

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

William Jeffrey Young, Circuit Court Judge

JAMES N. STARNES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001259

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 2, 2015	1
APPLICATION FOR POST-CONVICTION RELIEF	379
RETURN AND MOTION TO DISMISS.....	391
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 10, 2017	397
ORDER OF DISMISSAL.....	426
INDICTMENTS AND SENTENCE SHEETS.....	433

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
CASE NO.: 2011-GS-29-1278, 1279
1280, 1281, 1282

STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
JAMES NICHOLAS STARNES) VOLUME I (PAGES 1 - 264)

JUNE 2, 2015
LANCASTER, SOUTH CAROLINA

BEFORE THE HONORABLE BRIAN GIBBONS

APPEARANCES:

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I-N-D-E-X

WITNESSES: Direct Cross Re-Direct Re-Cross

*PRE-TRIAL TESTIMONY:

*Ryan Mclemore

By Mr. Knight 17

By Mr. Lifsey 26

*Tony Bowers

By Ms. Collins 29

By Mr. Lifsey 35

Opening statements 47

Tony Bowers

By Mr. Knight 54

By Mr. Lifsey 72

By Mr. Knight 80

By Mr. Lifsey 82

Ryan Mclemore

By Mr. Knight 92

By Mr. Lifsey 120

By Mr. Knight 130

By Mr. Lifsey 131

Brandon Rollins

By Mr. Knight 136

By Mr. Lifsey 146

Crystal Jones

By Ms. Collins 148

By Mr. Lifsey 155

By Ms. Collins 157

Dyvonne Jowers

By Mr. Knight 157

By Mr. Lifsey 164

Rico Green

By Ms. Collins 165

In camera:

By Ms. Collins 167

By The Court 169

Proffered:			
By Ms. Collins	174		
Rico Green (contd.)			
By Ms. Collins	192		
By Mr. Lifsey		205	
By Ms. Collins			206
By Mr. Lifsey			208
Ryan Mclemore			
By Mr. Knight	209		
By Mr. Lifsey		210	
By Mr. Knight			213
Ken Taylor			
By Mr. Knight	214		
By Mr. Lifsey		237	
Crystal Jones			
By Ms. Collins	245		
By Mr. Lifsey		245	
Ann Horton			
By Mr. Knight	246		
By Mr. Lifsey		262	
Douglas Robinson			
By Mr. Knight	266		
By Mr. Lifsey		293	
Closing statements	314		
Jury Charge	343		
Verdict	363		
Sentencing	373		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
S-1	Photos (1.1 - 1.38)	39	110
S-2	Chain of Custody form	65	67
S-3	BEST kit - chain of custody		100
S-4	BEST kit - chain of custody		265
S-5	BEST kit - B178913 - drugs	141	282
S-6	Miranda waiver		
S-7	Green's statement		
S-8	BEST kit - drugs		274
S-9	BEST kit - drugs - 3 bags		289
S-10	Paper bag with marijuana		258
S-11	Ruger P95 pistol with holster And magazines	227	228
S-12	Paper bag containing digital Scale	228	229
S-13	Marijuana analysis worksheet	243	257
S-14	Money paperwork	259	261
S-15	SLED chain of custody Lab #L11-09616		272
S-16	SLED chain of custody Lab #L11-09614		279
S-17	SLED chain of custody Lab #L11-09615		288
C-1	Note from jury	361	

1 (COURT BEGINS AT 9:10 AM.)

2 THE COURT - All right, good morning. I believe
3 we have some motions on this matter and I've got -- been
4 handed up defendant's motion in limine, so why don't we
5 just take them in the order presented.

6 MR. LIFSEY - Your Honor, -- and just to tell you,
7 I will tell you some of them have been resolved, I think.
8 I you want me to kind of ---

9 THE COURT - Yeah, go ahead and tell me which ones
10 have been resolved.

11 MR. LIFSEY - All right. Beginning with number
12 one is the Denno hearing -- have that, so I believe ---

13 THE COURT - Okay.

14 MR. LIFSEY - -- we'll need to have a Denno
15 hearing in a moment. And, of course, I'd like the Denno
16 hearing to cover any statement that they intend to
17 introduce at all just to make sure we won't have any
18 problem later. The second is to ask the State to reveal if
19 they've offered any plea bargain to any testifying
20 witnesses. There's several non-law enforcement witnesses,
21 including one that is incarcerated. I just want to state -
22 - have them state on the record whether or not they've
23 offered him any inducement, any promise of leniency. The
24 provision now, as the Court knows, in our code that allow
25 potential reductions of sentence later on for cooperation,

1 I want to ask on the record if they have done any of that
2 or promised any of that or discussed any of them, either
3 them or law enforcement agents acting of their behalf.

4 THE COURT - All right, solicitor, what do you
5 know about that?

6 MR. KNIGHT - Yes, Your Honor, we did speak with
7 Mr. Green yesterday downstairs in the courthouse and we --
8 we did make him aware of the downward departure as they
9 call the statute, however, we did not promise him any kind
10 of deal or offer him any kind of, you know, to -- we made
11 him aware of the statute. We told him that it exists and -
12 --

13 THE COURT - But has any plea bargain been made
14 with any particular witness?

15 MR. KNIGHT - No plea bargain has been made.

16 MR. LIFSEY - And that's fine, obviously I take
17 him at his word, but I believe just to clarify that if
18 they've made him aware of that, I need to be able to ask
19 him about that. I intend to -- I think I'm entitled to
20 fully exploring his -- I don't know -- potential bias but
21 motivation to testify in this trial.

22 THE COURT - I agree.

23 MR. LIFSEY - Thank you, Your Honor.

24 THE COURT - I -- you can certainly talk about the

25 ---

1 MR. LIFSEY - Number three concerns -- my motion
2 number three concerns photographs. I've looked at the
3 photographs that Solicitor Knight showed me a moment ago,
4 and if those are all he intends to use, I don't have any
5 objection to his photographs. Is there -- I'd just like --
6 is there anything else other than what you showed me?

7 MR. KNIGHT - No, just those.

8 THE COURT - The photographs that you've seen that
9 the State intends to offer are fine with the defense.

10 MR. LIFSEY - Yes, sir. They're not -- they're
11 not objectionable.

12 THE COURT - Right, is not objectionable.

13 MR. LIFSEY - That's correct.

14 THE COURT - Okay, so that takes care of number
15 three.

16 MR. LIFSEY - Number four, I'm asking if any of
17 the potential witnesses for the State have told law
18 enforcement anything different than the statements they've
19 been provided to me, so I'd like to know whether they have.
20 If they have, I believe I'm entitled to it, because I think
21 that would be subject to cross examination and potentially
22 could be exculpatory under Brady and Kyle (sic) so what I'm
23 asking is, if Mr. Green -- for example, he said he spoke to
24 Mr. Green yesterday -- did Mr. Green say anything different
25 than he said in his written statement, and did Mr. Jowers,

1 who's also a potential witnesses, if they've had
2 conversation with Mr. Jowers, has he said anything
3 different than what is in his written statement, then I
4 believe I'm entitled to that.

5 THE COURT - All right, you are entitled to that.
6 Solicitor?

7 MR. KNIGHT - Yes, when speaking with Mr. Green
8 yesterday afternoon, he did state that the statement he
9 gave to law enforcement back on August the 4th, 2011 was
10 different than what he believes now. He basically stated
11 that it was entirely false that he made in the statement,
12 because law enforcement wanted him to make the statement
13 and not because it was true, however, you know, we do have
14 witnesses of statements that state otherwise, but that is
15 what he told us yesterday afternoon.

16 THE COURT - All right.

17 MR. LIFSEY - Anybody recanted their testimony?

18 MR. KNIGHT - I did speak with Mr. Jowers, Dyvonne
19 Jowers. He basically stated the same thing he stated in
20 his statement when he spoke with me, stating that he was
21 just along for the ride, and he had no knowledge of any
22 part in the dealing of the drugs or anything like that.

23 MR. LIFSEY - So Jowers' current statements then
24 are consistent with his written statement?

25 MR. KNIGHT - That's correct.

1 THE COURT - And the other witnesses recant on his
2 previous written statement or indicated he was yesterday
3 talking to you?

4 MR. KNIGHT - That's correct.

5 MR. LIFSEY - Yeah, who knows what he's going to
6 say ---

7 THE COURT - Who knows what he's going to say on
8 the witness stand.

9 MR. LIFSEY - Yes, sir. And I -- I don't want to
10 jump ahead of ourselves, but I would ask the Court -- as
11 I'm sure you're already familiar with the rules for
12 impeaching with a prior inconsistent statement -- if that's
13 what the State intends to do -- make sure we adhere to
14 those rules ---

15 THE COURT - Yes, sir.

16 MR. LIFSEY - Number five, I'm requesting that the
17 witnesses be sequestered in this matter.

18 THE COURT - Any problem with that, solicitor,
19 other than the chief investigating officer?

20 MR. KNIGHT - Sure. I have no problem with that.

21 THE COURT - Okay. Then that'll be the order of
22 the Court.

23 MR. LIFSEY - And just -- and to clarify and I'm
24 trying not to make it any more difficult than it has to be,
25 I think in prior -- I don't think in front of Your Honor,

1 but just to -- what sequester means is, of course, not
2 discussing their testimony, what's going on in the
3 courtroom. I mean that's what involving sequestration of
4 witnesses means to me. It's not just that they're
5 physically outside the courtroom; it's that they're not
6 allowed to discuss their testimony, their -- what's going
7 on the courtroom.

8 THE COURT - Okay.

9 MR. LIFSEY - Make sure he clarifies that with law
10 enforcement's witnesses.

11 MR. KNIGHT - I do have one question about the
12 sequestration of the witnesses. The custodian of the
13 evidence, Ann Horton, who is also one of our witnesses,
14 she's got all of our evidence that we are going to need
15 throughout the trial -- how we can handle that.

16 MR. LIFSEY - I don't care about the witness
17 Horton. That's fine. I mean I -- that sounds rude, but I
18 certainly have no -- she can be an exception to the
19 sequestration rule.

20 THE COURT - Okay.

21 MR. LIFSEY - Mainly what I want are -- there are
22 some civilian witnesses in this case that aren't in
23 custody, obviously, remain in custody, sequestered I guess
24 in the basement, but the main law enforcement witnesses
25 other than of course ---

1 THE COURT - Are there any defense witnesses?

2 MR. LIFSEY - No, sir, other than potentially my
3 client, but ---

4 THE COURT - Okay. I just -- you know, what's
5 good for that side is good for your side as well, so if
6 you're not intending on calling any, that'll be fine.

7 All right, sequestration, of course, means that
8 they can't be in the courtroom during the testimony of
9 another witness, nor discuss the testimony of the other
10 witness with that particular witness. Okay? All right, so
11 that's ordered. Number six.

12 MR. LIFSEY - Number six, it is -- in some ways I
13 mean might be early, but I'd like -- might be premature,
14 but I'd like the Court to have them state on the record,
15 maybe now if they can do it, but certainly prior to my
16 client getting ready to testify, what they think they're
17 entitled to impeach him with, because, of course, the Court
18 has to make a ruling on whether or not that's more
19 probative than prejudicial, whether it's too similar to the
20 convictions he's on trial for, and those are factors that
21 he'll need to think about when he's deciding to testify or
22 not.

23 THE COURT - All right, what kind of record does
24 he have that the State would seek to impeach his
25 credibility with ---

1 MR. KNIGHT - Your Honor, ---

2 THE COURT - --- if he were to testify?

3 MR. KNIGHT - --- if I remember correctly, I think
4 he's got a 2014 forgery from North Carolina that he was
5 just convicted of. Or York County, I'm sorry.

6 THE COURT - All right, well, that's impeachable.

7 MR. LIFSEY - Yes, sir, I understand.

8 MR. KNIGHT - And that's the only thing that I
9 know of right now based on his rap sheet.

10 THE COURT - Well, I mean do you have -- does he
11 have any prior drug convictions?

12 MR. KNIGHT - He -- I believe he does, but I would
13 have to look through -- he's got a lengthy rap sheet. I'm
14 not sure at this point. If I could have a few minutes to
15 look through it to make.---

16 THE COURT - Well, more likely than not, those
17 would not -- I would not allow those to come in. You
18 haven't asked me if they could come in yet, but I'm just
19 going ahead and kind of giving you an idea of what my
20 ruling would be, because I believe that would be
21 substantially prejudicial under a Rule 403 analysis, but
22 certainly the forgery conviction could come in. If there's
23 anything else non-drug-related within the ten-year period
24 or dishonesty or whatever, let me know about it. Okay?

1 MR. LIFSEY - Your Honor, number seven is moot at
2 this point. We've already past that stage. Number -- I
3 don't have a number eight, but let me add one additional
4 matter. I was provided yesterday morning with a copy of a
5 letter that -- and I'll let -- the solicitor can speak to
6 when he knew about it and what happened, but I was provided
7 with a copy of a letter than has been in the possession of
8 law enforcement since 2011 that I was provided yesterday,
9 and I just don't think they ought to be able to use it. As
10 the Court knows, according to the rules of -- the criminal
11 rules of criminal procedure require that they comply I
12 think within 30 days. We have an administrative order that
13 requires them to provide me discovery by first appearance.
14 I think it's unfair for them -- and I don't mean this --
15 I'm not accusing you of any unethical violation. What I'm
16 saying is -- I think it's substantially unfair for them on
17 a case that's almost four years old would be providing me
18 evidence the day before trial when the State's had it in
19 their possession for four years.

20 THE COURT - And what evidence is it?

21 MR. LIFSEY - It is a letter purportedly from Rico
22 Green to a female -- I think was his girlfriend or some
23 acquaintance at the time. It purports -- I mean once I
24 again I haven't the chance to analyze his handwriting. You
25 know, I might've called witnesses on whether or not that's

1 actually his handwriting. I think it purports to support -
2 - I presume it is a document they would use to impeach him
3 if he gets up and says, you know, I'm not -- I don't know
4 anything about anything. So I object to it, first of all
5 on discovery basis. As far as evidentiary objections I
6 want to see how they attempt to use it at trial, may they
7 have evidentiary objections, but I think as a preliminary
8 matter, it just seems incredibly unfair for a case that's
9 almost four years old for me to get evidence the morning we
10 are ---

11 THE COURT - All right, solicitor, what's your
12 response?

13 MR. KNIGHT - Yes, Your Honor, I have received the
14 information from Lieutenant Mclemore about this letter
15 yesterday afternoon. This letter was -- it is addressed
16 from Rico Green, the co-defendant who is now incarcerated,
17 to his girlfriend Allison Miles with information about this
18 particular case. This letter was seized through a search
19 warrant that had nothing to do with this case. It was
20 another drug search warrant seized by Jeff Steele with the
21 Lancaster County Sheriff's office. This was put in the
22 file several months after the original case file for this
23 case. It was put together -- that's why we didn't -- it
24 kind of slipped through the cracks, because it was one of
25 those things that the letter was associated with a

1 different case, but it had to do with this case based on
2 the content of the letter. The State ---

3 THE COURT - How long has the State known about
4 the content of the letter?

5 MR. KNIGHT - The solicitor's office hasn't known
6 about it since yesterday afternoon.

7 THE COURT - That's all I'm asking. How long has
8 the State known about the contents of the letter?

9 MR. KNIGHT - I believe 10 of 2011, 10/11, 2011.

10 THE COURT - All right, it's not coming in.
11 All right, what else?

12 MR. LIFSEY - I think that covers everything. I
13 spoke to Mr. Knight about rap sheets for some of the
14 testifying witnesses, which I think he has already given
15 me, but none of them are going to -- none of the ones that
16 I'm concerned about are going to testify right -- at first,
17 so we'll take -- when we take our first morning break, you
18 know, I'll get together and I'll get copies, if I don't
19 have them already. I think he's already given me those,
20 but I just -- as far as I know, that's it beyond having the
21 Denno hearing.

22 THE COURT - No other pre-trial matters at this
23 time.

24 MR. LIFSEY - Not ---

1 THE COURT - All right, other than the Jackson
2 versus Denno. Anything else from the State on the motion
3 line before I hear your Jackson vs. Denno?

4 MR. KNIGHT - Judge, other than -- I think -- you
5 said you wouldn't object to any of the photographs, to go
6 ahead and entering them into and mark them as exhibits?

7 MR. LIFSEY - That's fine. I don't -- you can
8 have them marked for -- I think -- however you want to do
9 it. I have no objection.

10 THE COURT - Well, if you don't have any objection
11 to them, we'll just go ahead and introduce them into
12 evidence.

13 MR. LIFSEY - That'll be fine. I ---

14 THE COURT - Go ahead and have them marked in
15 order. That'll be easier for my court reporter, you can go
16 ahead and do it.

17 MR. LIFSEY - And I'm saying that presuming that
18 officers will testify that that's the condition that the
19 bar was in and that's the pictures they took.

20 THE COURT - Okay.

21 MR. LIFSEY - As long as that's stated, I don't
22 have any problem with it.

23 THE COURT - We can do that after the Denno
24 hearing. We can have all that marked up. All right,
25 anything else?

RYAN MCLEMORE - DIRECT BY MR. KNIGHT (PRE-TRIAL)

17

1 MR. LIFSEY - No, sir.

2 (WHEREUPON, DISCUSSION IS HELD WITH NEW
3 MAGISTRATE JUDGE AND THE INTERNS REGARDING OBSERVING COURT)

4 THE COURT - Solicitor, are you ready on the
5 Jackson v. Denno issue?

6 MR. KNIGHT - Yes, Your Honor.

7 THE COURT - All right, you can call your witness.

8 MR. KNIGHT - At this time I'd like to call
9 Lieutenant Ryan Mclemore.

10 THE COURT - All right, sir, if you'll come
11 around.

12 RYAN MCLEMORE, AFTER BEING FIRST DULY SWORN,
13 TESTIFIES AS FOLLOWS -

14 THE COURT - All right, solicitor.

15 DIRECT EXAMINATION

16 BY MR. KNIGHT -

17 Q Could you please state your name and occupation for
18 the record?

19 A Lieutenant Ryan Mclemore. I am the narcotics
20 supervisor for Lancaster County Sheriff's office.

21 Q All right, were you working in 2011 on August 4th?

22 A Yes, I was.

23 Q All right. Do you remember seeing the Defendant,
24 James Starnes on that day?

25 A Yes.

1 Q What time -- around what time did you see him that
2 day?

3 A It was in the evening. I can't remember the exact
4 time. It was toward the evening.

5 Q Under what circumstances did you see the defendant
6 that night?

7 A He was working or running a bar here in Lancaster
8 County.

9 Q Did he give you any kind of statement or speak to you
10 in any way?

11 A He did.

12 Q What'd he say to you?

13 A I had asked him -- had ended up on a scene that was
14 from a drug investigation, and he was picked out by another
15 co-defendant in this case and -- or description-wise. And
16 when I approached him and spoke with him, I asked him was
17 he running the bar that night, and he said yes.

