

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Berkeley County  
Maite Murphy, Circuit Court Judge  
\_\_\_\_\_

RECEIVED  
OCT 20 2017  
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

CHAD ROBERT KOZLOSKI,

APPELLANT

APPELLATE CASE NO 2017-000209

\_\_\_\_\_  
RECORD ON APPEAL  
\_\_\_\_\_

WANDA H. CARTER  
Deputy Chief Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

J. BENJAMIN APLIN  
Senior Assistant Deputy Attorney General  
Attorney General Office  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX .....	i
TRIAL TRANSCRIPT DATED JANUARY 30-31, 2017 .....	1
JURY VOIR DIRE .....	5
JURY SELECTION .....	11
PRE-TRIAL MOTION TO SUPPRESS DRUGS .....	16
DEFENSE COUNSEL'S ARGUMENT .....	17
SOLICITOR'S ARGUMENT .....	21
COURT'S RULING .....	28
<u>JACKSON V. DENNO</u> HEARING .....	28
TESTIMONY	
SERGEANT SHANE COOK .....	28
CHAD ROBERT KOZLOSKI .....	40
RULING BY THE COURT ON MOTION TO SUPPRESS DRUGS .....	53
RULING BY THE COURT ON <u>JACKSON V. DENNO</u> HEARING .....	55
OPENING STATEMENT BY THE COURT .....	61
OPENING STATEMENT BY SOLICITOR .....	67
OPENING STATEMENT BY DEFENSE COUNSEL .....	68
TRIAL TESTIMONY	
SERGEANT SHANE COOK .....	69
SHANA SORRELLS .....	81
STEVEN RUSSELL GOTTULA, JR. ....	97
STATE RESTS .....	105

PRIOR MOTIONS RENEWED .....	105
MOTION FOR A DIRECTED VERDICT .....	105
RULING BY THE COURT ON ALL MOTIONS .....	106
COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY .....	107
TESTIMONY	
LAURA LANGDON .....	110
CHAD ROBERT KOZLOSKI .....	123
DEFENSE RESTS .....	134
DEFENSE'S MOTIONS RENEWED .....	134
COURT'S RULING ON RENEWED MOTIONS .....	134
CLOSING ARGUMENT BY SOLICITOR .....	134
CLOSING ARGUMENT BY DEFENSE COUNSEL .....	137
CHARGE ON THE LAW .....	144
RENEWAL OF ALL MOTIONS .....	154
RULINGS BY THE COURT .....	155
VERDICT .....	156
POLLING OF THE JURY .....	156
SENTENCING .....	162
INDICTMENT .....	166
CERTIFICATE OF COUNSEL .....	168

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 )  
COUNTY OF BERKELEY ) CASE NO.: 2016-GS-08-00133

STATE OF SOUTH CAROLINA, )  
 )  
 v. ) TRANSCRIPT OF RECORD  
 )  
CHAD ROBERT KOZLOSKI )  
 )  
 )  
 )

**ORIGINAL**

Monday, January 30, 2017 - Tuesday, January 31, 2017.

COMMENCING AT:  
Berkeley County Courthouse  
Monks Corner, South Carolina  
Before The Honorable Maite Murphy, Judge

APPEARANCES:

For the State of South Carolina:  
Assistant Solicitor Benjamin A. Dennis, Esquire  
Assistant Solicitor Price Sigal, Esquire  
Ninth Circuit Solicitor's Office  
300-B California Avenue  
Monks Corner, South Carolina 29461

For the Defendant:  
Debra Kay Littlejohn, Esquire  
John Church, Esquire  
Berkeley County Public Defender's Office  
219 North Highway 52, Suite E  
Monks Corner, South Carolina 29464

Heather R. Landry, CVR  
Official Court Reporter

INDEX

Voir Dire .....5  
 Jury Selection .....11  
 \*Strike sheet attached to end of transcript  
 Pretrial Motions .....16  
 Jackson v Denno Hearing .....28

JACKSON V. DENNO HEARING

State's Witness: Shayne Cook  
 Direct Examination by Ast. Sol. Dennis.....28  
 Cross-Examination by Ms. Littlejohn.....34  
Defense Witness: Chad Kozloski  
 Direct Examination by Ms. Littlejohn.....40  
 Pretrial Motions (Continuing) .....42  
 Court's Ruling on Motions .....53  
 Instructions by the Court .....61  
 Opening Statements .....67

STATE'S WITNESSES

Witness: Shane M. Cook  
 Direct Examination by Ast. Sol. Dennis.....70  
 Cross-Examination by Ms. Littlejohn.....73  
 Redirect by Ast. Sol. Dennis.....81  
Witness: Shana B. Sorrells  
 Direct Examination by Ast. Sol. Dennis.....82  
 Cross-Examination by Ms. Littlejohn.....90  
 Redirect Examination by Ast. Sol. Dennis.....96  
Witness: Steve R. Gottula  
 Direct Examination by Ast. Sol. Dennis.....97  
 Cross-Examination by Ms. Littlejohn.....102  
 Defense's Motion for Directed Verdict .....105  
 Defendant's Fifth Amendment Rights .....107

DEFENSE WITNESSES

Witness: Laura Langdon  
 Direct Examination by Ms. Littlejohn.....112  
 Cross-Examination by Ast. Sol. Sigal.....113  
 Redirect Examination by Ms. Littlejohn.....114

Witness: Chad Kozloski  
 Direct Examination by Ms. Littlejohn.....123  
 Cross-Examination by Ast. Sol. Dennis.....130  
 Redirect Examination by Ms. Littlejohn.....132

Closing Arguments.....134  
 Jury Charge.....144  
 Verdict of the Jury.....156  
 Sentence of the Court.....161  
 Certificate of Reporter .....163

STATE'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1	Hypodermic Needles	87
2	Heroin Residue	89
3	Heroin Soaked Cotton	90
4	SLED Report	89
5	SLED Report	90

DEFENSE EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
------------	--------------------	-----------------

NO EXHIBITS INTRODUCED

COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1	Michigan Court Record	160
2	Michigan Court Record	160

1 (The proceedings in the trial of this matter began on  
2 Monday, January 30, 2017, at 11:10 a.m.)

3 VOIR DIRE

4 THE COURT: Thank you, ladies and gentlemen of the jury  
5 panel. The jury panel is now qualified. We will begin the  
6 process for our first jury selection. Solicitor, you may  
7 call your first case.

8 AST. SOL. DENNIS: The State calls the State v. Chad  
9 Kozloski.

10 THE COURT: And can I see the indictment, please.

11 AST. SOL. DENNIS: Yes, Your Honor.

12 THE COURT: Actually, I've got it right here. Ladies  
13 and gentlemen of the jury panel, we're about to begin the  
14 trial of the case of the State of South Carolina versus Chad  
15 Kozloski. Before we begin the jury selection in this case,  
16 I'm going to read to you the indictment in this case. And  
17 the purpose of this is just to see if you have any previous  
18 knowledge about the case or any information about the case  
19 so that you can let me know. The indictment is not any  
20 evidence whatsoever. It's merely the allegations of what  
21 has been alleged to have occurred.

22 The indictment states that the defendant, Chad Robert  
23 Kozloski, did on or about January 14, 2015, in Berkeley  
24 County, South Carolina, knowingly or intentionally possessed  
25 heroin, a schedule one controlled substance narcotic, all in

1 violation of the South Carolina Code of Laws as amended.  
2 Ladies and gentlemen, I'm going to ask first the solicitor  
3 to stand up and introduce himself and the members of his  
4 office.

5       AST. SOL. DENNIS: Good morning, ladies and gentlemen.  
6 My name is Benjamin Dennis. I work for the Ninth Circuit  
7 Solicitor's Office. I prosecute cases for Solicitor  
8 Scarlett Wilson as well as the State of South Carolina.  
9 Seated with me is another assistant solicitor, Price Sigal.  
10 She'll be up here all week with me as well as Denita Brown.  
11 I also have my investigator, Shay Musgrave (ph) and Sergeant  
12 Shane Cook with the Berkeley County Sheriff's Office.

13       THE COURT: Thank you, Solicitor. Anyone related by  
14 blood or marriage or has a close, personal, or social  
15 relationship with any member of the solicitor's office, or  
16 has ever contributed to the campaign funds of Solicitor  
17 Scarlett Wilson or in any way has been represented by any of  
18 the attorneys or have any contact with any of those members  
19 of the solicitor's office? If so, please stand.

20       (No response.)

21       THE COURT: I find that there is no one standing. And  
22 counsel for defense, I'll allow you the same opportunity.

23       MS. LITTLEJOHN: My name is Debbie Littlejohn. And I  
24 representing Mr. Chad Kozloski. And seated with me is Mr.  
25 John Church. In our office is Mr. David Schwacke, Julie

1 Shivers, Keisha White, Tim Burke, and Caroline Bickley.

2 Thank you.

3 THE COURT: Thank you, counsel. Ladies and gentlemen  
4 of the jury panel, same question applies. Anyone related by  
5 blood or marriage, or have a close, personal, or social  
6 relationship with any of the attorneys in their office or  
7 has ever been represented by any of them? If so, please  
8 stand.

9 (No response.)

10 THE COURT: I find that there is no one standing.  
11 Ladies and gentlemen, I'm going to read to you a list of  
12 potential witnesses in this case. And I'll ask you the same  
13 question, if you know any of these people. And if you're in  
14 the courtroom, if you would please stand: Shane Cook, Steve  
15 Gottula, Mac Flood, Shana Sorrells, and Lauren Langdon. Any  
16 member of the jury panel related by blood or marriage, or  
17 has a close personal or social relationship with any of the  
18 potential witnesses? If so, please stand.

19 (No response.)

20 THE COURT: I find that there is no one standing.  
21 Ladies and gentlemen, you were previously introduced to  
22 Mr. Kozloski. Sir, if you would please stand and face the  
23 jury panel. This is Mr. Kozloski. Anyone related by blood  
24 or marriage, or has a close, personal, or social  
25 relationship with him. If so, please stand.

1 (No response.)

2 THE COURT: You may have a seat, sir. I find that  
3 there is no one standing. Is there any member of the jury  
4 panel who is a member of or contributor to any group which  
5 has its primary concern as a promotion of law enforcement or  
6 victims' rights? These groups would include, but are  
7 certainly not limited to, MADD, SADD, or Citizens Against  
8 Violent Crime? If so, please stand.

9 (No response.)

10 THE COURT: I find that there is no one standing.  
11 Ladies and gentlemen, you've heard the initial allegations  
12 in this case. Has any member of the jury panel formed or  
13 expressed any opinion about any issue or matter involved in  
14 this case? If so, please stand.

15 (No response.)

16 THE COURT: I find that there is no one standing. Is  
17 there any member of the jury panel aware of any bias or  
18 prejudice towards either the State or to the defense in this  
19 case? If so, please stand.

20 (No response.)

21 THE COURT: I find that there is no one standing.

22 (Juror stands.)

23 THE BALIFF: Juror number 153.

24 THE COURT: Good morning. You're Ms. Stafford?

25 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: Yes, ma'am. Can you tell what . . .

2 PROSPECTIVE JUROR: I worked ten years with law  
3 enforcement agencies so . . .

4 THE COURT: All right. So you're telling me that based  
5 on your experience you can't be fair and impartial?

6 PROSPECTIVE JUROR: I don't think I could.

7 THE COURT: All right. I'm going to keep you here with  
8 us, though, and we're going to put you on a civil panel.

9 PROSPECTIVE JUROR: Okay.

10 THE COURT: Is there any member the jury panel that was  
11 a member of the grand jury which issued the indictment in  
12 this case? If so, please stand.

13 (No response.)

14 THE COURT: I find that there is no one standing.  
15 Ladies and gentlemen of the jury panel, is there any member  
16 of the jury panel who has any previous information about  
17 this case whether before today, anything in the newspapers,  
18 TV, or anything during today's proceedings, any information  
19 about this case whatsoever? If so, please stand.

20 (No response.)

21 THE COURT: I find that there is no one standing.  
22 Ladies and gentlemen, I'm going to ask you to think about  
23 your collective experiences personally and those of your  
24 immediate family members. Anything about this type of case  
25 that causes you any hesitation in your ability to be fair

1 and impartial to both the State and to the defense? If so,  
2 please stand.

3 (No response.)

4 THE COURT: I find that there is no one standing. Does  
5 any member of the jury panel know of any reason whatsoever  
6 why he or she should not serve as a juror in this case with  
7 a particular emphasis being placed on your ability to be  
8 fair and impartial to both the State and to the defense? If  
9 so, please stand.

10 (No response.)

11 THE COURT: I find that there is no one standing.  
12 Ladies and gentlemen, that will conclude the list of  
13 questions before we begin the jury selection in this case.  
14 Madam Clerk, do you need a few minutes?

15 (Brief pause.)

16 THE COURT: Ladies and gentlemen, while we wait for the  
17 clerk to put your names in the hopper so to speak, I'll  
18 share with you a story that will make you appreciate coming  
19 to court here in Berkeley County. As members of the  
20 judiciary, we're required to attend continuing legal  
21 education at the National Judicial College in Reno, Nevada.  
22 And part of that process, there are judges from all over the  
23 country and some international judges there. And I met a  
24 judge from Alaska who informed me that he presides over a  
25 very large territory. And in order to have jurors, they

1 travel from village to village. And to get jurors to the  
2 courthouses, most jurors live so far out that they're  
3 subjected to a two-hour snowmobile ride, a two-hour dogsled  
4 ride, and a two-hour airplane ride. And they're all  
5 provided with weapons to guard against potential bear  
6 attacks. So consider yourselves lucky.

7 THE CLERK: Ladies and gentlemen of the jury, as I call  
8 your name, please come forth and bring your personal  
9 belongings with you. And if I say "seat the juror," please  
10 have a seat in the jury box here to my right. If I say,  
11 "excuse the juror," please return to your original seating.  
12 And please follow the instruction of the bailiff standing  
13 here with the burgundy jacket on.

14 Juror number 90 Richard Malone, Junior. What says the  
15 State?

16 AST. SOL. DENNIS: Please present this juror.

17 THE COURT: What says the defense?

18 MS. LITTLEJOHN: Please seat the juror.

19 THE CLERK: Seat the juror. Juror 180, Jason Williams.  
20 What says the State?

21 AST. SOL. DENNIS: Please excuse this juror.

22 THE CLERK: Excuse the juror. Juror 97, Jessica  
23 McKeever. What says the State?

24 AST. SOL. DENNIS: Please seat the juror.

25 THE CLERK: What says the defense?

1 MS. LITTLEJOHN: Please seat the juror.

2 THE CLERK: Seat the juror. Juror 20, Kristina

3 Bowling. What says the state?

4 AST. SOL. DENNIS: Please excuse this juror.

5 THE CLERK: Please excuse the juror. Juror 160,

6 Christina Uttenhove. What says the State.?

7 AST. SOL. DENNIS: Please seat this juror.

8 THE CLERK: What says the defense?

9 MS. LITTLEJOHN: Please seat the juror.

10 THE CLERK: Seat the juror. Juror 123, Cristy Preslar.

11 What says the State?

12 AST. SOL. DENNIS: Please seat the juror.

13 THE CLERK: What says the defense?

14 MS. LITTLEJOHN: Please excuse this juror.

15 THE CLERK: Excuse the juror. Juror 75, Rita Jones.

16 What says the State?

17 AST. SOL. DENNIS: Please seat the juror.

18 THE CLERK: What says the defense?

19 MS. LITTLEJOHN: Please seat the juror.

20 THE CLERK: Seat the juror. Juror 161, Britnay Van

21 Norden. What says the State?

22 AST. SOL. DENNIS: Please seat this juror.

23 THE CLERK: What says the defense?

24 MS. LITTLEJOHN: Please seat the juror.

25 THE CLERK: Seat the juror. Juror 39, Richard Comer.

1 What says the State?

2 AST. SOL. DENNIS: Please seat this juror.

3 THE CLERK: What says the defense?

4 MS. LITTLEJOHN: Please seat the juror.

5 THE CLERK: Seat the juror. Juror number 130,

6 Denielle Richardson. What says the State?

7 AST. SOL. DENNIS: Please seat this juror.

8 THE CLERK: What says the defense?

9 MS. LITTLEJOHN: Please seat the juror.

10 THE CLERK: Seat the juror. Juror 27, Jerome Brown.

11 What says the State?

12 AST. SOL. DENNIS: Please excuse this juror.

13 THE CLERK: Excuse the juror. Juror 13, Eugenia Bell.

14 What says the State?

15 AST. SOL. DENNIS: Please seat the juror.

16 THE CLERK: What says the defense?

17 MS. LITTLEJOHN: Please seat the juror.

18 THE CLERK: Seat the juror. Juror 169, Stephen Walker.

19 What says the State?

20 AST. SOL. DENNIS: Please seat this juror.

21 THE CLERK: What says the defense?

22 MS. LITTLEJOHN: Please seat the juror.

23 THE CLERK: Seat the juror. Juror 124, Shelley

24 Prioleau. What says the State?

25 AST. SOL. DENNIS: Please seat this juror.

1 THE CLERK: What says the defense?

2 MS. LITTLEJOHN: Please excuse this juror.

3 THE CLERK: Excuse the juror. Juror 137, Anne Sader.

4 What says the Stat?

5 AST. SOL. DENNIS: Please seat this juror.

6 THE CLERK: What says the defense?

7 MS. LITTLEJOHN: Please seat the juror.

8 THE CLERK: Seat the juror. Juror 88, James Lott.

9 What says the State?

10 AST. SOL. DENNIS: Please seat the juror.

11 THE CLERK: What says the defense?

12 MS. LITTLEJOHN: Please seat the juror.

13 THE CLERK: Seat the juror. Juror 51, Stanley Franks.

14 What says the State?

15 AST. SOL. DENNIS: Please seat this juror.

16 THE CLERK: What says the defense?

17 MS. LITTLEJOHN: Please seat the juror.

18 THE CLERK: Seat the juror. Our alternates. The first  
19 alternate, juror 109, Brenda Murphy. What says the State?

20 AST. SOL. DENNIS: Please seat the juror.

21 THE CLERK: What says the defense?

22 MS. LITTLEJOHN: Please seat the juror.

23 THE CLERK: Seat the juror. Alternate -- second  
24 alternate, juror 11, JM Baxley. What says the State?

25 AST. SOL. DENNIS: Please seat this juror.

1 THE CLERK: What says the defense?

2 MS. LITTLEJOHN: Please excuse the juror.

3 THE CLERK: Excuse the juror. Juror 122, Charona

4 President. What says the State?

5 AST. SOL. DENNIS: Please seat this juror.

6 THE CLERK: What says the defense?

7 MS. LITTLEJOHN: Please seat the juror.

8 THE CLERK: Seat the juror.

9 THE COURT: Any exceptions or objections to the  
10 selection of this jury from either the State or the defense?  
11 Solicitor?

12 AST. SOL. DENNIS: No exceptions, Your Honor.

13 THE COURT: Ms. Littlejohn?

14 MS. LITTLEJOHN: None, Your Honor.

15 (The jury is impaneled at 11:30 a.m.)

16 THE COURT: Ladies and gentlemen of the jury that was  
17 not -- jury panel that was not selected for service in this  
18 particular case, if you would return to the jury panel room  
19 then you will be given further instructions as to where you  
20 go to next. I think we're going to do another jury  
21 selection for the Common Pleas trial. Thank you.

22 (Unselected members of the jury panel exit the  
23 courtroom at 11:30 a.m.)

24 THE COURT: Would counsel please approach.

25 (Whereupon, a bench conference is held off the record

1 and out of the hearing of the jury panel.)

2 THE COURT: Ladies and gentlemen of the jury, we have  
3 some matters that we must take care of before we actually  
4 start the trial of this case. So I'm going to give you an  
5 extra long lunch break, and I hope you enjoy it here in  
6 Berkeley County. There's lots of good choices for lunch.  
7 If you would please be back in your jury room at 2:30 then  
8 we'll be able to start the trial of this case. Please do  
9 not discuss this case with anyone or allow anyone to discuss  
10 this case with you as you must make your determination based  
11 on the evidence presented solely in the courtroom and  
12 throughout the trial after you've been properly instructed  
13 on the law. So please do not talk to anybody about this  
14 case or allow anyone to talk about the case with you. If  
15 you see any of the parties or officers or anybody during  
16 your lunch break and they don't speak to you, they're not  
17 being rude. They're just following the Court's  
18 instructions. I hope that you have a nice lunch. And the  
19 bailiffs will instruct you on where to report back to your  
20 jury room and show you where you need to be. Have a nice  
21 lunch.

22 (Whereupon, the jury exits the courtroom at 11:33 a.m.)

23 PRE-TRIAL MOTIONS

24 THE COURT: All right. Counsel, I understand that we  
25 have several motions to take care of before we start the

1 trial. Who's got the first one up?

2 MS. LITTLEJOHN: I guess we're having to somewhat look  
3 at the order of all of this, Your Honor. I did do a --  
4 probably he just went over with. I did do a motion with  
5 regard to the order of closing based on that new case.

6 THE COURT: Yes, ma'am. And I think the law is -- the  
7 law is what it is on that. So we'll certainly follow that.

8 MS. LITTLEJOHN: I just didn't know if we were  
9 still doing -- folks still do the order of motions or not.  
10 Your Honor, probably the biggest issue in this case comes  
11 down to was the motion to suppress. The motion to suppress  
12 comes down, and I believe I've handed this up to the Court,  
13 was the arrest valid. To determine if the arrest is valid,  
14 Your Honor, what we're going to have to do is -- we could  
15 look at the underlying case. If we look at the underlying  
16 case, because when you look at what was provided in the  
17 discovery, it references a case number in the discovery --  
18 and I provided this in the brief as well -- case number  
19 201501002281. That case is labeled "Theft From Building."  
20 And I've put in as exhibit one; it's four pages.

21 The incident dates are listed on it. Your Honor,  
22 Officer Cook was involved in that case. In the Theft From  
23 Building, my client, Mr. Kozloski, was a suspect per the  
24 report. They were a bunch of generic items that were  
25 recorded. The dates that are very critical here are

1 January 14th and January 15th. On January 14th, Officer  
2 Cook apparently is investigating this; goes to Money Man,  
3 finds these. He, according to the Rule 5, goes to the home  
4 of Mr. Kozloski and Mr. Hart on information from Mr. Hart  
5 that there was an eviction. There was no -- illegal  
6 eviction. Officer Cook had asked Judge Baggett to issue  
7 warrant 2015A0810460 for receiving stolen goods. Judge  
8 Baguette issued that warrant. Judge Baguette signed that  
9 warrant on the 15th. And that's the critical part of this,  
10 Your Honor. Because that was with regard to the theft the  
11 from the building. In their report, in his report, Your  
12 Honor, the first line of the incident report on the material  
13 that the State provided, it says on 1-14-15, I received  
14 information from the victim of a larceny, (case number  
15 2015010002281). When you look that up, it comes back to  
16 this receiving stolen goods. Your Honor, that -- and I  
17 believe the State would stipulate the warrant was not signed  
18 until January 15th. It was on January 14th that the  
19 officers went to Mr. Kozloski's and Mr. Cook's [sic] house  
20 with no -- they are alleging now, they have a warrant, that  
21 they've had a warrant. Today, this morning, Officer Cook  
22 produced a document that to my knowledge is nowhere on  
23 public record. And I don't know if Your Honor would like to  
24 ask the Clerk of Court to check and see if it's on public  
25 record, warrant number 2015A0810400047 and 48. These happen

1 to be for obtaining signature under false pretenses and  
2 petty larceny. Those were signed on January 12th.

3 Your Honor, I did a diligent search of the public  
4 index. These were nowhere in the public index. They were  
5 not provided during discovery. Solicitor didn't have them.  
6 The officer just happens to give them today to the  
7 solicitor. There go the solicitor is having to come up with  
8 something because he just happened to have gotten them.

9 Your Honor, I would ask if those that are affiliated  
10 with 47 and 48 be suppressed and anything with it. Because  
11 had they been relevant, they would've been immaterial and  
12 exculpatory or inculpatory. They would have been provided  
13 pursuant to discovery. They were not provided. If they're  
14 not provided and they're material, I would ask that we  
15 exclude them. If we exclude them because they were not  
16 provided, the takes us back to the warrant that ends in 60,  
17 which was not signed until the 15th. If it wasn't signed  
18 until the 15th, the officers are at the front door per the  
19 report on the 14th at an apartment building. Officers at  
20 the front door per the report on there -- the officers  
21 apparently knock. Some mystery person is out front and  
22 allegedly teared says, oh, I saw white male run out the  
23 back. However, Your Honor, I would submit that -- and this  
24 is getting into the flight motion as well -- Mr. Kozloski  
25 would not have been fleeing from police because to his

1 knowledge he would not have had any warrants, nor would  
2 there have been any warrants if the Court agrees that the  
3 State should provide all material evidence that can be  
4 exculpatory and inculpatory in discovery and not just let  
5 the officer come up the last minute and provide it.

