROSS: And that would be -- the 10 to
24 28 is 0452 CDR code?

25 THE COURT: No, the trafficking that I

497

1 have for 3039, third offense, 10 to 28 grams, is 25
2 to 30 years and \$50,000.

3 MR. ROSS: Your Honor, it doesn't matter
4 to me.

5 THE COURT: Okay, that's what I'm saying.

6 MR. ROSS: He's getting the same
7 punishment regardless.

8 THE COURT: Same punishment. So you don't
9 have any objection to using the CDR of 3039?

10 MR. ROSS: Negative, sir. I can hand you
11 up the sentencing sheets I've done and --

12 THE COURT: I can change the CDR code if
13 you don't have any objection.

14 MR. ROSS: However you see fit, sir.

15 THE COURT: And rather than 0349, you
16 would request that it be use CDR code 3039, Mr.
17 Floyd?

18 MR. FLOYD: Yes, the lesser.

19 THE COURT: And the State has no
20 objection?

21 MR. ROSS: No objection, Your Honor.

22 THE COURT: All right, the CDR code for
23 the offense that was actually found will show as
24 3039, the punishment being the same thing.

25 MR. ROSS: Your Honor, I'm looking at my

1 drug sheet, and it's got CDR code 3039 as PWID crack
2 third. So that's why --

3 THE COURT: Okay. I'm looking at
4 trafficking.

5 MR. ROSS: Yes, I know. I'm looking at
6 the -- my CDR codes say trafficking crack, 10 to 28
7 grams, third offense, is 0452, and this is just a
8 handout that has been floating around in the
9 Solicitor's Office.

10 THE COURT: I'm looking at CDR codes for
11 common drug offenses, 3039, crack cocaine, 10 to 28,
12 third, is 25 to 30 years, and the same thing is for
13 28 to 100 grams. You don't show it as being the
14 same thing?

15 MR. ROSS: No, I'm showing 3039 as PWID
16 crack, third offense.

17 THE COURT: What are showing, 3039?

18 MR. ROSS: 3039 is PWID crack, third
19 offense, according to my sheet.

20 CLERK OF COURT: Judge, that's what the
21 Court Administration website has also.

22 THE COURT: Okay. Then my little sheet is
23 not correct, doesn't look like. What do you have as
24 the punishment for trafficking crack, 10 to 28, Mr.
25 Ross?

1 MR. ROSS: That's 25 to 30 under the
2 statute and what I'm showing.

3 THE COURT: Okay. And so is 28 to 100.
4 So the punishment is the same.

5 MR. ROSS: Yes, the punishment is going to
6 be the same.

7 THE COURT: So it's just a question of
8 what is the correct CDR code for 10 to 28.

9 MR. ROSS: Roger that, sir. I'm showing
10 0452.

11 THE COURT: All right, Madam Clerk, have
12 you got the CDR codes?

13 CLERK OF COURT: Yes, sir. It's 0452 for
14 trafficking 10 to 28 grams, third offense.

15 THE COURT: All right, so 0452, then,
16 would be the same punishment but showing 10 to 20.

17 Is that what you're saying, Mr. Ross?

18 MR. ROSS: Yes, sir.

19 THE COURT: Are you agreeable to going
20 with the 0452, then?

21 MR. ROSS: I am, sir.

22 THE COURT: Okay. All right, that takes
23 care of it.

24 Do you agree with that, Mr. Floyd? The
25 same thing, we're talking about 10 to 28 rather than

1 28 plus.

2 MR. FLOYD: That's correct, Your Honor.

3 THE COURT: All right, third offense, and
4 that will be CDR code 0452. Have you introduced the
5 two previous offenses? Has the Court Reporter
6 marked those?

7 MR. ROSS: They've been marked, and I will
8 hand --

9 THE COURT: Hand them to me.

10 (Court's Exhibit Number
11 Seven, Aiken Indictment; and Court's Exhibit Number
12 Eight, Lexington Indictment, were marked for
13 identification.)

14 COURT REPORTER: Court's Number Seven is
15 the Aiken indictment, and number eight is the
16 Lexington indictment.

17 THE COURT: All right, thank you.

18 MR. ROSS: Let's go ahead and staple
19 those, because there's an indictment and a
20 sentencing sheet.

21 THE COURT: And then the simple
22 possession, third offense, of powder cocaine carries
23 zero to 10 and up to zero to \$12,500 under CDR code
24 3013.

25 You agree with that, Mr. Floyd?