18 Q And who was out there with you when you talked to him?

19 A Just me and him.

20 Q Okay. Could you tell if he was under the influence of
21 any alcohol or drugs?

22 A No.

23 Q Did he appear to have any physical or mental
24 disability?

25 A He did not.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT (PRE-TRIAL)

19

1 Q So you said he told you about -- he gave you this
2 statement. Where was this -- where did he tell you this
3 at?

4 A We were standing out in the parking lot of the bar.

5 Q Okay. And how much time -- was he under arrest when
6 you first started talking to him?

7 A Not when I first started talking to him.

8 Q Okay. At what point was he put under arrest?

9 A I had received some information -- I started -- I went
10 into the bar and asked him to step outside with me, and he
11 did, complied. I identified myself and spoke with him. I
12 was gathering some information from a car stop throughout
13 our investigation that included Mr. Starnes. From that
14 information I was gathering from Investigator Bowers, he
15 was passing some information on to me that was -- kind of
16 come together during our investigation, and once I received
17 that information he was placed under arrest, but prior to
18 that, after coming outside and speaking with Mr. Starnes, I
19 had read him Miranda even before he was placed under arrest
20 or before he was asked any type of questions.

21 Q Okay. You said you had read him his Miranda Rights?

22 A I did, yes.

23 Q How -- did you do a form or how'd you ---

24 A I just read it aloud by use of a card.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT (PRE-TRIAL)

20

1 Q Do you have a card that you use to read Miranda
2 Rights?

3 A Yes.

4 Q Do you have it with you?

5 A Yes.

6 Q Is that a copy or similar to the card you use to read
7 his Miranda on that night on August 4th, 2011?

8 A Yes, it is. It's a card that's provided to us from
9 Southern States Police Benevolent Association, that they
10 give out and provide us, and have Miranda on the back.

11 Q And you've read -- okay -- and you read everything on
12 that card to Mr. Starnes that night?

13 A I did.

14 Q Before he said anything to you, made any statements or
15 anything like that?

16 A I did.

17 Q Okay. After you mirandized him, what -- do you
18 remember what he said to you?

19 A I had asked him, of course, about the drug deals, some
20 drugs that we had found in the traffic stop. He denied any
21 knowledge or anything of that effect. I think I had asked
22 him about the -- was he running the bar, and he said, yes.
23 I think I'd asked him did he open or close or have control
24 of the bar, and he said, yes, he advised me that he had
25 control of any offices and so forth, and he also had a set

RYAN MCLEMORE - DIRECT BY MR. KNIGHT (PRE-TRIAL)

21

1 of keys on him that was also the keys to different rooms
2 and to the bar itself.

3 Q Okay. Was anybody else around the bar area or inside
4 the bar or outside the bar when you were ---

5 A When I first came in there was Mr. Starnes, a female
6 bartender, and there was another unknown female patron that
7 was in there and that's it.

8 Q Okay. Was he made any -- did you give him any threats
9 or promises to elicit his statements about ownership of the
10 bar?

11 A No, I did not.

12 Q Okay. And you said you gave him Miranda.

13 A Yes.

14 Q Even before he was under arrest.

15 A Yes.

16 Q Was the defendant -- when you first started talking to
17 him, was he free to go at any point?

18 A Yes, up until, of course, when I placed him under
19 arrest.

20 Q And that was after he told you ---

21 A Yes.

22 Q --- the statements about he had ownership of the bar
23 and that kind of stuff?

24 A Yes, I think so.

1 Q Okay. Did -- you told the defendant the nature of the
2 investigation and why you were there?

3 A I did.

4 Q And you told him that y'all were there on the belief
5 that drugs may have been sold from the bar?

6 A Correct.

7 Q Okay. And you said you advised him of his Miranda
8 warnings and you went through all the -- all the Miranda
9 warnings on your card. Correct?

10 A I did.

11 Q Did he have any trouble understanding his rights ---

12 A He did not.

13 Q --- stated by you on the Miranda card? Did he say he
14 couldn't understand English or he couldn't hear you or
15 anything like that?

16 A No, he didn't.

17 Q Did -- when you were asking him about the bar, you
18 know, ownership and control of the stuff he told you, did
19 defendant's answers to the questions, they seem rationale.
20 and responsive or was he really emotional so you couldn't
21 understand him?

22 A No, they were rationale.

23 Q So he was giving you straight answers, straight
24 questions?

25 A Yes.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT (PRE-TRIAL)

23

1 Q Okay. Did you or anybody in your presence -- you --
2 know who else was there -- offer him any kind of promise or
3 hope of reward?

4 A No. No.

5 Q Okay. How did the defendant respond when he (sic)
6 asked whether he wanted an attorney before he spoke to
7 police -- before he spoke to you?

8 A He didn't say that he wished to have an attorney.

9 Q Okay. And was there an advisement of rights form or
10 did y'all have one on scene?

11 A No, there wasn't.

12 Q Did he ever later change his mind and ask to stop
13 questioning because he wanted an attorney?

14 A I think maybe to another officer, not necessarily to
15 myself, but I think at some point he did, but not to me.

16 Q Okay. So when you were out there, he didn't say I
17 want to stop, I want to get a lawyer.

18 A No, he didn't.

19 Q To the best of your knowledge, was the defendant's
20 statement freely and voluntarily given?

21 A Yes.

22 Q The statement wasn't recorded audio or video ---

23 A No, it was not.

24 Q That's because y'all were out there on the scene with
25 no ways to do that?

RYAN MCLEMORE - DIRECT BY MR. KNIGHT (PRE-TRIAL)

24

1 A Right.. We had none of that available.

2 Q Was the statement written down anywhere?

3 A No, it was not.

4 Q Was it ---

5 A Other than documenta -- documented in the report, but
6 not handwritten at this point while he questioned from him.

7 Q And it was documented in the incident report?

8 A Correct.

9 Q And there wasn't any kind of -- when he was talking to
10 you about the ownership, what he was saying to you that
11 night, there was no coercion, there was no, we'll give you
12 a lesser charge if you tell us anything, or anything like
13 that?

14 A No, just -- just the simple question and answer.

15 MR. KNIGHT - I think I have no further questions.

16 (WHEREUPON, DISCUSSION IS HELD BETWEEN MS.

17 COLLINS AND MR. KNIGHT WHICH WAS NOT REPORTED.)

18 MR. KNIGHT - Your Honor, just a couple more
19 things.

20 THE COURT - Okay.

21 Q You said you had a copy of your Miranda card?

22 A Yes.

23 MR. KNIGHT - Can I mark this as State's Exhibit

24 1?

25 THE COURT - For the purpose of this hearing?

RYAN MCLEMORE - DIRECT BY MR. KNIGHT (PRE-TRIAL)

25

1 MR. KNIGHT - For the purpose of this hearing.

2 MR. LIFSEY - If I can look at it a second.

3 Judge, I'm find with him just reading it if I can look at
4 it and so we don't take it from the officer, unless he
5 really wants to.

6 THE COURT - Right. If we put it into evidence,
7 it becomes ours and he doesn't get it back. So if Mr.
8 Lifsey doesn't object to what it says, it says what it
9 says.

10 (WHEREUPON, MR. LIFSEY REVIEWS DOCUMENT.)

11 MR. LIFSEY - Thank you.

12 THE COURT - All right. Do you have any objection
13 to what that is, what it purports to be?

14 MR. LIFSEY - No, sir, not at all.

15 THE COURT - Okay. You don't need to introduce
16 it.

17 Q All right, at this time for the record I'm handing you
18 your Miranda card back. You said that was the card or a
19 copy of the card that you read to the defendant that night
20 on August the 4th, 2011?

21 A Yes. Correct.

22 Q Could you please read it for the record as you read it
23 to the defendant on that night?

24 A You have the right to remain silent; anything you say
25 can and will be used against you in a Court of law. You

RYAN MCLEMORE - CROSS BY MR. LIFSEY (PRE-TRIAL)

26

1 have the right to speak with an attorney, to have an
2 attorney present during any questioning. If you cannot
3 afford a lawyer, one will be provided for you at the
4 government's expense. Knowing and understanding your
5 rights as I've explained them to you, are you willing to
6 answer any of my questions without an attorney present.

7 Q And those were the same -- same words you spoke to the
8 defendant that night?

9 A Yes.

10 MR. KNIGHT - No further questions. Please answer
11 anything Mr. Lifsey has.

12 THE COURT - All right, Mr. Lifsey?

13 MR. LIFSEY - Just briefly.

14 CROSS EXAMINATION

15 BY MR. LIFSEY -

16 Q Prior to you reading him that card, what, if anything,
17 did he say to you?

18 A I think prior to that it was -- and if I may, if I
19 could refer back to -- I think prior to that it was
20 basically only the questions other that did he know about
21 the drug deal that was going on.

22 MR. LIFSEY - Well, maybe we can take a minute. I
23 just want to clarify because that impacts ---

RYAN MCLEMORE - CROSS BY MR. LIFSEY (PRE-TRIAL)

27

1 THE COURT - All right, if you need to use your
2 incident report to refresh your recollection, that'd be
3 fine. Was there a written statement made, Mr. Lifsey?

4 MR. LIFSEY - No.

5 THE COURT - Okay, all right. So we're only
6 talking about the introduction of an oral statement.

7 MR. LIFSEY - Yes, sir, I think there's going to
8 be several -- I think ---

9 THE COURT - I just needed to know what we're
10 talking about. I thought it was a written statement.
11 Okay.

12 A Looks like the only thing prior that he and I
13 discussed prior to Miranda was, of course, his name. He
14 told me his name was James Nicholas Starnes, and that
15 everyone called him Nick, and I think that was the only
16 thing basically discussed prior to Miranda.

17 Q So and then post-Miranda specifically -- base that up
18 (sic) to the solicitor -- was specifically what did he tell
19 you post-Miranda?

20 A Post-Miranda, again, that was after some information
21 that I was getting from Investigator Bowers from the
22 traffic stop, post-Miranda asked him about specifically
23 selling the cocaine and he denied it. I also -- I advised
24 him that the other subject whom had left the bar that he
25 had met with was cooperating; I had told him then that that

1 subject was cooperating and he again denied another
2 question at post-Miranda. And I asked him was there any
3 other bar -- any other drugs in the bar and he stated was
4 not that I know of. And those were the post-Miranda.

5 Q Other than that, is that the extent of the statements
6 you took from my client or heard or he made to you?

7 A That other than asking him questions post-Miranda
8 about the bar. I asked him did he have control, custody of
9 the bar, and he stated he did. Asked him about the keys
10 that were on his -- that were found on his person. He said
11 those were the keys to the bar that he used to open and
12 close, and he also said that he had -- that he was the only
13 one who had controlled of the locked officers and so forth
14 in the bar, which also the keys in his pocket fit.

15 Q Do you remember -- if you do -- and I know it's been --
16 -- do you remember specifically what you asked him about
17 that, and specifically what he said, or you just remember
18 in general terms what was going on in the conversation?

19 A It says here in the incident report, specifically, and
20 there again, it has been a while, so I go back to the
21 incident report, it says that I asked him specifically
22 about the keys in his pocket, and he stated that they were
23 the keys to the bar. It says that he works for -- he
24 worked for one of the bar owners, and he also says that he
25 had access to the office and all other keys in the

TONY BOWERS - DIRECT BY MS. COLLINS (PRE-TRIAL)

29

1 business. Those were pretty much the only other questions
2 or anything that he and I discussed.

3 Q And he did tell you that -- who the owner of the bar
4 was?

5 A He did.

6 MR. LIFSEY - All right. Thank you, Judge. I
7 don't have any further questions.

8 THE COURT - All right. Thank you, sir. You can
9 step down.

10 Y'all have another witness from the State?

11 MR. KNIGHT - Yes, Your Honor. Tony Bowers from
12 the Lancaster County Sheriff's office.

13 TONY BOWERS, AFTER BEING FIRST DULY SWORN,
14 TESTIFIES AS FOLLOWS -

15 THE COURT - Solicitor?

16 DIRECT EXAMINATION

17 BY MS. COLLINS -

18 Q Would you state your name for the record?

19 A Tony Bowers.

20 Q What is your occupation?

21 A Narcotics Investigator with Lancaster County Sheriff's
22 office.

23 Q How long have you been a member of law enforcement?

24 A I've worked at the sheriff's office since January of
25 2001, ten years.

1 Q So that's your entire law enforcement career?

2 A Worked two years prior to that for the department of
3 corrections.

4 Q In the course of your duties, did you have an occasion
5 to be involved in the investigation alleging that James
6 Starnes was dealing drugs out of a bar?

7 A I did.

8 Q Okay. And you've heard the testimony previously
9 offered?

10 A Yes.

11 Q Were you involved at the scene of the investigation?

12 A Yes.

13 Q And on that day, did you have an occasion to speak to
14 the defendant?

15 A I did.

16 Q When did you first speak to the defendant?

17 A When I arrived at the bar, Lieutenant Mclemore was in
18 the parking lot; Mr. Starnes, he was standing in handcuffs.
19 I approached those two, and Lieutenant Mclemore advised me
20 that Mr. Starnes had been read his Miranda rights and was
21 under arrest.

22 Q And at that time, after having been advised that the
23 defendant had been read his Miranda rights, did Sergeant
24 Mclemore also tell you he had waived those rights?

25 A Yes.

TONY BOWERS - DIRECT BY MS. COLLINS (PRE-TRIAL)

31

1 Q Okay. Did you have an occasion then to speak to the
2 defendant?

3 A I did.

4 Q Was that in the presence of Officer McClemore?

5 A Well, I -- I basically took custody of Mr. Starnes
6 while Lieutenant McClemore went back inside the bar.

7 Q And were y'all still standing outside at the patrol
8 vehicle?

9 A We were.

10 Q And is this an unmarked patrol vehicle?

11 A It is.

12 Q Okay. And at that time did you interrogate the
13 defendant?

14 A I basically just asked Mr. Starnes if he had been
15 searched. Since I took custody of him I wanted to make
16 sure he'd been searched for weapons or any kind of
17 contraband. He stated that he had been searched but that
18 he had a Hydrocodone pill in his pocket.

19 Q Okay. So at that time the defendant told you he had a
20 Hydrocodone pill in his pocket?

21 A Yes.

22 Q And that was pursuant to you asking him if he had been
23 searched?

24 A That's right.

25 Q Okay. Was he in handcuffs at that point?

1 A He was.

2 Q So he was in custody still ---

3 A Yes.

4 Q --- and still under arrest. What did you do at that
5 point in terms of the pill that he ---

6 A I recovered the pill from his pants pockets and did a
7 thorough search of his person.

8 Q And there was just one pill?

9 A Yes, ma'am.

10 Q Did he make any other statement regarding the pill at
11 that time?

12 A Not at that time.

13 Q Did he make any other statement to you at time
14 regarding anything about the investigation of the incident?

15 A No.

16 Q Did he subsequently make further statements to you?

17 A Yes. At the conclusion of the investigation I
18 transported Mr. Starnes to the Lancaster County Detention
19 Center.

20 Q And was that within that same patrol vehicle that you
21 just described?

22 A I think we were standing beside Lieutenant Mclemore's
23 vehicle, and I transported him in my vehicle.

24 Q All right, and that's an unmarked patrol car?

25 A It is. It's a truck.

TONY BOWERS - DIRECT BY MS. COLLINS (PRE-TRIAL)

33

1 Q When you transported the defendant, was he still in
2 handcuffs?

3 A He was.

4 Q And that's a locked area that he is sitting in?

5 A It is not; he was in the front passenger seat within a
6 seatbelt.

7 Q Okay. All right. But he was still in handcuffs?

8 A Yes.

9 Q At that time -- let me back up a little bit to where
10 y'all were standing by the car. Did he at any time invoke
11 his Miranda rights with you or ask to have an attorney
12 present?

13 A No.

14 Q Did he at any time say he didn't want to speak anymore
15 with you?

16 A No.

17 Q So as you're transporting him in the truck -- let me
18 ask you -- are there video cameras within that truck?

19 A No.

20 Q Okay. So any conversation with him was not recorded?

21 A That's right.

22 Q He's still under custody. What, if anything, did the
23 defendant tell you at that time?

24 A As I do with most people I transport to the detention
25 center, on the way I ask them if they're willing to give us

1 a statement detailing their involvement or any knowledge
2 they have of the criminal activity that's been
3 investigated. Mr. Starnes told me that he didn't know
4 anything about cocaine or crack cocaine, that he had
5 purchased two Hyrdocodone pills from the black male that
6 was driving the black Charger.

7 Q At that point had you said anything to Mr. Starnes
8 about cocaine?

9 A I may have. I don't remember. I just -- seems like I
10 asked him if he wanted to give us a statement about the
11 drugs that were being sold in the bar that night.

12 Q But did you specify to the defendant that it was
13 cocaine or crack cocaine, or did you just say the drugs?
14 Do you recall?

15 A I don't recall. I very well could've asked that
16 cocaine or crack cocaine.

17 Q All right. And so at that time he told you he didn't
18 have any knowledge of it?

19 A That's right.

20 Q Did he say anything further at that time?

21 A No, just that he had bought two pills from the guy
22 driving the Charger.

23 Q When you asked him if he wanted to give a statement to
24 cooperate, did you make any promises to him regarding
25 leniency or otherwise?

TONY BOWERS - CROSS BY MR. LIFSEY (PRE-TRIAL)

35

1 A No.

2 Q Did you make any threats?

3 A No.

4 Q And when y'all were standing by the car, did you make
5 any promises or make any threats in order to induce his
6 statement?

7 A No.

8 Q Did the defendant say anything else to you?

9 A No.

10 MS. COLLINS - One moment. (Pause) That's all.

11 THE COURT - Mr. Lifsey?

12 CROSS EXAMINATION

13 BY MR. LIFSEY -

14 Q So just to summarize and make sure I've got it clear,
15 what he said to you was, he admitted he had bought
16 Hydrocodone. Correct?

17 A That's right.

18 Q And he denied that he was involved in the sale of
19 drugs or any other drugs at that point.

20 A That's right.

21 Q That's the only statements he made to you?

22 A Yes, sir.

23 MR. LIFSEY - I don't have anything further.

1 THE COURT - All right, thank you, sir. You can
2 step down. All right, anything further from the State, any
3 further statements?