6       Therefore, they caught him walking on the road. He was  
7 walking. The officer comes up to him walking and  
8 immediately arrests him; cuffs him when there is no warrant  
9 for him other than these two warrants that the solicitor  
10 received this morning, we received this morning, which could  
11 not be material to the case in any way, or we would have all  
12 received them much beforehand. And they were not on public  
13 records so there's no way of being able to find them. He's  
14 cuffed before then. He is under arrest before that. I  
15 don't think the solicitor would disagree that he does get  
16 arrested and cuffed. That's all on the 14th. So if you go  
17 with the warrant that ends in 60, the receiving stolen  
18 goods, there was no basis to arrest my client. There is  
19 nothing that he was fleeing from. The officer's report says  
20 they are in the front. He leaves out the back, is an  
21 apartment building. I submit that they don't see the back  
22 from the front. And as a matter of fact, his report would  
23 state that someone told them not that he saw it. So,  
24 obviously, he wouldn't say he saw it because his report says  
25 differently.

1           Your Honor, I would ask that you suppress, first of  
2 all, these two warrants that were served that solicitor got  
3 today and we got today as a violation of Rule 5. Your  
4 Honor, they just -- it is -- the solicitor should not have  
5 to come up with an argument when the material is kept from  
6 him as well. I have no doubt Mr. Dennis would've provided  
7 it had he had the material. And I have no doubt he is going  
8 to argue that these two warrants are very much material to  
9 this case. However, to do that would be to say it should've  
10 been provided. Your Honor, I would also ask -- so that's  
11 basically my motion to suppress and flight, I guess, all in  
12 one. You're gonna have to take the flight one with the  
13 motion to suppress, I guess. Do you want to stop there and  
14 ---

15           THE COURT: Let him respond to that portion of it ---

16           MS. LITTLEJOHN: That's what I was going to say.

17           THE COURT: --- then we'll move on to the flight  
18 portion. All right. Solicitor?

19           AST. SOL. DENNIS: Speaking directly to the issue with  
20 these previous warrants. Within the report that I have in  
21 the arrest summary that I believe and certain was provided  
22 to defense, two other case numbers were noted as part of the  
23 basis for police to appear at 3000 Harbor Lake Drive on  
24 January 14th. So it's not that there wasn't any kind of  
25 notice that this was part of the reason why sheriff deputies

1 were dispatched to that area. The two warrants, to start  
2 off, I don't believe are exculpatory in nature. They don't  
3 go to show guilt or innocence in this particular matter. So  
4 I don't think that it really fits within a Brady motion or  
5 the Rule 5.

6 This is also a case -- these two cases are not directly  
7 related to the reason that we're here today. We're here  
8 today because of heroin indictments, not any other kind of  
9 adjunct cases or companion cases. It's also not required  
10 that I provide every possible thing that could possibly be  
11 there that could go towards the defendant's guilt or  
12 innocence. It's only if it would be material. I think that  
13 if police were there but for these two warrants alone, not  
14 in conjunction with a tip that one of the victim witnesses  
15 in the warrant that was signed on the 15th, gave them that  
16 a suspect in that matter that they were actively  
17 investigating along with these other case numbers that were  
18 also present in the report, gave them rise to show up at  
19 that apartment. I think that that would be enough to  
20 continue this on.

21 The other issue, even if we're going to look at it in  
22 kind of in additional places, if we're going to look at a  
23 State v. Counts type of -- that type of argument, that they  
24 showed up at this apartment. I believe the defense has  
25 discussed the fact that we're kind of a little hazy as to

1 whether or not he was actually being evicted, was in the  
2 process of being evicted, if anything had been filed. I  
3 think that given the fact that there was a tip that he was  
4 there by a victim witness that knew him, could identify him,  
5 that police had also been able to identify him earlier in  
6 the process and had been investigating him, I think there is  
7 reason for them to be present there independently from  
8 these two other warrants. For those reasons, I think that  
9 the arrest and the subsequent evidence that comes in by  
10 virtue of the drug evidence should still remain.

11 As far as him walking away from this home and the  
12 utterance by a neighbor that he had run away, I think that  
13 the only way the police could have known that he had come  
14 out of the apartment was if that neighborhood had indicated  
15 to them that he was there. And, certainly, if they had any  
16 suspect -- or suspicion that he was involved in any kind of  
17 criminal activity, they could stop and question him. And I  
18 think that even if all of this other evidence didn't exist,  
19 I think that we have enough here for basically a Terry stop  
20 on the side of the road. They knew him from past dealings.  
21 Because of information from the victim witness and a tip  
22 they received, they could stop him and briefly detain him,  
23 question him pursuant to those investigations. So I don't  
24 think that we should have everything suppressed because we  
25 have two warrants from a wholly unrelated matter that had

1 existed for at least 2 or 3 days at the time that police  
2 came over there, combined with the fact they had other  
3 information that caused them to be at that location.

4 THE COURT: Any response, Ms. Littlejohn?

5 MS. LITTLEJOHN: Yes. Your Honor, first of all, the  
6 police -- they didn't question him. They just went out  
7 there and arrested him. So there wasn't any questioning.  
8 So we're past that. He had a right to be at the apartment.  
9 And the right to be at the apartment doesn't give the  
10 officers the right to arrest. Your Honor, furthermore, we  
11 did do a due diligence in that arrest summary of those two  
12 cases. And you'll notice in brief that I said that we  
13 received the material from solicitor's office on March 3,  
14 2016. I sent our investigator to look up those two case  
15 numbers. They were expunged. To me, I have no idea they  
16 were ever -- if there were ever a warrant affiliated with  
17 them. Or, you know, police officers will go out and they'll  
18 take a report, even for a welfare check.

19 THE COURT: Well, let me ask you this based on what  
20 you're saying. You're saying these warrants were expunged.  
21 Were they ever served on your client and then he had them  
22 expunged subsequent to that?

23 MS. LITTLEJOHN: I have no idea. And will tell you I  
24 have not asked him.

25 THE COURT: All right. You may proceed.

1 MS. LITTLEJOHN: Your Honor, they were expunged before  
2 we ever received any discovery. There was no way we could  
3 know if these were reports.

4 THE COURT: Well, explain to me how you know they were  
5 expunged. Do you have the expungement paperwork or what do  
6 you have that shows they were expunged?

7 MS. LITTLEJOHN: We sent a subpoena to, I guess, to the  
8 clerk's office. I asked my investigator to get it. And I  
9 will tell you here's what I got back: a sticky paper with  
10 those two numbers on it saying expunged. I don't know --  
11 for all I know, they could be welfare checks. You know,  
12 police officer rides out and does a welfare check. They  
13 write a case up. Just because have a case, doesn't mean you  
14 have an arrest. Just because you have a case doesn't mean  
15 you have a warrant. You can have a case number and not  
16 have -- it could just be for whatever. It doesn't have to  
17 be for a warrant or an arrest. To be, oh, yeah, let me go  
18 tell the kids to lay down the noise. Your Honor, so  
19 we're -- so far as the eviction, I think that there was  
20 nothing with that to my -- we checked on that. And I don't  
21 think State will be producing any evidence that there was  
22 any legal eviction going on because we checked, and we could  
23 not find any. He had a right to be in his apartment. Just  
24 because he had the right to be at the apartment doesn't give  
25 them the right arrest, Your Honor.

1 THE COURT: Let's move onto the actual arrest. I  
2 think, certainly, they were acting on information to go to  
3 the apartment. There's no allegations that they went into  
4 the apartment and illegally obtained any evidence from the  
5 apartment. Basically, what this lies is upon the actual  
6 arrest when he walking down the road. So let's move on to  
7 that portion of it as far as the facts concerned in that,  
8 Solicitor.

9 MS. LITTLEJOHN: Your Honor, he's walking down the road  
10 and they cuff him.

11 THE COURT: So let's move onto the next motion, though.  
12 Your motion as far as the evidence of flight. Tell me your  
13 motion on that.

14 MS. LITTLEJOHN: Yes, Your Honor. That would be -- I  
15 believe what the solicitor is going to try to get out is  
16 that he ran from the police officers when he left the back  
17 of his apartment.

18 THE COURT: All right. Solicitor?

19 AST. SOL. DENNIS: I think that the categorization of  
20 how he was not in that apartment is tough to kind of get  
21 around because it's a quick succession of events that lead  
22 to that. The knowledge that he had these arrest warrants, I  
23 mean, I've got copies of them. They were signed by what I  
24 presume to be Mr. Kozloski on the 14th. You know, I think  
25 that if he has an active criminal investigation, he may know

1 about that. But really the way that it would be framed  
2 would be that police found him not in the apartment but on  
3 the street, but they could identify him readily. And the  
4 reason that he was stopped was for these existing arrest  
5 warrants along with the suspicion of his connection with  
6 another criminal matter that was being investigated.

7 THE COURT: Well, let's take one of those one at a  
8 time. Obviously, I'm concerned about other arrest warrants  
9 that may or may not be admissible as to why they were  
10 detaining him. I think the fact that he was walking, he was  
11 not in the apartment, that's technically not evidence of  
12 flight as long as they don't say he bolted from the back  
13 door and we chased him down. Because, obviously, unless you  
14 have some sort of testimony that he had prior knowledge that  
15 they were there looking for him, I don't think that's  
16 evidence of flight. So let's then go on. If you couch it  
17 in those terms that they were there on-scene investigating  
18 based on a tip, and they located and they recognized him,  
19 then let's move on to that next step as far as the actual  
20 arrest. What was the probable cause for the arrest?

21 AST. SOL. DENNIS: The probable cause for the arrest  
22 was that they had previous information about him that had  
23 come from the witness victim in the other case that he was  
24 then subsequently served the arrest warrant on the 15th.  
25 And that was the reason why they were there. But I think

1 that would be the reason for the stop. And then the  
2 subsequent detainment happened because of that alone. The  
3 probable cause to search him then came from their being able  
4 to appreciate the smell of marijuana on his person. Then  
5 asked him did he have anything that is dangerous on your  
6 body similar to weapons or anything like along the same  
7 lines as the traditional Terry stop. At that point, he said  
8 that he did have some syringes and then told them that he  
9 also had some heroin on him.

10 THE COURT: All right. I suppose the next logical step  
11 and let's move on into the Jackson v. Denno. You may call  
12 your first witness.

13 AST. SOL. DENNIS: The State would call Sergeant Shane  
14 Cook.

15 THE COURT: Your witness.

16 AST. SOL. DENNIS: Thank you, Your Honor.

17 JACKSON V. DENNO HEARING

18 DIRECT EXAMINATION

19 BY AST. SOL. DENNIS:

20 Q. Good morning, Sergeant Cook. Please state where you  
21 are currently employed.

22 A. Berkeley County Sheriff's Office.

23 Q. And how long have you been employed there?

24 A. Approximately three and a half years.

25 Q. What is your previous law-enforcement experience?

1 A. I started in 2009 with the Greenville County Sheriff's  
2 Office where I was assigned to uniform patrol. Just after  
3 that, after about two years, I spent with the traffic, DUI,  
4 drug enforcement unit for about three years prior to  
5 transferring to Berkeley County in 2013.

6 Q. How long have you been in this position?

7 A. Current position as a sergeant, I've been for  
8 approximately eight months.

9 Q. Okay. And let's back up briefly. What are your job  
10 duties as a sergeant with Berkeley County Sheriff's Office?

11 A. Primary responsible is a supervisor on road patrol  
12 assigned to supervise approximately 15 deputies in their  
13 day-to-day functions for calls for service.

14 Q. And did you have an occasion to talk to this defendant,  
15 Chad Kozloski, during the investigation of the case which  
16 brings us here today?

17 A. I did.

18 Q. And when was that?

19 A. On January 14, 2013.

20 Q. And who was present during the questioning?

21 A. Myself and Deputy Bell who is also with Berkeley  
22 County.

23 Q. Anyone else that was there?

24 A. A witness and victim in one of the cases I was  
25 currently investigating.

1 Q. Did the defendant appear to be under the influence of  
2 drugs or alcohol to the extent that would impair his ability  
3 to understand the questioning?

4 A. No. But he did appear under the influence.

5 Q. Did the defendant appear to have any physical or mental  
6 disability that would have impaired his ability to  
7 understand what was being said and asked?

8 A. No.

9 Q. Where was the defendant questioned?

10 A. On the roadside.

11 Q. Could you be more specific, location?

12 A. Surfside Drive and Harbor Lake Drive in the Goose Creek  
13 area, Berkeley County.

14 Q. Thank you. What was the total length of your  
15 conversation with the defendant?

16 A. Approximately ten to 15 minutes.

17 Q. And did the defendant ever ask for food or water or a  
18 bathroom break?

19 A. No, he did not.

20 Q. Did you coerce the of defendant into making a statement  
21 with any threats or other actions?

22 A. No.

23 Q. Did you promise the defendant anything in return for  
24 making a statement?

25 A. No.

1 Q. To the best of your knowledge, was the defendant's  
2 statement given freely and voluntarily?

3 A. Yes, is it was.

4 Q. Was the defendant already under arrest at the time of  
5 your questioning?

6 A. Yes.

7 Q. And was the defendant detained?

8 A. He was prior to arrest.

9 Q. Was the defendant advised as to why you wanted to  
10 question him?

11 A. He was.

12 Q. Did you advise the defendant of his constitutional  
13 rights pursuant to Miranda?

14 A. I did.

15 Q. And which point in the questioning?

16 A. Just after the pat-down for an officer safety.

17 Q. Did you advise him in writing or was it verbally given?

18 A. Verbally.

19 Q. How did the defendant acknowledge that he understood  
20 the advisement of each warning?

21 A. He shook his head yes and said he understood.

22 Q. Did the defendant appear to have the ability to  
23 understand written and spoken English?

24 A. Yes.

25 Q. Did the defendant's answers to questions appear

1 rational or was he so emotional that your concerns regarding  
2 his ability to understand the warnings and waive of his  
3 rights?

4 A. They appeared to be rational.

5 Q. Did the defendant respond when you asked whether or not  
6 he wanted an attorney?

7 A. Yes.

8 Q. And what was his reply?

9 A. He didn't request one.

10 Q. How did the defendant acknowledge that he wanted to  
11 talk to you without an attorney?

12 A. I don't recall specifically. I just know he did not  
13 invoke his right to counsel at that time.

14 Q. Did the defendant mention an attorney at any time  
15 during the questioning?

16 A. No.

17 Q. Did the defendant at any time during the questioning  
18 change his mind and ask to stop because he wanted to speak  
19 to an attorney?

20 A. Not to my knowledge.

21 Q. Did you ask the defendant at any time before, during,  
22 or after questioning to provide a written statement and  
23 signed written Miranda?

24 A. No, I did not.

25 Q. Did the defendant write a written statement?

1 A. No.

2 Q. Why not?

3 A. That, I can't answer.

4 Q. Did the defendant sign a written Miranda form?

5 A. No, he did not.

6 Q. So it's standard procedure to verbally advise  
7 defendants of their Miranda warnings, and once they talk  
8 to -- and once they talk to ask them to provide a written  
9 statement and signed written Miranda?

10 A. If a written statement is obtained, then he would sign  
11 a written Miranda. But a written statement was not  
12 obtained.

13 Q. Why is that?

14 A. When he went to the jail, he was immediately taken for  
15 a strip search. At that time, he was turned over to jail  
16 custody. So the written statement was not obtained because  
17 of their procedures.

18 Q. Did the defendant at any time make a verbal statement  
19 to you?

20 A. Yes, he did.

21 Q. What did the defendant say at that point?

22 A. Upon detaining the defendant, I asked for officer  
23 safety if he had anything on his person that would stick me,  
24 poke me, harm me, which he verbally stated he had needles in  
25 his pocket as well as heroin.

1 Q. Was that statement given before or after Miranda?

2 A. Before.

3 Q. And did the defendant at any time stop answering your  
4 questions and/or cooperate with you?

5 A. Questions regarding the crime wasn't conducted until  
6 after Miranda was given. Questions that were asked were  
7 officer safety risks.

8 AST. SOL. DENNIS: Please answer any questions that Ms.  
9 Littlejohn might have for you.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MS. LITTLEJOHN:

13 Q. Officer Cook, you started with Greenville; correct?

14 A. Yes, ma'am.

15 Q. And at some point in time you did go to the Academy;  
16 correct?

17 A. Correct.

18 Q. And you're a sergeant? You're at three stripes?

19 A. Yes, ma'am.

20 Q. So you have some rank on yourself; right?

21 A. (No verbal response.)

22 Q. And at the Academy, they teach y'all to write the  
23 reports. So they tell y'all if you're going to write  
24 reports, put everything in it; correct?

25 A. Correct.

1 Q. All the important things go in the report; right?

2 A. Correct.

3 Q. And that's because you may not remember what it is a  
4 year from now; correct?

5 A. That's correct.

6 Q. Or somebody may pick up your report and be reading it.  
7 There are a lot of reasons; right?

8 A. Yes.

9 Q. Okay. And you knew that the solicitor would be given a  
10 copy of the report?

11 A. I was.

12 Q. Okay. And that they would rely on it; right?

13 A. (No verbal response.)

14 Q. Officer Cook, that day you caught up with my client;  
15 correct?

16 A. I did.

17 Q. Told him to stop?

18 A. I did.

19 Q. Told him place your hands behind your back?

20 A. Correct.

21 Q. You are under arrest?

22 A. Yes.

23 Q. Then you said to him, "Do you have anything on you that  
24 I should be aware of that would harm me?"

25 A. Correct.

1 Q. Your statement is that he then said he had a few  
2 needles in his pocket along with heroin?

3 A. Correct.

4 Q. You said you smelled freshly smoked marijuana on him?

5 A. Correct.

6 Q. Do they burn marijuana for you all at the Academy so  
7 that you can smell it?

8 A. No.

9 Q. Then how would you know what it smells like?

10 A. I've been involved in several drug cases between  
11 Berkeley County and Greenville County. Through my training  
12 experience, I know what freshly smoked marijuana smells  
13 like.

14 Q. So you know that marijuana like cigarettes will linger  
15 on your clothes?

16 A. I do.

17 Q. And would you agree with me that if you get in a car  
18 where somebody has been smoking cigarettes, smoking  
19 marijuana, smoking a pipe, you're going to smell smoke?  
20 You're going to smell that.

21 A. Correct. He wasn't coming from a car though.

22 Q. And same as if you're around them and they smoke any of  
23 the cigarettes, marijuana, pipe, whatever, cigar, you're  
24 going to smell it on their clothes?

25 A. Uh-huh.

1 Q. And that will linger on there, wont' it?

2 A. (No verbal response.)

3 Q. So there's no telling when that smell would've come  
4 from. You can't place it as in 30 minutes?

5 A. Correct..

6 Q. Or 12 hours; correct?

7 A. Correct.

8 Q. And then you say in your report that he, the suspect,  
9 appeared to be, "out of it." Isn't that what you wrote in  
10 your report?

11 A. It is.

12 Q. With eyes glassy and bloodshot. So according to your  
13 report, he was out of it?

14 A. Glassy eyes and bloodshot, yes.

15 Q. But he was out of it; correct?

16 A. Correct.

17 Q. When you were arresting him on this, you didn't say --  
18 you didn't tell -- you didn't write down here, you didn't  
19 tell him why you stopped him, did you?

20 A. In the report, no. I don't believe so.

21 Q. And if it was important, you would've written it.

22 You've already said that, right? If it's important, you  
23 write it.

24 A. Typically, yes.

25 Q. So you have a fella who is walking along. You stop him,

1 turn him around, cuff him. A guy who is, "out of it," by  
2 your own words. Search him. And at this point in time, you  
3 had still never told him what he's under arrest for.

4 A. That's inaccurate. I did advise him that he had active  
5 warrants and that's why he was under arrest.

6 Q. But that's not in your report, is it?

7 A. No, it's not.

8 Q. So you don't know really when you did tell him, do you?

9 A. No. I remember that one is well. Prior to his arrest,  
10 I advised him that he had two active warrants for his  
11 arrest.

12 Q. You didn't just testify to that. I just asked you  
13 specifically. I went over it point by point what you did.  
14 You didn't say that, did you?

15 A. You didn't ask me that specifically to my  
16 understanding.

17 Q. You never said that you did it before then, did you?

18 A. When Castle (ph) asked me if I advised him he was under  
19 arrest and before, I did answer that question.

20 Q. So let's talk about that arrest before. What happened  
21 with those cases?

22 A. I would have to look at court records and back at the  
23 docket.

24 Q. Are they public record?

25 A. I imagine they would be. They were signed by a

1 Berkeley County magistrate.

2 Q. So if the clerk here were to look them up, she'd  
3 absolutely find it?

4 A. I have warrant numbers, so. I don't know how the clerk  
5 of courts work, and that would be a question for them.

6 Q. So if the judge were to ask the clerk to look up your  
7 warrant ---

8 AST. SOL. DENNIS: Objection, Your Honor.

9 Q. --- we'd find them? You believe they're public?

10 AST. SOL. DENNIS: Relevance.

11 THE COURT: Sustained. Let's move on, Ms. Littlejohn.

12 Q. Did your car have a camera in it that day?

13 A. No. My vehicle is not equipped with a camera.

14 Q. And Berkeley County is one of the few counties that  
15 doesn't have body cams; correct?

16 A. Correct.

17 Q. But they do provide y'all a telephone; correct?

18 A. They do.

19 Q. That has video capabilities; correct?

20 A. It does.

21 Q. And there was another deputy there according to your  
22 testimony; correct?

23 A. There was.

24 Q. Did anyone video this?

25 A. No. It's not common practice with a cell phone.

1 MS. LITTLEJOHN: Court's indulgence. Nothing, Your  
2 Honor.

3 THE COURT: Redirect?

4 AST. SOL. DENNIS: Nothing at this time, Your Honor.

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

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: You may call your next witness.

8 AST. SOL. DENNIS: We don't have any more, Your Honor.

9 THE COURT: Ms. Littlejohn, do you care to call any  
10 witnesses?

11 MS. LITTLEJOHN: Chad Kozloski.

12 CHAD ROBERT KOZLOSKI, after being duly sworn, testified  
13 as follows:

14 THE COURT: Your witness.

15 DIRECT EXAMINATION

16 BY MS. LITTLEJOHN:

17 Q. Mr. Kozloski, the basis for the hearing here today, and  
18 I'm gonna tell you because he officers know it well, is to  
19 determine if any statement that you may or may not have made  
20 was voluntary. That's what this hearing is for. You've  
21 heard the officer testify. The statement that we are  
22 looking at to determine if it was voluntary was the issue  
23 that you supposedly made a statement about heroin. Do you  
24 recall the day that the officers stopped you on the side of  
25 the road?

1 A. Yes, I do.

2 Q. When he stopped you, do you recall if he told you you  
3 are under arrest?

4 A. He did not.

5 Q. Did he immediately place handcuffs on you?

6 A. Yes, he did.

7 Q. Did you know why he was arresting you?

8 A. I did not.

9 Q. Do you recall making a statement to him saying that you  
10 had needles and heroin on yourself?

11 A. The statement about syringes.

12 Q. Syringes.

13 A. Correct.

14 Q. And heroin?

15 A. No.

16 Q. Do you recall if he read you your Miranda rights before  
17 you said anything to him?

18 A. He did not read me or verbally tell me my Miranda  
19 rights at any point during the arrest.

20 Q. And that's all to the best of your knowledge; correct?

21 A. Correct.

22 MS. LITTLEJOHN: I have no further questions.

23 THE COURT: Cross-examination?

24 AST. SOL. DENNIS: Beg the Court's indulgence, Your  
25 Honor. (Brief pause.) No questions, Your Honor.

1 THE COURT: All right. You may step down, sir. Thank  
2 you. Any other witnesses?

3 MS. LITTLEJOHN: None, Your Honor.

4 THE COURT: Anything further on this matter?

5 AST. SOL. DENNIS: Not from the State, Your Honor.

6 MS. LITTLEJOHN: Just for argument sake.

7 THE COURT: Yes, ma'am.

8 MS. LITTLEJOHN: Yes, Your Honor, I asked my client if  
9 this was -- his answers were to the best of his knowledge.  
10 The answers were yes. I went over the officer his -- what  
11 exactly he did and what he wrote in his report. And he  
12 fully acknowledged that if it's important, he writes it --  
13 bar none. It wasn't written. Your Honor, in the officer's  
14 own words he had said he was out of it. And that's the  
15 officer's own words on paper. So it was clearly important  
16 because the officer testified if it happened and it's  
17 important, he writes it down. He was out of it according to  
18 the officer when these alleged statements were made. The  
19 Miranda, Your Honor, from what I recall him saying, was  
20 immediately handcuffed and patted down. Miranda came after  
21 that. We'd ask that any statement with regard to heroin and  
22 syringes there on the side of the road be suppressed. And  
23 we're also going to be arguing shortly about that actual  
24 stop anyway?

25 THE COURT: Solicitor?

1           AST. SOL. DENNIS: I think that -- I'd like some  
2 clarification on defense stance on whether or not the arrest  
3 was lawful or unlawful at this time. But just because I  
4 think we're arguing kind of on both ends of this matter. I  
5 think that the report does say, obviously, that the  
6 defendant appeared to be out of it. However, I think that  
7 given the behavior of the defendant in leaving the apartment  
8 and reacting to officers, being able to maintain balance and  
9 stand while the questioning happened, the brevity of the  
10 conversation, and the fact that there was actually no  
11 interrogatory questions that were asked. This was basically  
12 a questioning for officer safety not directly requesting any  
13 sort of indication of guilt or culpability in the matter,  
14 and that the information was freely given. I think that it  
15 should still remain as an option to be admitted into  
16 evidence.

17           THE COURT: Any response?

18           MS. LITTLEJOHN: Yes, Your Honor. Let me just go right  
19 back to -- the first thing, it needs to be suppressed anyway  
20 because this officer just testified on the stand if it's  
21 material to a case, he will put it in the report. Clearly,  
22 the two warrants he gave us today has nothing to do with  
23 this case we're here for. If it did, he would've put it in  
24 the case by his own admission, Your Honor. Leading us to  
25 that, since these are expunged and we would've had no way of

1 getting to them, that leads us to the one which was done and  
2 signed on the 15th. These actions occurred on the 14th.  
3 The Court cannot, and in all candor, expect the defense to  
4 be able to find things that have been expunged. We can't  
5 find them. The solicitor here didn't have them. Mr. Dennis  
6 is wonderful to work with. I have no doubt had he had them  
7 in his possession, he would've provided them. And that  
8 would've taken a different angle on this. I absolutely  
9 believe he would've provided. He did not provide them.  
10 They were in the possession of the officer. They didn't get  
11 them until this morning.

12 Your Honor, there is -- we're right back to how are we  
13 to go forward on something we cannot have the ability to  
14 even look at nor did the State have it in their possession,  
15 direct possession. But it was given to them today. If we  
16 rely on taking that out of the picture, then we're back at  
17 warrant number six, 2015, blah, blah, 60 that was signed on  
18 January 15th. If we look at the one signed on the 15th,  
19 they were at his house on the 14th. If they're at the  
20 house on the 14th, they have no reason on the 14th to be  
21 arresting him.

22 THE COURT: I understand your argument. Do we have any  
23 other motions?

24 AST. SOL. DENNIS: The State has a rule regarding  
25 404(b) evidence to prior bad acts that we would like to

1 address at some point in time.

2 THE COURT: Well, here's what I intend on doing just to  
3 make sure everybody is on the same page. Obviously, I've  
4 listened to your arguments and the testimony. I do want to  
5 take the time over the lunch break to review your briefs  
6 before I issue a ruling on the record. So just to give you  
7 a heads-up, this is kind of where I'm heading. But I'd like  
8 hear all of the motions first and then will issue the ruling  
9 before the jury comes back. So you may proceed on your 404.

10 MS. LITTLEJOHN: Excuse me. Excuse me, Your Honor.

11 (Brief pause.)

12 THE COURT: We like logic, so that works.

13 MS. LITTLEJOHN: We're thinking about -- thinking about  
14 keeping it sort of in the string of what happened during  
15 that time frame. Actually, if he objects -- my next  
16 argument, Your Honor, would be to suppress the entirety of  
17 that heroin that was referenced; that we've been  
18 referencing, on the stop on the side of the road. That's  
19 actually in my trial brief. And the basis for that, Your  
20 Honor, is that if you look at the warrant number that is  
21 affiliated with the indictment, what you're going to see is  
22 that that has to do with heroin found at the Hill-Finklea  
23 Detention Center. Also warrant number -- and I believe that  
24 was warrant number -- Court's indulgence. Let me find the  
25 indictment number. Sixty-five. Possession of heroin. And

1 I will read the warrant just for the record. I have in my  
2 trial brief as Exhibit 8 that on 1-14 the defendant, Chad  
3 Kozloski, was arrested for active warrants. And during a  
4 narcotics search at the Hill-Finklea Detention Center  
5 located at 300 California Avenue, Monks Corner, within  
6 Berkeley County, the defendant was found to be in possession  
7 of a small blue baggie containing cotton brown liquid, which  
8 the defendant admitted was heroin. And he has a heroin  
9 addiction. That's the warrant that corresponds with the  
10 indictment number.

11 The next warrant that I'll be referencing will also be  
12 Exhibit 8, 2015A0810400068. It is possession of contraband,  
13 "heroin", at the county jail, which says pretty much the  
14 same thing. It goes on about contraband saying it's at the  
15 Detention Center found to be in possession and did conceal  
16 by his person a small blue baggie with cotton-soaked brown  
17 liquid which the defendant stated was heroin. In both of  
18 these warrants, 65 and 68 -- I'm just referring to the last  
19 two numbers here, Your Honor -- we have the place being the  
20 Detention Center; 300 California Avenue is actually  
21 specified in warrant number 65, the non-contraband warrant.  
22 They both describe the item as a cotton-soaked brown liquid  
23 in a blue baggie. There are two items of heroin that were  
24 taken, Your Honor, in this situation: one on the side of the  
25 road, which weight somewhere around .10 grams, something

1 like that; and then a piece of cotton-soaked brown liquid.  
2 That was recovered at the jail, the cotton-soaked brown  
3 liquid. That being the point, both of these warrants  
4 reference the cotton-soaked brown liquid. These two  
5 warrants were placed on page two of the booking report. On  
6 page one of the booking report are evading arrest -- I  
7 provided it to the Court. I believe simple possession of  
8 marijuana, second. It is not the heroin. I believe that the  
9 State is within their purview to give a possession of heroin  
10 as well as a possession of contraband at the jail. If you  
11 look at the body of it where it's written and what it says,  
12 one would think the warrant 2015 ending in 65 has to do with  
13 the possession of the heroin at the jail. The officer was  
14 certainly free to write warrants for possession of heroin on  
15 the side of the road, possession of whatever he -- over the  
16 years, we've all seen lots of different kinds of warrants --  
17 there are plenty of warrants written.

18 Your Honor, what I'm getting at is the issue that we've  
19 been talking about on the side of the road should be  
20 suppressed. Furthermore, it should be suppressed because  
21 that's not even -- I would submit that's not even the heroin  
22 that we're here about. Granted, the indictment says  
23 possession of heroin. But if you don't -- so you have a --  
24 but if you're not even arrested on that heroin, how would  
25 you know because you could have been directly indicted on

1 it, that heroin. But you weren't directly indicted on that  
2 heroin. You were arrested on some other heroin. That would  
3 be my argument for suppressing the -- that would be, I  
4 guess, my other argument for suppressing the one on the side  
5 of the road, Your Honor.

6 THE COURT: All right. Solicitor?

7 AST. SOL. DENNIS: Thank you, Your Honor. I believe  
8 all of this argument can be capsulated into a cumulative  
9 evidence argument. Under State v. Owens, 293-SC-161, an  
10 indictment is sufficient if the offense is stated with  
11 sufficient certainty and particularity so that the Court can  
12 know what judgment to pronounce, and the defendant can know  
13 what he's called upon to answer, and then an acquittal or a  
14 conviction may be pleaded subsequent to prosecution. This  
15 case, he has notice that he is here to defend himself  
16 against possession of heroin. This isn't a case where the  
17 amount of heroin contained within is key or important as  
18 long as the heroin exists and is less than one gram, or I  
19 think .4 -- or four grams -- I'm sorry -- for heroin. Also  
20 in dealing with indictments, any evidence that is not  
21 material or could be seen as harmless if it's merely  
22 cumulative. Here we're just kind of saying heroin was found  
23 on this date; you were noticed that you are to defend  
24 against these types of charges.

25 Further, I would kind of connect this as an analog to

1 something like the single larceny doctrine where you have a  
2 single time frame where a common criminal intent is shown  
3 and you can collect all of the different larcenies or all of  
4 the different instances of that in order to place them into  
5 one indictment. Rather than to have eight to ten  
6 indictments for multiple petty larceny's; you can just have  
7 one single grand larceny. For those reasons I think that  
8 another instance of heroin does not change the overall scope  
9 of the charge or the overall amount of narcotic is harmless  
10 and should be admitted.

11 THE COURT: Anything further?

12 MS. LITTLEJOHN: Just briefly in reply, Your Honor. I  
13 would argue, obviously, it was to put in two heroin finds on  
14 the same day is clearly more prejudicial than probative.  
15 And that that was found at the jail, the result was no  
16 weight obtained. Which I believe is very significant versus  
17 what was obtained on the one by the side of the road. Your  
18 Honor, and I understand where the solicitor is coming from.  
19 But I would submit that I've been up here many times as a  
20 defense attorney where I've said, come on, y'all, you don't  
21 want to really put up 15 forgeries against my client, and  
22 the solicitor wants to hand up 15 forgeries. I mean,  
23 because officer wrote for 15 forgeries when we could have  
24 just put it together for three things and put it up. But,  
25 you know, an officer has -- they have -- it's up to them

1 what they want to write for. It's up to the solicitor what  
2 they want to indict for. And the officer has the freedom to  
3 go to the solicitor and say let's indict for this. And I  
4 think it's certainly very much more prejudicial than  
5 probative to have two sets of heroin that day on there.

6 THE COURT: Thank you, counsel. All right. Next  
7 motion.

8 AST. SOL. DENNIS: Just two motions from the State,  
9 Your Honor. We do intend to produce evidence of prior  
10 convictions under Lisle mainly focusing on any lack of  
11 absence or mistake as a result of this. I think the  
12 defendant has been convicted twice in the State of Michigan.  
13 I have copies of those convictions that are certified. He  
14 knows what heroin is so that he could form the requisite  
15 intent to knowingly and intentionally possess it. That  
16 would be the reason that we would introduce that evidence.  
17 I think that it is more probative than prejudicial just  
18 given the potential argument that defense counsel could be  
19 making that he didn't know that it was on his person. I  
20 think that the characteristics of where the heroin is found,  
21 especially the second instance where it was found on a  
22 cotton-soaked or a soaked cotton swab, that would show some  
23 level of intent to use since that is a way in which people  
24 use and prepare heroin for injection by needle. For those  
25 reasons we would ask that the priors be admitted in.

1 THE COURT: Let me ask you this, Solicitor. Based upon  
2 your investigation of the prior instances and convictions,  
3 do you have any evidence as to the particular facts of those  
4 cases that you can line up to be almost identical to this  
5 case? Were they same packaging? Was it the same way that  
6 he -- they were found? Was it on a -- can you produce those  
7 similarities for it to be admissible under Lisle?

8 AST. SOL. DENNIS: Cannot.

9 THE COURT: All right. Your motion is denied.

10 AST. SOL. DENNIS: Thank you. Also would just like to  
11 have some clarity regarding the stipulation of chain. The  
12 State has our arresting officers and a drug analyst from the  
13 South Carolina Law Enforcement Division. We would like for  
14 defense to stipulate to chain between the arresting officers  
15 and the SLED agent since it was basically an administrative  
16 deliverance that got it from the jail up to Columbia and  
17 then it was unopened or opened by the analyst.

18 THE COURT: Any objection to that Ms. Littlejohn?

19 MS. LITTLEJOHN: Court's indulgence. (Brief pause.)

20 That's fine. I think you're talking about everybody at SLED  
21 but the analyst; right?

22 AST. SOL. DENNIS: Yes.

23 MS. LITTLEJOHN: Right. All right.

24 THE COURT: All right. Thank you. Is that everything?

25 AST. SOL. DENNIS: Yes, Your Honor, I believe so.

1 THE COURT: All right. Well, what we'll do is we'll go  
2 ahead and take our lunch recess break ---

3 MS. LITTLEJOHN: Wait. Hold on. Court's indulgence.  
4 One more and that would be -- as gonna be tied all to this  
5 whole thing of that other case and that would be that we not  
6 reference anything with regard to any other case if we're  
7 here strictly on this case.

8 THE COURT: Well, we'll have to consider how to word  
9 that. Obviously, there was reason for an arrest, which I  
10 still have to rule on that. Say that comes in, that the  
11 arrest is valid, somehow, you know, we need to obviously  
12 leave out the factual basis for it. But maybe y'all can  
13 come up with some wording that would be acceptable to both  
14 parties should I rule that not to suppress it, so.

15 MS. LITTLEJOHN: Your Honor, I just make the argument  
16 that I believe it would be much more prejudicial than  
17 probative. And I think that isn't clearly not material to  
18 this case or anything that wasn't put in this case.

19 THE COURT: Well, facts are stubborn things.

20 MS. LITTLEJOHN: Yeah.

21 THE COURT: Facts are stubborn things and sometimes  
22 they can be prejudicial, but they also can be probative. So  
23 I would urge you two to maybe get together to come up with  
24 some acceptable language on where to get -- obviously,  
25 there's not going to be any facts as to the underlying basis

1 for the arrest warrant. But if I rule all of this comes in  
2 then, of course, they've got to have a reason to be there to  
3 place him under arrest to begin with. So maybe y'all can  
4 come up with some language or I'll have to do it for you.  
5 But if y'all can come up with something acceptable then that  
6 would certainly be helpful.

7 AST. SOL. DENNIS: I believe we can do that, Your  
8 Honor.

9 MS. LITTLEJOHN: Thank you, Your Honor.

10 THE COURT: All right. So we'll be at ease until,  
11 let's say, two o'clock. That should give us sufficient time  
12 to put everything on the record before we get started.

13 ASP. SOL. DENNIS: Yes, Your Honor. Thank you.

14 MS. LITTLEJOHN: Thank you.

15 (The proceedings in the trial of this case were at ease  
16 from 12:34 p.m. to 2:04 p.m.)

17 THE COURT: Are the parties ready to proceed?

18 MS. LITTLEJOHN: We are, Your Honor.

19 AST. SOL. DENNIS: Yes, Your Honor.

20 THE COURT: All right. I've had an opportunity to  
21 review the motions of counsel. And I'll address each of  
22 those as they were brought up. First, as far as the first  
23 issue that was brought up was the arrest valid. In  
24 reviewing the arrest warrants, and I understand that the  
25 actual copies of the arrest warrants which were signed by

1 Judge Baggett (ph) on the 12th, those were not provided to  
2 counsel until this morning. However, on the face of these  
3 warrants, it appears on the return that they were signed for  
4 by the defendant on the 14th, the date of his arrest.  
5 Further, the testimony indicated that the Officer Cook went  
6 to the apartment because of these active warrants which were  
7 subsequently served on the defendant. One being for petty  
8 larceny the other being for obtaining signature by a  
9 property owner, false pretenses. Those were identified as  
10 being for having taken the Beats by Dr. Dre and then pawning  
11 them. Those actions are indicated and corroborated in the  
12 incident report which details that was part of the arrest  
13 for the defendant. The warrant on the 15th, which was  
14 subsequently served him, was for the tablet which was also  
15 referenced in the incident report. Therefore, the defendant  
16 did have ample knowledge. He was served with the warrants.  
17 Whether or not he chose to give them to counsel, his own  
18 counsel, in her preparation of this, that's to his  
19 detriment. He certainly had them in his possession and  
20 counsel did have benefit of having the information of these  
21 warrants in the incident report even though the actual copy  
22 of the warrant itself was not served upon her until today.  
23 The Court finds no prejudice in that and that is not  
24 exculpatory. But it does find that based on those warrants  
25 being active, the arrest was lawful on the defendant based

1 on those warrants.

2 Next is regarding the voluntariness of the statement  
3 which was made to Officer Cook on the side of the road. The  
4 Court does find that it was a custodial -- obviously, he was  
5 in custody. He was in handcuffs. However, the  
6 interrogation requirement has not been met because he wasn't  
7 asking him questions regarding the incident for which he was  
8 placed under arrest. It was merely a question as to safety.  
9 The defendant voluntarily disclosed that he had the needles  
10 along with the heroin. I find that the officer's testimony  
11 was credible and that that was the question that was asked,  
12 and that the defendant freely and voluntarily gave that  
13 statement. Based upon his mere request as to a safety issue  
14 as much as a Terry frisk.

15 Regarding the suppression of heroin on the State's  
16 case, the indictment clearly states that the defendant is  
17 called upon for possession of heroin, first offense. It  
18 states that the defendant, Chad Kozloski, did on or about  
19 January 14, 2015, in Berkeley County knowingly or  
20 intentionally possessed heroin a schedule one controlled  
21 substance, narcotics. It goes on to give the statute  
22 number. The evidence which the State chooses to put in  
23 regarding his possession of heroin is all, from what I  
24 understand, what they're intending to do is what was found  
25 on January 14th. He was given adequate notice of both

1 possessions, I guess if you can split them up. I guess,  
2 technically, they could have been two indictments: one for  
3 the heroin done on the side of the road and one for the  
4 heroin at the detention center. They chose to go forward  
5 with one instead of two. Therefore the Court finds no  
6 prejudice to the defendant. And the suppression motion is  
7 respectfully denied.

8 In regards to the sufficiency of the indictment, the  
9 Court does find that the indictment does meet the  
10 sufficiency standard; it does indicate -- it does certainly  
11 tell the defendant what he is called upon to answer and  
12 enables the Court what punishment to pronounce should he be  
13 convicted. It does state the date for which the incident  
14 that allegedly occurred and the statute number for which he  
15 is called to answer to. So that motion is also denied.  
16 Anything further before we wait for the jury to come back at  
17 2:30?

18 AST. SOL. DENNIS: Briefly, Your Honor -- or has she  
19 already ruled on Lisle evidence.

20 MS. LITTLEJOHN: Not the flight.

21 AST. SOL. DENNIS: Oh, I think that we did have a  
22 question on the evidence of flight and whether or not that  
23 would be admissible?

24 MS. LITTLEJOHN: Well, Officer Cook said he didn't see  
25 him leaving outside. And I think they're going to say that

1 he fled.

2 THE COURT: Well, no. I think my previous ruling on  
3 that -- and if I didn't make that clear, let me do so now.  
4 There was no independent testimony that someone told the  
5 defendant the officers were there searching for him. And I  
6 think without that, we don't have evidence of flight. I  
7 think they can say they were at the scene and they saw him  
8 down the road. But please instruct the officers not to  
9 testify that he was fleeing.

10 AST. SOL. DENNIS: Yes, Your Honor. I do have one last  
11 matter. It has come to the State's attention that juror 161  
12 had, it was either nodding off or behaved in a way that she  
13 was not seemingly paying attention to the proceedings. I  
14 just wanted to touch base with Your Honor and see how you  
15 would like us to handle that. If either State or defense  
16 notices that during the trial, if we just ask to approach  
17 and discuss it or . . .

18 THE COURT: Sure. If you see that, obviously, ask to  
19 approach and discuss it. I might in my opening remarks, you  
20 know, kind of remind them it's their duty obviously to pay  
21 close attention. Some of us think with our eyes closed  
22 better at times. But we need to make sure that we know that  
23 they're awake. So I'll ask them to try and be mindful of  
24 that. And, of course, we'll have to deal with that as it  
25 comes up. Hopefully, it won't be an issue. But if it does,

1 we'll cross that bridge when we get to it.)

2 AST. SOL. DENNIS: Thank you, Your Honor. Also we  
3 wanted to request sequestration of the potential witnesses.  
4 I believe that the defense's witness that is on the list is  
5 currently in the courtroom.

6 MS. LITTLEJOHN: Yeah. She's been in here the entire  
7 time. We hadn't had sequestration, so.

8 THE COURT: All right. So certainly any objection to  
9 that, Ms. Littlejohn?

10 MS. LITTLEJOHN: Your Honor, I just ask that we not  
11 have it because, frankly, she's been in here the entire  
12 time. She's heard it.

13 THE COURT: Well, the witnesses have not been, other  
14 than the officer, under oath at that time. And based upon  
15 the request, I think it's a proper motion to make, of  
16 course, other than the case officer.

17 MS. LITTLEJOHN: And the other thing we need to figure  
18 out is relevance of any other cases to this case. How are  
19 we -- are we just -- I don't know if the jury is going to  
20 understand that you had to have probable cause to arrest  
21 somebody.

22 THE COURT: Well, I think the simpler the better. I  
23 mean, I think the officer can testify we had an active  
24 warrant. And I think there -- maybe during the jury  
25 instructions at the end, you know, you're not to consider

1 anything as far as any validity of that active warrant.  
2 You're only to consider this case and this charge. I'm  
3 happy to go through those particular jury instructions at  
4 the close if that's how y'all would like handle it.

5 MS. LITTLEJOHN: Why don't we just say they wanted to  
6 talk with -- I mean, you've already ruled it was a valid  
7 arrest.

8 THE COURT: Right.

9 MS. LITTLEJOHN: So we -- the officer, we wanted to /  
10 talk with him, so we arrested him. They don't have to know  
11 the legalities of it.

12 THE COURT: Well, I think jurors may be a little more  
13 educated sometimes than we give them credit for. And  
14 wanting to talk to him and placing him under arrest and  
15 cuffing him and putting him down is a whole different ball  
16 game, which may call into question, A, both sides. I think  
17 we need to be honest with them in a way that's not  
18 prejudicial to your client. And I think, obviously, they  
19 had a valid arrest warrant. And I'm happy to craft whatever  
20 jury instruction y'all want to make sure that they are not  
21 to consider that; that that's not evidence in this case.  
22 And for all we know, it could have been dismissed. No idea.  
23 They're not to consider that. The officers acted lawfully  
24 in making that arrest.

25 MS. LITTLEJOHN: Can we say an active warrant was not

1 valid, which was dismissed?

2 THE COURT: I don't know that it was dismissed.

3 MS. LITTLEJOHN: Your Honor, if we can ask the clerk to  
4 check.

5 THE COURT: I don't know that that's relevant. There  
6 was an active warrant at the time. You're not to draw any  
7 inference from that whatsoever as to the guilt or innocence  
8 or anything having to do with that prior active warrant.  
9 You're not to consider that at all. It's just the basis for  
10 the officers making the arrest which leads us here today.  
11 And I think if we leave it at that and not open the door any  
12 further, we'll be okay. But I think to tell the jury they  
13 wanted to talk to him and all of sudden they placing him  
14 under arrest, that puts law enforcement at a disadvantage to  
15 thinking that they were acting unfairly to the defendant.  
16 And I think it's also prejudicial to your client. So I  
17 don't think that's a fair game plan. Anything else?

18 AST. SOL. DENNIS: Not at this time, Your Honor.

19 THE COURT: Okay. I guess we'll just wait for the  
20 jury. They'll be back at 2:30? All right. Will you let us  
21 know when everybody's present?

22 THE BALIFF: Yes, ma'am.

23 (A brief recess was taken at 2:14 p.m. The proceedings  
24 resumed at 2:39 p.m.)

25 THE COURT: Anything further before we bring the jury

1 out?

2 AST. SOL. DENNIS: Not from the State, Your Honor.

3 MS. LITTLEJOHN: Nothing from the defense, Your Honor.

4 THE COURT: All right. Let's have our jury please.

5 (Whereupon, the jury enters the courtroom at 2:40 p.m.)

6 THE COURT: Welcome back, ladies and gentlemen of the  
7 jury. Where is our clerk?

8 THE CLERK: Right here.

9 THE COURT: Oh, there you are. I didn't see you behind  
10 the screen. If you would please swear in the jury.

11 (The jury is sworn at 2:41 p.m.)

12 THE COURT: Welcome back, ladies and gentlemen of the  
13 jury. I hope that you had a nice lunch. Thank you for  
14 accepting the import responsibility of jury service and for  
15 your contribution today to our system of justice. What I  
16 will now say to you is intended to serve as an introduction  
17 to the trial of this case. These remarks are not a charge  
18 on the law in this case. I will instruct on the law  
19 applicable to this case at the end of the trial before you  
20 retire to consider your verdict. This is merely an  
21 explanation of the procedure that we will follow in the  
22 trial so that you may have an understanding of what is going  
23 on.