4 MR. KNIGHT - None, Your Honor.

5 THE COURT - All right, argument, Mr. Lifsey?

6 MR. LIFSEY - I think as long as we are limited to
7 those statements, I think -- I think they're admissible.
8 My concern was whether or not when he said something in
9 relation to Miranda, it sounds like from what I understand
10 of Mclemore's testimony, the only statements he made prior
11 to Miranda were a name and basic information, which I don't
12 have nay objection to. All the other statements were given
13 post-Miranda. I can't make in good faith any argument
14 against that, other than I will tell you that -- once
15 again, I'll put it on the record, that's it on the
16 statements. I mean I don't want to get in the middle of
17 this trial and them say there are other statements. As
18 long as that's it, I don't think I have -- it's your
19 ruling, Judge, on whether they're voluntary or not. I
20 believe -- I can't make any further argument. My concern
21 is as to voluntariness, and like I say, my other concern is
22 make sure that's all the statements they intend to use
23 against my client.

24 THE COURT - All right, does the State intend to
25 use any other statements?

1 MR. KNIGHT - None, Your Honor.

2 THE COURT - All right, well, those statements are
3 admissible.

4 MR. LIFSEY - Yeah, yeah, my client -- that's
5 fine. Yes, sir, I'm just clarifying that's all the
6 statements they intend to use of my client.

7 THE COURT - Okay. Right. We're not having them
8 witness for the Denno hearing.

9 MR. LIFSEY - Yes.

10 THE COURT - Okay, got it. I'm with you.

11 All right, so, well, then we've done the Jackson
12 vs. Denno. Those statements that I heard are admissible
13 and will come into evidence during the trial of this case.
14 Any other pre-trial issues?

15 MR. LIFSEY - Well, let me bring up something just
16 because- - and it may have been just the way for the
17 purposes of this hearing Ms. Collins asked the question.
18 She asked Officers Bowers, were you involved in
19 investigation of drugs being sold out of the bar. I would
20 object to -- if that's the form of the question that is
21 asked in front of the jury, because I think that assumes
22 hearsay. I think it assumes things are being sold. I
23 object to a question that refers to any hearsay statements.
24 I mean as I understand, this whole investigation started
25 because they get an anonymous tip that drugs are being sold

1 out of the bar. I object to any references, directly or
2 indirectly, to that statement, which I believe is hearsay -
3 --

4 THE COURT - Because it assumes facts that are not
5 in evidence. Okay, well, I mean this is a non-jury
6 procedure ---

7 MR. LIFSEY - Sure. I don't object to it here.
8 I'm just telling you just we avoid an argument in front of
9 the jury. I think -- and Ms. Collins has been doing this
10 longer than I have, so I don't want to tell her how to ask
11 her questions, but I think ---

12 THE COURT - If it's an improper question I will
13 rule upon it at that time.

14 MR. LIFSEY - And I think there are ways to --
15 were you involved in this investigation, seems a lot
16 cleaner to me than any embellishment ---

17 THE COURT - Right. Okay. If you have a problem
18 with the question, make an objection and I'll rule on it,
19 but at this point I can't do that. Okay, anything else?

20 MR. LIFSEY - No, sir.

21 THE COURT - All right, sounds good. Let's take a
22 five minute refreshment break and get ready to roll, and
23 we'll bring the jury in.

24 (WHEREUPON, RECESS TAKEN)

1 (WHEREUPON, STATE'S EXHIBIT 1 MARKED FOR
2 IDENTIFICATION)

3 THE COURT - All right.

4 MR. KNIGHT - I believe we stipulated that the
5 power point I've got for opening, if you're all right with

6 ---

7 MR. LIFSEY - No, I don't -- that's fine. I
8 looked at it. I'm not -- I don't have any objection to
9 what he's proposing.

10 THE COURT - All right, let's bring the jury in.

11 (WHEREUPON, JURY ENTERS THE COURTROOM)

12 THE COURT - All right, good morning, ladies and
13 gentlemen. I hope you had a good evening. I know y'all
14 are ready to get rolling with the trial of the case
15 morning. Before we proceed with some initial instructions
16 that I'm going to give you, I'm going to have the clerk
17 administer the trial juror oath to you. Okay. So if
18 you'll please stand at this time and raise your right hand.

19 (WHEREUPON, JURY IS DULY SWORN BY THE DEPUTY
20 CLERK)

21 THE COURT - All right, can everybody hear me
22 okay?

23 (WHEREUPON, JURORS RESPOND)

24 THE COURT - All right, well, ladies and
25 gentlemen, now before we begin the trial, I'm going to tell

1 you that this trial is probably going to be different from
2 what you might expect. Many people don't have a chance to
3 attend actual court sessions like you're doing right now,
4 much less participate in them like you're doing right now.
5 Many people think that what they see in the movies or on TV
6 or read in the books is what all court is always like.
7 Now, you know, trials sometimes may have drama, intense
8 action and riveting circumstances like you see in the
9 movies or on TV, but many times it's not that way. This
10 trial is not for entertainment, ladies and gentlemen. It
11 is a fundamental part of our democracy. It's a search for
12 the truth in an effort to make sure that justice is done
13 between the parties before the Court. Now, searching for
14 the truth and making sure that justice is done can
15 sometimes be a slow, deliberate and repetitive process, the
16 opposite from what you may expect from what you've seen in
17 the movies or on the TV.

18 Now, ladies and gentlemen, this courtroom is a
19 place of honor dedicated to the preservation of citizen's
20 right to what many have called the greatest justice system
21 ever created. The attorneys who are appearing before you,
22 first and foremost, are advocates for the parties that they
23 represent. The solicitors represent the State of South
24 Carolina. Mr. Lifsey, as the defense lawyer, represents
25 the accused, and they're -- but before that they are

1 officers of this Court. They are sworn to uphold the
2 integrity and fairness of our judicial system and to help
3 you, the jury, in search for the truth. Now, you should
4 expect them, therefore, to be professional, competent and
5 ethical in the representation of their client's interest.
6 Now, remember, you have just taken an oath to do the same
7 thing and to act that way and to reach a fair and just
8 verdict, so you as well are expected to be reasonable and
9 ethical. Thank you again for accepting this important
10 responsibility and for your role this week in our judicial
11 system.

12 Now, let me talk to you basically about how a
13 trial proceeds. First, the State will make what's called
14 an opening statement to you. An opening statement is not
15 evidence. It's simply an outline to help you understand
16 what that party expects the evidence will show. The
17 defense may, if they wish, make an opening statement, but
18 they don't have to, and I'll tell you about that later on
19 at the conclusion of the trial. Now, following opening
20 statements you will then hear testimony and evidence in
21 this case. This will consist of testimony from State's
22 witnesses as well as any physical exhibits which may be
23 introduced into evidence, and they'll -- the witnesses will
24 testify right there. Okay? Now, in following the
25 completion of the testimony, the attorneys again will have

1 an opportunity to talk directly to you by what's called a
2 closing statement or a closing argument. Again, this isn't
3 evidence. This is just the lawyers' attempt to try to
4 convince you or to talk to you about why the facts they are
5 presenting or the facts that they are contesting to be more
6 persuasive to you. Okay, that's what closing arguments
7 truly are. In following these closing statements by the
8 lawyers, that's when I will instruct you on the law of
9 South Carolina as it pertains to the issues that have
10 arisen in this case. When I have completed my instructions
11 to you, that's when you will begin to begin discussing this
12 case and deliberating your verdict.

13 Now, as you know, this is a criminal case that
14 has been brought by the State of South Carolina who has
15 charged the Defendant, Mr. James Nicholas Starnes, with
16 various criminal offenses. And the charges against the
17 defendant are contained in these what's called indictments.
18 Now, these indictments are not evidence of anything. These
19 are simply the description of the charges that have been
20 made by the State against the defendant. Now, the
21 defendant has pled not guilty to these charges and is
22 presumed innocent unless and until proven guilty by the
23 State beyond a reasonable doubt. Now, I'm going to define
24 reasonable doubt in more detail for you at the conclusion
25 of this case when I charge you the law, but a reasonable

1 doubt is the kind of doubt that would cause a reasonable
2 person to hesitate to act. Now, a defendant has the right
3 to not testify and never has to prove innocence or present
4 any evidence. The burden of proof is always upon the State
5 of South Carolina. Now, I instruct you that you are the
6 finders of fact in the case. Okay? Just like you are the
7 Judge of the facts, I'm the Judge of the law. You will
8 hear the evidence and you will see the evidence if there's
9 any physical evidence which may come into Court, and you'll
10 decide what the facts are and you'll apply those facts as
11 you find them to be to the law which I will give you. Now,
12 that's how you reach a verdict, and in doing so, ladies and
13 gentlemen, you must follow the law as I give it to you
14 whether you agree with it or not. Don't take anything I
15 say or do during the trial as indicating what I think the
16 evidence shows or what your verdict should be. Now, just
17 like rules which govern sports and other activities,
18 there's certain rules of evidence which control what can
19 come into evidence in Court, and when a lawyer asks a
20 question or offers something into evidence and the lawyer
21 on the other side thinks that it's not permitted by the
22 rules of evidence, that lawyer may stand up and object.
23 Y'all all have seen that or heard that maybe on movies or
24 TV. Now, if I overrule the objection, that means that the
25 question may be answered or that the exhibit may come into

1 evidence. If I sustain the objection, that means that the
2 question cannot be answered or the exhibit cannot come into
3 evidence. Now, whenever I sustain an objection to a
4 question or deny a motion to have something into evidence,
5 you must ignore that question or the existence of that
6 exhibit, and you must not speculate or guess what the
7 answer would've been or what the exhibit would've shown.
8 Now, sometimes it also may be necessary for me to request
9 that you leave the courtroom while I discuss certain legal
10 issues with the lawyers that may come up during the trial.
11 Now, if this occurs, don't speculate about what we're
12 talking about or the reason why you were asked to leave.
13 This is simply a procedure that the law requires when
14 certain legal issues arise. Remember, I'm the Judge of the
15 law. I deal with all the law stuff; y'all deal with all
16 the fact stuff. Okay? Now, there also may be occasions
17 where instead of y'all getting back -- up and down and
18 going back and forth to your jury room where I ask the
19 lawyers to approach the bench so I can discuss a legal
20 issue with them in private. I'll do this as often as
21 possible to keep y'all from having to get up and down.
22 Again, if I get them up here to talk about something, don't
23 think we're all trying to hide something from you. This is
24 just a procedure that all lawyers and all Courts use to
25 make things go as orderly as possibly and to make sure that

1 you get the best evidence as possible so that you can make
2 a just and fair decision. Okay? Now, in deciding the
3 facts of this case, ladies and gentlemen, you may have to
4 decide which witnesses to believe and which witnesses not
5 to believe. You can believe everything a witness says,
6 only part of it or none of it. That's your role as a jury.
7 Now, during this trial you're also not going to be allowed
8 to take notes concerning the testimony of the witnesses, so
9 please pay close attention to what the witnesses say and
10 what they testify to so that you can accurately discuss it
11 when you deliberate it later. And at the end of the trial
12 you're going to have to make your evidence based upon --
13 excuse me -- make your decision based upon the evidence
14 presented. You will not have a written transcript of the
15 trial to consult, and it's very difficult and time-
16 consuming to have my court reporter read back or play back
17 lengthy testimony, so please pay close attention while the
18 trial is going on. Now, until I -- and on that same line,
19 until I advise you to begin your deliberations, do not
20 discuss this case with anyone, including your fellow
21 jurors. Don't discuss it with friends, family members on
22 lunch breaks or whatnot or anybody else involved in the
23 case. Don't go on the internet to research things about
24 this case. Don't go on Facebook or other social media and
25 talk about being a trial juror and tell everybody what kind

1 of case you're sitting on. Don't do that. You're
2 violating the rules of Court if you do that, because
3 remember, your decision has to be based solely on what
4 happens in this courtroom, the evidence and testimony
5 received in this courtroom. Now, during the trial also --
6 this goes without saying -- don't read, listen to or watch
7 any news reports that there may be about this case or read
8 any newspaper articles about it. Remember, your job as a
9 juror is to decide from the evidence presented in this
10 courtroom and only in this courtroom. Now, and after this
11 case is submitted to you, ladies and gentlemen, you must
12 discuss it only in the jury room with your fellow jurors.
13 Now, if anybody attempts to talk with you about this case
14 in violation of these instructions which I've just given
15 you, let me know and I'll take care of it. Okay? Now,
16 ladies and gentlemen, lastly, it's very important that you
17 keep an open mind and not decide any issue in this case
18 until all the evidence has been presented, until after
19 everybody's made their closing arguments and after I've
20 instructed you on what the law is in this case. It's your
21 solemn responsibility to determine the guilt or innocence
22 of the defendant and your verdict must be based solely on
23 the evidence that is presented to you in this trial and on
24 the law as I instruct you during and at the close of the
25 trial.

1 We will now proceed with opening statements.

2 All right, solicitor. Yes, sir?

3 MR. KNIGHT - May it please the Court?

4 THE COURT - Yes, sir.

5 MR. KNIGHT - Good morning, ladies and gentlemen
6 of the jury. My name's Luke Knight. I introduced myself
7 earlier. I'm a assistant solicitor in the Sixth Circuit
8 and which means basically a prosecutor or district attorney
9 in other jurisdictions.

10 Today we're here because the Defendant, James
11 Starnes, was charged with several crimes. He was charged
12 with trafficking cocaine in the amount of 28 grams to 100
13 grams. He was charged with trafficking in a cocaine base
14 10 grams to 28 grams. He was also charged with possession
15 of a firearm during the commission of a violent crime, and
16 he was also charged with possession with intent to
17 distribute marijuana, and he was finally charged with
18 possession of a controlled substance.

19 Now, today you're going to hear from many
20 witnesses in this case. You're going to hear first from
21 Officer Tony Bowers from the Lancaster County Sheriff's
22 Department. He's going to testify that on August the 4th of
23 2011 he got some information and based on that information,
24 himself and Lieutenant Ryan Mclemore with the Lancaster
25 County Sheriff's Office along with Investigator Brandon

1 Rollins with the Lancaster County Sheriff's Office set up
2 surveillance on a bar here in town on West Meeting Street,
3 formerly known as the Chatterbox or Good Time Charlies. As
4 they set up surveillance on this bar, they noticed a black
5 Dodge Charger that pulled in the parking lot. It stayed in
6 the parking lot; the driver of the car later identified as
7 Rico Green, got out, went inside the bar, stayed for about
8 15 or 20 minutes, exited the bar, came back out, got in his
9 car and drove off. At that time the officers that were
10 doing surveillance on the bar followed this Dodge Charger.
11 When they followed this Dodge Charger it -- for about a
12 mile or two, they initiated a traffic stop based on an
13 expired registration plate on the -- on the tag of the car.
14 Once they stopped the car, they noticed the passenger who
15 was later identified as Dyvonne Jowers got out and started
16 running as soon as they pulled the car over. When the
17 investigators were able to get Mr. Jowers and stop Mr.
18 Jowers, they found on him approximately 23 grams of cocaine
19 and approximately 18 grams of cocaine base or known also as
20 crack cocaine. At that point, based on information they
21 received at that time, they went back and got a search
22 warrant for the bar that is known as Chatterbox of Goodtime
23 Charlies. When they got the search warrant for the bar,
24 they found the defendant located as the manager as the
25 owner of the bar, part owner of the bar, that had control

1 over the bar in a office. And this office, if you look in
2 the bar, this office has locks on it. It's not a office
3 that you can go in and go out of it. It's got two
4 deadbolts on it. And what they found after executing that
5 search warrant at the office, they found approximately 26
6 grams of regular cocaine. They found approximately 28
7 grams of marijuana. They found baggies, scales, a firearm,
8 as well as cash that they seized that night.

9 Now, ladies and gentlemen of the jury, the
10 evidence is going to show that after all the testimony
11 after we get through all this, that the defendant is guilty
12 of trafficking cocaine from 28 grams to a 100 grams, guilty
13 of trafficking in cocaine base from 10 grams to 28 grams,
14 of possession of a weapon during a violent crime,
15 possession of marijuana with intent to distribute, and
16 finally possession of a controlled substance.

17 Thank you for your time, and I appreciate you
18 serving as jurors. At the end of this we'll prove to you
19 that the defendant is guilty of all these charges. Thank
20 you again.

21 THE COURT - Thank you, solicitor. Mr. Lifsey?

22 MR. LIFSEY - May it please the Court?

23 THE COURT - Yes, sir.

24 MR. LIFSEY - Ladies and gentlemen, on August 4th,
25 2011, my client bought Hydrocodone from a drug dealer named

1 Rico Green. I wish he hadn't done that. Okay? But I'm
2 not going to lie to you; I'm going to tell you he bought
3 drugs from Rico Green. You should find him guilty of the
4 charge of possession of a controlled substance. That's one
5 of the indictments. You can find him guilty of that. He's
6 not guilty of the rest of that stuff. Okay? What happens
7 is when drug dealer Rico Green gets pulled over on August
8 4th, 2011 almost four years ago, he says to the police,
9 that's where I got the drugs from; I bought it from the
10 white boy at the bar. The police go; they execute a search
11 warrant. Now, I don't know what Rico Green's going to say
12 on the witness stand today. My understanding is he told
13 the solicitors yesterday that none of that's true. I don't
14 know what he's going to say on the stand, but I understand
15 -- I tell you that because I'm not faulting the officers
16 for making an arrest based on the information they had at
17 the time, because at the time they execute a search warrant
18 and they find in a bar in a locked office in the back a
19 bunch of drugs, but they're not going to be able to prove
20 those drugs are my client's. The solicitor said something
21 about him being an owner of the bar. There will be
22 absolutely zero testimony today showing he owned or had any
23 ownership interest in this bar. Yes he had some keys in
24 his pocket. Okay? But you will find out he's not the
25 owner, and you will find out there's no fingerprints; you

1 will find out there's no DNA; you will find there is
2 nothing more to link my client to those drugs in the back
3 of the car. Now, as I said, I don't fault the police for
4 making the arrest, because the standard for arrest is
5 probable cause. That's a low standard. Okay? But this is
6 -- but the standard for conviction is just what Judge
7 Gibbons said to you, beyond a reasonable doubt. There's a
8 reason that we make it hard for the State to convict
9 people. It's because we want to make sure they get it
10 right, that they've fully investigated it, that they've
11 looked into it. That's why, as Judge Gibbons told you, my
12 client is presumed innocent. Now, that's a phrase we've
13 all probably heard a million times in our lives, somebody's
14 innocent until proven guilty, innocent until proven guilty.
15 But it's not just a phrase. It means what it says. And
16 what I try to tell jurors is, you need to look at it --
17 there's a human nature to look at somebody charged with a
18 crime in a different way than you might look at someone
19 else, but when the Judge tells you you're to presume him
20 innocent, you should look at him -- like if you had a
21 friend or a neighbor or someone that you know and trust and
22 know him, and you picked up the paper tomorrow and saw he'd
23 been accused of some horrible crime, your first reaction
24 might be, and I hope it would be -- is they have to have
25 made a mistake, how could he have done that, and that's the

1 attitude you have to have about my client at the beginning
2 of this case, because he's presumed innocent. The second
3 thing I want you to remember that Judge Gibbons already
4 told you, is the State has the burden of proof. They've
5 got to prove their case. Now, this is important in this
6 case, because this is an old case. This happened in August
7 of 2011, almost four years ago. So they have had almost
8 four years to investigate this case. They've had almost
9 four years to run down records. If they think my client's
10 a truck trafficker, they've had plenty of time to go find
11 evidence of that. Listen and find out what they have done
12 since August 4th of 2011 to investigate this case, to get
13 them from that low hurdle of probable cause needed for
14 arrest, to get them to the high hurdle of proof beyond a
15 reasonable doubt. Ask yourselves that as you listen to the
16 State's case. Finally, proof beyond a reasonable doubt.
17 That means what it says. At the end of this case -- at the
18 end of this case -- certainly our burden -- my client and
19 myself -- that at the end of this case you're going to say
20 clearly the State doesn't met their burden of proof,
21 clearly, clearly -- I hope you say that. Obviously, if you
22 do that, you find him not guilty. Even if you get to the
23 point where you say, I don't really know what happened, you
24 can't convict him. You got to have proof beyond a
25 reasonable doubt. Even if you get to the point -- and I

1 hope you don't -- but if you get to the point where you
2 say, you know, he's probably guilty, that's not enough.
3 You got to have proof beyond a reasonable doubt. So
4 please, these are very serious charges, very serious
5 charges, a very old case, plenty of time for the State to
6 investigate. Listen, remember the client's presumed
7 innocent. Remember, Mr. Starnes doesn't have the burden of
8 proof. The State of South Carolina's got the burden of
9 proof. And remember, before you can convict him of
10 anything beyond the Hydrocodone -- which I told you he's
11 guilty of -- before you can convict him of any of the rest
12 of these charges, they've got to prove him guilty beyond
13 any reasonable doubt. And if there's any reasonable doubt
14 that this happened, you have taken an oath to return a
15 verdict of not guilty. I'm glad the Judge emphasized to
16 you the oath, because what we're asking you to do is not
17 always easy. Okay? It's easy to side on the side of law
18 enforcement. It's easy to just affirm it and hope we got
19 it right. That's not what y'all all promised to do. You
20 all promised individually to look at this case and not to
21 vote for guilty unless there's proof beyond a reasonable
22 doubt. Listen to the case; ask yourself those questions as
23 you hear the State's case. Thank you.

24 THE COURT - All right, thank you, Mr. Lifsey.
25 All right, the State call its first witness.

TONY BOWERS - DIRECT BY MR. KNIGHT

54

1 MR. KNIGHT - At this time I'd like to call
2 Investigator Tony Bowers.

3 TONY BOWERS, AFTER BEING FIRST DULY SWORN,
4 TESTIFIES AS FOLLOWS -

5 DIRECT EXAMINATION

6 BY MR. KNIGHT -

7 Q Good morning, investigator.

8 A Good morning.

9 THE COURT - Make sure you speak loudly into that
10 mic. It doesn't extend too far, so speak loud.

11 MR. BOWERS - Yes, sir.

12 Q Could you please state your name and occupation for
13 the record?

14 A My name is Tony Bowers. I'm a narcotics investigator
15 for the Lancaster County Sheriff's office.

16 Q How long have you been working for the Lancaster
17 County Sheriff's office?

18 A I started with the sheriff's office in January of
19 2001.

20 Q Okay. And you've been an officer with them the entire
21 time?

22 A I have. I began working narcotics around the fall of
23 2007.

24 Q And what do you do as a narcotic's officer?

TONY BOWERS - DIRECT BY MR. KNIGHT

1 A We do controlled buys of various controlled
2 substances, work with informants, follow-up on tips, just
3 various things.

4 Q All right, let's turn now to August the 4th of 2011.
5 Do you remember if you were working on that day?

6 A I was.

7 Q Do you remember around what time? Were you working
8 day-shift, night-shift?

9 A We were working night-shift that evening.

10 Q Okay. Are you familiar with the case we're here for
11 today?

12 A Yes, sir, I am.

13 Q Could you kind of tell us what led to the
14 investigation of this case?

15 A I received a phone call ---

16 MR. LIFSEY - Wait, wait -- I object to that based
17 on my prior objections.

18 THE COURT - Overruled.

19 MR. LIFSEY - May I ---

20 THE COURT - Y'all approach.

21 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
22 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
23 WHICH WAS NOT REPORTED.)

24 THE COURT - All right.

TONY BOWERS - DIRECT BY MR. KNIGHT

56

1 Q Did you -- on -- back on August the 4th of 2011 do you
2 remember going out to a certain location on West Meeting
3 Street in Lancaster, South Carolina?

4 A I do.

5 Q And why'd you go out there?

6 A Received an anonymous tip about illegal drug activity.

7 MR. LIFSEY - I object. I'd like to be heard at
8 the appropriate time on this ---

9 THE COURT - Okay. Objection overruled at this
10 point. You're protected. I'll hear you later on.

11 Q And what particular -- where are y'all -- where are
12 y'all set up to do surveillance on this location?

13 A We responded to the area. There was a car lot across
14 the road from Goodtime Charlies, the bar on West Meeting
15 Street. I parked inside of that car lot, maybe 50 yards
16 from the front door of the business.

17 Q And was the bar the target location of -- the Goodtime
18 Charlies bar the target location of your surveillance?

19 A Yes, it was.

20 Q Who else was with you, law enforcement?

21 A Lieutenant Ryan Mclemore, my supervisor, and
22 Investigator Brandon Rollins was also on the drug team at
23 that time.

24 Q And were y'all in the same car or separate cars ---

25 A We were in three separate vehicles.

TONY BOWERS - DIRECT BY MR. KNIGHT

1 Q Okay. And you said you were located in the parking
2 lot across from the Goodtime Charlies bar.

3 A That's right.

4 Q All right. Could you tell us around what time that
5 was when y'all got out there?

6 A Around 6:20 p.m.

7 Q Okay. And what did you see what you first got out
8 there?

9 A When I first got out there, there were three cars in
10 the parking lot the bar. One vehicle I couldn't see the
11 license plate on; one had a dealer's tag and one was a
12 South Carolina license plate.

13 Q Okay. And just kind of -- so the jury kind of can get
14 a picture of it, where is this bar located that you're
15 looking at?

16 A It's at the intersection of Memorial Park Road and
17 Meeting Street just below the hospital, probably three
18 quarters of a mile to a mile.

19 Q Are there businesses beside of the Goodtime Charlies
20 bar?

21 A There are. The Westgate Tire is right beside it. I
22 think they share a parking lot.

23 Q Okay. Was -- at this time you said you observed three
24 different vehicles at the bar?

25 A That's right.

TONY BOWERS - DIRECT BY MR. KNIGHT

58

1 Q Was there any other cars in the parking lot?

2 A No, the other businesses were closed.

3 Q All right. So -- so you saw three cars in the
4 parking. What -- what did y'all -- what kind of happened
5 after that?

6 A Just -- you know, ran the tags on the vehicles. The
7 North Carolina vendor's plate came back to McAdenville
8 Motors out of Gastonia, North Carolina. The South Carolina
9 license plate came back to Crystal Jones who was a
10 bartender at the bar.

11 Q And the third car?

12 A Later on we determined the third car belonged to
13 McAdenville Motors also. It didn't have a license plate.
14 It was just sitting in the parking lot.

15 Q All right. Did you see anybody pull into the bar?

16 A I did. Prior to that, during the surveillance period
17 I saw Mr. Starnes come out on the telephone twice, come out
18 of the bar, walk around the parking lot and go back in. A
19 few minutes after the second time I saw him, I saw a black
20 Dodge Charger pull into the parking lot. I saw Mr. Starnes
21 come out of the bar and meet with the black male driver of
22 the Charger and then they both went inside the location.

23 Q Was anybody else in that Dodge Charger that ---

24 A There was. There was a black male passenger.

TONY BOWERS - DIRECT BY MR. KNIGHT

59

1 Q Did you know any of these individuals before -- you
2 testified that you saw the defendant come out on the phone.
3 Did you know him prior to this -- this night?

4 A I did not.

5 Q Okay. So what happened? You said that the black
6 Dodge Charger pulled into the bar. What happened after
7 that?

8 A Once they met in the parking lot and went inside the
9 location, Mr. Starnes and the driver of the Charger were in
10 there maybe ten or 15 minutes and then the driver comes
11 out, gets back in the Charger and leaves the location.

12 Q And what'd you do after?

13 A Of course I'm radioing to Lieutenant Mclemore and
14 Investigator Rollins, you know, of what I'm observing. We
15 decided to follow the black Charger and attempt to initiate
16 a traffic stop.

17 Q Were you the car right him? So you just went right
18 behind the black Dodge ---

19 A Yes, sir.

20 Q --- Charger? Where did he pull out to?

21 A He pulled out, went down Memorial Park Road; we
22 followed it; the other officers were able to catch up with
23 me. We turned left onto Springdale Road. I initiated the
24 blue-lights on my vehicle and conducted a traffic stop on
25 the black Charger.

TONY BOWERS - DIRECT BY MR. KNIGHT

60

1 Q What'd you stop him for?

2 A He had an improper vehicle license tag on the car.

3 Q Okay. And what kind of improper vehicle license did
4 he ---

5 A The State of South Carolina requires a license plate
6 if it has a paper tag or dealer tag to have a expiration
7 date written on it that's 45 days from the purchase of the
8 vehicle, and this car just had a -- just a plain paper tag
9 on it without the proper expiration date.

10 Q Okay. After you initiated -- you said you -- were you
11 in a marked car or were you in a ---

12 A No, I was driving an unmarked vehicle.

13 Q Did it have blue-lights in it?

14 A Yes, sir.

15 Q So you said -- you stated you activated your blue-
16 lights. What happened after that?

17 A I did. The car stopped on Small Street; it's off
18 Springdale Road. The black male passenger exited the
19 vehicle and attempted to run, flee from the car.

20 Q And did you know who that passenger was at the time?

21 A At the time I did not.

22 Q Okay. Was there any loss of contact between the time
23 the black Charger pulled out of the parking lot from the
24 bar to the time that you ---

25 A No.

TONY BOWERS - DIRECT BY MR. KNIGHT

1 Q --- put the blue-light --- so it never took any
2 detours and stopped nowhere?

3 A No.

4 Q Okay. So going back to the scene of the car stop,
5 what happened?

6 A When the car stopped and the passenger jumped out ran,
7 Investigator Rollins and Lieutenant Mclemore pursued; I
8 made contact with the driver and recognized him as Rico
9 Green.

10 Q Did you know Rico Green before this car stop?

11 A I did.

12 Q How did you know ---

13 A From past cases.

14 Q Okay. Was -- you said the other two officers, were
15 they on scene with you?

16 A Yes, they were following behind me.

17 Q Do you know who ---

18 A We waited a couple of miles til they could catch up
19 with me to initiate the traffic stop for safety purposes.

20 Q Okay, what happened with the passenger? You said that
21 ---

22 A He fled maybe ten, 20 yards. He was apprehended by
23 Lieutenant Rollins and Lieutenant Mclemore.

24 Q Okay. And do you know -- did you ever see him have
25 anything on him or anything like that?

TONY BOWERS - DIRECT BY MR. KNIGHT

62

1 A You have to understand this happens in a matter of
2 seconds. I approached Rico Green, got him out of the car,
3 told him to keep his hands where I could see him. They
4 announced that they had located the gun and some drugs on
5 Mr. Jowers, the passenger, so I placed Mr. Green in
6 investigative custody and handcuffed him for safety
7 purposes. When they had notified me that they had found
8 the narcotics, I asked Rico Green whose drugs are those,
9 and he basically -- he claimed ownership of them, said they
10 were his.

11 Q Did he say -- how did he -- he said the drugs that
12 were found on the passenger were his?

13 A Yes, sir.

14 Q Did you find anything else in the car?

15 A Investigator Rollins searched the vehicle. I think
16 there was some cocaine found in the console.

17 Q Okay. Do you remember how much -- like the quantity
18 of drugs that was found on the car stop, ---

19 A I don't.

20 Q --- approximate amount?

21 A I'm not -- I think it was approximately an ounce of
22 cocaine and maybe a half an ounce of crack and Rico Green
23 also had some marijuana in his pocket.

24 Q And -- and what did you do after that, after you
25 arrested him?

TONY BOWERS - DIRECT BY MR. KNIGHT

63

1 A Sergeant Graffam, one of our road deputies, had saw
2 the traffic stop -- it was in a busy part of town -- he
3 stopped to assist us. I asked Rico Green where he got the
4 drugs from; he said he just got them from white guy he met
5 with at the bar. Lieutenant Mclemore -- we placed Dyvonne
6 Jowers and Rico Green in Investigator Rollins' vehicle.
7 Lieutenant Mclemore left the scene with Sergeant Graffam
8 and went to the bar in order to secure it as the
9 investigation developed.

10 Q Okay. So you didn't go back to the bar immediately
11 right after ---

12 A Not immediately, no.

13 Q What'd you do during that time period?

14 A I stayed on the scene, spoke with Rico Green, kind of
15 tied down some of the details, and then he was transported
16 along with Dyvonne Jowers to the Lancaster County Detention
17 Center by one of our road deputies and I responded to the
18 bar.

19 Q So you stated that Rico Green told you that all the
20 drugs that y'all found from the car stop came from -- is
21 that what you testified to, that they came from the bar?

22 A Yes. Yes. He also gave a description of him; he was
23 wearing a t-shirt, shorts and flip-flops.

24 Q Description of the defendant?

25 A Yes, Mr. Starnes.

TONY BOWERS - DIRECT BY MR. KNIGHT

64

1 Q And was that consistent with your surveillance earlier
2 in the night of the defendant?

3 A Yes, it was the same clothing that was worn by the
4 white male I saw exit the bar and meet with Mr. Green in
5 the parking lot.

6 Q What kind of clothing was it? Do you remember
7 specifically?

8 A White t-shirt, blue jeans shorts and some multi-
9 colored striped flip-flops.

10 Q And you saw that before y'all stopped Rico Green.

11 A Yes.

12 Q Okay. What'd you do after you cleared up at the
13 traffic stop?

14 A I went to the Goodtime Charlies, to the bar.

15 Q Okay. What'd you observe when you got there?

16 A When I pulled into the parking lot, Lieutenant
17 Mclemore had Mr. Starnes -- they were standing on the side
18 of Lieutenant Mclemore's vehicle, and Mr. Starnes was in
19 handcuffs.

20 Q Okay. Was anybody else there?

21 A Yeah, I think Sergeant Graffam had responded over to
22 Lieutenant Mclemore to help secure the location until we
23 could have other officers arrive.

24 Q Was there anybody else in the bar, bar patrons, staff,
25 anything like that?

TONY BOWERS - DIRECT BY MR. KNIGHT

65

1 A The bartender, Crystal Jones, was there, and I think
2 there was one customer, a female.

3 Q Okay. So there were two other individuals there other
4 than the defendant when you got back.

5 A Yes, sir.

6 Q Did you speak with the defendant when you got back on
7 ---

8 A I did. I met with him and Lieutenant Mclemore in the
9 parking lot. Lieutenant Mclemore advised me that he had
10 read Mr. Starnes his Miranda rights, and that he had been
11 placed under arrest based on the drugs that were found in
12 the traffic stop.

13 Q Okay.

14 A Lieutenant Mclemore went inside to assist with --
15 secure the location; I stayed with Mr. Starnes in the
16 parking lot. I asked him if he had been thoroughly
17 searched since he was in custody, if he had anything
18 illegal on his person; he told me had a Hydrocodone pill in
19 his pocket. I recovered it and searched him.

20 Q Okay.

21 MR. KNIGHT - At this time ---

22 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
23 STATE'S EXHIBIT NUMBER 2.)

24 Q Where'd you find this pill that you said you located
25 on ---

TONY BOWERS - DIRECT BY MR. KNIGHT

66

1 A It was in his pants pocket.

2 Q In his pants pocket?

3 A Yes, sir.

4 Q Okay. And you stated you found that after he was
5 arrested?

6 A I did.

7 Q He was in handcuffs?

8 A That's right.

9 Q Okay. What did the pill look like? Do you remember?

10 A I don't.

11 Q Okay. What do y'all -- as part of your training and
12 duties as narcotics officer, what do y'all do with
13 recovered contraband such as controlled substances or other
14 kind of drugs?

15 A Anytime we seize a controlled substance, we fill out
16 what's called a BEST kit, B-E-S-T kit. I don't know what
17 it's stands for. It's a SLED provided kit, because all of
18 our controlled substances are analyzed by SLED, so I pull
19 out the kit and turn it into our evidence department at the
20 sheriff's office.

21 MR. KNIGHT - May I approach the witness?

22 MR. LIFSEY - I don't have an objection to that --

23 -

24 THE COURT - All right.

TONY BOWERS - DIRECT BY MR. KNIGHT

1 MR. LIFSEY - I don't have any objection to that
2 document -- it's -- if he intends to introduce it at some
3 point ---

4 THE COURT - Okay. Do you intend to introduce the
5 document?

6 MR. KNIGHT - I do.

7 THE COURT - All right, introduced as State's next
8 in order. You can ask him about it. Just let -- has it
9 already been marked? Let her mark it.

10 MR. KNIGHT - It has.

11 THE COURT - Let her mark it, then you ask him
12 about it.

13 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
14 EXHIBIT NUMBER 2.)

15 Q For the record I'm showing you what's marked as
16 State's Exhibit 2. Can you tell me what that is?

17 A I can. A part of a BEST kit, what's called a Form B,
18 is a chain of custody. It describes who seized the drugs
19 and basically what they did with it after that and the
20 description of it and this is the Form B from the BEST kit
21 I filled out.

22 Q Okay. Is there anything on that form that states
23 where it's collected, from whom and on what date?

TONY BOWERS - DIRECT BY MR. KNIGHT

68

1 A There is. It's on 8/4/2011, I seized from James
2 Starnes pursuant to a lawful search on West Meeting Street
3 in Lancaster, one pill.