24 Ladies and gentlemen, you may not take notes during the  
25 trial of this case. The defendant in this case is charged

1 by the indictment filed in this court with a crime of  
2 possession of heroin. The elements of that crime, of that  
3 charge, will be explained to you later. The indictment is  
4 simply the charge by which the case is brought into this  
5 court. And it is not in any sense evidence of any of the  
6 allegations that it contains. The defendant has pled not  
7 guilty to this indictment. The State, therefore, has the  
8 burden of proving each of the elements of the indictment  
9 beyond a reasonable doubt. It will be your duty, ladies and  
10 gentlemen, to decide whether the State has met that burden.  
11 Your purpose as jurors is to find and determine the facts.  
12 You are the sole judge of the facts. If at any time I make  
13 any comment regarding the facts, you must disregard it. You  
14 are to determine the facts from the testimony you hear and  
15 from the other evidence that is introduced in court. It is  
16 up to you to determine the inferences which you may feel may  
17 be properly drawn from the evidence. It is especially  
18 important that you perform your duty of determining the  
19 facts diligently and conscientiously because ordinarily  
20 there is no way to correct an erroneous determination of the  
21 facts by a jury.

22 On the other hand and with equal emphasis, the same law  
23 that makes you the judges of the facts makes me the judge of  
24 the law. The law as given by the Court is the only law that  
25 you may consider. You must accept it and follow it even

1 though you may disagree with it. I cannot tell you what the  
2 facts are, and you cannot disagree with me about what the  
3 law is or what the law should be. Your job is to take the  
4 law as I give it to you and apply it to the facts as you  
5 find them from the testimony of the witnesses and any other  
6 evidence that is properly introduced during the trial of  
7 this case. After doing that, you will render your verdict  
8 under the solemn oath that you just took as jurors. Until I  
9 advise you to begin your deliberations, you must not discuss  
10 this case with anyone including your fellow jurors, you  
11 friends, your family members, and anyone involved in this  
12 case. This includes any discussions which are face-to-face  
13 and those by telephone, e-mail, text, blogs, or any other  
14 method of communication. You may not use a computer, a cell  
15 phone, or any other electronic device with communication  
16 capabilities at any time while in the courtroom or during  
17 your deliberations. During your breaks for meals or for  
18 overnight, if necessary, of course you may use these  
19 devices. However, you may not at any time use these devices  
20 to get or send information about the case. This includes  
21 any information about a party, a witness, an attorney, the  
22 court officer, any news accounts about the case, any  
23 research on any topics that may be raised, or any topics  
24 that you think may be helpful in deciding the case, or any  
25 testimony presented by any witness. During the trial, do no

1 read, listen to, or watch any news reports about this case.  
2 This includes anything that may be on the Internet,  
3 newspapers, radio, or TV. You must not consider anything  
4 that you may have read or heard about this case outside of  
5 the courtroom whether before or during the trial.

6 After the case is submitted to you, you must discuss it  
7 only in your jury room with your fellow jurors. The  
8 attorneys and parties in this case have been advised not to  
9 talk to you all. So, again, if you see them throughout the  
10 course of these proceedings and they don't say hello,  
11 they're not being unfriendly; they're just following the  
12 Court's instructions. It is important that you keep an open  
13 mind and not decide any issue in this case until all of the  
14 evidence has been presented, the parties have made their  
15 closing arguments, and I have instructed you on the law in  
16 this case. It is your solemn responsibility to determine  
17 the guilt or innocence of the defendant, and your verdict  
18 must be based solely on the evidence that is presented to  
19 you in this trial, and on the law as I instruct you during  
20 and at the close of the trial.

21 In just a moment, the solicitor will make what is  
22 called an opening statement in which the solicitor will  
23 explain to you what the issues in the case are, at least  
24 what the solicitor thinks the issues in the case are. The  
25 attorney for the defendant may also make a an opening

1 statement, although they are not required to do so. What  
2 the attorneys tell you during their opening statements is  
3 not evidence in this case. It is only their contention as  
4 to what the issues are in this case. The evidence in this  
5 case will be presented to by the testimony of sworn  
6 witnesses on the witness stand and by any exhibits that are  
7 properly introduced during the trial of this case. From  
8 time to time during the trial you may hear one of the  
9 lawyers say something like, "Your Honor, I believe I have a  
10 question of law," or "may we approach the bench?" Or myself  
11 sometimes might find it necessary to excuse you from the  
12 courtroom for a short while so the attorneys and I can  
13 discuss a matter law. The reason for this is because you  
14 are the judges of the facts in this case. And sometimes  
15 when I'm discussing matters of law with the attorneys, it  
16 may be necessary for me to make some comment as to the facts  
17 in connection with ruling whether or not a particular law  
18 applies. I'm not supposed to tell you what I think the  
19 facts in the case are. So I will excuse you from the  
20 courtroom while these discussions take place so that in no  
21 way I will influence you by anything I might say or do in  
22 connection with the facts of this case.

23 In determining what the facts in this case are, you  
24 must decide whether or not the testimony of witnesses is  
25 believable. It will be my responsibility to rule as a

1 matter of law whether certain testimony is admissible or  
2 not. But once a testimony is admitted, whether or not you  
3 believe it is solely for you determine. In deciding whether  
4 to believe a witness, you have the right to consider the  
5 interest of any witness, the bias of any witness, the  
6 prejudice of any witness, the opportunity for the witness to  
7 have seen the matters and things about which the witness may  
8 testify, and the way that the witness acts on the witness  
9 stand. You have a right to consider anything that is in the  
10 record that will help you evaluate the testimony of the  
11 witnesses. That means it is your duty to pay close  
12 attention to these witnesses, to observe the witnesses, to  
13 listen to the witnesses, and to pay close attention to the  
14 attorneys and to the Court. Please do not let your thoughts  
15 wonder. But give strict attention to the testimony in this  
16 case so that at the end of all the testimony, after the  
17 arguments of counsel and the charge on the law by the Court,  
18 you will then be in a position to determine what the true  
19 facts are and apply the law to those facts and thus render  
20 your verdict. It will be the added duty of the foreperson  
21 to add -- to write the verdict on the indictment as well as  
22 on the verdict form. And I will provide you those  
23 instructions later. And I will select or I will allow y'all  
24 to select a potential foreperson. But we'll cross that  
25 bridge -- after a little while, we'll address that at a

1 later time. In order to preserve everyone's rights, is  
2 there any objection to the opening remarks from either the  
3 State or from the defense?

4 AST. SOL. DENNIS: None the State, Your Honor.

5 MS. LITTLEJOHN: None from the defense, Your Honor.

6 THE COURT: All right. Solicitor?

7 AST. SOL. DENNIS: Thank you, Your Honor. May it  
8 please the Court?

9 THE COURT: Yes, sir.

10 OPENING STATEMENTS

11 AST. SOL. DENNIS: Good afternoon, ladies and gentlemen  
12 of the jury. This case is about as straightforward as you  
13 can find. On January 14, 2015, the defendant, Chad  
14 Kozloski, possessed heroin not only in his right front  
15 jacket pocket, but also in his pants. Police showed up that  
16 day to serve an already active arrest warrant. They located  
17 the defendant somewhere around the 3000 Harbor Lake  
18 Apartments area and they arrested him. During that arrest,  
19 deputies found not only a brown tan powder, they also found  
20 syringes. Furthermore, along the arrest route, they also  
21 inquired as to whether or not the defendant had anything on  
22 him that might hurt them or pose a threat. The defendant  
23 gave a statement that not only did he have some hypodermic  
24 needles, but also he admitted to having heroin. After the  
25 arrest, he was taken over here at Hill-Finklea Detention

1 Center, and he was searched, which is normal whenever  
2 someone is booked into the jail. At that point, they also  
3 found a small cotton ball that was soaked in a liquid that  
4 was later found to be heroin as well.

5 Now, at any time in South Carolina, if you possess less  
6 than 2 grams, which is a very small amount of heroin, you're  
7 guilty of possessing heroin. You must knowingly and  
8 intentionally have the substance on your person. Now, the  
9 Judge will instruct you specifically on the law. What I've  
10 given you has just been a brief summation. Now, the State  
11 in this case, which I'm privileged to represent, has to  
12 prove beyond a reasonable doubt that defendant Chad Kozloski  
13 did in fact commit this crime. A reasonable doubt means  
14 that if at the end of the case you've heard all of the  
15 evidence, you are firmly convinced of his guilt, you must  
16 find him guilty. In the end, after you've heard testimony  
17 of several police officers and a SLED agent, I believe that  
18 you will go back and you will find him guilty. Thank you.

19 THE COURT: Counsel?

20 MR. CHURCH: Thank you, Your Honor. May it please the  
21 Court?

22 THE COURT: Yes, sir.

23 MR. CHURCH: Good afternoon, ladies and gentlemen. My  
24 name is John Church. I'm with the public defender's office  
25 up here in Berkeley County, as is my co-counsel, Debbie

1 Littlejohn. And in this case we represent Chad Kozloski who  
2 has been charged with possession of heroin. Now, at this  
3 point, Mr. Kozloski is presumed innocent. And he is covered  
4 in a clothed cloak, innocence at this point. He has nothing  
5 to prove. The entire burden in this case is on the State to  
6 prove every element beyond a reasonable doubt.

7 I'll just be brief in this. They've got show more than  
8 just possession. They have to show that he knowingly and  
9 intentionally possessed what is heroin. And if they can't  
10 do that, then you have to find him not guilty. So just  
11 please listen to the evidence that comes from the stand.  
12 Because what I say or what counsel from the other side says,  
13 that's not evidence. The evidence is going to come from the  
14 people on the stand, and the law is going to come from the  
15 Judge sitting up there in the black robe. So when this is  
16 all over with, we're going to come back and ask you to find  
17 him not guilty. Thank you.

18 THE COURT: You may call your first witness.

19 AST. SOL. DENNIS: Thank you, Your Honor. The State  
20 calls Sergeant Shane Cook.

21 SHANE COOK, after being duly sworn, testified as  
22 follows:

23 THE COURT: Your witness.

24 AST. SOL. DENNIS: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY AST. SOL. DENNIS:

2 Q. Sergeant Cook, please state your name for the record.

3 A. Shane Cook.

4 Q. And where do you work?

5 A. Berkeley County Sheriff's Office.

6 Q. How long have you been involved in law enforcement?

7 A. Total of eight years.

8 Q. What are your current duties at Berkeley County  
9 Sheriff's Office?

10 A. I'm a shift supervisor assigned to the Uniform Patrol  
11 Division, assigned approximately 50 deputies. Primary  
12 responsibility calls for service.

13 Q. And were these your duties on January 14, 2015?

14 A. They were not.

15 Q. What was different?

16 A. I was assigned to the Criminal Investigation Division  
17 for the Property Crimes Unit.

18 Q. And what were your duties at that point?

19 A. I would investigate anything from burglaries, auto  
20 break-ins, larcenies from buildings, all the way up to  
21 homicides. It's a wide range.

22 Q. And were you dispatched to 3000 Harbor Lake Drive,  
23 Apartment 1A, on January 14th of 2015?

24 A. I was.

25 Q. And where is that located?

Direct Examination of Mr. Cook by Ast. Sol. Dennis

1 A. In the Goose Creek area of Berkeley County.

2 Q. Okay. Please explain now for the jury the reason why  
3 you were dispatched to that apartment complex?

4 A. During a subsequent investigation through Property  
5 Crimes that I was investigating, two warrants had been  
6 issued in reference to stolen property for Mr. Kozloski that  
7 was signed on January 12, 2015. We received information  
8 that the defendant was possibly at that location. Myself  
9 and along with Deputy Bell responded out there. Knocked on  
10 the door; attempted to make contact. We did not make  
11 contact at the door at that time with the defendant.  
12 Shortly after, he was located just down the road on Harbor  
13 Lake near Surfside Drive where I noticed him from a DMV  
14 photo that it was the defendant we were looking for. We got  
15 the arrest warrants. At the time, he was placed under  
16 arrest for the active arrest warrants. Subsequent to that,  
17 I asked if he had anything on his person that would stick  
18 me, poke me, or harm me that I needed to be aware of. He  
19 advised me that he had syringes in his pocket as well as  
20 heroin. Upon a search of his person, I did locate three  
21 orange capped needles as well as a blue bag which he said  
22 was the heroin as well. At that time, he was placed in the  
23 back of a patrol car for Deputy Bell. The items of  
24 contraband were secured in my vehicle prior to being  
25 transported to the Hill-Finklea Detention Center.

1           AST. SOL. DENNIS: Your Honor, may I approach the  
2 witness?

3           THE COURT: You may.

4           Q. Sergeant Cook, please describe for the Court what I  
5 just handed you.

6           A. This first one is a blue baggie containing residue  
7 previously sealed in a SLED BEST bag as evidence under this  
8 case number. The second one is vile containing three orange  
9 capped syringes, which was also previously sealed in a SLED  
10 BEST bag as evidence under this case number.

11          Q. Do you recognize both of those items?

12          A. Yes, I do.

13          Q. How do you recognize them?

14          A. Those are the items that were taken from the  
15 defendant's person at the time of his arrest.

16          Q. What type of bag were those items contained within  
17 again?

18          A. A SLED BEST bag which is standard procedure. When any  
19 sort of narcotics are found other than marijuana, it's a way  
20 of containing, sealing, and transporting to SLED in order  
21 for proper testing.

22          Q. Why do you fill out those BEST bags and why do you  
23 place them in those types of containers?

24          A. For the containers and the needles, they're placed in  
25 that container just for the hazmat and biohazard

1 capabilities that they pose, the safety risk. Currently,  
2 Berkeley County does not have any facility in order to test  
3 drug types of this, I guess, magnitude if you want to say.  
4 And that's why we use SLED in order to do that. And they  
5 are sealed to keep the chain of custody and to make sure  
6 they are not tampered with prior to being transported to  
7 SLED.

8 Q. And while they were in your custody, were they tampered  
9 with in any way or did anyone else have access to them?

10 A. No.

11 Q. Thank you.

12 AST. SOL. DENNIS: No further questions at this time.

13 Please answer any questions that Ms. Littlejohn may have for  
14 you.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MS. LITTLEJOHN:

18 Q. Officer Cook, hey. In your years, you've gone to the  
19 Academy; correct?

20 A. I have.

21 Q. And just so that everybody's aware, we all know it.  
22 They teach y'all how to testify to the jury; right?

23 A. They do.

24 Q. That's actually a class. You learn you talk to them  
25 like that; right?

1 A. It is. I think it's changed since I've gone, but  
2 somewhat.

3 Q. Right. But they teach you how to write reports.

4 A. They do.

5 Q. And tell you if it's important, it has to go in there.

6 A. Correct.

7 Q. They teach you that detectives will rely on these  
8 reports; right?

9 A. That's correct.

10 Q. And one of the reasons is because it could be a while  
11 before a case comes to trial or if somebody else may need  
12 it. For various reasons, you need to put everything in your  
13 report; correct?

14 A. Correct.

15 Q. And you wrote your own report?

16 A. I did.

17 Q. And y'all aren't given a time frame of how long you can  
18 spend on reports. Nobody says you can only take two minutes  
19 to write it, do they?

20 A. No. It's just a daytime requirement.

21 Q. And you'll look over it after you finish writing it,  
22 don't you?

23 A. Yes.

24 Q. And one of the reasons you do that is to make sure you  
25 put down everything; correct?

1 A. That's correct.

2 Q. Let's talk about some areas that are out there in the  
3 open now, these body cameras. It seems like everybody has  
4 them. Does Berkeley County have those?

5 A. We do not.

6 AST. SOL. DENNIS: Objection, Your Honor.

7 Q. No?

8 THE COURT: Basis of your objection?

9 AST. SOL. DENNIS: Relevance.

10 THE COURT: Overruled.

11 BY MS. LITTLEJOHN (continuing):

12 Q. Do you have a camera in your car?

13 A. No.

14 Q. You said there was another officer there. Did he have  
15 a camera in his car?

16 A. He did not.

17 Q. Are y'all issued telephones?

18 A. We are.

19 Q. Do those telephones have ways of video recording?

20 A. They do.

21 Q. Do they teach y'all at the Academy or any follow-up  
22 training that the best documentation is recorded  
23 documentation?

24 A. Sometimes, yes.

25 Q. And since they taught y'all that the best documentation

1 is recorded documentation, did you or Officer Bell record  
2 any of this?

3 A. We did not.

4 Q. Is there a reason you didn't?

5 A. Number one, it's not standard practice. Number two,  
6 being a cell phone having several pieces of evidence or  
7 phone calls dealing with other cases not relevant to this  
8 case.

9 Q. So it's just not standard practice for Berkeley County  
10 is right?

11 A. Using a cell phone isn't standard practice to my  
12 understanding in any department that I've been with.

13 Q. That's just here and Greenville only; correct?

14 A. Greenville and Berkeley; that's correct.

15 Q. Greenville and Berkeley. And in your days, I'm sure  
16 you've seen violent crimes; correct?

17 A. I have.

18 Q. Responded to them during and after?

19 A. Correct.

20 Q. And you've probably seen things, I don't know, like  
21 this paperclip that could be made into a weapon, hadn't you?

22 All sorts of things can be ---

23 A. --- things.

24 Q. --- into a weapon. Would you agree with that?

25 A. Sure.

1 Q. And as a matter of fact, that's one of the reasons why  
2 they talk about on TV or at the jail about shakes; correct?

3 A. Uh-huh.

4 Q. Because something very small can be made into a weapon,  
5 can't it?

6 A. Correct.

7 Q. And that's one of the reasons you do pat-downs, isn't  
8 it? For your safety.

9 A. It is.

10 Q. And because you never know what can be made into a  
11 weapon; right?

12 A. Correct.

13 Q. And in your report you stated that you took his personal  
14 property, didn't you?

15 A. I did.

16 Q. And you patted him down; correct?

17 A. I did.

18 Q. And you did a good pat-down, didn't you?

19 A. I'd like to think so.

20 Q. So part of a good pat-down would be if somebody, I  
21 don't know, say had a lighter. You'd find that, wouldn't  
22 you?

23 A. Not always.

24 Q. Something like that can be made into a weapon; right?

25 A lighter.

1 A. I suppose it could.

2 Q. Or it could catch, say, something on fire, couldn't it?

3 A. It could.

4 Q. And you wouldn't want somebody riding in the police  
5 car -- this is for the Court's record -- a small lighter.  
6 They have bigger ones too. Don't they, Officer?

7 A. Yes, they do.

8 Q. Either way that can catch something on fire in the  
9 police car, couldn't it?

10 A. I suppose it could.

11 Q. And cause all sorts of havoc; right?

12 A. Sure.

13 Q. So you would want to do a good pat-down; right?

14 A. Yes.

15 Q. Make sure you have everything from him before he's  
16 taken into jail; correct?

17 A. Correct.

18 Q. And when you cuff him after you have done this  
19 excellent pat-down as per your training, you make sure  
20 you've got everything off of him. He is cuffed in the back;  
21 correct?

22 A. He was.

23 Q. And one of the reasons for cuffing folks in the back  
24 isn't that so they can't move and get around to their side  
25 or their front?

1 A. It is.

2 Q. Because you don't want him to get to the side so they  
3 can open the car door; right?

4 A. Correct.

5 Q. So securely cuffed would mean basically that at most  
6 they could probably move, what? Maybe an inch one way or  
7 the other?

8 A. Yeah. It depends on the person. I've seen different.

9 Q. But would that be about right for a good securely  
10 cuffed person?

11 A. Again, it would depend on their physical makeup. I  
12 couldn't say that for everybody.

13 Q. Well, with how you cuffed Mr. Kozloski. And did you  
14 securely cuff him so that he could move only maybe an inch  
15 here or there?

16 A. He was handcuffed behind his back, double locked. And  
17 it was checked for fit. So I ---

18 Q. So you knew he couldn't move to the side and to the  
19 front; correct?

20 A. Not the hands in the front. But I don't know his  
21 flexibility is at that time.

22 Q. And you did search him totally; correct?

23 A. I did.

24 Q. In accordance with the policy?

25 A. I did.

1 Q. Did you ever ask him to write a statement?

2 A. No, I did not.

3 Q. And why didn't you?

4 A. Not every situation calls for it. At that time, it  
5 wasn't needed with the admission of him and also the  
6 evidence found on his person.

7 Q. Do you know if the other officer asked him to write a  
8 statement?

9 A. I'm not sure. I would have to refer to him.

10 Q. And you probably have to refer to him to see if he took  
11 a video recording too, wouldn't you?

12 A. I would.

13 Q. That's Officer Bell; correct?

14 A. It is. And I know he was not issued a county cell  
15 phone at that time.

16 Q. But we don't know what he might have; right?

17 A. That's correct.

18 MS. LITTLEJOHN: Court's indulgence.

19 Q. And at the Academy and through all of your training,  
20 they try to teach you that -- well, you've said that a  
21 recording is better than not having a recording. But a  
22 written statement is better than no written statement, isn't  
23 it?

24 A. It can be.

25 Q. And they teach you all that too, don't they?

Redirect Examination of Mr. Cook by Ast. Sol. Dennis

81

1 A. Yes.

2 MS. LITTLEJOHN: Okay. No further questions.

3 THE COURT: Any redirect?

4 AST. SOL. DENNIS: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY AST. SOL. DENNIS:

7 Q. Sergeant Cook, where was the defendant from the time of  
8 your arrest to him being placed in the custody at  
9 Hill-Finklea Detention Center?

10 A. He was in the back of Deputy Bell's patrol car, which I  
11 was following to the jail.

12 Q. Did you have any point occasion to notice him not being  
13 in that location?

14 A. No.

15 Q. And where have you been a law-enforcement officer?

16 A. Greenville County Sheriff's Office and Berkeley County  
17 Sheriff's Office.

18 AST. SOL. DENNIS: May I approach the witness, Your  
19 Honor?

20 THE COURT: You may.

21 AST. SOL. DENNIS: No further questions at this time.

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

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 AST. SOL. DENNIS: The State calls Shana Sorrells.

1 SHANA SORRELLS, after being duly sworn, testified as  
2 follows:

3 THE COURT: Your witness.

4 DIRECT EXAMINATION

5 BY AST. SOL. DENNIS:

6 Q. Ms. Sorrells, thank you for being here. Where are you  
7 currently employed?

8 A. I'm currently employed at the South Carolina Law  
9 Enforcement Division or commonly known as SLED.

10 Q. And how long have you been employed with South Carolina  
11 Law Enforcement Division?

12 A. I have been employed just under 11 years.

13 Q. And what is your current job title?

14 A. I currently work in the drug analysis department as a  
15 forensic chemist.

16 Q. And what are your day-to-day responsibilities as a  
17 forensic chemist?

18 A. As a forensic chemist, we analyze liquid, powder, rock  
19 substance, anything that is submitted to us, and look for  
20 the presence or absence of controlled substances.

21 Q. And what type of academic program qualified you for  
22 this position?

23 A. I have a bachelor's degree in chemistry from the  
24 University of South Carolina. I also have a master's degree  
25 in analytical chemistry from the University of South

1 Carolina.

2 Q. And what type of specific training have you received in  
3 the area of drug recognition and analysis?

4 A. I started at SLED in the forensic toxicology department  
5 where I analyzed drugs and alcohol in blood, urine, and  
6 another bodily fluids. I then transferred over -- well, I  
7 did an extensive in-house training and went to multiple  
8 seminars and multiple training sessions on analyzing drugs  
9 in blood and urine. And then I switched over to the drug  
10 analysis department where I did extensive in-house training  
11 there. It was sent to the DEA in Washington, D.C., and  
12 trained up there in one of their forensic trainings. And I  
13 have also attended the drug recognition expert classes  
14 offered in the State of South Carolina.

15 Q. And connected with that as a part of your job, do you  
16 continue to attend training in your field to keep up with  
17 the most recent advances and technologies?

18 A. Yes, I do.

19 Q. And are you a member of any professional organizations?

20 A. Not at this time, no.

21 Q. And in your current role, how many times in a given  
22 week do you analyze substances to determine whether the  
23 substance is or contains a controlled substance?

24 A. Daily.

25 Q. And how many times in a given week do you have the

1 opportunity to analyze heroin?

2 A. It varies from week to week. We work cases in batches.  
3 Usually, we work 25 to 30 cases a week. And depending on  
4 which county I pull batches from, a lot of counties you  
5 don't see heroin, and some, that's all you see. So it  
6 varies from week to week.