4 Q Okay. What kind -- when you -- when you talking about
5 a BEST kit, what type of container is a BEST kit, or what's
6 it placed in when you seize ---

7 A I put whatever the substance is into a evidence bag
8 from the sheriff's office and seal it, and then I fill out
9 the BEST kit. It comes with its own sealed evidence bag
10 that I put my evidence into with these forms and then we
11 seal it and turn it into the evidence department at the
12 sheriff's office.

13 Q And that -- State's Exhibit 2 that you've got in front
14 of you right now, is that a copy of the ---

15 A It is. It's chain of custody.

16 Q Okay. And what is that -- what is that denote, just -
17 --

18 A Basically that I'm the seizing officer. I turn it
19 over to Ann Horton who is our evidence lady at the
20 sheriff's office, and then she took it to SLED for
21 analysis.

22 Q Okay. So do you know what date you gave it to Ann
23 Horton?

24 A Yeah, it was turned on 8/4/2011.

TONY BOWERS - DIRECT BY MR. KNIGHT

69

1 Q And with the BEST kit -- or -- you said you sealed it
2 up?

3 A Yes. Actually it was turned into to her on 8/5/2011
4 because this incident ended around midnight so ---

5 Q Okay. Let's turn back to the bar. You said that you
6 got the pill off of the defendant ---

7 A Yes, sir.

8 Q --- what was you said was a Hyrdocodone pill I
9 believe. What did you do after that?

10 A Once the bar was secured -- and basically what
11 happens, if we believe there's probable cause to obtain a
12 search warrant for a location, we secure it in advance to
13 stop any evidence from being destroyed and any people
14 coming or going. We secured this location; I kept Mr.
15 Starnes outside while Investigator Rollins went and met
16 with the magistrate judge and obtained a lawful search
17 warrant for the address.

18 Q Do you remember the time period from the time y'all
19 got back to the bar until the time the search warrant was
20 obtained?

21 A I can tell you that the search warrant was executed
22 around 9:00 pm. The traffic stop on Rico Green would've
23 been around 8:30 -- I'm sorry -- around 6:30, 6:45 in that
24 area. We would've locked the bar down between 7:00, 7:30,
25 and the search warrant would've been executed around there.

TONY BOWERS - DIRECT BY MR. KNIGHT

70

1 Q What'd y'all find when you executed the search
2 warrant?

3 A I basically maintained custody of Mr. Starnes and -- I
4 executed the search warrant. Once it arrived at the
5 location, I read it aloud to Mr. Starnes and the bartender,
6 Ms. Jones. The female custody that was present had been
7 released and was allowed to leave.

8 Q Okay. So you were outside while the search warrant
9 for the bar -- while they were searching the bar?

10 A Once the search warrant arrived at the location, we
11 escorted Mr. Starnes back inside, let him have a seat at
12 one of the booths, and I read the warrant to him and the
13 bartender.

14 Q Did you personally find anything or seize anything in
15 the bar pursuant to the search warrant?

16 A I did not. Everything seized would've been by our
17 crime scene investigator, Ken Taylor.

18 Q Okay. Do you remember in this case -- well, tell us
19 what happened after the search warrant was executed.

20 A Basically, we executed the search warrant; we searched
21 the entire premise. Anything that we think is relevant to
22 the case, we seize it, document it on the search warrant
23 and leave a copy at the location, and then once it was
24 completed, I transported Mr. Starnes to the Lancaster
25 County Detention Center.

TONY BOWERS - DIRECT BY MR. KNIGHT

71

1 Q Okay. Did you transport him in your -- your vehicle,
2 your sheriff's office unmarked car?

3 A I did. In the front seat under seatbelt, handcuffed.

4 Q And did he say anything to you about -- did you try to
5 ask him any questions or anything like that?

6 A I did. I offered Mr. Starnes the opportunity to stop
7 by the sheriff's office and sit down and give me a written
8 statement on the -- anything he knew about the incident
9 going on that evening, and he stated that he didn't know
10 anything about any illegal sale of cocaine or crack
11 cocaine, but that he had bought two Hydrocodone pills from
12 the black male that was driving the black Charger earlier
13 in the evening.

14 Q Okay. And that's all he stated to you?

15 A Yes, sir.

16 Q You only found one Hydrocodone pill on him though,
17 right?

18 A That's right.

19 Q Did you remember taking any statements from anybody
20 else in this case?

21 A I did. When I dropped Mr. Starnes off at the
22 detention center, I picked up Rico Green and took him to
23 the sheriff's office, drug task force office and sat down
24 and I got a written statement from him.

25 Q Okay. Did you take a statement from anyone else?

TONY BOWERS - CROSS BY MR. LIFSEY

72

1 A I did. Because of how late it was in the evening when
2 this investigation was concluded, the next day when we came
3 into work, I went to the detention center and got Mr.
4 Dyvonne Jowers and sat down and took a written statement
5 from him.

6 Q And all this occurred in Lancaster County?

7 A Yes, sir.

8 MR. KNIGHT - Okay. I think I have no further
9 questions. Please answer any questions Mr. Lifsey has for
10 you.

11 THE COURT - Mr. Lifsey?

12 CROSS EXAMINATION

13 BY MR. LIFSEY -

14 Q Officer Bowers, so you were the case agent in charge
15 of this investigation?

16 A Yes, sir. It was a combination of all of our efforts,
17 but yes, sir, my name's on the warrants.

18 Q Okay. Just to clarify -- I think you made it clear,
19 but just to clarify, when you saw the black Charger arrive
20 at Goodtime Charlies, that was the first point that day you
21 had seen that Charger. Correct?

22 A That's right.

23 Q So obviously, you don't know what was going on
24 beforehand or anything like that, do you?

25 A That's right.

TONY BOWERS - CROSS BY MR. LIFSEY

73

1 Q So you certainly didn't have any search of that
2 vehicle prior to him arriving at Goodtime Charlies.

3 A No, sir.

4 Q So you have absolutely no way of knowing where those
5 drugs came from of your own knowledge. Correct?

6 A Not of my knowledge, no, that's right.

7 Q So you see a -- my client walk out talking on the
8 phone a couple times. Is that correct?

9 A Yes, sir.

10 Q Then you see the Charger arrive. Correct?

11 A That's right.

12 Q And you see him and -- I say him -- my client and Rico
13 Green go into the bar. Is that correct?

14 A That's right.

15 Q You were in no position to overhear their
16 conversation. Correct?

17 A No, sir.

18 Q You were in no position to have any kind of hidden
19 cameras, because Mr. Green wasn't working as an agent for
20 you or anything.

21 A No, sir.

22 Q You have no surveillance inside. Did you have
23 surveillance inside the bar?

24 A There was a DVR that was seized but it was -- it
25 wasn't working, so no there's no video inside.

TONY BOWERS - CROSS BY MR. LIFSEY

74

1 Q So -- and there's no audio of went on from the bar.

2 A No, sir.

3 Q So basically you've got no way of your own knowledge
4 to know whether my client sold drugs to Rico Green or
5 whether Rico Green sold Hydrocodone to my client, of your
6 knowledge. You have no way of knowing that. Correct?

7 A That's right.

8 Q I want to ask you some questions about how we might
9 could've found out that. Did -- did you attempt to
10 fingerprint the drugs that were seized out of Rico Green's
11 car?

12 A No, sir.

13 Q All right. Who owned the bar?

14 A I -- I think the bar is owned by Jimmy McDonald and
15 leased out to whoever wants to rent it I guess.

16 Q Wasn't it leased out to a guy that runs a car lot in
17 McAdenville?

18 A That's right. I believe it was.

19 Q Which is not my client.

20 A No, that's right.

21 Q So my client didn't own the bar, did he?

22 A No, sir.

23 Q All right. So my client told you he didn't know
24 anything about the drugs in that bar.

25 A That's right.

TONY BOWERS - CROSS BY MR. LIFSEY

75

1 Q Beyond the Hydrocodone. He didn't know anything about
2 them. Correct?

3 A That's right.

4 Q So what investigation have you done of the guy from
5 McAdenville?

6 A Well, we -- it's in the Gastonia part of North
7 Carolina and we have been in discussion with the narcotic's
8 officers in the area immediately after this case.

9 Q What is the result -- well, let me ask you this. Have
10 you interviewed or -- to your knowledge -- has -- have you
11 interviewed Mr. -- the man who owns the car lot in
12 McAdenville?

13 A No, sir, he won't come and talk to us.

14 Q Were you involved at all in the actual search that
15 found the drugs in the back locked room?

16 A No, sir.

17 Q Okay. You mentioned Ken Taylor. Who is he?

18 A Ken Taylor is a crime scene investigator employed by
19 the Lancaster County Sheriff's office.

20 Q What does he do?

21 A Anything to do with crime scene. A lot of times when
22 we -- we would execute a search warrant, we would get one
23 of the CSI guys to come and seize all the evidence and
24 maintain custody of it.

TONY BOWERS - CROSS BY MR. LIFSEY

76

1 Q And part of Ken Taylor's job he can also, for example,
2 dust for fingerprints. Correct?

3 A Yes, he can.

4 Q He can also look for DNA evidence. Correct?

5 A That's right.

6 Q Was -- to the best of your knowledge, was that done of
7 the area in which the drugs were found in this case?

8 A No, sir.

9 Q You mentioned Jimmy McDonald probably owns it ---

10 A Yes, sir.

11 Q --- and leased it out to him. Did you discuss this
12 case with Jimmy McDonald?

13 A I spoke to one of the -- one of his local, I guess,
14 general managers that runs operations in Lancaster County
15 about this case, yes.

16 Q Did he tell you then who owned the bar?

17 A She did not. She would get back with me and didn't.

18 Q Well, since that time have you gotten back with her or
19 anybody connected with McDonald Enterprises to determine
20 who actually did the day-to-day operation of that bar, who
21 was down there regularly?

22 A No, sir. Um I believe Mr. Starnes was the general
23 manager.

24 Q Do you -- did you at any point -- you saw my client on
25 a cell phone.. Correct?

TONY BOWERS - CROSS BY MR. LIFSEY

77

1 A That's right.

2 Q Did you at any point get my client's cell phone
3 records?

4 A No, sir.

5 Q So you don't have any way to know if he was calling my
6 client -- excuse me -- Mr. Green, if he was calling
7 somebody else or any of that. Did you -- did you get a
8 cell phone from Rico Green?

9 A I don't remember getting one from him.

10 Q Did you make any effort to get Rico Green's cell phone
11 records?

12 A No, sir.

13 Q Did you attempt to get any kind of bank records from
14 my client that might support the idea that he's some big
15 time drug dealer?

16 A No, sir. Cash money was seized at the -- the search
17 warrant.

18 Q Sure. Nineteen hundred bucks. Right?

19 A Right, that corroborated the information given by Mr.
20 Green.

21 Q All right. You're saying the way somebody could have
22 nineteen hundred dollars in cash is if somebody -- they
23 just sold drugs. There's no way ---

24 A No, sir.

25 Q --- any other human being can have that.

1 A No.

2 Q Did you -- for example, did you look at my client's
3 bank records?

4 A No, sir.

5 Q So you don't know if he had made a withdrawal earlier
6 in that day, do you?

7 A No.

8 Q Did you check his payroll records of this bar to see
9 how much he was paid or when he was made?

10 A No, sir. Those things are kind of -- were impossible
11 to follow-up on. Mr. Starnes was not cooperative.

12 Q You mean you can't get bank records from a defendant
13 unless he's cooperative? You can't subpoena ---

14 A I'm not sure ---

15 Q --- documents?

16 A I'm not sure where he banks at. There's several
17 financial institutions.

18 Q So you're saying anybody that's charged with a
19 financial crime just needs to tell y'all that he doesn't --
20 he doesn't want to cooperate and y'all are no longer able
21 to get any bank records. Is that what you're saying?

22 A I don't -- I don't work financial crimes.

23 Q Okay. But plenty of people at the sheriff's do.
24 Correct?

25 A Yes, sir.

TONY BOWERS - CROSS BY MR. LIFSEY

79

1 Q Did you call any of them to assist you?

2 A No, sir.

3 Q Did you call any of them to look at tax records or
4 anything like that?

5 A No, sir.

6 Q Did you look at tax records related to the county as
7 far as ownership of this bar or who had access to it?

8 A No, sir.

9 Q Did you investigate the relationship between Crystal
10 Jones and my client?

11 A No, sir.

12 Q This event happened in August of 2011 and I know you
13 did some stuff it sounds like in the next few days.

14 A That's right.

15 Q What'd you do in November of 2011 to investigate this
16 case further?

17 A Nothing on this case. There were several cases
18 pending at the same time.

19 Q Not on my client.

20 A No, sir.

21 Q Okay. Other cases -- Rico Green had other cases.

22 A Yes, sir.

23 Q Okay. December of 2011 what did you do in this case,
24 to investigate this case ---

25 A Nothing on this case.

TONY BOWERS - RE-DIRECT BY MR. KNIGHT

80

1 Q --- to investigate this case. How about January of
2 2012?

3 A Nothing.

4 Q How about the other 11 months of 2012, what'd you do
5 to investigate this case?

6 A Nothing on this case.

7 Q How about 2013, how much did you investigate this
8 case?

9 A Nothing since the night of the incident.

10 Q So you didn't do anything up until I guess the other
11 day when y'all got subpoenaed to come up ---

12 A That's right.

13 Q So it's far to say the investigation of this matter
14 ended that night.

15 A That's right.

16 MR. LIFSEY - Excuse me one second. (Pause)

17 Thank you, Judge. I don't have any further questions.

18 THE COURT - All right, any redirect?

19 MR. KNIGHT - Just a few things.

20 THE COURT - Okay.

21 RE-DIRECT EXAMINATION

22 BY MR. KNIGHT -

23 Q Investigator Bowers, when you said you followed the
24 black Charger from the bar, was there any point that you
25 lost sight of the black Dodge Charger?

TONY BOWERS - RE-DIRECT BY MR. KNIGHT

81

1 A No, sir. I pulled out immediately behind the vehicle
2 and followed him until it was stopped.

3 Q And Rico Green, when you talked to him after you
4 pulled the black Charger over, did he state to you that all
5 the drugs that he had on his possession came from that bar?

6 MR. LIFSEY - I object to that as hearsay.
7 Presumably they can call Rico Green to testify if they want
8 to.

9 THE COURT - All right. Sustained. Just move on.

10 Q All right. It was your belief that the defendant was
11 the manager and the only person that had access to open and
12 close the bar that night.

13 A That's right.

14 Q And I believe Mr. Lifsey asked you about the
15 relationship between Crystal Jones and the defendant. You
16 said you didn't investigate that?

17 A Well, ---

18 Q Do you have any knowledge about their relationship?

19 A Yes, sir.

20 Q What was their relationship?

21 A Crystal Jones was the bartender that works for Mr.
22 Starnes at the location.

23 Q Works for Mr. Starnes?

24 A That's right.

1 Q And that would support the fact that Mr. Starnes would
2 be the general manager of the bar?

3 A Yes, sir, that and that he had the -- the only set of
4 keys to the location to the locked office in his pocket.

5 Q Okay. Who else was in the bar when y'all shut it down
6 with the search warrant?

7 A Crystal Jones and one customer.

8 Q Okay.

9 A A female.

10 MR. KNIGHT - I have no further questions. Thank
11 you.

12 THE COURT - Any re-cross based on that?

13 RE-CROSS EXAMINATION

14 BY MR. LIFSEY -

15 Q You've got know way to know how long those drugs were
16 there, do you?

17 A The drugs in ---

18 Q Of your own knowledge. You've got no way ---

19 A The drugs in the bar?

20 Q Yeah. You've got no way to know that of your
21 knowledge.

22 A No, sir.

23 MR. LIFSEY - Thank you. I don't have anything
24 further.

1 THE COURT - All right. Thank you, sir; you may
2 step down. Ladies and gentlemen, let's take a brief mid-
3 morning recess. We'll get you back out here in ten
4 minutes. Don't talk about the case; you've only heard from
5 one witness. Okay? Thank you.

6 (WHEREUPON, JURY EXITS THE COURTROOM)

7 THE COURT - All right, Mr. Lifsey, you wanted to
8 bring up the matter outside the jury's presence.

9 MR. LIFSEY - Yes, sir. I would move for a
10 mistrial based on that statement of him investigating drug
11 activity, which -- I mean on its own merits I think it's
12 too prejudicial, and the bell I can't unring. In addition
13 I tried my best in the pre-trial and I tried my best by
14 objecting early to get them to avoid asking that in such a
15 way that it would elicit that response, and yet we
16 continued to do it, and I just don't understand it, so I
17 move for a mistrial on the grounds that it's a -- it's
18 prejudicial to my client; it can't be unring. If the Court
19 does not grant a mistrial, which I urge you to do, I would
20 ask for a curative instruction which, of course, I don't
21 think would be sufficient to cure the mistrial is why I
22 request a mistrial. Thank you, sir.

23 THE COURT - Thank you. Solicitor?

24 MR. KNIGHT - Well, we would just say that that
25 statement that they responded to the location in

1 investigating possible drug activity wasn't offered for the
2 truth of the matter asserted, therefore, it wouldn't be
3 hearsay. It was just kind of explaining how they got to
4 the bar that night and why they there setup on the bar that
5 night and why the drug officers were there. It wasn't to
6 whether or not it was true or not, whether that tip was,
7 you know, there really was drugs being sold, it was offered
8 to show why they ended up across the street surveilling the
9 defendant out there, and I think that ---

10 THE COURT - Well, your first question, there was
11 an objection; I overruled it, and I brought y'all up here
12 and then I sent you back. And then you rephrased your
13 question, and the witness answered they received an
14 anonymous tip about drug activity. Okay? I mean, Mr.
15 Lifsey, what's objectionable other than it doesn't -- it
16 may prejudice your client because he's on trial for, you
17 know, selling drugs allegedly, but I mean why is that
18 improper? I don't -- I don't follow your -- your logic
19 here.

20 MR. LIFSEY - I think it's not probative at all.
21 I mean it's not -- first of all, it is prejudicial as you -
22 - I think you know ---

23 THE COURT - Yeah, I understand that.

24 MR. LIFSEY - And also ---

1 THE COURT - But just because it's prejudicial
2 doesn't mean it can't come into evidence.

3 MR. LIFSEY - Yes, but it has to have probative
4 value that outweighs the prejudicial effect. What's the
5 probative value, when they could've just said, were you
6 conducting an investigation. Instead, now we've got this
7 statement to the jury there was an anonymous tip out there.
8 Why -- I mean I don't -- I think it's prejudicial; I don't
9 understand why we did it. I don't think it was necessary,
10 and like I say, I think I asked two or three times for them
11 not to do it and they still did. I just -- I don't
12 understand. I think it was more prejudicial than
13 probative. I think it has no probative value at all. It's
14 unnecessary.