7 Q. Have you ever been qualified as an expert in this area  
8 in court?

9 A. Yes, I have.

10 Q. And how many times?

11 A. I've testified 32 times. I've been qualified as a drug  
12 chemist four times.

13 Q. Thank you.

14 AST. SOL. DENNIS: Your Honor, at this time, the State  
15 would move that Ms. Sorrells be qualified as an expert in  
16 the field of forensic analysis of control substances.

17 MS. LITTLEJOHN: No objection.

18 THE COURT: All right. The Court finds that she is  
19 qualified.

20 Q. Ms. Sorrells, I'm going to --

21 AST. SOL. DENNIS: And Your Honor, may I approach the  
22 witness?

23 THE COURT: You may.

24 Q. Ms. Sorrells, I'm going to pass up several articles to  
25 you. And we can just go through all of them. We'll just

1 start from the top. Would you please explain what I have  
2 handed you. One of them will be marked as an Exhibit No. 1.

3 A. This is -- the other packaging is a K-pak (ph) bag  
4 that we place it in once we are finished with analysis on  
5 the evidence. I can tell that this is mine because my  
6 initials appear on the bottom along with the date that I  
7 sealed it.

8 Q. And how did this exhibit come into your possession?

9 A. This was brought into -- may I look at my notes?

10 Q. Absolutely.

11 A. I'm sorry.

12 Q. I believe you have two of those reports.

13 A. I do. I just don't want to say something.

14 Q. Absolutely.

15 AST. SOL. DENNIS: May I approach the witness again,

16 Your Honor?

17 THE COURT: You may.

18 Q. Just to refresh the line of questioning. How did this  
19 exhibit come into your possession?

20 A. This was brought into SLED by, I guess, an agent from  
21 the Berkeley County Sheriff's Office. It was brought into  
22 our log-in department. And when it is brought in, it comes  
23 in this sealed bag inside here. This is called a BEST kit  
24 bag. BEST stands for Best Evidence Sample Testing. It is  
25 tamper evident, not tamperproof. If you can see it -- I

1 don't know if y'all can see it from there -- but you see the  
2 squiggles, the blue squiggles, all along the side. If those  
3 lines do not match up, we could tell that the bag has been  
4 tampered with. Once the evidence is placed inside the bag,  
5 it is sealed by the submitting agent or the arresting  
6 officer depending on whoever seals it. And it is brought  
7 into SLED. It is brought into our log-in department where  
8 one of our technicians logs all of the data into the system.  
9 And then they place it into a holding container until --  
10 since this case was assigned to me, I went down to pick it  
11 up and brought it upstairs to where we do the analysis. I  
12 checked to make sure that this bag is sealed. If this bag  
13 is not sealed or appears to have been tampered with,  
14 analysis stops. In this case, it was sealed. I have  
15 written on the bag seal in tact, my initials, and the date  
16 that I opened it. I write that on every bag that comes into  
17 the lab that I analyze. That is how I received it.

18 Q. Thank you. What case does that bag correspond to?

19 A. When it comes into -- I'm sorry. My lab number or?

20 Q. Yes. That and then the subsequent report that was  
21 generated after that.

22 A. And the subsequent report. Okay. Whenever any  
23 evidence or any BEST kit is brought into the lab, our  
24 technicians assign it a specific lab number that is  
25 associated with a specific bar code. In this case, our

1 technicians assigned it L15-03205. This is an electronic  
2 way of tracking it in the system. When I picked it up from  
3 downstairs, I have a scan card that has a bar code  
4 associated with me. That bar code has to be scanned. And  
5 then this bar code is scanned saying that this is now in my  
6 custody and that I have sole responsibility of it. And this  
7 case is then tracked in our system in a information system,  
8 a LIMS system. And at the end of analysis and at the end of  
9 me gathering all of my data, I generate a report that  
10 reflects the evidence that was in the BEST kit and the  
11 results that I found.

12 Q. And from your examination of that package, was any  
13 controlled substance found?

14 A. This had three syringes in it. And upon my analysis,  
15 no controlled substances were found in this.

16 AST. SOL. DENNIS: Your Honor, at this time, the State  
17 would ask that State's Exhibit labeled No. 1 be admitted  
18 into evidence?

19 THE COURT: Is that the syringes?

20 AST. SOL. DENNIS: Yes, Your Honor.

21 THE COURT: Any objection?

22 MS. LITTLEJOHN: No objection, Your Honor.

23 THE COURT: All right. They're in.

24 (Whereupon, State's Exhibit No. 1, Hypodermic Needles,  
25 were received into evidence.)

1           AST. SOL. DENNIS: Thank you. And may we move to  
2 publish?

3           THE COURT: You may.

4           AST. SOL. DENNIS: Thank you.

5 BY AST. SOL. DENNIS (continuing):

6 Q. Ms. Sorrells, let's move onto the next package which  
7 has been pre-marked State's Exhibit 2. And can you identify  
8 what this is?

9 A. This is another BEST kit that was brought into the lab.  
10 Again, you see the seal intact, my initials, the date. This  
11 was -- let me make sure I have the right correspondence.

12 Okay. This item number was assigned L1503204. It contained  
13 the officer's evidence bag and another small bag that  
14 contained a small amount of powdered substance. Actually,  
15 it was a negligible amount to where we couldn't put an exact  
16 weight on it based off of the balance that was used to weigh  
17 it. The analysis was done. Once the analysis was completed,  
18 the evidence was sealed in the bag and my initials and date  
19 is on the bottom of the bag where I sealed this outside bag.

20 Q. And what was the result of that reporter as far as  
21 control substances?

22 A. The powder substance that was in that bag was heroin.

23 Q. And what lab report corresponds to that particular bag?

24 A. Again, L1503204.

25 Q. Okay. And what is that lab report labeled as for

1 State's exhibit?

2 A. Four.

3 Q. Four.

4

5 AST. SOL. DENNIS: At this time, Your Honor, State  
6 would move to admit both State's Exhibit 2 and 4 into  
7 evidence.

8 THE COURT: Any objection?

9 MS. LITTLEJOHN: Without objection.

10 THE COURT: All right. They're in.

11 AST. SOL. DENNIS: May we publish as well?

12 THE COURT: You may.

13 AST. SOL. DENNIS: Thank you, Your Honor.

14 (Whereupon, State's Exhibit No. 2, Heroin Residue, was  
15 received into evidence.)

16 (Whereupon, State's Exhibit No. 4, SLED Report, was  
17 received into evidence.)

18 Q. Thank you, Ms. Sorrells. And if will tell me what the  
19 baggie labeled State's Exhibit 3 is along with the  
20 corresponding report State's Exhibit 5.

21 A. Again, you have another BEST kit that was submitted to  
22 the lab. This one was assigned L1503206. Again, seal  
23 intact, my initials, and date. You have it in the evidence  
24 bag that they send it in and another small Ziploc bag. This  
25 small Ziploc bag contains a piece of cotton. That cotton

1 was analyzed and this bag, this outer bag, was sealed with  
2 my initials and date.

3 Q. Thank you. And, again, that corresponds to the report  
4 that is labeled as State's Exhibit 5?

5 A. Yes, it does.

6 Q. Okay.

7 AST. SOL. DENNIS: And, Your Honor, at this time State  
8 would move to admit what has been pre-marked State's Exhibit  
9 3 and State's Exhibit 5 into evidence.

10 THE COURT: Any objection?

11 MS. LITTLEJOHN: No objection.

12 THE COURT: All right. They're in.

13 AST. SOL. DENNIS: May we publish as well, Your Honor?

14 THE COURT: You may.

15 AST. SOL. DENNIS: Thank you. No further questions for  
16 you, Ms. Sorrells. Please answer any questions that Ms.  
17 Littlejohn might have.

18 (Whereupon, State's Exhibit No. 3, Heroin Soaked  
19 Cotton, was received into evidence.)

20 (Whereupon, State's Exhibit No. 5, SLED Report, was  
21 received into evidence.)

22 CROSS-EXAMINATION

23 Q. Agent Sorrells, let me just kind of go over this real  
24 briefly with you. The syringes, no controlled substance.  
25 Nothing found; correct?

1 A. Nothing was found, no.

2 Q. It would be like if we went and bought a brand new box,  
3 laid it out right here. Same thing, right? Nothing.

4 A. Same thing.

5 Q. Okay.

6 A. Nothing was in it.

7 Q. Okay. Number two --

8 MS. LITTLEJOHN: Permission to approach, Your Honor?

9 THE COURT: Yes, ma'am.

10 Q. I'm just going to hand you that. if somebody said there  
11 was brown powder in it, can you show me brown powder on  
12 there, in that?

13 A. Again, it's hard to tell. The bag is blue. I placed  
14 it back in the sample because -- or I placed it back in the  
15 bag because that's how it came. It was a negligible amount,  
16 but it was testable.

17 Q. But do you didn't see any to the eyeball of brown  
18 powder of that I just handed to you?

19 A. Not when you just handed it to me. When it is done in  
20 the lab, if I can see it, I can weigh it. If it is  
21 unweighable, we actually put on the report no weight  
22 obtained. In this case, I have net weight is less than  
23 0.10 grams. So there was enough powder in the sample for me  
24 to actually get a weight on it.

25 Q. Help me out with 0.10 grams.

1 A. Yes.

2 Q. Is that going to be like a piece of sugar?

3 A. Most likely not.

4 Q. Not that big?

5 A. No. Probably more than that. It was enough for me to  
6 take a weight and run a sample on. We don't require much  
7 for sample. But the balance that I weighed it on was the  
8 lowest reading that we say we can read accurately even  
9 though the balance can go lower. We say the lowest we can  
10 read is 0.10 grams on that balance. Since that was the only  
11 sample that was submitted in that BEST kit, it wasn't taken  
12 to our more analytical balance, one that can read out to  
13 three decimal places. Because no matter how much was in  
14 that bag, if it was .002 or .009, it was still under the  
15 weight threshold to get you to possession with intent to  
16 distribute. So at that point, it didn't matter.

17 Q. So it's just negligible is what you're saying?

18 A. We say it is as negligible -- it is present, but it is  
19 not enough to get you to the next charge threshold, yes.

20 Q. Exhibit 3?

21 MS. LITTLEJOHN: If I may, Your Honor, approach?

22 THE COURT: You may.

23 Q. Exhibit 3?

24 A. Yes.

25 Q. There's some fuzz in there. Cotton fuzz; whatever you

1 want to call it. And the result on that, if I recall  
2 correctly, was no weight obtained?

3 A. We do not weigh cotton because you cannot ingest  
4 cotton. So if I took a weight of that cotton with -- in  
5 this case, heroin was found in cotton -- but if I took a  
6 weight of that cotton, that is an inaccurate way. That is a  
7 false weight that is sent to the heroin. It could be a  
8 minimal amount of heroin, but the cotton ball adds a weight  
9 to it.

10 Q. Okay. Thank you.

11 A. Yes. So we did not take a weight.

12 Q. Now, one of the ways -- in looking at this, and the  
13 jury is going to have these back there with them, one of the  
14 ways they -- would you know if you're walking down the road  
15 or dining somewhere, if what you found in here was just  
16 sitting on the table, would you know it's heroin?

17 AST. SOL. DENNIS: Objection, Your Honor. Speculative.

18 THE COURT: Sustained.

19 MS. LITTLEJOHN: Your Honor, she's an expert.

20 THE COURT: In analysis.

21 MS. LITTLEJOHN: Correct. I going to ask her a  
22 question about testing.

23 THE COURT: Maybe rephrase your question.

24 Q. Do you know it's heroin unless you test it?

25 A. No, we do not.

1 Q. If you see it, would you know it's heroin unless you  
2 test it?

3 A. We have an idea when we see it. But then again, we see  
4 so many samples coming through the lab, you get an idea.  
5 But we -- it's why we test everything because we do not  
6 know.

7 Q. Did you test it for touch DNA?

8 A. I do not do DNA analysis. And in this case, DNA was  
9 not requested.

10 Q. And that's the State that requests that; right?

11 A. Somebody from the agency would have to request it for  
12 us to know to do touch DNA ---

13 Q. So Berkeley County would or something?

14 A. Somebody would ---

15 Q. Somebody other than you; right?

16 A. Other than me, right. Yeah.

17 Q. Fair enough. Fair enough. You test all sorts of  
18 drugs?

19 A. Yes, I do.

20 Q. You test cocaine?

21 A. All the time.

22 Q. If I were to go -- and I'm just going to use a  
23 hypothetical here. Can you find cocaine on money you get  
24 from a bank?

25 AST. SOL. DENNIS: Objection, Your Honor. Relevancy.

1 THE COURT: Is there a point?

2 MS. LITTLEJOHN: There is, Your Honor.

3 THE COURT: I'll allow it at this stage.

4 A. Yes, you can.

5 Q. And that would be because some things are so minute  
6 that you may not can see them but they would test positive?

7 A. They can, yes.

8 Q. Sort of like you may not could have seen on Exhibit 2,  
9 but it would test positive?

10 A. For me to call it a powder substance, I have to see a  
11 powder. If it was -- I had many samples submitted where I  
12 had to take a swab and swab the bag because there's no way  
13 to actually get powder substance to come out of the bag. In  
14 this case, for me to list it as containing powder substance,  
15 I was able to get powder out of the bag without having to  
16 manipulate the substance or manipulate the bag.

17 Q. And the piece of cotton left, what have you though,  
18 with no weight obtained, that would be the same sort of  
19 weight that you might find on that dollar bill that you get  
20 from the bank?

21 A. That's correct.

22 Q. And so any of us can be carrying around that dollar  
23 bill and test it positive under what you tested; right?

24 A. That is correct.

25 MS. LITTLEJOHN: Court's indulgence. Nothing further,

1 Your Honor.

2 THE COURT: Any redirect?

3 AST. SOL. DENNIS: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY AST. SOL. DENNIS:

6 Q. Ms. Sorrells, what was the substance found in the both  
7 of those bags again?

8 A. Heroin.

9 Q. Okay. How often do normal plastic bags of this sort  
10 typically come in and test positive for heroin if it was a  
11 clean bag?

12 A. They do not.

13 Q. How often do dollar bills come back testing positive  
14 for heroin?

15 A. They do not. And it's rare that we see dollar bills  
16 that contain cocaine, but it has happened.

17 Q. And just to ask you: How much does a grain of heroin  
18 weigh offhand?

19 A. Okay. Hold on. A grain of heroin weighs approximately  
20 .064 grams.

21 Q. So we're dealing with what is about -- how much are we  
22 dealing with in the first instance of heroin? I know that  
23 it's not an exact weight.

24 A. It's less than .10 grams, which is less than two  
25 grains.

Direct Examination of Mr. Gottula by Ast. Sol. Dennis

97

1 Q. Okay. Thank you.

2 AST. SOL. DENNIS: No further questions, Your Honor.

3 THE COURT: You may step down, Agent. Thank you. You  
4 may call your next witness.

5 AST. SOL. DENNIS: The State calls Deputy Steven  
6 Gottula.

7 STEVEN RUSSELL GOTTULA, JR., after being duly sworn,  
8 testified as follows:

9 THE COURT: Your witness.

10 AST. SOL. DENNIS: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY AST. SOL. DENNIS:

13 Q. Good afternoon, Deputy Gottula. Where do you currently  
14 work?

15 A. The Berkeley County Sheriff's Office.

16 Q. And long have you been in law enforcement?

17 A. Civilian side, going on two and a half years.

18 Q. And where were you employed previously to that?

19 A. Did private security work in nightclubs and military  
20 police.

21 Q. Okay. How long were you in the military police?

22 A. Five years.

23 Q. And what are your duties currently at the Berkeley  
24 County Sheriff's Office?

25 A. I'm currently assigned to Road Patrol Division and I

1 respond to calls for service: emergency, nonemergent.

2 That's basically what I do.

3 Q. And were these duties the same that same -- are these  
4 responsibilities the same that you had on January 14, 2015?

5 A. No.

6 Q. What were your responsibilities on that date?

7 A. At that time, I was in corrections. I worked at the  
8 Hill-Finklea Detention Center, which is the detention center  
9 for Berkeley County. And my job ranged that day from  
10 booking inmates in, searching inmates when they came into  
11 the detention center, escorting inmates throughout the  
12 facility, and anything else designated to me.

13 Q. Did you have chance to receive an inmate from Deputy  
14 Cook on that date?

15 A. I did.

16 Q. And could you point him out to us in the courtroom now?

17 A. The defendant.

18 AST. SOL. DENNIS: Please let the record show that the  
19 deputy pointed to the defendant, Chad Kozloski.

20 Q. And explain to the jury what happens when you received  
21 an inmate on that day. What was your normal procedure?

22 A. Well, the first thing before any inmate can proceed  
23 through the, you know, proceed to where other inmates are  
24 kept is a search has to be conducted. That search is  
25 dependent -- what kind of search is completed is dependent

1 on the defendant's charges. If it's just, you know, a  
2 simple driving under the influence or, you know, an assault  
3 and battery charge or something of that nature, a thorough  
4 search of the person's clothing and body is conducted with  
5 clothes on. If it's a drug charge, drug paraphernalia, if  
6 drug paraphernalia is involved or if it's a drug charge  
7 itself, then what we call a strip search is conducted in a  
8 private area of the jail in middle booking.

9 Q. Why do you do that for people that are suspected of  
10 having drugs on their person?

11 A. Essentially, we don't want the drugs -- if that person  
12 does have drugs, we don't want the drugs to get to the back  
13 in the jail and cause harm to other inmates.

14 Q. Okay. Did you have the opportunity to search the  
15 defendant in this case?

16 A. I did.

17 Q. And what happened after you searched him?

18 A. During the search -- essentially, the way I've always  
19 conducted my strip searches -- due to the nature of the  
20 charges coming in, a strip search was conducted on the  
21 defendant. I started with his outer garments first. You  
22 know, just one at a time, I try to make it not, you know,  
23 you don't want everything done at one time. You don't want  
24 them standing there, you know, in a vulnerable position in  
25 front of you. So I start with the outer garments, which I

1 believe he had a jacket on that day. I searched the jacket  
2 and then his shirt. And then actually we asked him to  
3 remove his pants. I searched his pants. And in the front,  
4 I believe it was the right pocket, find a blue baggie with  
5 cotton swabs in it with a brown liquid. I completed my  
6 search. And upon the search being completed, I turned the  
7 baggie over to Detective Cook.

8 AST. SOL. DENNIS: Your Honor, may I approach the  
9 witness?

10 THE COURT: Yes, sir.

11 AST. SOL. DENNIS: Thank you.

12 Q. Deputy Gottula, what have I just handed you?

13 A. What looks to be a BEST -- excuse me -- a BEST analysis  
14 bag for narcotics.

15 Q. And how do you recognize that baggie?

16 A. I recognize this particular bag placed in front of me  
17 based on my experience on the road. Whenever a narcotics  
18 violation -- anything other than marijuana, this SLED BEST  
19 bag is completed and turned in for testing.

20 Q. Okay. Do you recognize the baggie and it's contents  
21 inside of it?

22 A. Am I able to pick up?

23 Q. Absolutely.

24 A. Okay. Yes. Yes, I do.

25 Q. And how do you recognize that?

1 A. That appears to be the bag that I found in the  
2 defendant's pocket.

3 Q. Is that bag in the same or substantially same condition  
4 as when you found it on the defendant?

5 A. It appears so.

6 AST. SOL. DENNIS: Let the record show that Deputy  
7 Gottula has been handed what has been marked as State's  
8 Exhibit 3.

9 Q. And how often do you find other articles -- when people  
10 would enter the jail, how often would you find other  
11 articles on their clothing from their original arrest?

12 A. Often. Even as a deputy now, you know -- you know, I'm  
13 human. I make mistakes as well. I've searched people. You  
14 know, when I arrest them, I get to the jail and, you know,  
15 the corrections officer finds a lighter in the defendant's  
16 pocket. You know, it happens all the time.

17 Q. Okay. Going back to your training experience. You  
18 ever had any opportunity to learn or observe how an  
19 individual would administer heroin to themselves?

20 MS. LITTLEJOHN: Object, Your Honor.

21 THE COURT: Basis for your objection?

22 MS. LITTLEJOHN: Speculation.

23 THE COURT: Go into more detail as to his basis for  
24 that knowledge.

25 AST. SOL. DENNIS: Thank you.

1 Q. Deputy Gottula, you've stated that you have worked on  
2 the road for several months. What types of narcotics have  
3 you been exposed to?

4 A. Exposed to personally on the road? I've been exposed  
5 to methamphetamine, crack-cocaine, crack rocks, marijuana.  
6 I think that's about it at this point.

7 Q. So you've never had any -- when was the last time that  
8 you had experience to take any heroin into evidence?

9 A. I believe this was the last time.

10 AST. SOL. DENNIS: No further questions at this time,  
11 Your Honor.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY MS. LITTLEJOHN:

15 Q. Officer Gottula, wasn't there -- actually you took Mr.  
16 Kozloski from Officer Bell, didn't you?

17 A. I don't remember who actually brought him in. I just  
18 remember that I was told that inmate was -- a person was  
19 coming in that needed a strip search because there was  
20 narcotic violations involved. I conducted the strip search.  
21 And Detective Cook was there. He was an LA 1 officer or a  
22 class one officer, which is road deputy. I was a class  
23 three. I'm sorry, class two. I turned the evidence over to  
24 the first LA 1. When I found him, he ---

25 Q. So it could have been Officer Bell who brought him in;

1 right?

2 A. I don't know who the officer was.

3 Q. When he was brought in, when they bring in inmates,  
4 they're cuffed from behind; right?

5 A. Yes.

6 Q. And they're usually pretty much holding them as they  
7 walk them, aren't they?

8 A. You can ---

9 Q. I mean, they're not just allowed to just sort of wonder  
10 around, are they?

11 A. No. I mean, you maintain control of your suspect.

12 Q. Right.

13 A. Or your defendant or your subject or whoever.

14 Q. And Mr. Kozloski, he was cuffed from behind and -- you  
15 don't recall anything unusual, do you? No one was not -- he  
16 was maintained control over?

17 A. Yes.

18 Q. Okay. So you don't recall anything such as him being  
19 able to move his hands all freely or anything, do you?

20 A. I don't recall that at all. I mean, that was two years  
21 ago. I don't recall.

22 Q. That would be pretty unusual for somebody to be able to  
23 move around their hands pretty freely if they're cuffed in  
24 the back; right?

25 A. Yes.

1 Q. And he's brought straight for a strip search; correct?

2 A. I don't recall the time frame of the strip search  
3 whenever he entered the facility until the time to the strip  
4 search.

5 Q. Would you -- would it be unusual -- it would be  
6 probably normal for him to be taken straight for a strip  
7 search, wouldn't it?

8 A. Correct. There are some mitigating circumstances at  
9 times. But the normal procedure is to go on in.

10 Q. And do you recall if he was cuffed very well like  
11 they're supposed to be? Or do you recall him being cuffed  
12 poorly?

13 A. I don't remember the cuff -- the cuffs being in a poor  
14 condition.

15 Q. Okay. And you said that officers do make mistakes and  
16 they've found lighters before; right?

17 A. Yes.

18 Q. And those are because they make mistakes?

19 A. Well, I mean if you search somebody, you're gonna -- I  
20 mean, you search hundreds of people throughout your year,  
21 your career, you know, you're bound to miss things.

22 Q. And so things do happen that are mistakes and made by  
23 officers; correct?

24 A. In terms of searching, yes.

25 MS. LITTLEJOHN: No further questions.

1 THE COURT: Any redirect?

2 AST. SOL. DENNIS: Nothing at this time, Your Honor.

3 THE COURT: You may step down, sir. Thank you. You  
4 may call your next witness.

5 AST. SOL. DENNIS: Your Honor, the State does not have  
6 anymore witnesses.

7 THE COURT: The State rests?

8 AST. SOL. DENNIS: Yes, Your Honor.

9 THE COURT: Ladies and gentlemen of the jury, it's time  
10 for us to take a brief recess. If you would please go into  
11 the jury room. Again, please remember my previous  
12 instruction not to discuss this case. We'll be right back  
13 with you.

14 (Whereupon, the jury exits the courtroom at 3:41 p.m.)

15 THE COURT: Any motions?

16 MS. LITTLEJOHN: Your Honor, we make a motion for a  
17 directed verdict. First of all, based on our prior motions:  
18 Fourth Amendment, Fourteenth, et cetera. And we would also  
19 make a motion on the intentional element of the heroin; no  
20 one's testified to that, Your Honor.