15 THE COURT - Okay. Solicitor?

16 MR. KNIGHT - I believe Tony Bowers with the
17 sheriff's office testified -- he didn't say that it was
18 anonymous tip or was particularly about his client. He
19 just said that the reason they were in the parking lot
20 across the street was because they were doing surveillance
21 in reference to an anonymous tip. I think -- it wasn't the
22 basis of the car stop; it wasn't the basis of the search
23 warrant. It was just the basis of why they were in the
24 parking lot across the street. I think based on that, it's
25 very probative to show the jury why they were sitting out

1 across the street. It doesn't have anything to do with,
2 you know, his client particularly selling drugs. I don't
3 think he testified to that. He just said, the reason they
4 were in the parking lot, looking at that parking lot that
5 night was because, you know, an anonymous tip. They didn't
6 say it was about his client or anything like that and -- it
7 was about the bar, so I think based on that that, you know,
8 it -- it's probative value would definitely outweigh its
9 prejudicial value, and again, the basis for the car stop,
10 the basis for the search warrant had nothing to do with an
11 anonymous tip. Everything was plain view, seen in plain
12 view, and I think based on all that and the fact that he
13 didn't testify to that the defendant was selling drugs,
14 that there was just drug activity at the bar, I think that
15 that kind of makes it even cleaner, that it should be
16 allowed.

17 THE COURT - All right, well, I'm going to stand
18 by my previous ruling. I'll deny your motion for mistrial;
19 I think you're certainly protected in the record, Mr.
20 Lifsey, but, you know, the basis for my ruling the way it
21 was, I didn't think it was an improper question, and I
22 don't think -- and I agree with the State's position that -
23 - I agree with the State's position. Anything else?

24 MR. LIFSEY - Thank you. No, thank you for taking
25 ---

1 THE COURT - All right, sure. Anything else?

2 (WHEREUPON, NO REPSONSE)

3 THE COURT - All right, y'all go take a break.

4 (WHEREUPON, RECESS TAKEN)

5 THE COURT - All right, thank you. We'll come
6 back to order. You may be seated.

7 All right, we have a juror knocked on the door
8 and advised Hal -- Juror number 71 -- where's my list --
9 Ms. Lizenby indicated that she had a cousin named James
10 Starnes from Waxhaw. Okay? That's what she said, and she
11 hadn't seen the cousin in 25 years.

12 How old is your client, Mr. Lifsey?

13 MR. LIFSEY - 34 -- almost 34.

14 THE COURT - So that means he would've had to have
15 been 9 and -- but -- anyway I'm going to bring out -- I'm
16 going to bring her out here and ask her about it, but she
17 thought about it -- I think that's the only way I can deal
18 with it. Y'all okay with that?

19 MR. LIFSEY - Yes, sir.

20 MR. KNIGHT - (Indicating yes)

21 THE COURT - All right, let's bring juror number
22 71 out here so I can ask her about it.

23 MR. LIFSEY - Of course, you know, even if --
24 whether she is or isn't, if she's concerned enough about it

1 -- I mean I know you'll make a proper inquiry whether she
2 can still ---

3 THE COURT - Sure.

4 MR. LIFSEY - We have an alternate I guess is what
5 I'm saying.

6 THE COURT - That's correct.

7 (WHEREUPON, JUROR 71 ENTERS THE COURTROOM)

8 THE COURT - All right, Ms. Lizenby -- you're
9 fine. You're not in trouble. Stand right there for me.
10 Raise your right hand.

11 (WHEREUPON, JUROR 71 IS DULY SWORN BY THE COURT)

12 THE COURT - All right, thank you. Madam Court
13 Reporter, can you hear her?

14 COURT REPORTER - Yes, sir.

15 THE COURT - I just have a few questions. What
16 did you tell my bailiff back there during the break?

17 JUROR - Said that I have a cousin named Jamie
18 Starnes.

19 THE COURT - Okay.

20 JUROR - I'm not sure that this is him, but I just
21 wanted to make sure. I just wanted to be honest.

22 THE COURT - Sure. Absolutely. And in looking at
23 the defendant here, Mr. James Starnes, do you recognize any
24 family resemblance?

25 JUROR - No.

1 THE COURT - Okay. The cousin named Jamie Starnes
2 who you have, when's the last time you've seen that person?

3 JUROR - Probably three years ago.

4 THE COURT - Okay. Three years ago? Is that the
5 same person you see here today?

6 JUROR - I don't think so.

7 THE COURT - All right. Okay. And who was --
8 who's his mama, your cousin's mama?

9 JUROR - Shelby Starnes.

10 THE COURT - Okay. All right, and is -- okay,
11 Shelby Starnes. And how are you related to Shelby Starnes?

12 JUROR - She's my mother's sister.

13 THE COURT - Got you. All right, thank you very
14 much for your honesty. You may go back to your jury room.
15 Appreciate it.

16 (WHEREUPON, JUROR EXITS THE COURTROOM)

17 THE COURT - Any relation, Mr. Lifsey?

18 MR. LIFSEY - Not -- not my client. His mother's
19 not named Shelby Starnes.

20 THE COURT - Okay. That's why I asked that
21 question. Okay, well better safe than sorry. Any position
22 from the defense as to this particular juror?

23 MR. LIFSEY - No, I don't - I don't know if I
24 really have a position, Judge. I mean, you know, I -- I
25 don't know -

1 THE COURT - I mean she just testified she saw him
2 three years ago.

3 MR. LIFSEY - Yeah. I kind of think -- I would
4 think out of abundance of caution it would be best to use
5 the alternate.

6 THE COURT - Okay. What's the State think?

7 MR. KNIGHT - We're okay with the alternate. I
8 think out of abundance of caution I think that might be the
9 best ---

10 THE COURT - Well, darn, I was going to make Ms.
11 Lizenby the forelady. I really was.

12 MR. LIFSEY - Were you?

13 THE COURT - I was. I had her down with an
14 asterisk to be the forelady, but she won't be the forelady
15 anymore. All right, just -- all right, bring Ms. Lizenby
16 out here again, and I'm going to -- with the consent of
17 both parties then I will allow her to not be on the trial
18 jury. We'll have the alternate fill in. Out of abundance
19 of caution. Is your client related to any of the Starnes
20 in Waxhaw?

21 MR. LIFSEY - They're from North Carolina.
22 Charlotte, so ---

23 THE COURT - Well, Charlotte, Waxhaw; it's all the
24 same now.

25 MR. LIFSEY - Hard to tell, Judge.

1 THE COURT - Okay.

2 (WHEREUPON, JUROR 71 RETURNS TO THE COURTROOM)

3 THE COURT - Ms. Lizenby, nothing you did wrong;
4 again, you're not in trouble. Okay? Out of abundance of
5 caution, I'm just going to ask that you not serve on this
6 jury. Okay?

7 JUROR - Okay.

8 THE COURT - Just call back this evening after
9 6:00 and you'll get instructions about what you're supposed
10 to do. Okay?

11 JUROR - Okay.

12 THE COURT - I mean that's why we have an
13 alternate in case of situations like this, and thank you
14 for your honesty.

15 JUROR - Thank you.

16 THE COURT - All right, you have a good day.

17 (WHEREUPON, JUROR EXITS THE COURTROOM)

18 THE COURT - All right, Mr. Lifsey, Ms. Collins.

19 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
20 NOT REPORTED IN AN UNRELATED MATTER.)

21 THE COURT - All right, anything else before we
22 bring the jury out?

23 (WHEREUPON, NO RESPONSE)

24 THE COURT - None?

25 (WHEREUPON, NO RESPONSE)

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

92

1 THE COURT - Bring them on.

2 (WHEREUPON, JURY ENTERS THE COURTROOM AT 11:31
3 AM)

4 THE COURT - All right, all members of the jury
5 are present. Thank you, ladies and gentlemen. During the
6 recess you may notice that there's one less of you, and
7 what happened -- I want to make sure you knew what happened
8 -- better safe than sorry -- Ms. Lizenby who was serving on
9 the jury has a cousin with the same last name from the same
10 area where the defendant is from, and so even though there
11 was no relation, out of an abundance of caution, I just
12 told her she could serve on another jury. Okay? And
13 that's why we have alternates. Okay. So now, madam
14 alternate, you have stepped into that role. So
15 congratulations.

16 All right, we will proceed with the next witness.

17 MR. KNIGHT - At this time the State would like to
18 call Ryan Mclemore.

19 THE COURT - All right.

20 RYAN MCLEMORE, AFTER BEING FIRST DULY SWORN,

21 TESTIFIES AS FOLLOWS -

22 DIRECT EXAMINATION

23 BY MR. KNIGHT -

24 Q Good morning, Lieutenant.

25 A Good morning.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

93

1 Q Could you please state your name and occupation for
2 the record?

3 A Lieutenant Ryan Mclemore. I'm a narcotics
4 investigator for the Lancaster County Sheriff's office.
5 I'm supervisor of that unit.

6 Q How long have you been with the Lancaster County
7 Sheriff's Office?

8 A I've been in law enforcement for 20 years. I've been
9 with the sheriff's office for 19 years.

10 Q How long have you been over the narcotics division at
11 Lancaster County?

12 A I've been supervisor over that unit for about eight
13 years, eight and a half, nine years.

14 Q All right. Let's turn now to August the 4th of 2011.

15 Do you remember if you were working on that day?

16 A I was.

17 Q Do you remember going out to the scene of The Goodtime
18 Charlies bar on West Meeting Street?

19 A I do.

20 Q Do you remember about what time you got out to that
21 location?

22 A It was toward the latter part of the evening. We
23 working second shift; I don't remember the exact time.

1 Q All right. Do you remember why y'all -- when you
2 first got out there that evening where you were located at,
3 where you sat up at?

4 A Yes, I sat up in the Crown Cinema parking lot which is
5 a movie theater which was right down the road on Meeting
6 Street from the target location.

7 Q And what were you doing out there?

8 A One of my guys, Investigator Bowers, he had received
9 some information that the ---

10 MR. LIFSEY - I -- I renew my objection --
11 previously to this ---

12 THE COURT - Yes, sir. Objection noted;
13 overruled.

14 Q Continue.

15 A He had received some information prior that the bar in
16 question, Goodtime Charlies, that there was some drug
17 transactions taking place there and would be throughout the
18 evening. So we took that information based on that and we
19 set up what we call surveillance ---

20 MR. LIFSEY - And, Judge, I hate to interrupt.
21 But I want to clarify. I'm objecting not just to -- under
22 prior testimony I think -- what he just said is
23 objectionable as well on the same grounds, if it goes even
24 further -- I mean the reason I objected, so I would like to
25 be heard in that regard.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

95

1 THE COURT - Yes, sir, objection noted; objection
2 overruled.

3 Q All right, so y'all went out to the bar. Do you
4 remember around what time y'all went out there?

5 A I can't right off without looking. It was toward the
6 early part of the evening. It was, you know, early --
7 early evening.

8 Q Do you remember who was with you, what other officers
9 were with you?

10 A It was Investigator Bowers and Investigator Brandon
11 Rollins.

12 Q Were y'all driving separate cars or were y'all
13 together?

14 A We were in separate cars.

15 Q What kind of car were you in?

16 A At that time I was in a black Ford, four-wheel drive
17 unmarked police vehicle.

18 Q And you had -- from where you were at your location in
19 the Crown Cinema parking lot, could you see the bar parking
20 lot area?

21 A I could not, no.

22 Q Okay. What happened after you got out there and sat
23 out there for a few minutes?

24 A We sat there for a little. Investigator Bowers, he
25 was positioned to where he could actually see the bar. We

1 were communicating back and forth to each other via radio,
2 our private channels in our police vehicles. He advised
3 over the radio that he had observed a black male pull up
4 into the parking lot in a Charger. He saw a while male
5 subject inside the bar come out. The two met briefly
6 outside in the parking, and he's telling us all this over
7 the radio, and he says they go back inside the building at
8 that point.

9 Q Okay. What happened after that, after you got that
10 information?

11 A We decided to continue surveillance on the bar. After
12 a few moments Investigator Bowers advised us that the black
13 male has exited the bar and has gotten into his vehicle
14 and is leaving the location. I made the decision then that
15 we needed to follow this subject that was leaving the bar
16 based on the earlier information we had acquired, so we
17 indeed did that, and we conducted surveillance, and at this
18 time got behind the black Charger as it left and followed
19 it from the bar.

20 Q Was your car directly behind the black Charger?

21 A It was not.

22 Q Do you -- can you recall which officer's car it was?

23 A I'm thinking Investigator Bowers. I think he probably
24 -- because he had eyes on the location, so he probably
25 would have been the first vehicle out.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

97

1 Q Okay. Where'd y'all follow the Dodge Charger to?

2 A It was followed from that location down Springdale
3 Road in Lancaster.. It took me a little bit of time, of
4 course, to catch up to him because I was a little bit
5 further down the road, but it was being followed by
6 Investigator Bowers and Investigator Rollins, and they had
7 continuous sight of the vehicle once it left the bar.

8 Q Okay, what'd you do when you -- when y'all caught up
9 to the car, what did you -- what'd you observe? What
10 happened?

11 A As I got there -- like I said, I was a little bit
12 behind, caught in a little bit of traffic, once I got
13 there, Investigator Bowers had already started to initiate
14 a traffic stop. Once I actually could get to where I could
15 -- got to the scene, the car was actually coming to a stop
16 at that point once- - once I got there. As I pulled up to
17 the traffic stop, I observed the passenger's side door
18 swing open and the passenger jump out of the car and
19 attempt to flee on foot.

20 Q So the passengers got out and started running?

21 A Yes.

22 Q What'd you do after that?

23 A I jumped out of my vehicle along with Investigator
24 Rollins. I think Investigator Bowers went to the black
25 Charger. We pursued the subject on foot, which it wasn't

1 far (sic) pursuit, he only ran 15, 20 feet or so. It
2 wasn't very far up the road. He just kind of gave up and
3 laid down on the ground and we took him into custody.

4 Q Who was the passenger that ran?

5 A He was Jowers.

6 Q And did you know him prior to this car stop?

7 A I did not.

8 Q You learned of his name after the car stop.

9 A Yes.

10 Q Okay. And did you actually arrest Mr. Jowers?

11 A I found some of the drugs and the pistol that was on
12 him. I can't remember exactly who put the handcuffs on
13 him. Myself and Investigator Rollins were both dealing
14 with him.

15 Q So you -- you say you found some drugs and a pistol on
16 Mr. Jowers?

17 A Yes.

18 Q Do you remember exactly what kind of drugs you found
19 on Mr. Jowers?

20 A It was a bag of crack cocaine, a bag of powder
21 cocaine, and -- I think they were -- it was in his left --
22 left front pants pocket. You could see a piece of the bag
23 sticking out. And you could also see -- once we stood him
24 out -- or actually I think he was still on the ground -- I

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

99

1 saw the butt of a pistol sticking out of his right pants
2 pocket.

3 Q And what'd you do with those drugs once you got them
4 from Mr. Jowers?

5 A They were -- they were seized at that point.

6 Q And do you remember what -- were they in bags? Were
7 they in containers? Do you remember off the top of your
8 head?

9 A They were in bags, two separate bags.

10 Q Okay, and I -- at this -- I'm showing ---

11 MR. LIFSEY - I don't have any objection to that
12 document.

13 Q At this time I'd like to show what's marked as State's
14 Exhibit 3 for identification purposes.

15 THE COURT - You don't have any objection to it
16 coming in?

17 MR. LIFSEY - Not if he intends to introduce it.
18 That's fine.

19 THE COURT - Okay, you intend on introducing that
20 into evidence?

21 MR. KNIGHT - I do.

22 THE COURT - Okay. Then it'll come in as evidence
23 next order.

24 MR. KNIGHT - Thank you, Your Honor.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

100

1 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
2 STATE'S EXHIBIT NUMBER 3.)

3 Q Lieutenant McClemore, could you tell me what that is?

4 A This is what's called a Form B from a BEST kit, those
5 kit -- which are evidence-type kits that we fill out in
6 order to send to SLED for analysis.

7 Q What is a BEST kit? Could you explain kind of what
8 that is?

9 A Those are kits that are designed by the State Law
10 Enforcement Division who actually analyze different drugs
11 that we may send to those -- it's a kit -- we call it a
12 kit. It's a little small plastic bag and it has -- drugs
13 go inside of it, and there's different type forms that you
14 fill out on it and it shows chain of custody. There's
15 forms here like this one that shows where I initially took
16 the drugs from Mr. Jowers or Rico Green, and it's where --
17 and then I turned the drugs over to Investigator Rollins
18 and just -- on the form here it just shows that chain of
19 custody where one officer has it, and, you know, who has
20 had the drugs in their hand and so forth. All this
21 paperwork is filled out; there's other forms in the BEST
22 kits that are killed out. They're sealed and signed by the
23 person who are sealing them or signing them and they're --
24 from there they're carried to SLED or to Columbia for
25 analysis.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

101

1 Q Do you recall if you collected the items off of Mr.
2 Jowers on August the 4th of 2011?

3 A Yes.

4 Q You put it in the BEST kit and sealed it up?

5 A I gave them to Investigator Rollins ---

6 Q Okay.

7 A --- there on the scene; it shows the chain here.

8 Q And that's with the BEST kit when y'all send them off
9 to SLED?

10 A Right.

11 Q Okay. And how do you know that you actually put it in
12 -- do y'all initial or do any kind of markings on that form
13 that you had to show what you did when and when you did it?

14 A Right. This form here will show where -- and it says
15 here that I initially seized it, because I was the one who
16 took the drugs off of Mr. Jowers. From there -- when I
17 left the scene, the drugs were left with Investigator
18 Rollins, which there's the signature here. Investigator
19 Rollins, according to this BEST kit would've been the one
20 who put it inside the kit itself and sealed it. The
21 officer that does do that signs that he is -- he or she is
22 the officer that sealed the BEST kit.

23 Q And would there be -- at the top -- there's a number
24 at the top?

25 A (Indicating yes)

1 Q What is that?

2 A That's called a control number. That number goes
3 along with the kit itself. It's issued a number and it's
4 called a control number, and these are put at the top of
5 each form; that way you know which drug goes with which kit
6 and it all stays together as one; it can be tracked.

7 Q All right. Thank you. All right, so let's turn now -
8 - after you seized the drugs from Mr. Jowers at the car
9 stop, what did you do after that?

10 A Based on the information that we had received earlier
11 about the bar being -- the information that drugs could be
12 coming from the bar location and the fact that we just ---

13 MR. LIFSEY - Object once again to that, Judge.
14 We've -- I guess the third or fourth time I've objected.

15 THE COURT - Repeat the question.

16 Q What did you do after you cleared up from the car stop
17 with Rico Green and Dyvonne Jowers?

18 MR. LIFSEY - My objections not to his question;
19 it's to the answer.

20 THE COURT - Well, I understand that. Just -- all
21 right, just answer the question asked?

22 A I went -- I went back to the bar.

23 Q Okay. Why did you go back to the bar?

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

103

1 A We were given the information from the subject that we
2 had just stopped that he had just purchased the drugs from
3 the bar.

4 Q Okay. What was the scene like when you arrived back
5 at the bar?

6 A There was just I think maybe one, one or two vehicles
7 in the parking lot, if I can remember correctly, vehicles.
8 Once I went inside there were three people, only three
9 people in the bar. That was Mr. Starnes who was
10 identified, another unknown female patron was in there and
11 a female bartender was in there, and that's all that was in
12 the bar.

13 Q And what did you do after you walked in the bar?

14 A I identified Mr. Starnes by a description that was
15 given to me from the subjects that we had just stopped and
16 gotten the drugs from as the guy that they just purchased
17 from. He matched the description with the clothing that he
18 had on. I walked up to him in the bar, identified myself
19 and asked him if he'd step outside to speak with me, and he
20 did.

21 Q Okay. At some point did you mirandize him when you
22 were talking with the defendant?

23 A I did.

24 Q Okay. What'd you ask the defendant when you took him
25 back outside?

1 A When I took him back outside, I asked him did he have
2 any type of drugs on him or anything and asked him would he
3 consent to be patting him down; he said sure; he consented
4 to a pat down. I didn't do a complete search; I just
5 patted him down at that point. And during this time I was
6 getting information relayed from (sic) me by Investigator
7 Bowers who was still on the traffic stop scene with the
8 guys that we had seized the drugs from.

9 Q Okay. Did you find anything on him when you patted
10 him down?

11 A I didn't.

12 Q Okay. At that point what did you do with the
13 defendant?

14 A I knew I would be questioning him about the things
15 that were going on, so at this point I read him Miranda.

16 Q And were you by yourself at the bar or were with other
17 people at the bar?

18 A Just he and I were outside. There was another deputy
19 on scene, but he wasn't in -- directly with me. He had a
20 car stopped over, you know, out in the parking lot, but at
21 this point it was just me and Mr. Starnes.

22 Q Did you ask him about what his role -- what his job
23 was at the bar or did you ---

24 A I did.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

105

1 Q What did -- did he tell you anything about what he did
2 there?

3 A Yes. He told me that he -- from time to time he
4 worked at the bar; he told me that the folks that he worked
5 for -- he said his job was to come down and open and close
6 the bar and -- and run the bar.

7 Q Okay. Did -- do you remember asking him if anybody
8 else that owned the car had the control of the bar was
9 there that night?

10 A Yes, just -- he -- he was the only person there that
11 night who had control of anything at the bar.

12 Q Okay. At that point where was the other two officers
13 that were involved with the investigation?

14 A They were still on the traffic stop.

15 Q Okay. And do you know if they were going to get
16 anything, or like a search warrant or anything like that?

17 A Yes.

18 Q And were you waiting on them to return with a search
19 warrant?

20 A Yes. Once we gathered information, combined the
21 information that we had, I made a decision that we would,
22 what we call lock the bar down, not let anybody else come
23 or go or come in, secure the scene, and I had Investigator
24 Rollins to go and start the search warrant.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

106

1 Q Okay. So during that period of time, yourself,
2 basically, you said locked the bar down. What does that
3 mean?

4 A That's basically just, you know, nobody else can come
5 or go. The other female patron that was in there, she was
6 allowed to leave. The bartender stayed and, of course, Mr.
7 Starnes stayed. We didn't let any other customers come in
8 or anybody else leave. We just, you know, basically like I
9 said, we locked it down, secured it; no one touched
10 anything or searched anything until we were able to acquire
11 a search warrant.

12 Q Could you kind of explain what the bar looked like,
13 like the general layout to the jury of how it was kind of
14 set up?

15 A When you first walked in the door, there -- it was
16 kind of an open area like a regular bar. The bar itself
17 set kind of in the middle of the room. There was a little
18 open area to your left that may have been set up like a
19 dance floor, something of that nature. I think there was
20 some speakers and stuff stacked over there. There was
21 another small room back to the right and it had pool
22 tables, I think one or two pool tables, I'm not exactly
23 sure how many, had some pool tables in there, a couple
24 stand-up games, and back to the corner of that part of the
25 room there was an office part back there, and it was a

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

107

1 locked office building. It was the manager's office or the
2 building, whoever was in control of the bar and the office
3 area where, I guess, money and things like that kept.

4 Q Okay. At what point did Investigator Rollins return
5 with the search warrant?

6 A I'm not really exactly sure of an exact time-frame,
7 but it was -- I don't know -- an hour or so. I'm not sure.
8 But at the point he came back and had the search warrant
9 signed by a magistrate.

10 Q And what was the search warrant for?

11 A It was for the inside of the bar of Goodtime Charlies.

12 Q Did you assess ---

13 A It was for drugs.

14 Q Okay. Did you find anything on the defendant as far
15 as keys or anything like that?

16 A Yes, found a set of keys in his pocket.

17 Q And do you remember asking or talking to the defendant
18 about what those keys were for?

19 A I did. I asked him what the keys were for, and he
20 told me that those were the keys to the bar; he told me
21 that that's the keys that he used to open the bar with,
22 close the bar and also access any locked cabinets, such as
23 liquor cabinets and the office areas, that those were also
24 the keys to the office.

1 Q Could you describe the office area? Was it locked
2 when you ---

3 A It was locked, yes.

4 Q How was it locked?

5 A I remember it being -- there was a deadbolt and then a
6 regular key lock on a door knob. I do not recall which was
7 locked or both of them was locked. I do remember us having
8 to unlock it with a key that was on the key ring. I don't
9 remember if both locks were locked, but it was locked.

10 Q Those were the keys that were found on the defendant?

11 A The keys that were found on the defendant were the
12 keys that opened the office. Correct.

13 Q Okay. Did you assist with the execution of the search
14 warrant when Investigator Rollins got back?

15 A I did.

16 Q Where'd you go -- where'd you start searching and
17 what'd you find?

18 A I started searching in the office area; this was the
19 location that we were directed to that where some of the
20 drugs would be located, and the -- upon searching that
21 office area is where I, in fact, did locate some drugs and
22 a gun.

23 Q Okay, what'd you -- could you be more specific about
24 what you located in the office?

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

109

1 A Sure. Inside the office there was a desk. When you -
2 - it was a real small type office, almost like a real small
3 office, a small closet. It was real tight, real small.
4 There was a desk, I think, to the right as you walked in.
5 Middle desk drawer -- I think it was middle desk drawer --
6 I may have to look at some of the photos -- but in one of
7 the drawers in the desk was a handgun, loaded handgun that
8 was inside there. One of the file cabinets in the top
9 drawer, I think there were two small baggies of cocaine
10 that were located in there along with a set of scales,
11 digital scales, used to weigh out the cocaine, and -- was
12 also found in that drawer, also some plastic baggies, some
13 corners of plastic baggies that were cut out that are
14 commonly used to wrap -- to store the cocaine in was also
15 found in that file cabinet. I think the bottom drawer of
16 the file cabinet we found some vacuum seal bags. They were
17 large-type vacuum seal bags that had some marijuana residue
18 in them. Those large type of vacuum seal bags tells us
19 that that's usually large quantities are brought in, that
20 way when it's tightly sealed, but there was -- it just had
21 the residue inside those bags, and also down in between
22 there was a wooden -- I think a wooden table or something
23 in the file cabinet -- was a large bag of cocaine.

24 Q And did you seize these items or were there ---

25 A I did not. Someone else seized them.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

110

1 Q Okay.

2 MR. KNIGHT - At this time I would like to show
3 Lieutenant Mclemore certain pictures of the scene that
4 night that have been stipulated to as State's Exhibit 1,
5 1.1 through 1.38.

6 MR. LIFSEY - I don't have any objection to the
7 pictures.

8 THE COURT - All right, thank you. All right,
9 we're going to publish photos which have already been
10 introduced into evidence then. Solicitor, they're State's
11 evidence 1.A through ---

12 MR. KNIGHT - 1.1 ---

13 THE COURT - --- or 1.1 through 1.38?

14 MR. KNIGHT - That's correct.

15 (WHEREUPON, PHOTOS MARKED AND ENTERED INTO
16 EVIDENCE AS STATE'S EXHIBITS 1, CONTAINING 1.1 THROUGH
17 1.38)

18 THE COURT - Are y'all's screens working in front
19 of you? Y'all see the photograph in front of you?

20 JURORS - Yes.

21 THE COURT - You do? Okay.

22 (WHEREUPON, JURORS INDICATING AFFIRMATIVELY)

23 Q I'm showing you what's marked as State's Exhibit 1,
24 1.1. Could you tell me what this -- this picture is?

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

111

1 A This is the outside front entrance to Goodtime
2 Charlies, the bar that we're talking about.

3 Q And it fairly and accurately depicts the bar that
4 y'all went to that night on August the 4th, 2011?

5 A It -- it does. You can actually see the two vehicles
6 that were there and I think -- that's my truck that's the -
7 - one kind of angled in. It's parked over the right.

8 THE COURT - Any way to make that bigger,
9 solicitor?

10 MR. KNIGHT - Your Honor, I'm not really sure how
11 to do that.

12 THE COURT - I don't want to touch it. I have it
13 up. If I touch it, I'll mess it up.

14 MR. KNIGHT - I feel the same way.

15 Q All right, this is State's Exhibit 1.4. Are you
16 familiar with what this is?

17 A That's a inside picture of the bar, and that's
18 actually right there at the bar area as I described when
19 you first walk into the door.

20 MR. KNIGHT - All right, for the record I'm
21 turning on the annotation.

22 Q Could you circle where kind of the location of the
23 office that was located in the bar that night that you said
24 -- testified to that you seized the drugs out of? I think
25 you can just circle on the screen.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

112

1 A It's not --

2 Q Is it not working?

3 THE COURT - Hang on. Now try it now.

4 A Now. It was in that back corner area there.

5 Q Okay. And where's this picture taken from?

6 A Again, that's standing if you walk in the door kind of
7 in the main part of the bar, right by the bar, and that to
8 the right is where the pool tables were and kind of around
9 that corner back in there is where the office area was.

10 Q Okay. And this another picture. Could you tell --
11 tell the jury what this is a picture of?

12 A Yes, that's the room I was describing that had the
13 pool tables in it and when you walk back in that back
14 corner, again, is where the office was located.

15 Q Okay. And could you tell the jury what this picture
16 is of?

17 A This is a small desk and cameras -- the monitoring
18 system, I guess, or security system that was inside the
19 office.

20 Q And this was the office that you testified to that
21 y'all unlocked?

22 A Correct.

23 Q Could you tell us what this picture is?

24 A That's a trash can that was located inside the office
25 that -- and on the floor there were some baggies that were

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

113

1 on the floor. Inside that trash can and in the office was
2 just several different plastic sandwich baggies, if you
3 may. What that's commonly used for and what we absolutely
4 (sic) see is they take these sandwich baggies that are --
5 the kind -- not the Ziploc kind but the kind that -- that
6 kind of fold over that are real flimsy, real cheap --
7 that's how they will break the cocaine down and store it or
8 put it in these bags. Commonly we see them cut the corners
9 out with scissors, if you will, just picture your plastic
10 bag in the corners and they just clip it there and it just
11 leaves a triangle shape for the corner, the plastic, and
12 feel that with the cocaine, tie it off on the end. And
13 that's also how I found two of the baggies of cocaine that
14 were tied and done that way that was in the file cabinet.

15 Q And this -- this clearly and accurately depicts the
16 scene of the office as you walked into it?

17 A Yes.

18 Q And what's this a picture of?

19 A That's going to be I think the large -- the larger bag
20 of cocaine that I found that was kind of in between behind
21 another wooden -- the wooden desk there, it was a larger
22 bag of cocaine that was hid down behind it.

23 Q And this was in the office as well?

24 A This was in the office as well, yes.

1 Q And this is a picture of -- is this picture also in
2 the office and the same bag of cocaine?

3 A Yes, that -- that's a picture of the bag undisturbed
4 before it was moved.

5 Q And what's this a picture of?

6 A That's the picture of the pistol that we found in the
7 drawer inside the office.

8 Q And what's this a picture of?

9 A Against one of the file cabinet drawers, and that's
10 the baggie of -- or the box of the plastic baggies that I
11 was describing earlier.

12 Q And this picture?

13 A That's a -- also on the first -- the last picture that
14 was just there, that's also the top, and I think we'll get
15 to that picture in a moment -- but that's also the top
16 drawer where some cocaine was found, too, along with those
17 baggies.

18 Q And this picture?

19 A That's the bottom drawer of the file cabinet where the
20 vacuum sealed bags where the marijuana residue was located.

21 Q And this picture?

22 A And that's also some vacuum sealed baggies of
23 marijuana.

24 Q And this picture?

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

115

1 A Again, that's the top drawer; that's some of the
2 filing folders there. Inside that folder that's being
3 pulled back, if you'll look down there, that's one of the
4 small baggies of cocaine that was wrapped up in the plastic
5 bags like I was describing. That's also some cocaine in
6 the back part of the drawer open.

7 Q Was this -- you were talking about the corners being
8 cut off.

9 A Yes.

10 Q This one of the -- wrapped up in one of those corner
11 cut baggies?

12 A It is, yes.

13 Q This picture?

14 A That's the picture of the cocaine. You can see how
15 the plastic bags are -- how the corners tied, how I was
16 explaining how it's tied at the end.

17 Q (Indicating)

18 A That's another picture of cocaine.

19 Q (Indicating)

20 A That's a set of digital scales that were found in that
21 drawer also. Those scales contained a powder residue on it
22 also.

23 Q And what's this a picture of?

24 A That's the items that were located inside of the
25 office once they were taken out of their original

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

116

1 locations, which is the gun, vacuum sealed baggy of
2 marijuana, a set of digital scales and two small -- smaller
3 baggies of cocaine that were bagged up separately for sale
4 and the larger bag of cocaine and then some of the plastic
5 bags with the corners cut out.

6 Q Could you circle -- I think the annotation works on
7 your screen -- could you circle the marijuana that was
8 found out of the office you just testified to?

9 A (Witness complies)

10 Q Okay. Now, could you circle the baggies of cocaine --
11 that you testified that you found out of the office on that
12 night?

13 A (Witness complies)

14 Q It was two baggies?

15 A Well, that's all the cocaine, two baggies at the top
16 and the larger bag there.

17 Q Could you circle the firearm that y'all seized, y'all
18 found in the desk drawer?

19 A (Witness complies)

20 Q And was there anything else in this picture that y'all
21 found out of that office that was seized?

22 A Yes, there was some -- computer and camera equipment
23 that was seized that's not in this picture.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

117

1 Q What kind of -- to the left -- I'm looking at this
2 picture. There's several baggies. What are those that are
3 laying on ---

4 A These are the baggies that I was describing to you
5 earlier as having the corners cut out, the type of baggies
6 that there are and how they're commonly used.

7 Q Okay. And you said that you didn't seize all these
8 items.

9 A No, correct.

10 Q Who -- do you know who seized them?

11 A We called our -- one of our CSI investigators out to
12 the scene that night, and once these items were located,
13 that's Deputy Ken Taylor, and Deputy Taylor actually seized
14 all these items from the location.

15 Q Okay. And based on everything you heard from the
16 defendant that night, he was the only one with custody and
17 control of the office?

18 A Yes, he was. He was the only one there with custody
19 and control of the office, and I also spoke with the
20 bartender that night and questioned her. She ---

21 MR. LIFSEY - I object to anything that ---

22 THE COURT - Sustained.

23 A Yes, he was the only one that -- that ---

24 Q He had the keys in his pocket?

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

118

1 A Yes, he had the keys to the pocket (sic) -- the keys
2 in his pocket that unlocked the office door.

3 Q And there wasn't -- after y'all came back to the bar
4 nobody was allowed in or out of the bar to go back and
5 forth?

6 A Correct.

7 MR. KNIGHT - Beg the Court's indulgence.

8 THE COURT - Yeah.

9 Q Now, you stated that there was a bag of cocaine
10 located in the office, couple of bags of cocaine in the
11 office?

12 A Yes.

13 Q Was there -- based on your experience working with
14 narcotics and drug investigation, it was your belief that
15 this was cocaine and not crack cocaine ---

16 A Yes.

17 Q --- from the way it looked?

18 A Correct.

19 Q Okay. And was there any money seized from the bar
20 that you recall?

21 A I think there was some money, yes.

22 Q Do you know where -- where it was seized from?

23 A Don't remember.

24 Q But you -- did you seize ---

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

119

1 A I can't recall right off where the money was seized
2 from.

3 Q Okay.

4 A I didn't seize it.

5 Q You didn't seize it?

6 A I think there was some taken, but I'm not sure where
7 it was taken from.

8 Q Okay. You talked about some scales that were found in
9 the office. What is the significance of finding the scales
10 along with the cocaine in this office?

11 A The scales tell us that once you find a larger
12 quantity like you have in the picture there, then you have
13 two smaller baggies, that's how it's split up for sale.
14 The scales were used, of course, to get the correct amount
15 into those baggies once it's weighed out. Say, for
16 instance, if you were going to sell gram baggies, then you
17 have a -- you know, you may have an ounce of cocaine which
18 is 28 grams, well, you'll need to break that down into one
19 gram baggies, so you would need to use those digital scales
20 in order to weigh that gram out.

21 Q All right. This bar, Goodtime Charlies, located in
22 Lancaster County?

23 A Yes, it is.

24 Q On Meeting Street in Lancaster County?

25 A Yes.

RYAN MCLEMORE - CROSS BY MR. LIFSEY

120

1 Q Okay. So based on the finding of the scales and the
2 baggies, did that -- what did that indicate to you?

3 A That indicated to me that this indeed was evidence of
4 a selling operation, that this stuff indeed was packaged in
5 order to resale and based on my experience and what I see,
6 that that's -- that's what I believe was happening here.

7 MR. KNIGHT - Thank you. No further questions.
8 Please answer anything Mr. Lifsey has for you.

9 THE COURT - Mr. Lifsey?

10 CROSS EXAMINATION

11 BY MR. LIFSEY -

12 Q Lieutenant Mclemore, would you say you're the
13 supervisor of the narcotics ---

14 A I am.

15 Q Were you the supervisor at the time this occurred?

16 A I was.

17 Q So you have the authority to call officers to the
18 scene, not call officers to the scene, that sort of thing.
19 Is that correct?