21 THE COURT: Solicitor?

22 AST. SOL. DENNIS: I think that in both times that this  
23 defendant has had this substance on him. The statement that  
24 was noted that he admitted that he had heroin on him, I  
25 think that shows that at a knowingness, which is part of the

1 statue -- statute. I'm sorry. We have the location. We've  
2 had at least one deputy identify the defendant. And I think  
3 that at this stage there is certainly some direct evidence  
4 to pose the question to the jury as to whether or not  
5 there's guilt in this case.

6 THE COURT: I agree. Based upon the evidence that has  
7 been presented, at the juncture, there has been some direct  
8 evidence intending to establish the guilt of the defendant.  
9 Again, it's not the weight, but the existence of such  
10 evidence. Therefore, your motion is respectfully denied.  
11 All right. Ms. Littlejohn, is your client intending on  
12 testifying?

13 MS. LITTLEJOHN: If we could just have a few minutes,  
14 Your Honor.

15 THE COURT: Sure.

16 MS. LITTLEJOHN: Can we go to the back there, Your  
17 Honor.

18 THE COURT: Sure. I'll wait for you.

19 AST. SOL. DENNIS: Your Honor, may I approach the  
20 witness stand and pick up that exhibit.

21 THE COURT: Sure.

22 (A brief break was taken at 3:44 p.m. The proceedings  
23 resumed at 3:51 p.m.)

24 THE COURT: Are we ready.

25 MS. LITTLEJOHN: We are, Your Honor.

1 THE COURT: All right. Ms. Littlejohn, does your  
2 client wish to testify?

3 MS. LITTLEJOHN: Your Honor, we're going to present a  
4 witness. And right after that, he will let me know  
5 immediately if he wants to testify.

6 THE COURT: Okay. What I'll do is I'll go ahead and  
7 place him under oath and question him regarding that. And  
8 if you need to take another break, at least we don't have to  
9 do go through the colloquy again. I'll just ask him again  
10 at that juncture. Sir, could you please stand.

11 (Whereupon, the defendant, Chad Robert Kozloski, is  
12 duly sworn.)

13 THE COURT: Sir, would you please state your name.

14 THE DEFENDANT: Chad Robert Kozloski.

15 THE COURT: Mr. Kozloski, at this time I'm going to  
16 explain to you certain of your rights. If you do not  
17 understand anything that I say, please let me know. If you  
18 want me to explain anything in more detail, also please let  
19 me know. Do you understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You have now reached the stage of the trial  
22 where you may present your defense. You have the right to  
23 claim the protections given to you by the Fifth Amendment of  
24 the Constitution of the United States. This amendment  
25 states in part that no person shall be compelled in any

1 criminal case to be a witness against himself. This means  
2 that you cannot be required to testify in this case. You  
3 have the right to testify on your own behalf. However, no  
4 one can make you testify. This is a personal right up. No  
5 one can waive this right except for you.

6 If you decide to testify, you will be subject to the  
7 same rules that govern other witnesses, and you may be  
8 examined and cross-examined on any relevant issue in this  
9 case. In addition, if you have any convictions involving  
10 dishonesty or for false statement or for crimes punishable  
11 by imprisonment for more than one year, and this Court  
12 determines that probative value of admitting this evidence  
13 outweighs the prejudicial effect to you, the solicitor will  
14 be able to introduce your record to attack your credibility.  
15 If you decide to testify, this decision on your part must be  
16 freely, voluntarily, and intelligently made with the  
17 knowledge of the protections given to you by the Fifth  
18 Amendment and the consequences of your decision to testify.  
19 If you decide not to testify, I will instruct the jurors  
20 they cannot give the fact that you did not testify any  
21 consideration whatsoever, and that there's absolutely no  
22 prejudice to you because you did not testify. It is left  
23 entirely up to you whether or not you wish to testify. You  
24 may talk to your attorney, your family, your friends, or  
25 anyone else, but the final decision is ultimately up to you.

1 Do you understand what I've just explained to you?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you have any questions about what I have  
4 just explained to you?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Have you discussed this matter with your  
7 attorney?

8 THE DEFENDANT: Briefly.

9 THE COURT: Do you need more -- she indicates to me  
10 that you wish for the first witness to testify and then you  
11 will make a decision at that juncture. Is that correct?

12 THE DEFENDANT: That's correct.

13 THE COURT: I will allow you another opportunity to  
14 talk to your attorney at that point. But at this stage, do  
15 you have any more questions?

16 THE DEFENDANT: No.

17 THE COURT: All right, sir. Thank you. All right.  
18 Are we ready for the jury?

19 MS. LITTLEJOHN: Yes, Your Honor.

20 THE COURT: Please bring our jury out.

21 (Whereupon, the jury enters the courtroom at 3:55 p.m.)

22 THE COURT: Welcome back, ladies and gentlemen of the  
23 jury. Thank you for your patience. Now that you're back,  
24 gentleman on the very end seat, what is your name, sir?

25 JUROR: Rick Malone. Richard Malone.

1 THE COURT: Richard Malone. Juror number 90?

2 JUROR: Yes.

3 THE COURT: Well, it's your lucky day. Since this is a  
4 very scientific method of selecting a foreperson, you are  
5 going to be appointed our foreperson since you're in that  
6 seat.

7 All right. And we are now ready to precede with the  
8 trial of this case. You make all your first witness.

9 MS. LITTLEJOHN: The defense calls Laura Langdon. Your  
10 Honor, the investigator has gone to find her.

11 THE COURT: All right, ma'am. Thank you.

12 (Brief pause.)

13 THE COURT: Counsel approach.

14 (Whereupon, a bench conference is held off the record  
15 and out of the hearing of the jury panel.)

16 THE COURT: Ladies and gentlemen, I'm going to send you  
17 to your jury room just for a few minutes while we located  
18 our witness. Sometimes people run out to their car and  
19 don't realize that the testimony is at the juncture that it  
20 is. So we're going to try to find our witness and then  
21 we'll be right back with you. Again, please remember my  
22 previous instruction not to discuss this case.

23 (Whereupon, the jury exits the courtroom at 3:59 p.m.)

24 THE COURT: Counsel, while we wait for our witness, do  
25 y'all have any proposed jury instructions? Other than the

1 basic.

2 AST. SOL. DENNIS: I think the standard jury  
3 instructions will be fine, Your Honor.

4 THE COURT: What we'll do is -- obviously, it's already  
5 four o'clock. So what we'll do is I'll go ahead and have my  
6 clerk print out the proposed jury instructions and give them  
7 to y'all before we leave, and then we'll argue the charge in  
8 the morning.

9 AST. SOL. DENNIS: Thank you, Your Honor.

10 (Brief pause.)

11 MS. LITTLEJOHN: Your Honor, she's right here.

12 THE COURT: All right. Let's have our jury please.

13 Hold on one second.

14 (Brief pause.)

15 THE COURT: All right. Let's have our jury, please.

16 (Whereupon, the jury enters the courtroom at 4:04 p.m.)

17 THE COURT: Welcome back, ladies and gentlemen of the  
18 jury. We're now ready to proceed. You may call your first  
19 witness.

20 MS. LITTLEJOHN: Yes. Your Honor, the defense would  
21 call Ms. Langdon.

22 LAURA NICOLE LANGDON, after being duly sworn, testified  
23 as follows:

24 THE COURT: Your witness.

25 DIRECT EXAMINATION

1 BY MS. LITTLEJOHN:

2 Q. Ms. Langdon, at what in point time -- well, you know

3 Mr. Kozloski, don't you?

4 A. Yes.

5 Q. And how do you know him?

6 A. We used to date.

7 Q. And y'all don't date anymore, do you?

8 A. No.

9 Q. You're familiar with the date in question here, aren't  
10 you?

11 A. Yes.

12 Q. Are you familiar with the jacket that he was wearing?

13 A. Yes.

14 Q. Whose jacket was that?

15 A. My jacket.

16 Q. Did you know if there were syringes in the jacket?

17 A. Yes.

18 Q. Were there syringes in the jacket?

19 A. Yes, ma'am.

20 Q. Did you place the syringes in the jacket?

21 A. Yes, ma'am.

22 Q. Are you aware there were baggies in the jacket?

23 A. No, ma'am. I knew there was trash. I didn't know what  
24 they were.

25 Q. And you had picked that up?

1 A. Yes, ma'am.

2 Q. So what was in the jacket was yours?

3 A. Yes, ma'am.

4 MS. LITTLEJOHN: No further questions, Your Honor.

5 THE COURT: Cross-examination?

6 AST. SOL. DENNIS: Court's indulgence. Just a moment,  
7 Your Honor.

8 (Brief pause.)

9 CROSS-EXAMINATION

10 BY AST. SOL SIGAL:

11 Q. Good afternoon, Ms. Langdon.

12 A. Hi.

13 Q. Ms. Langdon, about how tall are you?

14 A. Five-eight.

15 Q. About how tall is Mr. Kozloski?

16 A. Almost six-foot.

17 Q. So it's about a four-inch difference between the two of  
18 you?

19 A. Yeah.

20 Q. And you just stated that the jacket that he was wearing  
21 was yours?

22 A. Yes.

23 Q. What about the pants he was wearing? Was those yours  
24 as well?

25 A. No.

1           AST. SOL SIGAL: Beg the Court's indulgence.

2       Q.    Ms. Langdon, you stated that you and Mr. Kozloski used  
3   to date. Is that right?

4       A.    Yes, ma'am.

5       Q.    How long did you date?

6       A.    Almost three to four years.

7       Q.    When did you break up?

8       A.    I want to say last summer.

9       Q.    So three or four years. That's a long time. Were  
10   y'all pretty close?

11      A.    Yes.

12      Q.    Were y'all in love?

13      A.    I would say yes.

14      Q.    Do you still love Mr. Kozloski?

15      A.    Yeah.

16      Q.    Do anything for him?

17      A.    Sure.

18           AST. SOL SIGAL: No further questions. Thank you.

19           THE COURT: Any redirect?

20           MS. LITTLEJOHN: Yes, Your Honor. Your Honor, may I  
21   approach the witness?

22           THE COURT: Yes, ma'am.

23                            REDIRECT EXAMINATION

24           BY MS. LITTLEJOHN:

25      Q.    Ms. Langdon, I want to show you what's been marked as

1 State's Exhibit 1. Are these the syringes you were saying  
2 was in your jacket? Did they look like that?

3 A. Yes. Yeah.

4 Q. I'm going to show you what's been marked as State's  
5 Exhibit 2 and 3. Are these what you were saying was in your  
6 jacket?

7 A. Yes.

8 Q. The State just asked you would you do anything for him.  
9 Would you lie for him?

10 A. Not under oath.

11 Q. Would you put your freedom at risk for him?

12 A. No.

13 MS. LITTLEJOHN: No further questions.

14 THE COURT: You may step down, ma'am. Thank you.

15 Ladies and gentlemen of the jury, I know you're going to  
16 think that you're gonna get your exercise today, and for a  
17 Monday, it's always a good thing after the weekend. So I'm  
18 going to ask you to go to your jury room one last time.  
19 Please don't discuss this matter. We'll be right back with  
20 you.

21 (Whereupon, the jury exits the courtroom at 4:09 p.m.)

22 THE COURT: All right. Mr. Kozloski, you indicated  
23 through your counsel at this stage you will make your  
24 decision as to whether or not you are going to testify.  
25 Have you discussed this matter with your attorney?

1 (Brief pause.)

2 MS. LITTLEJOHN: Your Honor, may we go in the back room  
3 for a minute.

4 THE COURT: Sure.

5 (A brief break was taken at 4:13 p.m. The proceedings  
6 resumed at 4:23 p.m.)

7 THE COURT: All right. Mr. Kozloski, I was questioning  
8 you whether you've had enough time to discuss this matter  
9 with your attorneys as to whether or not you wish to  
10 testify. It's approximately 4:30 now. You haven't come  
11 back stating you're ready, so my intention is to let you  
12 have overnight to discuss this matter. We'll resume this  
13 questioning in the morning that way you have ample time to  
14 talk to your attorneys, your family, whoever you may wish to  
15 talk to about whether or not you wish to testify. I will  
16 inform you, though, that it is my policy that once a case is  
17 called to trial, your bond has been distinguished. So you  
18 will remain in custody overnight until we finish your case.

19 THE DEFENDANT: I was going to testify ---

20 THE COURT: No, sir. We're going to break overnight.

21 And that way you have plenty of time to discuss it with your  
22 attorneys ---

23 THE DEFENDANT: I will ---

24 THE COURT: Please don't interrupt me, okay.

25 THE DEFENDANT: I apologize.

1 THE COURT: We'll resume this trial at 9:30 in the  
2 morning. Everybody have a nice evening. Before we do that,  
3 actually let me bring the jury out to let them know what  
4 we're going to be doing. You can have a seat, sir.

5 (Whereupon, the jury enters the courtroom at 4:24 p.m.)

6 THE COURT: Welcome back, ladies and gentlemen of the  
7 jury. Thank you for your patience. It's almost 4:30 and I  
8 certainly understand that many of you don't want to be here  
9 past five o'clock. So I'm not going to do that to you.  
10 Before we continue with the trial of this case, it's a good  
11 time for us to take a break overnight and then we'll resume  
12 the trial of this case in the morning. If you would please  
13 be back in your jury room around 9:20 or so, then we'll make  
14 sure we've got everybody accounted for, and we'll start the  
15 testimony back at 9:30 or the trial of this case at 9:30.  
16 Please, again, remember my previous instruction not to  
17 discuss this case with anyone including your family,  
18 friends, or fellow jurors or do any independent research.  
19 And have a nice evening. We'll see you in the morning.

20 (Whereupon, the jury exits the courtroom at 4:25 p.m.  
21 and is excused for the remainder of the day.)

22 THE COURT: All right. We'll be at recess until 9:30.  
23 If counsel would just stick around so we can get you the  
24 proposed jury instructions for in the morning, then we'll be  
25 good to go. Everybody have a nice night.

1 (The proceedings in the trial of this case adjourned  
2 for the day at 4:26 p.m.)

3  
4 (The proceedings in the trial of the case resumed on  
5 Tuesday, January 31, 2017, at 9:28 a.m.)

6 THE COURT: All right. Counsel, it's my understanding  
7 that you've had an opportunity to discuss with your client  
8 whether or not he wishes to testify. Is that correct?

9 MS. LITTLEJOHN: That is correct, Your Honor.

10 THE COURT: And, Mr. Kozloski, if you would please  
11 stand.

12 (Defendant complies.)

13 THE COURT: Sir, yesterday I went over your rights with  
14 you regarding your right to testify, or whether or not you  
15 wish to testify. And that decision, again, has to be  
16 completely up to you after you discuss the matter with your  
17 attorney and whoever else you may want to discuss it with.  
18 Have you had ample opportunity to discuss this with your  
19 attorney?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And do you wish to testify?

22 THE DEFENDANT: I will testify.

23 THE COURT: You will testify?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right, sir. And counsel for the State,

1 I understand the defendant has prior convictions. Are there  
2 any 609 issues we need to address?

3 AST. SOL. DENNIS: Yes, Your Honor. We would, of  
4 course, seek to introduce those. The convictions are from  
5 2008. So they are within a ten-year span. They were both  
6 misdemeanor charges, which I believe carry over a year  
7 sentence. So we would seek to introduce those for  
8 impeachment evidence. Also -- yes, impeachment evidence of  
9 a criminal conviction.

10 THE COURT: And Ms. Littlejohn?

11 MS. LITTLEJOHN: Your Honor, I am aware of those. And  
12 I believe they have the certified copies as well.

13 THE COURT: All right. And you said the convictions  
14 are -- the two previous are both for the possession of  
15 heroin.

16 AST. SOL. DENNIS: Yes, Your Honor. One is from --  
17 excuse me -- I just want to be clear -- June 23rd of 2008.  
18 And then the other is from November 3, 2008.

19 THE COURT: And considering the fact that they are for  
20 the same type of crime, the Court is concerned, obviously, I  
21 think the fact that he has convictions is admissible.  
22 However, the fact that they're the same type of convictions,  
23 probative value outweigh the prejudicial effect on it. So  
24 I'll allow you to cross-examination him on prior  
25 convictions, that he's got two prior convictions. But don't

1 get into the actual type of conviction.

2 AST. SOL. DENNIS: I believe one of them is a cocaine  
3 conviction. That would be the November 3rd of 2008  
4 conviction. So it's one for cocaine and one for heroin.

5 THE COURT: All right. Hold on one second.

6 (Brief pause.)

7 THE COURT: And what's your position on that, Ms.  
8 Littlejohn?

9 MS. LITTLEJOHN: Your Honor, I'm still going to be in  
10 the, basically, a 404(b) so far as much more prejudicial  
11 than probative with regard to this so far as heroin versus  
12 cocaine. I think with the way the statutes, even here, are  
13 written and the length of time they carry assuming that --  
14 I'm guessing. I don't know that Michigan probably does it,  
15 I guess, about the same way as we do so far as that's  
16 concerned. So I think that I really feel -- you're looking  
17 at 2008. We're here in 2017. This allegedly occurred  
18 January 2015. Substantial time difference. This wasn't as  
19 though it was just two years ahead of time. It was out of  
20 state. We know no facts whatsoever about it. I just really  
21 think that -- I know that we're prevented on the 404(b).  
22 But I really think that we need to get right back to when  
23 you look at the purpose of that and the prejudicial effect  
24 of it. I would ask that the Court not allow it.

25 THE COURT: Well, looking at the State versus Colf (ph)

1 opinion, the Court must consider the following factors:  
2 impeachment value of the prior crime; the point and time of  
3 the conviction, and the witness's subsequent history; the  
4 similarity between the past crime and the charged crime; the  
5 importance of the defendant's testimony and the centrality  
6 of this credibility issue. I think considering those  
7 factors taken as a whole, obviously, I think in weighing  
8 that, that it is a time issue. But most importantly because  
9 they are drug convictions, I think the prejudicial effect of  
10 that outweigh the probative value to go into the details. I  
11 think it's certainly -- you can ask him he's got two prior  
12 convictions for crimes, and you can say what they carry.  
13 However, don't go into the fact that they are drug offenses.

14 AST. SOL. DENNIS: Just to make the argument at this  
15 point, we would not directly renew our Lisle motion under  
16 404(b). But I think that given that we do have testimony  
17 from another defense witness stating that the drugs are in  
18 the syringe, or syringes, in the jacket belonged to him. I  
19 think that the knowingness -- the knowingness of this crime,  
20 the element of that combined with removing any sort of  
21 mistake or misunderstanding under 404(b) I think perhaps --  
22 even if I didn't go into the specific nature of those drug  
23 convictions, I think maybe just the knowingness issue would  
24 be helped by that.

25 THE COURT: Mr. Dennis, therein lies the problem.

1 Because you have to have the specifics for me to allow it  
2 in. It has to be almost identical in circumstances. You've  
3 indicated to the Court that you don't have that information  
4 and, therefore, I must exclude it.

5 AST. SOL. DENNIS: Yes, Your Honor.

6 THE COURT: So I don't think we can go there.

7 AST. SOL. DENNIS: Thank you.

8 THE COURT: Anything further?

9 MS. LITTLEJOHN: Your Honor, just for clarification, it  
10 will simply be a matter of he has been convicted twice for  
11 two other crimes, period?

12 THE COURT: Right. You can say the type -- not that  
13 it's drug offenses. You can say that it was, you know, it  
14 carried whatever it carried.

15 MS. LITTLEJOHN: I don't know. It's out of state. I  
16 have no idea what it ---

17 THE COURT: If it's something you intend to use. But  
18 you can't say that they were drug convictions.

19 MS. LITTLEJOHN: Thank you.

20 AST. SOL. DENNIS: Thank you, Your Honor.

21 THE COURT: Anything else before we bring the jury out?

22 AST. SOL. DENNIS: Not from the State, Your Honor.

23 MS. LITTLEJOHN: Nothing from the defense.

24 THE COURT: All right. Let's have our jury, please.

25 (Whereupon, the jury enters the courtroom at 9:35 a.m.)

1 THE COURT: Good morning, ladies and gentlemen of the  
2 jury. Welcome back. I hope that you had a nice evening.  
3 We're now ready to proceed with the trial of this case. You  
4 may call your next witness.

5 MS. LITTLEJOHN: Your Honor, we would call Mr. Chad  
6 Kozloski.

7 CHAD ROBERT KOZLOSKI, after being duly sworn, testified  
8 as follows:

9 DIRECT EXAMINATION

10 BY MS. LITTLEJOHN:

11 Q. Mr. Kozloski, as soon as we can learn a little bit  
12 about you -- can you tell us where you're from.

13 A. I'm from just outside of Detroit, Michigan, originally.

14 Q. And how long have you been down here in the Charleston  
15 area?

16 A. I moved to Charleston in April of 2011. So almost six  
17 years now.

18 Q. What caused you to move down this way?

19 A. The economy, mostly. And I had to start something  
20 fresh and look for some fresh opportunity. Michigan was  
21 really doing pretty bad at the time. So I wanted to get on  
22 my own two feet.

23 Q. How old are you?

24 A. I will be 33 on March 5th.

25 Q. Do you work?

1 A. I do.

2 Q. What do you do?

3 A. I work in a restaurant as a server during the night,  
4 and I work in the daytime doing construction and  
5 renovations, cabinet installations. Things like that.

6 Q. And what is your level of education?

7 A. Two years of college.

8 Q. Have you ever had any situations with the law? You've  
9 had two convictions in the past.

10 A. I have; about nine years ago in Michigan.

11 Q. 2008?

12 A. 2008.

13 Q. I want to take -- you've heard everything that's been  
14 said because you've been sitting here. Let's go back to  
15 that day. When the officers testified they were at your  
16 door, that was your apartment where you were living;  
17 correct?

18 A. Correct. Yes, ma'am.

19 Q. Did you ever receive any form of a legal eviction  
20 notice?

21 A. No.

22 Q. Are you aware of any legal eviction notice being placed  
23 on file for you?

24 A. There was none. There hasn't been none.

25 Q. Officer Cook stopped you when you were walking down the

1 road; correct?

2 A. Uh-huh. Yes, ma'am.

3 Q. And there was another officer with him; right?

4 A. Yes.

5 Q. Officer Bell?

6 A. Correct.

7 Q. Can you tell us what happened.

8 A. I was behind the apartment on Harbor Lake Drive. There  
9 is one entrance and exit from and to the apartment building.  
10 My unit was 1A, which is right next to the entrance and the  
11 exit. So when they were leaving, they saw me standing  
12 behind, and he pulled up and put cuffs on me. And he was  
13 very arrogant, very aggressive. And he asked me if there  
14 was anything that would hurt him or poke him. And before I  
15 left the house to go out and smoke a cigarette, I put on a  
16 sweatshirt from inside the house. And when I lit a  
17 cigarette, I put my cigarettes on one side, my lighter in  
18 the other, I noticed there were syringes in there. Lauren,  
19 who was my girlfriend at the time, worked with a pet care  
20 company, and she had to administer insulin to animals at any  
21 given time. And that's why she had those syringes. And he  
22 handcuffed me. I made him aware of the syringes just so  
23 that he wouldn't be aggravated by not knowing that they were  
24 there and finding them on his own. And that was pretty much  
25 it.

1 Q. You heard Officer Cook say you made a statement. Did  
2 you make a statement?

3 A. No, ma'am. I did not.

4 Q. Did he tell you why you were under arrest?

5 A. He did not. I asked after he handcuffed me. I had to  
6 ask him because it just shocked the whole -- it just shocked  
7 me. So I was a little out of it as far as responding to  
8 him. Because I didn't know what was going on. But when I  
9 finally asked him what I'm being arrested for, he said  
10 arrested for a warrant in relation to an item in a pawn  
11 shop.

12 Q. Now, something was made about you wearing your  
13 ex-girlfriend's jacket.

14 A. Uh-huh. It was a sweatshirt.

15 Q. It had pockets -- it was able to have pockets; right?

16 A. Uh-huh.

17 Q. Jacket, sweatshirt, what have you. You're fairly  
18 skinny.

19 A. Uh-huh.

20 THE COURT: Sir, you need to answer yes or no so the  
21 court reporter can take that down.

22 A. Yes.

23 Q. Were you skinny then too?

24 A. Yes, ma'am.

25 Q. And she is not as skinny as you. Was she not as skinny

1 as you then either?

2 A. She's about the same size I know she is now.

3 Q. Okay. So what was that sweatshirt/jacket doing at your  
4 place?

5 A. We both lived there. Me and Lauren were renting a room  
6 at the apartment on Harbor Lake Drive.

7 Q. And why did you put on a sweatshirt/jacket?

8 A. I went outside to smoke a cigarette and it was colder  
9 than I expected. So when I walked back in, her sweatshirt  
10 was downstairs on the chair in the kitchen by the backdoor.  
11 And I put it on me -- we share sweatshirts quite a bit. I  
12 did. So it wasn't uncommon.

13 Q. And what month was this?

14 A. This is in January; January 14th, 2015.

15 Q. And you were cuffed in the back?

16 A. Correct.

17 Q. With the way Officer Bell cuffed you, were you able to  
18 move around?

19 A. No, ma'am.

20 Q. When you were taken to the jail, can you tell us what  
21 happened there?

22 A. I was walked into the jail by Detective or Officer  
23 Bell. And I was taken from handcuffs into a strip search.  
24 And he asked me if -- the person that did the strip search  
25 that was here yesterday testified -- asked me if I had

1 anything else on me and I said no. Because I had no reason  
2 to believe I had anything else on me. He emptied ---

3 Q. Why would that be?

4 A. He emptied my pockets when he arrested me.

5 Q. And who is he?

6 A. Officer Cook.

7 Q. And what do you mean by that?

8 A. I saw him pull out the syringes, a pack of cigarettes,  
9 my phone, a lighter, and two blue bags also. My wallet was  
10 the only thing that didn't come out of my pocket before I  
11 was placed in the police car. And then when I got to the  
12 jail and I was strip searched. He took my pants off of me.  
13 He asked me if I had anything, and I said no. I didn't even  
14 really check because I didn't expect there to be anything.

15 A reasonable person wouldn't expect there to be anything.

16 And that's when he pulled a lighter and one of the small  
17 blue bags out of the pocket of the pants.

18 Q. Mr. Kozloski, you were charged with this, possession of  
19 heroin. Can you tell us anything -- was there any other  
20 history, legal history, with you and Officer Cook?

21 A. No. No, there wasn't. He was there for some items in  
22 a pawn shop that he had a warrant for that was dismissed.

23 And ---

24 Q. It was dismissed?

25 A. Yes. Several were dismissed. He put six charges on me

1 and they were all dismissed. The reason he was there to  
2 arrest me was for something that I didn't do. And that came  
3 to light. The charges were dismissed.

4 Q. So what you're telling us is he put how many warrants  
5 on you before this?

6 AST. SOL. DENNIS: Objection, Your Honor. The  
7 relevance of this?

8 MS. LITTLEJOHN: Bias, prejudice.

9 THE COURT: I'll allow it.

10 A. There was a total of 11 charges put on me that day  
11 including what we're here today for.

12 Q. And of those, do you know how many have been dismissed?

13 A. Apparently seven or eight at this point.

14 Q. And were all of those by Officer Cook?

15 A. Yes.

16 MS. LITTLEJOHN: I have no further questions, Your  
17 Honor.

18 THE COURT: Cross-examination?

19 AST. SOL. DENNIS: Your Honor, may Ms. Littlejohn and I  
20 approach briefly?

21 THE COURT: Sure.

22 (Whereupon, a bench conference is held off the record  
23 and out of the hearing of the jury panel.)

24 THE COURT: You may proceed.

25 AST. SOL. DENNIS: Thank you, Your Honor.

## 1 CROSS-EXAMINATION

2 BY AST. SOL. DENNIS:

3 Q. Good morning, Mr. Kozloski.

4 A. Good morning, sir.

5 Q. I apologize if we butchered your name all throughout  
6 these proceedings.

7 A. That's all right.

8 Q. I'd like to discuss these warrants that you said have  
9 been dismissed and expunged. Isn't the real reason why they  
10 were dismissed and expunged is that you paid the restitution  
11 to the pawn shop?

12 A. I paid the restitution to the pawn shop.

13 Q. It's just a yes or no question, sir.

14 A. I did, yes.

15 Q. Thank you. Now these other warrants that you've  
16 discussed as well, wasn't one of them that was served on you  
17 that very day possession of marijuana?

18 A. No, it wasn't.

19 AST. SOL. DENNIS: Court's indulgence, Your Honor.

20 (Brief pause.) Your Honor, may I approach this witness?

21 THE COURT: You may.

22 Q. Mr. Kozloski, would you please read to the jury,  
23 explain what I just handed you.24 A. A warrant for possession of an aluminum foil make-shift  
25 pipe containing burnt, green-leafy substance rolled inside.

1 And it is dated the 14th. I thought you meant the month  
2 from the 12th. I apologize.

3 Q. Would you read what the offense is for that warrant.

4 A. The offense ---

5 Q. It says offense ---

6 A. Simple possession of marijuana.

7 Q. Thank you.

8 AST. SOL. DENNIS: May I approach again, Your Honor?

9 THE COURT: Yes, sir.

10 AST. SOL. DENNIS: I apologize for not asking you  
11 before.

12 Q. So not only did you have heroin on your person, but you  
13 also had marijuana?

14 A. That's what's alleged.

15 Q. Okay. So you did have these syringes on there, on your  
16 person?

17 A. Yes. I knew I had the syringes.

18 Q. Okay. You said earlier when you had put on that  
19 jacket, you put your hands in both pockets; correct?

20 A. Correct.

21 Q. So you had -- you could feel the syringes, and you  
22 couldn't feel another strange baggie, an aluminum foil  
23 balled up object inside of that jacket?

24 A. The aluminum foil was ---

25 Q. Yes or no question?

1 A. No.

2 Q. Where was the aluminum foil?

3 A. It was in the left side ---

4 Q. So a balled-up piece of aluminum foil in a sweatshirt  
5 and you couldn't feel it? You didn't know it was there?

6 A. Not at the time, no.

7 Q. Okay. And so where was heroin found on you?

8 A. In the pocket and in the jean pocket.

9 Q. So two times?

10 A. Two; yes.

11 Q. Okay.

12 AST. SOL. DENNIS: No further questions, Your Honor.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MS. LITTLEJOHN:

16 Q. Mr. Kozloski, on those two warrants dated the 12th they  
17 were talking about?

18 A. Uh-huh. Yes, ma'am.

19 Q. That Officer Cook gave on you. Those two warrants, you  
20 didn't know what they were going to do with them, did you?

21 A. No, absolutely not.

22 Q. And you did know, though, that when someone told you it  
23 was expunged that that meant it was just as though they were  
24 not in existence; correct?

25 A. Correct.

1 Q. And were you here yesterday when Officer Cook just  
2 appeared with them?

3 A. I was.

4 Q. And were you aware that no one could find them on any  
5 public records ---

6 BY AST. SOL. DENNIS: Objection, Your Honor.  
7 Relevance.

8 MS. LITTLEJOHN: Bias and prejudice, Your Honor.

9 BY AST. SOL. DENNIS: It's also speculative.

10 THE COURT: I'll sustain on speculation.

11 Q. Could you locate them anywhere on public record?

12 A. No, ma'am.

13 Q. And you had been told that they would -- would be as  
14 though they were not in existence?

15 A. Yes.

16 Q. Was that shocking when Officer Cook just happened to  
17 appear with these two out of the blue?

18 A. It was.

19 Q. Because those are two that you thought was supposed to  
20 have been expunged; correct?

21 A. (No verbal response.)

22 Q. And they were actually expunged, weren't they?

23 A. I believe so, yes.

24 Q. But he had them, didn't he?

25 A. Yes.

1 MS. LITTLEJOHN: No further questions.

2 THE COURT: You may step down, sir. Thank you. You  
3 may call your next witness.

4 MS. LITTLEJOHN: The State [sic] rests, Your Honor.

5 THE COURT: At this point, you renew your previous  
6 motions?

7 MS. LITTLEJOHN: Yes, Your Honor. At this point, we  
8 would renew all of our prior motions. If you would like us  
9 to get in detail with them, we can do so later or outside of  
10 the presence of the jury if you like.

11 THE COURT: What we can do, if you don't mind, we'll go  
12 ahead and go into closings and then I'll allow you to place  
13 those matters on the record.

14 MS. LITTLEJOHN: Okay. Thank you.

15 THE COURT: Thank you. Ladies and gentlemen of the  
16 jury, now both parties have rested their case. It is now  
17 time for the closing arguments of counsel. If you would  
18 please pay close attention. And you may begin.

19 CLOSING ARGUMENTS

20 AST. SOL. DENNIS: Thank you, Your Honor. May It  
21 please the Court? Good morning, again, ladies and gentlemen  
22 of the jury. Well, I told you at the beginning this was  
23 going to be a straightforward a case, as you can see. And I  
24 think we're still there. So let's talk about what we have,  
25 what the State has the burden to prove, where we're at now.

1 So let's start off with the arrest that day. Officers  
2 you've heard testified that the reason they were there was  
3 to serve existing arrest warrants. The defense discussed  
4 those arrest warrants. They should've been shocked that  
5 they could have shown up. They were expunged. And  
6 typically that means that we're not to bring them up, but  
7 they were brought up. Not by me.

8 So they're there to arrest and serve arrest warrants  
9 and to investigate for a pending crime. Some issues with  
10 some merchandise at a pawn shop. They show up. They did  
11 see the defendant that they have known because they had been  
12 investigating him for some time. They arrest him. They  
13 ask, you have anything on you that could poke me, stab me,  
14 hurt me in any way, which is normal operating procedure.  
15 And he says, yes, I have syringes, and I have heroin. In  
16 fact, he has heroin on him two times; syringes and heroin.  
17 They take him. They secure him. They check his person.  
18 They find not only heroin but something that they believe is  
19 marijuana. Enough marijuana to serve out a warrant for that  
20 arrest. And they take him to the jail. While at the jail,  
21 they do a strip search, which you heard from Deputy Gottula  
22 is also normal. Because you want to make sure that none of  
23 that gets into the jail. You want to make sure that there  
24 are no weapons that they may be hiding on their person,  
25 which is a similar to what Deputy Cook asked when they first

1 arrested him. They find heroin on him again. But this  
2 time, it's not just powder heroin. It's not just those  
3 grains of heroin that you heard the SLED agent, Ms.  
4 Sorrells, speak of. It's heron that is inside and contained  
5 within a cotton ball that has been soaked and that he's  
6 carrying around in his pants. Now, there's been some  
7 discussion about whose custody he was in, where he was. The  
8 consistent part of that is is that he was arrested, he was  
9 searched. A small, thin plastic baggie was then found in a  
10 pant's pocket, jeans pocket, at the jail. At some point, he  
11 has heroin on him in both of these time. He knows he has  
12 heroin on him. You've heard him say that he stuck his hands  
13 in both pockets of his jacket. He's got a ball of aluminum  
14 foil in this jacket. He knows he has heroin on it. He  
15 admits to the officers at the first point they arrest him,  
16 I've got heroin on me. And he has heroin on him not once  
17 but twice.

18 Now, again, the Judge at the end of this case is gonna  
19 instruct you on the law. I'm going to give you a brief  
20 summation. It's simple. If you are in South Carolina and  
21 you intentionally, knowingly, possess heroin, that is less  
22 than a certain amount -- really, any amount of heroin that  
23 can be attributed to you, you're guilty. This defendant had  
24 it on him not once but twice. Now, again, the State, which  
25 I'm privileged to represent, has the highest burden of prove

1 in this case. It is beyond a reasonable doubt. Now, in  
2 life as you all know, there are very few things that we can  
3 be absolutely, 100 percent, certain about. That's not where  
4 this burden of proof lies. Beyond a reasonable doubt means  
5 that if you can sit there firmly convinced of the facts in  
6 this case, then you must find him guilty. I think looking  
7 at what we have, we have not one but two instances of  
8 heroin. We don't have just heroin, we have syringes. We  
9 also have heroin inside of a cotton ball, soaked -- heroin  
10 soaked in this cotton ball. I think after that evidence  
11 you've seen and heard all in the past day and a half, you'll  
12 go back there and you'll find him guilty. Thank you.

13 THE COURT: Counsel?

14 MS. LITTLEJOHN: First of all, thank y'all for being  
15 here. And let's understand, I'm pretty sure nobody picked  
16 up a telephone, called Mary Brown and said, "Hey, can I have  
17 jury duty this week?" So I don't think anybody was really  
18 wanting to do that this week. But thank y'all because you  
19 know what? That's what makes this system work. It really  
20 is. That's what makes this system so different from so many  
21 other systems. A lot of countries have professional jurors.  
22 That's all they do for a living. Can you imagine? But not  
23 us. That's why we're special.

24 What are we talking about here? Mr. Dennis said it  
25 would be straightforward. It is. First of all, let me tell

1 you something. You are not entitled in any shape, form, or  
2 fashion to say my client is innocent. You're not allowed  
3 to. You can want to believe that my client is innocent  
4 until the cows come home. You're not never allowed to  
5 believe that about the defendant. Ever. Because the word  
6 is not innocent. The word is not guilty. Big difference  
7 between innocent and not guilty. Very big difference. Not  
8 guilty means the burden of proof was not met beyond a  
9 reasonable doubt. That's what that means. So in this case,  
10 or any case of a criminal nature, you're not allowed to find  
11 anyone innocent.

12 Now, let's go over some of what we've heard. Officer  
13 Cook tells us that he did pretty much everything right. He  
14 cuffed and tightened behind his back. I'll submit to you  
15 that if you're cuffed tightly behind your back, correctly,  
16 like he said he did, you can't get to your front pocket.  
17 You just can't do it. It doesn't make any sense to me.  
18 Officer Cook said he patted him down. I'm gonna submit to  
19 you, if he did what he says he did, he wouldn't have had  
20 left that lighter. But officer Cook tells us, he says at  
21 the Academy they tell us a written statement -- he likes to  
22 use words, "is generally better than a oral statement." You  
23 know, I had to pull it out of him. But that's kind of like  
24 make a contract with somebody. I think you'd agree a  
25 written statement -- a written contract is better than an

1 oral contract. Did someone like to read it? Videoing  
2 something would tell more than not videoing something. I  
3 submit to you that videoing would tell you far more than not  
4 videoing. He did tell us how, unfortunately, we don't have  
5 body cams. No car cams. But that everyone, they have cell  
6 phones. And what do they have? He tells us video  
7 capability. Picture capability. I submit they have video  
8 capability, picture capability, so that they can take videos  
9 and pictures. It kind of makes sense. What do we notice?  
10 Don't have any videos and don't have any pictures. But I'm  
11 missing something. You're missing something. You're  
12 missing Officer Bell. What happened to him? Where is he?  
13 Why wasn't he here? You need to ask yourself that question.  
14 And go back to the jury room and -- look at that. The  
15 evidence here. When you look at it, I want you to look at  
16 it, real carefully. Tell me what you see in it. Tell me.  
17 Tell me. Tell yourself, individually, if in Exhibit 2 you  
18 see anything in that baggie. What do we know about the  
19 needles? Not a controlled substance. He had a no  
20 controlled substance. Why do you think he's throwing his  
21 cigarettes, weren't any controlled substances. His lighter  
22 wasn't even a controlled substance. If it's not a  
23 controlled substance, it's not a controlled substance. They  
24 want to say it's brown powder, but there's not any. Y'all  
25 may can see it. You may can see brown powder. I'm not

1 seeing any brown powder in there.

2 What else do we know? No weight obtained. You're  
3 gonna have that result. But we also know they didn't send  
4 it for touch DNA, did they? SLED agent admitted that.  
5 That's not her call. That's the County call. It was not  
6 sent for touch DNA. What did Officer Gottula tell us? He  
7 said he went straight to the strip search. Said he, as far  
8 as he knows, he remembers, he was cuffed correctly, which  
9 would mean he would have had time to put them aside. What  
10 else do we know? Officer Gottula came in and the State --  
11 I'll submit to you that there's videos at the jails. Did  
12 you see a video in jail? I didn't. Didn't see a video.  
13 And then what did Officer Gottula say? I took the lighter  
14 from him. That's a lighter. This is you average lighter  
15 and it's a small one. The smallest one, you can't miss it.  
16 He says it happens all the time. I'm going to submit to  
17 y'all, this doesn't happen all the time. His ex-girlfriend  
18 gets up there and she says, yes, I love him. But she also  
19 said, no, I do not lie under oath for him. And, no, I will  
20 not risk my freedom for him. She claimed it. She said it  
21 was hers. And she said she will not risk her freedom. She  
22 said what was in that jacket -- was hers. She's not a  
23 skinny as he is. He's skinnier. They tried to make a deal  
24 out of that. I really don't think that that's that big of a  
25 deal. You'll have to ask yourself if it is.

1           Then Mr. Kozloski testified today. And we brought out  
2 the warrants. Sure did. A lot of people might want to hide  
3 that. Sure might. They brought it out. And he told you  
4 all about these warrants that had been put on him by one  
5 particular officer. All about how a significant amount had  
6 already been dismissed. And also about how two of them had  
7 been expunged. Why did they wait? Because they may never  
8 have existed. But somehow Officer Cook managed to have them  
9 even though they don't exist. How is that? Remember, we're  
10 talking about possession of heroin. It has to be knowingly  
11 and intentionally; intentional. Think about that:  
12 intentionally. And look at what is missing. First  
13 question: Where is Officer Bell? When you're looking at  
14 that burden of proof, you can even say to yourself perhaps  
15 he's guilty. You could even say to yourself, possibly he's  
16 guilty. You can even say to yourself, he's innocent. I  
17 think that you'll say to yourself, totally innocent. You  
18 can say I have a strong belief. What you have to decide is  
19 guilty beyond a reasonable doubt to have knowingly and  
20 intentionally possessing it. I submit to you when you look  
21 at all the factors you've seen and all the factors you have  
22 not seen, you'll find that you'll acquit Mr. Kozloski.  
23 Thank you.

24           THE COURT: Any reply?

25           BY AST. SOL. DENNIS: Yes, Your Honor. Just briefly.

1 May it please the Court?

2 THE COURT: Yes, sir.

3 AST. SOL. DENNIS: Ladies and gentlemen, I think we've  
4 got some real some real credibility things going on in this  
5 case as well. . We've got the police here, lot's of  
6 experience in law enforcement for a long time. We've got  
7 another police officer that not only has served here in this  
8 county but also oversees and as military police. We've got  
9 a forensic analyst that has served -- I think she said  
10 30-something trials that she's been the expert in. And then  
11 we've got an ex-girlfriend who still very emotional on the  
12 stand; who says that they dated for four years and then when  
13 asked when they broke up, she pauses and says last summer.  
14 And then we've also got the defendant who takes the stand  
15 and discusses the reasons why these officers were there.  
16 Those warrants were expunged. The reason they were  
17 expunged, and you heard it directly from him, was that he  
18 paid restitution to the pawn shop. So we have a reason why.  
19 He shouldn't be shocked that they were brought in because he  
20 was served with them the same time with all of these eleven  
21 other warrants that he wants to talk about. But we know why  
22 they weren't here.

23 The other thing that we have to keep in mind is that  
24 those warrants are not specifically bearing on this case.  
25 The warrants that we care about, the warrant that we care

1 about, is the time that he had heroin not once but twice.  
2 The defense wants you to focus on no weight obtained. But  
3 we have a weight obtained in once instance of heroin. We  
4 have less than .1 grams. And then we have no weight  
5 obtained on the second instance of heroin. And you heard  
6 from Ms. Sorrells the reason we don't have weight obtained  
7 from that is that it's in a cotton ball. You're not going  
8 to be able to weigh the cotton ball and then assign it and  
9 say that's heroin. But we have it on there; enough that you  
10 can see it.

11 Now, when you go back there -- and you'll be able to  
12 handle these and you'll be able to look at it. This tiny  
13 little cotton ball in this tiny little blue bag lying still  
14 in a right pant's pocket, I don't know if I could have felt  
15 that. And I don't know anyone who could have with normal  
16 human hands to feel something so insignificant as this. The  
17 only way that you're going to know that it's in there is if  
18 you put it in there. And how's he gonna put it in there if  
19 his cuff's are -- if his hands are cuffed behind his back?  
20 He knows it's in there. He knows it's in there because he  
21 knew that the first instance of heroin is in there because  
22 he knew that the syringes were in there.

23 In the end, you're going to look at that and that's the  
24 key here when you're weighing this credibility issue. And  
25 who is telling the truth? Who is biased in this? Who needs

1 to get up there and say it wasn't mine? And who needs to  
2 get up there and say, oh, it was mine but it wasn't -- the  
3 other one wasn't mine. It's just too hard to keep track of.  
4 And it doesn't make sense. As far as, you know, all of this  
5 touch DNA and all of that? Well, it's in his pocket. Who  
6 else's DNA is going to be there? We don't have to send it  
7 up there just to say, well, it's his, we found it in his  
8 pocket.

9 In the end we're really talking about a fairly  
10 straightforward case. The defense is doing what defenses  
11 often do, muddying the water. And we all are living in the  
12 low country of South Carolina, and we've all been to the  
13 river, and we've all been to the beach. And we'll stand at  
14 the edge of the river, and we'll stand at the edge of the  
15 beach, and we can see our feet in the water until some wake  
16 comes up or a wave comes up and it covers up our feet. We  
17 can't see our feet, but we still know that they're there.  
18 We know what happened that day. We have multiple instances  
19 of this defendant knowingly and intentionally having heroin.  
20 And in the end, you're going to go back there, and you're  
21 going to decide the same thing, that's he guilty of this  
22 crime. Thank you.

23 JURY CHARGE

24 THE COURT: Ladies and gentleman, it's now time for me  
25 to charge you on the law in this case. The indictment

1 charges the defendant with possession of heroin. I remind  
2 you that the fact that the defendant was arrested, charged,  
3 and indicted in this case is not evidence in this case and  
4 cannot be considered by you as evidence of guilt in this  
5 case, nor does it create any presumption of inference of  
6 guilt. The document is simply the formal written instrument  
7 which contains a charge made against a defendant and is the  
8 formal document which this case is brought into court. The  
9 defendant has pled not guilty to this indictment. And that  
10 plea puts the burden on the State to prove the defendant  
11 guilty. A person charged with committing a criminal offense  
12 in South Carolina is never required to prove himself  
13 innocent. I charge you that it is an important rule of the  
14 law that the defendant in a criminal trial, no matter what  
15 the seriousness of the charge may be, will always be  
16 presumed innocent of the crime for which the indictment was  
17 issued unless guilt has been proven by evidence satisfying  
18 you of that guilt beyond a reasonable doubt. This  
19 presumption of innocence does not end when you begin your  
20 deliberations. But it accompanies the defendant throughout  
21 the trial until you reach a verdict of guilt based on  
22 evidence satisfying you of that guilt beyond a reasonable  
23 doubt.

24 The perception of innocence is like a robe of  
25 righteousness placed about the shoulders of the defendant

1 which remains with the defendant until it has been stripped  
2 from the defendant by evidence satisfying you of the  
3 defendant's guilt beyond a reasonable doubt. The  
4 presumption of innocence is not a mere legal theory. It's  
5 not a legal phrase. It's a substantial right to which every  
6 defendant is entitled to unless you the jury are satisfied  
7 from the evidence of the defendant's guilt beyond a  
8 reasonable doubt.

9       What is a reasonable doubt in the law? A reasonable  
10 doubt is the kind of doubt the would cause a reasonable  
11 person to hesitate to act. The State has the burden of  
12 proving the defendant guilty beyond a reasonable doubt.  
13 Some of you may have served as jurors in civil cases where  
14 you were told that it is only necessary to prove that a fact  
15 is more likely true than not true such as by the greater  
16 weight or the preponderance of the evidence. In criminal  
17 cases, the State's proof must be more powerful than that.  
18 It must be beyond a response doubt. Proof beyond a  
19 reasonable doubt is proof that leaves you firmly convinced  
20 of the defendant's guilt. There are very few things in this  
21 world that we know with absolute certainty. And in criminal  
22 cases, the law does not require proof that overcomes every  
23 possible doubt. If based on your consideration of the  
24 evidence, you are firmly convinced that the defendant is  
25 guilty of the crime charged, you must find the defendant

1 guilty. If, on the other hand, you think there is a real  
2 possibility the defendant is not guilty, you must give the  
3 defendant the benefit of the doubt and find him not guilty.

4 I remind you that during his trial you and I have  
5 certain duties to perform. AS a trial judge, it's my  
6 responsibility to preside over the trial of the case, and I  
7 also have the duty to rule on the admissibility of the  
8 evidence offered during his trial. You are to consider only  
9 the competent evidence before you. If there was any  
10 testimony ordered stricken from the record in this case  
11 during this trial, you must disregard that testimony. You  
12 are to consider only the testimony which has been presented  
13 from the witness stand, any exhibits which have been made  
14 part of the record in this case, and any stipulations of  
15 counsel. I have the additional duty to charge you the law  
16 applicable to this case. As the presiding judge, I'm the  
17 sole judge of the law in this case. And it is your duty as  
18 jurors to accept the law and apply the law as I now state it  
19 to you. If you already have any ideas as to what the law is  
20 or what the law ought to be and it does not agree with what  
21 I now tell you the law is, you must abandon this idea  
22 because you are sworn to accept the law and apply the law  
23 exactly as I state it to you.

24 In every case tried in this court before a jury, the  
25 jury becomes the sole and the exclusive judge of the facts

1 in the case. A trial judge cannot intimate, state, comment  
2 on, or make any statement to a trial jury about the facts in  
3 a case. Since you, the jury, are the sole judges of the  
4 facts in this, you're not to infer from what I have said  
5 during the process of this trial in ruling on the  
6 admissibility of evidence, or otherwise anything that I say  
7 now during the course of this instruction to you, that I  
8 have any opinion about the facts in this case. The law does  
9 not allow me to have an opinion about the facts in this  
10 case. This is a matter solely for you, the jury, to  
11 determine.

12 As jurors, it is your duty to determine the effect,  
13 value, weight, and truth of the evidence presented during  
14 the trial. There are two types of evidence which are  
15 generally presented during a trial: direct evidence and  
16 circumstantial evidence. Direct evidence is the testimony  
17 of a person who claims to have actual knowledge of a fact  
18 such as an eyewitness. Circumstantial evidence is proof of  
19 the chain of facts and circumstances indicating the  
20 existence of a fact. The law makes absolutely no  
21 distinction between the weight or value to be given to  
22 either direct or circumstantial evidence, nor is a greater  
23 degree of certainty required of circumstantial evidence than  
24 of direct evidence. You should weigh all of the evidence in  
25 this case. After weighing all of the evidence, if you're

1 not convinced of the guilt of the defendant beyond a  
2 reasonable doubt, you must find the defendant not guilty.

3 Necessarily, you must determine the credibility of  
4 witnesses who have testified in this case. Credibility  
5 simply means believability. It becomes your duty as jurors  
6 to analyze and to evaluate the evidence to determine which  
7 evidence convinces you of its truth. In determining the  
8 believability of witnesses who have testified in this case,  
9 you may believe one witness over several witnesses, several  
10 witnesses -- several witnesses over one witness. You may  
11 believe a part of the testimony of a witness and reject the  
12 remaining part of the testimony of that same witness. You  
13 may believe the testimony of a witness in its entirety, or  
14 you may reject the testimony of a witness in its entirety.  
15 You may consider whether any witness has exhibited to you  
16 any interest, bias, prejudice, or other motive in this case.  
17 You may also consider the appearance and the manner of a  
18 witness while on the witness stand.

19 The rules of evidence ordinarily do not permit  
20 witnesses to testify as to opinions or conclusions. An  
21 exception to this rule exists for witnesses we call expert  
22 witnesses. A witness who by education and experience has  
23 become an expert in some art, science, profession, or  
24 calling may state an opinion as to relevant material matter  
25 in which the witness claims to be an expert and they also

1 state the reasons for that opinion. You should consider any  
2 expert opinion received in evidence in this case like any  
3 other evidence and give it the weight that you think it  
4 deserves. If you decide that the opinion of an expert  
5 witness is not based on sufficient education and experience,  
6 or if you conclude that the reasons given in support of the  
7 opinion are not sound or that the opinion is outweighed by  
8 other evidence, you may disregard the opinion entirely. An  
9 expert witness's testimony is to be given no greater weight  
10 than that of other witnesses simply because the witness is  
11 an expert. Further, you're not required to accept an  
12 expert's opinion even though it's not contradicted.

13 The statement alleged to have been made by defendant  
14 has been admitted into evidence in this case. While the  
15 Court has determined that the statement is admissible, I  
16 instruct you that you make the ultimate decision of whether  
17 or not the defendant made the statement. If the defendant  
18 did make a statement, you must determine whether the  
19 statement was made by the defendant voluntarily and of his  
20 own free will. This means that the statement was not caused  
21 by pressure, force, fear, threats, coercion, or  
22 intimidation, or by hope or a promise of leniency or reward  
23 of any kind. In determining whether the statement was  
24 voluntary, you should consider both the characteristics of  
25 the defendant and the details of the questioning. Some of

1 the factors that you must consider are the age of the  
2 defendant, the defendant's education or lack of education,  
3 the defendant's mental abilities or capacity, the  
4 defendant's IQ or intelligence, the defendant's background  
5 and environment, the place and length of the detention, the  
6 nature of the questioning, and the advice or lack thereof to  
7 the defendant of his constitutional rights including but not  
8 limited to the right to remain silent, that any statement  
9 could be used against him in a court of law, the right to  
10 have a lawyer present, that if he could not afford a lawyer,  
11 a lawyer would be appointed to represent him without any  
12 cost, and that he could stop making a statement any time.  
13 You must carefully consider all of the surrounding  
14 circumstances before you give any weight to the alleged  
15 statement. The State has the burden of proving beyond a  
16 reasonable doubt that the alleged statement was voluntary.  
17 If you determine it was, you may give the statement any  
18 further consideration that you deem proper. You must decide  
19 what weight, if any, should be given to the alleged  
20 statement. If you determine the alleged statement was not  
21 the free and voluntary statement of the defendant, you  
22 should not consider the statement at all.

23 In order to establish criminal liability, criminal  
24 intent is required. For example, the mental state required  
25 to be proven by the State for a particular crime might be

1 purpose, intent, knowledge, recklessness, or criminal  
2 negligence. Criminal intent must be proven by the State  
3 beyond a reasonable doubt. Criminal intent is always a  
4 matter that must be determined by the jury from the  
5 circumstances surrounding the situation. There is no way to  
6 prove intent to a mathematical certainty. There is no way  
7 medical science can dissect a person's brain and determine  
8 what the person had in mind. So the law says that criminal  
9 intent may be inferred from the circumstances shown to have  
10 existed. And this is how you make a determination as to  
11 whether or not the element requiring intent was present. It  
12 is not necessary to establish intent by direct and positive  
13 evidence. But intent may be established by inference in the  
14 same way as any other fact by taking into consideration the  
15 acts of the parties and all of the facts and circumstances  
16 of the case. Criminal intent is a mental state, a  
17 conscience wrongdoing. It is up to you to determine what  
18 the defendant intended to do based on the circumstances  
19 shown to have existed. Criminal intent can arise from  
20 action or failure to act. It may arise from negligence,  
21 recklessness, or an indifference to duty or consequences  
22 that is considered by the law to the equivalent of the  
23 criminal intent.

24 The defendant is charged with possession of heroin.  
25 The State must prove beyond a reasonable doubt that the

1 defendant knowingly or intentionally possessed heroin.  
2 Knowingly means with the knowledge consciously not  
3 accidentally. Intentionally means willfully intending the  
4 result which actually occurs, not accidentally or  
5 involuntary. Intent may be shown by acts and conduct of the  
6 defendant in other circumstances from which you may  
7 naturally and reasonably infer intent. To prove possession,  
8 the State must prove beyond a reasonable doubt that the  
9 defendant had both power and the intent to control the  
10 disposition or the use of the heroin. Possession may be  
11 either actual or constructive. Actual possess means that  
12 the heroin was in actual, physical custody of the defendant.  
13 Constructive possession means that the defendant had  
14 dominion and control, or the right to exercise dominion and  
15 control over either the heroin itself or the property for  
16 which the heroin was found. Mere presence at the scene  
17 where the drugs are found is not enough to prove possession.  
18 The defendant's knowledge and possession may be inferred  
19 when a substance is found on the property under the  
20 defendant's control. However, this inference is simply an  
21 evidentiary fact to be taken into consideration by you along  
22 with the other evidence in this case and to be given the  
23 weight that you decide it should have.

24 Ladies and gentlemen of the jury, your verdict must be  
25 a unanimous verdict. And Mr. Malone, as the foreperson, it

1 will be your duty to fill out our verdict form. And you  
2 will have the indictment with you also in the jury room. On  
3 the front of the indictment, Mr. Foreman, it says verdict.  
4 If you would sign what the verdict is and sign as the  
5 foreperson and date it. And on the verdict form, it's  
6 pretty self-explanatory. It has the case caption and the  
7 charge. And it says, "We the jury unanimously find the  
8 defendant," and you circle the appropriate verdict which the  
9 jury comes to. Again, sign it. It's already dated for you.  
10 If you have any questions, of course, send us a note. I'm  
11 going to send you to your jury room one last time. But  
12 please don't discuss the case quite yet until you receive  
13 the verdict form, the indictment, and the exhibits. When  
14 you receive those, then you may begin your deliberations.  
15 Once you reach a verdict, please knock on the door, and  
16 we'll bring you back in to receive your verdict. Thank you.

17 (Whereupon, the jury exits the courtroom at 10:26 a.m.)

18 THE COURT: Any exceptions to the charge on the law  
19 from either the State or from the defense?

20 MS. LITTLEJOHN: None, Your Honor.

21 AST. SOL. DENNIS: None, Your Honor.

22 THE COURT: All right. And Ms. Littlejohn, I  
23 understand that you wanted to renew your previous motions.

24 MS. LITTLEJOHN: Correct, Your Honor. Going to renew  
25 in particular the motion to suppress. I think I set forth

1 all the details previously. And in particular, the expunged  
2 charges that were thrown upon the solicitor and then upon us  
3 on the -- sprung on us the day of trial, as well as all the  
4 other reasons that I set forth that are in -- set forth in  
5 my brief; as well as the indictment issue with regard to the  
6 two warrants that we've discussed. Your Honor, I think that  
7 those as well as the other motions that I have along with  
8 the directed verdict, I would ask just to renew those.

9 THE COURT: Thank you, Ms. Littlejohn. And for the  
10 same reasons as I articulated previously, the Court  
11 respectfully denies your motions.

12 MS. LITTLEJOHN: Thank you, Your Honor.

13 THE COURT: If y'all would just get together, here's  
14 the indictment and the verdict form. And just make sure we  
15 have all the exhibits to go back to the jury.

16 (Brief pause.)

17 (The jury began deliberations at 10:28 a.m.)

18

19 (The proceedings resumed at 10:54 a.m.)

20 THE COURT: It's my understanding that we have a  
21 verdict. Everyone ready to proceed?

22 AST. SOL. DENNIS: Yes, Your Honor.

23 MS. LITTLEJOHN: Yes, Your Honor.

24 THE COURT: All right. Let's have our jury please.

25 (Whereupon, the jury enters the courtroom at 10:55

1 a.m.)

2 THE COURT: Welcome back, ladies and gentlemen of the  
3 jury. Mr. Foreman, it is my understanding that the jury has  
4 reached a verdict. Is that correct?

5 FOREPERSON: We have, Your Honor.

6 THE COURT: If you would please hand it to the bailiff.  
7 (Brief pause.) Everything appears in order. Madam Clerk,  
8 would you publish the verdict.

9 VERDICT OF THE JURY

10 THE CLERK: The State of South Carolina, County of  
11 Berkeley, versus Chad R. Kozloski, indictment number  
12 2016-GS-08-133, as to the charge possession of heroin, we  
13 the jury unanimously find the defendant guilty. Signed by  
14 the foreperson.

15 THE COURT: Madam Clerk, if you would please poll the  
16 jury.

17 THE CLERK: Juror number 90, is this your verdict?

18 JUROR: Yes.

19 THE CLERK: Is this still your verdict?

20 JUROR: Yes.

21 THE COURT: Juror number 97, is this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR: (Affirms.)

25 THE CLERK: Juror number 97, is this your verdict?

1 JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR: (Affirms.)

4 THE CLERK: Juror number 160, is this your verdict?

5 JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR: Yes.

8 THE COURT: Juror number 75, is this your verdict?

9 JUROR: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR: Yes.

12 THE CLERK: Juror number 161, is this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR: Yes.

16 THE COURT: Juror number 39, is this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR: Yes.

20 THE CLERK: Juror number 130, is this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR: Yes.

24 THE CLERK: Juror number 13, is this your verdict?

25 JUROR: Yes.

1 THE CLERK: Is this still your verdict?

2 JUROR: Yes.

3 THE CLERK: Juror number 169, is this your verdict?

4 JUROR: Yes.

5 THE CLERK: Is this still your verdict?

6 JUROR: Yes.

7 THE COURT: Juror number 137, is this your verdict?

8 JUROR: Yes.

9 THE CLERK: Is this still your verdict?

10 JUROR: Yes.

11 THE CLERK: Juror number 88, is this your verdict?

12 JUROR: Yes, it is.

13 THE CLERK: Is this still your verdict?

14 JUROR: Yes.

15 THE CLERK: Juror number 51, is this your verdict?

16 JUROR: Yes.

17 THE CLERK: Is this still your verdict?

18 JUROR: Yes.

19 THE CLERK: Your Honor, the jury has been polled and  
20 the verdict stands.

21 THE COURT: Thank you, Madam Clerk. Ladies and  
22 gentlemen of the jury, if you would please retire to your  
23 jury room for the very last time. I'll be in there to  
24 release you shortly.

25 (Whereupon, the jury exits the courtroom at 10:58 a.m.)

1 THE COURT: Anything further before I release the jury?

2 MS. LITTLEJOHN: Nothing, Your Honor.

3 AST. SOL. DENNIS: Nothing from the State, Your Honor.

4 THE COURT: All right. If y'all would prepare the  
5 sentencing sheets, we'll proceed with sentencing once I  
6 release the jury.

7 AST. SOL. DENNIS: Yes, Your Honor.

8 (Brief pause.)

9 THE COURT: Are the parties ready to proceed?

10 AST. SOL. DENNIS: Yes, Your Honor.

11 MS. LITTLEJOHN: Yes, Your Honor.

12 AST. SOL. DENNIS: If we could wait for Mr. Church.

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

14 AST. SOL. DENNIS: Your Honor, I just wanted to  
15 reiterate the State's position that we will be going for a  
16 sentencing based on possession of heroin in the third, or  
17 third instance. And I've got case law. I've discussed it  
18 with defense counsel. I believe that they would stipulate  
19 to the two prior convictions under State v. Scriven (ph).  
20 In a very analogous situation, a court, a trial court, and  
21 the appellate court upheld that even though an indictment  
22 can be sworn -- or an issue for a first offense -- that the  
23 sentencing could comply with an enhanced drug penalty. So I  
24 would just reiterate that.

25 THE COURT: All right, sir. Thank you. And do you

1 have a sentencing sheet?

2 AST. SOL. DENNIS: Yes, Your Honor, I do. May I  
3 approach?

4 THE COURT: Yes, sir. (Brief pause.) All right. Ms.  
5 Littlejohn, anything from the defense?

6 MS. LITTLEJOHN: Yes, Your Honor. Briefly, I would  
7 just ask that we do make that -- Mr. Church and I have seen  
8 the certified copies. I just think we should probably make  
9 them a part of the record.

10 THE COURT: Yes, ma'am.

11 MS. LITTLEJOHN: To have a good, clean record here,  
12 Your Honor.

13 AST. SOL. DENNIS: May I approach as well?

14 THE COURT: Yes, if you -- we'll mark that as Court's  
15 exhibit.

16 (Whereupon, Court's Exhibits No. 1 and 2, Michigan  
17 Court Records, were marked for identification.)

18 MS. LITTLEJOHN: Your Honor, I believe you heard a lot  
19 about Mr. Kozloski in this. His last conviction was in  
20 2008. He is facing five years here today. He has been in  
21 no trouble since. He's employed. And I tell all of my  
22 clients, I don't know what happened. I was not there. I'm  
23 sure the solicitor is probably telling their officers that:  
24 I don't know what happened; I wasn't there. So that's all  
25 we can ever say to anybody. But I know what the jury said.

1 I respect that. However, I would ask you not to give him  
2 the maximum for exercising his right to trial. I think her  
3 Honor saw some of the issues that were presented and some of  
4 the things that occurred her in the trial. I'd ask you to  
5 take those into consideration, and we would ask for mercy  
6 with regard to that. Look at that and the last conviction  
7 being in 2008.

8 THE COURT: Thank you, ma'am. Anything further?

9 THE DEFENDANT: Just that I am gainfully employed and I  
10 have not been in any trouble -- and I do respect the jury's  
11 opinion.

12 MS. LITTLEJOHN: Your Honor, he told me he moved from  
13 Detroit down here. He wanted to get away from that Detroit  
14 life. And I'm guessing it's kind of like what we hear about  
15 on the TV. He said it was bad up that way. So, I respect  
16 him wanting to come down here and start a new life.

17 THE COURT: I respect that as well, Mr. Kozloski.  
18 Considering you've got two prior convictions for heroin, and  
19 then you've got an issue with -- or a conviction involving  
20 cocaine, that's certainly concerning that you may have a  
21 drug problem that you haven't been able to deal with during  
22 this period of time. So I've got to take that into  
23 consideration the fact that this is your third offense. I  
24 don't think it's an appropriate sentence, would be  
25 probation. I'm going to sentence you to enough time so that

1 you can get some treatment. And when you get out, I'm going  
2 to order that you continue with some drug. treatment.

3 On indictment 2016-GS-08-00133, you're hereby committed  
4 to the State Department of Corrections for a period of five  
5 years provided upon the service of three years, and  
6 probation to follow for three years. Special conditions of  
7 probation are that you are to receive substance abuse  
8 counseling, random drug and alcohol testing. You must pay  
9 \$500 to the Clerk of Court pursuant to the statute for your  
10 public defender appointment. And I'm going to recommend the  
11 ATU unit for you so that you can get that drug treatment  
12 while you're incarcerated. Good luck to you.

13 MS. LITTLEJOHN: Thank you, Your Honor.

14 (The proceedings in the trial of this case concluded at  
15 11:14 a.m.)

16 - - - - -  
17 (End of Record)

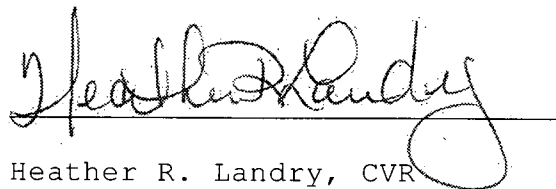
18  
19  
20  
21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA            )  
  )     CERTIFICATE OF REPORTER  
COUNTY OF CHARLESTON            )

I, HEATHER R. LANDRY, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the trial of the captioned case, in the Court of General Sessions for Berkeley County, South Carolina, on the 30th-31st day(s) of January 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party herto.

May 24, 2017.

  
Heather R. Landry, CVR  
Official Court Reporter

**Berkeley County Courthouse**  
**RANDOM STRIKE SHEET**

JUDGE NAME :  
TRIAL TYPE : General Session  
PANEL ID : 2016GS080133  
COURTROOM E

DESCRIPTION : State of SC vs. Chad Kozloski

Sorted by: Random Nbr  
Trial.

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Malone, Richard J Jr.	90	W	M	( )	( )	( )	
2 Williams, Jason	180	W	M	<del>( )</del>	( )	( )	
3 McKeever, Jessica E	97	W	F	( )	( )	( )	
4 Bowling, Kristina N	20	W	F	<del>( )</del>	( )	( )	
5 Uttenhove, Christina L	160	W	F	( )	( )	( )	
6 Preslar, Cristy J	123	W	F	( )	<del>( )</del>	( )	
7 Jones, Rita R	75	W	F	( )	( )	( )	
8 Van Norden, Britany T	161	B	F	( )	( )	( )	
9 Comer, Richard F	39	W	M	( )	( )	( )	
10 Richardson, Denielle A	130	B	F	( )	( )	( )	
11 Brown, Jerome A	27	B	M	<del>( )</del>	( )	( )	
12 Bell, Eugenia W	13	W	F	( )	( )	( )	
13 Walker, Stephen F	169	W	M	( )	( )	( )	
14 Prioleau, Shelley C	124	B	F	( )	<del>( )</del>	( )	
15 Sader, Anne M	137	W	F	( )	( )	( )	
16 Lott, James R	88	W	M	( )	( )	( )	
17 Franks, Stanley W	51	W	M	( )	( )	( )	
18 Murphy, Brenda G	109	W	F	( )	( )	( )	Alt #1
19 Baxley, J M	11	W	M	( )	<del>( )</del>	( )	
20 President, Charona A J	122	B	F	( )	( )	( )	Alt #2
21 Harvey, Ethan S	63	W	M	( )	( )	( )	
22 Myers, Steve R	112	W	M	( )	( )	( )	
23 Metzler, Justin A	99	W	M	( )	( )	( )	
24 Beers, Laura D	12	W	F	( )	( )	( )	

Berkeley County Courthouse  
RANDOM STRIKE SHEET

165

JUDGE NAME :

TRIAL TYPE : General Session

PANEL ID : 2016GS080133

COURTROOM E

Sorted by: Random Nbr

DESCRIPTION : State of SC vs. Chad Kozloski

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Faulk, Brenda W	49	W	F	( )	( )	( )	
26 Perrydore, Tanya J	120	W	F	( )	( )	( )	
27 Mazyck, Christine A	95	W	F	( )	( )	( )	
28 Segars, Jesse A	139	W	M	( )	( )	( )	
29 Gethers, Tharren S	54	B	M	( )	( )	( )	
30 Mori, Jo L	107	W	F	( )	( )	( )	
31 Wooten, Bradley S	182	B	M	( )	( )	( )	
32 Vandyke, Cory C	162	W	M	( )	( )	( )	
33 Lavanway, James L	82	W	M	( )	( )	( )	
34 Howle, Charles B Jr.	69	W	M	( )	( )	( )	
35 Gant, Derrick A	53	B	M	( )	( )	( )	
36 Bailey, Larry E Jr.	8	W	M	( )	( )	( )	

Total Number of Jurors: 36

\*\* END OF REPORT \*\*

16 FEB -9 PM 12:45  
MARLYN BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

BAA/0243111/2015-01-00123  
WITNESSES

Berkeley County Sheriff's Office

*Ashley B...*

AGENCY CASE NUMBER

201501002550

ARREST WARRANT NUMBER

2015A0810400065

DATE OF ARREST

01/15/2015

ACTION OF GRAND JURY

**True Bill**

*Julia M. Marshall 2-9-16*  
Foreperson of Grand Jury Date:

VERDICT

*GUILTY*

*Richard J. Malachuk 1-31-2017*  
Foreperson of Petit Jury Date:

DOCKET NO. 2016-GS-08-00133

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2016

THE STATE

VS.

CHAD ROBERT KOZLOSKI

W/M DOB: [REDACTED]

Indictment for

POSSESSION OF HEROIN 1ST

SC Code: § 44-53-0370(d)(1)

CDR Code: 0176

*JH*

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

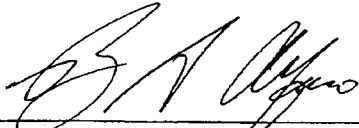
INDICTMENT

At a Court of General Sessions, convened February 2016, the Grand Jurors of Berkeley County present upon their oath:

**Possession of Heroin**

The defendant, Chad Robert Kozloski, did on or about January 14, 2015, in Berkeley County, South Carolina, knowingly or intentionally possess Heroin, a schedule I controlled substance narcotic. All in violation of 44-53-0370(d)(1) of the South Carolina Code of Laws (1976) as amended.

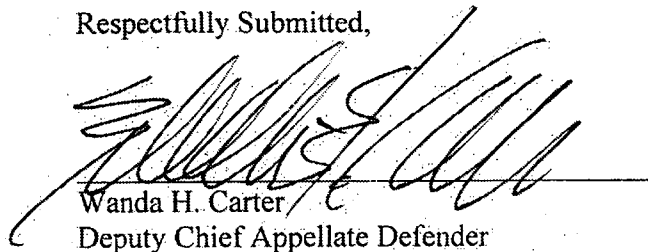
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
**BRYAN A. ALFARO**  
DEPUTY SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

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

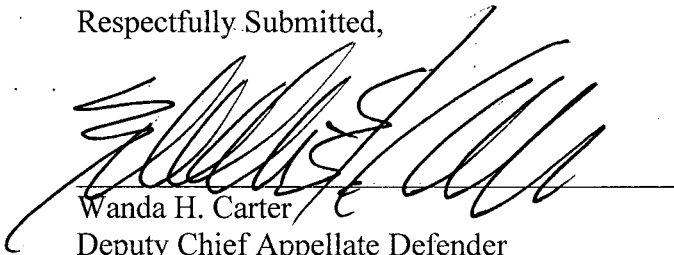
ATTORNEY FOR APPELLANT

This 20th day of October, 2017.

## CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 20th day of October, 2017.

**RECEIVED**  
OCT 20 2017  
SC Court of Appeals