20 A I do.

21 Q In fact, you made a decision to call Ken Taylor to the
22 scene. Is that correct?

23 A I did.

24 Q What is Ken Taylor's job?

RYAN MCLEMORE - CROSS BY MR. LIFSEY

121

1 A He is a crime scene investigator with the sheriff's
2 office.

3 Q Okay. When you called Ken -- and part of his job as a
4 crime scene investigator is to do I guess what he did in
5 this case which is take evidence in. Is that correct?

6 A Correct.

7 Q That's not the entirety of his job, is it?

8 A Right.

9 Q In fact, he often dusts for fingerprints. Is that
10 correct?

11 A He does.

12 Q He often takes evidence to see if there's DNA or
13 anything like that.

14 A He does.

15 Q He swabs -- because there's something called -- you
16 know what touch DNA is?

17 A Yes.

18 Q Like if I touch that and have any perspiration at all
19 on my hand, then they can swab and get a DNA sample. He
20 does that as part of his job. Is that correct?

21 A Correct.

22 Q Okay. And has done that in the past in other cases.
23 Correct?

24 A He has.

25 Q And gotten positive hits in other cases he's had.

1 A Probably in murder cases or something, probably so.

2 Q That's right. But he was out there on the scene that
3 night. Is that correct?

4 A He was.

5 Q Okay. And called I presume at your request as ---

6 A Yes.

7 Q Okay. Well, let's talk a little bit about -- well,
8 first of all, let's talk about the stuff in -- the illegal
9 drugs. That picture right there, that's not where they
10 were found, obviously. Is that correct?

11 A Correct.

12 Q Okay. I mean that's after you gathered them out and
13 laid them out on the pool table to take a good picture.
14 Correct?

15 A Right.

16 Q Okay. So let's kind of go through where each of the
17 things were found. It says here you located a pistol in a
18 desk drawer. Is that correct?

19 A Yes.

20 Q So -- this is going to sound like a dumb question.
21 That means -- presumes to be that somebody were to get into
22 that desk drawer would have to open that desk drawer. Is
23 that correct?

24 A Right.

RYAN MCLEMORE - CROSS BY MR. LIFSEY

123

1 Q All right. To the best of your knowledge did
2 Investigator Taylor look for fingerprints on the drawer?

3 A No.

4 Q Did he look for fingerprints anywhere on the desk?

5 A Not that I -- not to any of my knowledge, no.

6 Q Did he look for fingerprints on the gun?

7 A Don't know. I can't say if he did or didn't.

8 Q All right.

9 A He may have once he got it back to his office; I don't
10 know.

11 Q Did you ask him to do those things at the scene?

12 A No, I didn't.

13 Q Okay. You found two baggies in a file cabinet drawer.
14 Is that correct?

15 A Correct.

16 Q All right, this is going to sound like another dumb
17 question, but presumably to get into a file cabinet drawer,
18 someone would have had to reach in and it looked to be --
19 at least from the picture -- like a regular cabinet, in
20 other words you have to open it and pull it open. Is that
21 correct?

22 A Correct.

23 Q Did you ask investigator -- crime scene Investigator
24 Taylor to look for fingerprints on the cabinet drawer?

25 A No, we did not.

1 Q Did you ask him to look for DNA evidence on the
2 fingerprint ---

3 A No, we did not.

4 Q --- on the cabinet drawer? Did you ask him to look
5 for any of the file folders that he might've had to move or
6 adjust to see where the drugs were -- did you ask him to
7 look for any fingerprints or DNA evidence on those?

8 A No, we did not.

9 Q The scales -- the scales, it says here -- were they in
10 the drawer as well?

11 A They were in the drawer as well.

12 Q Okay. The scales, did you ask crime scene
13 Investigator Taylor to check for fingerprints or DNA
14 evidence on those scales?

15 A I can't answer to scales. I know that some of the
16 evidence he, in fact, did do fingerprints on. Now, whether
17 it was the scales, the gun, what part of it, I'm not sure;
18 he did conduct some fingerprint tests. Which items, now, I
19 can't testify to that; I don't know which items he did.

20 Q But in your authority as supervisor, you could've
21 ordered him to test everything out there. Could you not
22 have?

23 A Sure, I could have.

24 Q You could've asked him to test the drawer that
25 obviously someone who wanted to get to the drugs, to either

RYAN MCLEMORE - CROSS BY MR. LIFSEY

125

1 put them in there or remove them, would have had to open
2 them, but you did not. Is that correct?

3 A Correct.

4 Q So there was a powder substance behind a wooden
5 cabinet in the office. Is that correct?

6 A (Indicating yes)

7 Q Okay. So presumably, in order to get to that, someone
8 would've had to move the cabinet, at least in some way, to
9 be able to reach down there and get that. Is that correct?

10 A Actually, I think there was enough a crack you
11 could've just dropped it back there.

12 Q Well, you were able to reach your entire hand back
13 there to get it?

14 A You had to move it to get it, but there's enough crack
15 to where you could've just went, dropped it.

16 Q Well, if someone were getting it out of there ---

17 A Well, they probably ---

18 Q --- they would've had to moved it.

19 A Probably could've had -- had to move it.

20 Q Okay. Did you ask Investigator Taylor to look for any
21 fingerprint evidence on that?

22 A No, I did not.

23 Q Did you ask him to look for any DNA evidence on that?

24 A No, I did not.

1 Q Did you ask him to look for DNA evidence on any object
2 -- other object you found in that room, in that room?

3 A No, sir. No.

4 Q Including -- you seized because apparently you -- you
5 took some surveillance equipment. Is that right?

6 A Correct.

7 Q Some computer equipment. Is that right?

8 A Correct.

9 Q Presumably, you took those because you believed they
10 had some sort of evidentiary value or could. Is that
11 correct?

12 A Could have.

13 Q But yet you did not ask Investigator Taylor to do any
14 kind of testing on any of those items, did you?

15 A There again, I know that he tested some items back in
16 his office; and I can't tell you which ones he did or
17 didn't do.

18 Q Clearly. And he would be able, I guess, to tell us --
19 -

20 A Correct.

21 Q --- what, if anything, he tested.

22 A Correct.

23 Q Okay. All right. Let me ask you about -- were you --
24 you were -- were you positioned so you could see my client
25 come out of the bar and talk to the guy in the Charger?

RYAN MCLEMORE - CROSS BY MR. LIFSEY

127

1 A I -- I was not.

2 Q You are generally aware of what Investigator Bowers
3 observed as far as seeing my client out on the phone and
4 talking and that. Is that correct?

5 A Correct.

6 Q Okay. Did you make -- and, of course, you're the
7 supervisor. Correct?

8 A Correct.

9 Q All right. Did you make any effort to get my client's
10 phone records?

11 A I don't think so. I don't think we got any phone
12 records.

13 Q Okay. Did you -- have you made any efforts back in
14 August of 2011 or up to this day to get any kind of bank
15 records from my client?

16 A No.

17 Q Have you made any efforts since August, 2011 to now to
18 get any kind of tax records of his?

19 A No.

20 Q Okay. Did you go -- he told you -- when my client
21 spoke to you that the bar was owned by a man named Steve
22 Whetmore who owned McAdenville Motors. Is that correct?

23 A Correct.

24 Q Did you go talk to Steve Whetmore?

RYAN MCLEMORE - CROSS BY MR. LIFSEY

128

1 A I tried several times but unable to locate him,
2 actually tried to go through the Gastonia Police
3 Department, got no -- no help there.

4 Q So Steve Whetmore is not in a mood to cooperate with
5 law enforcement.

6 A Probably not.

7 Q Okay. My client never admitted to you at any point
8 that these drugs were his.

9 A No, he didn't.

10 Q I don't mean to be ugly about this; I don't mean to
11 berate this, but is it fair to say that the bulk of your
12 investigation was concluded that evening or the next day or
13 two after this case?

14 A No, it's not.

15 Q What have you done in the last six months?

16 A I misunderstood your question. I apologize. I just
17 now understand how you asked the question.

18 Q Is it fair to say ---

19 A Yes, we ---

20 Q --- by this -- this occurred in August -- by October
21 are you done investigating this, October of 2011?
22 November?

23 A Yes. That's fair to say.

24 Q What did you do in the calendar year of 2012 to
25 investigate this case?

RYAN MCLEMORE - CROSS BY MR. LIFSEY

129

1 A This particular case?

2 Q Yes, sir.

3 A (No response)

4 Q Nothing.

5 A Didn't work on this case in 2012.

6 Q Did you work on this case in 2013?

7 A No, sir.

8 Q Did you work ---

9 A Hundreds of others; I didn't work on this one.

10 Q Sure. And those hundreds of others, none of them are
11 my client. Right?

12 A Correct.

13 Q Okay. All right. So in 2014, what did you do to
14 investigate this case?

15 A Nothing on this case.

16 Q So in 2015 up to now, what have you done to
17 investigate this case?

18 A (No response)

19 Q So in other words, it's fair to say that whatever
20 investigation was done in this case was done within a
21 fairly short time period of all this occurring. Is that
22 correct?

23 A Sure. With the evidence we had, sure.

24 MR. LIFSEY - Beg the Court's indulgence just one
25 moment.

RYAN MCLEMORE - RE-DIRECT BY MR. KNIGHT

130

1 THE COURT - All right.

2 Q One thing -- let me ask you this. I asked you about
3 phone records of my client. Did you make any effort to get
4 phone records of Rico Green?

5 A I don't think so, no.

6 Q Did you make any efforts to get phone records of the
7 bartender, Crystal Jones?

8 A No.

9 Q From that day back in '11 til now, no efforts to ---

10 A No.

11 MR. LIFSEY - I don't have any further questions.

12 THE COURT - Re-direct?

13 MR. KNIGHT - Just a couple things.

14 RE-DIRECT EXAMINATION

15 BY MR. KNIGHT -

16 Q Was there anybody at the bar on August the 4th, 2011
17 that -- other than the defendant that could've unlocked the
18 office that you found all those items in?

19 A There was not.

20 Q Nobody -- no -- I don't know -- number to punch in or
21 no easy way to unlock the door or anything like that?

22 A No, that - would've had to have had the keys.

23 Q Without the keys that you found on the defendant that
24 night, could you have gotten into the office?

25 A No.

RYAN MCLEMORE - RE-CROSS BY MR. LIFSEY

131

1 Q Where you found all the stuff that's on this screen,
2 the cocaine, marijuana, the firearm, the scales and the
3 baggies?

4 A Correct.

5 Q And it's your -- based on your investigation, it's
6 your understanding that the defendant was under control -
7 the bar and the office was under his custody and control
8 that night.

9 A Yes, it was.

10 MR. KNIGHT - Thank you. No further questions.

11 RE-CROSS EXAMINATION

12 BY MR. LIFSEY -

13 Q Well, I mean you got -- your surveillance of this bar
14 started that afternoon. Correct?

15 A Correct.

16 Q So you've got no idea who had been to that bar earlier
17 in the day.

18 A (No response)

19 Q You've got no idea who had been to the bar the week
20 before, have you?

21 A No, not ---

22 Q You've got no knowledge of your own on how long those
23 drugs had been there, whether they'd been there two hours
24 or whether he'd (sic) been there two weeks. You have no
25 way of knowing that.

1 A Correct.

2 MR. LIFSEY - I don't have any further questions.

3 THE COURT - All right, thank you, sir. You may
4 step down. We're going to go ahead and break for lunch at
5 this point in time. Ladies and gentlemen, before we do
6 that, ma'am, what's your juror number?

7 JUROR - Me?

8 THE COURT - Yes, ma'am.

9 JUROR - 129, I think.

10 THE COURT - All right, juror number 129 -- give
11 me just a moment -- you're Ms. Steele.

12 JUROR - Yes.

13 THE COURT - All right, Ms. Steele, I'm appointing
14 you as the forelady of the trial jury. It will be your
15 added duty as the forelady to preside over the
16 deliberations in the jury room, and you will be the jury
17 spokesperson here in Court. It will also be your duty to
18 write the verdict on the verdict form which I will give you
19 at the conclusion of the trial, but although you're the
20 only one who's authorized to write on the verdict form, you
21 can't write on it until y'all have reached a unanimous
22 verdict. Okay? Unanimous means all 12 of you have to
23 agree as to the verdict before you can write it on the
24 verdict form, and I'll explain that later on. Okay? But
25 you will be the forelady as we begin this afternoon.

1 Now, ladies and gentlemen, we are going to take a
2 lunch recess at this point in time. I want to reiterate to
3 you the importance of not talking about this case at all.
4 You've only heard two witnesses. Okay? There's more to
5 hear; there's more evidence to hear, and, of course, I
6 haven't given you the law yet, so when you take your break
7 for lunch I don't want you talking about the case with
8 anybody; I don't want you going on to your smart phones or
9 going on to your laptops or reading about the people
10 involved in this cases or doing anything like that.
11 Lancaster is a small community, so if you choose not to go
12 home for lunch and you eat around this area, you may see
13 people who you see in this very courtroom eating lunch at
14 the same place. Don't talk to us. Okay? We're not being
15 rude, because we're not going to talk to you. Okay? The
16 reason I say that is, innocent conversations can easily be
17 misconstrued. Okay? And I don't want this process to be
18 ruined for either side. Okay? So just -- if you see us
19 out where you're eating lunch or whatever, just -- we're
20 not being rude to you; we're just making sure everything
21 goes appropriately. Y'all have a great lunch. It is now
22 12:18. My computer is the official timekeeper; that looks
23 to be little quick, so let's be back in the jury room ready
24 to go at 1:45. Okay? 1:45 p.m, and that gives you right
25 at an hour and a half, an hour and 30 -- well, close to an

1 hour and a half, hour and 27 minutes. Okay? Y'all free to
2 leave for lunch.

3 (WHEREUPON, JURY EXITS THE COURTROOM)

4 THE COURT - All right, anything before we take a
5 recess?

6 MR. LIFSEY - No, sir, not from the defense.

7 THE COURT - All right, thank you. Let's talk
8 about scheduling. How many more witnesses do y'all have?

9 MR. KNIGHT - Seven? Seven, Your Honor? I've got
10 six or seven.

11 THE COURT - Any long ones?

12 MR. KNIGHT - We have the chemist from SLED, but
13 he's -- he'll probably be here in the morning, first thing
14 tomorrow morning.

15 THE COURT - Is he subpoenaed to be here today?

16 MR. KNIGHT - For this week, but he had scheduling
17 conflicts, and ---

18 THE COURT - That's what I needed to know about.
19 So you can get through all your other witnesses -- there's
20 no reason why you shouldn't be able to get through all your
21 other witnesses today except for the chemist in the
22 morning.

23 MR. KNIGHT - As far as I know.

24 THE COURT - Okay. That's what I'd kind a like to
25 do today. All right? Anything from your end?

1 MR. KNIGHT - No, sir.

2 THE COURT - All right, well, y'all be -- let's be
3 ready to roll at quarter til and we'll go from there;
4 quarter til two, 1:45. Thank you.

5 (WHEREUPON, COURT IN RECESS)

6 THE COURT - All right, anything that needs to be
7 put on the record before we bring the jury in?

8 MR. LIFSEY - Judge, I probably want to renew --
9 and I forgot to this right before lunch -- my objection to
10 yet another statement about a tip. You know, this one was
11 even worst than the last one, I mean because this one was,
12 we got a tip about drugs being dealt out of the bar, I
13 think is the exact words that Agent Mclemore used. I renew
14 my motion for a mistrial based on the same arguments I made
15 before, except this is even more egregious now, so I -- I
16 just keep asking and asking ---

17 MR. KNIGHT - Yes, sir.

18 THE COURT - Objection overruled. You're
19 protected.

20 MR. LIFSEY - Thank you.

21 THE COURT - All right, bring the jury in.

22 (WHEREUPON, JURY ENTERS THE COURTROOM)

23 THE COURT - All right, all members of the jury
24 present. I hope y'all had a good lunch, and the State
25 calls its next witness.

BRANDON ROLLINS - DIRECT BY MR. KNIGHT

136

1 MR. LIFSEY - Yes, at this time we'd like to call
2 Investigator Brandon Rollins.

3 BRANDON ROLLINS, AFTER BEING FIRST DULY SWORN,
4 TESTIFIES AS FOLLOWS -

5 DIRECT EXAMINATION

6 BY MR. KNIGHT -

7 Q Good afternoon.

8 A Good afternoon.

9 Q Could you please state your name and occupation for
10 the record?

11 A Brandon Rollins. I'm a lieutenant with the sheriff's
12 department.

13 Q How long have you been in law enforcement?

14 A Fifteen years.

15 Q How long have you been with the Lancaster County
16 Sheriff's office?

17 A Fifteen years.

18 Q All right, let's turn back to the date of August the
19 4th of 2011. Do you remember if you were working on that
20 day or that night?

21 A Yes, sir, I was. I was assigned to the narcotics task
22 force at that time.

23 Q And do you remember seeing or coming in contact with
24 the Goodtime Charlies bar or the bar located on West
25 Meeting Street in Lancaster, South Carolina?

BRANDON ROLLINS - DIRECT BY MR. KNIGHT

137

1 A Yes, sir, I do.

2 Q How abouts did you come to -- to that location of that
3 bar on Meeting Street that day?

4 A I was assigned to the drug task force with
5 Investigator Tony Bowers and Ryan Mclemore who's a
6 lieutenant over the department, received a call from
7 Investigator Bowers that he had received a tip from ---

8 MR. LIFSEY - I object again to that.

9 THE COURT - Sustained. I mean, excuse me,
10 overruled.

11 A I had received some information from an informant that
12 there was some drugs being sold, so we -- we went to that
13 location to setup surveillance.

14 Q Do you remember the exact address of the location that
15 you went to?

16 A I do not. It was Goodtime Charlies on Meeting Street.

17 Q Okay. Were you in a vehicle by yourself?

18 A Yes, sir, I was.

19 Q And what kind of vehicle were you in?

20 A A 2014 Ford Explorer.

21 Q A 2014 ---

22 A I mean 2000 uh -- I'm trying to remember what I had
23 then. 2014 was my last car.

24 Q It was your unmarked ---

25 A It was an unmarked ---

BRANDON ROLLINS - DIRECT BY MR. KNIGHT

138

1 Q -- sheriff's office ---

2 A --- sheriff's office issued vehicle. Yes, sir.

3 Q Okay. Sounds good. And what -- at what location did
4 you set up surveillance on this bar?

5 A I was at a doctor's office just down West Meeting
6 Street.

7 Q Could you see the parking lot of the Goodtime Charlies
8 bar?

9 A I could see the entrance to the parking lot, but I
10 couldn't see up close to the building.

11 Q Okay. Could you tell us kind of around what time --
12 do you remember what time you got out there?

13 A I don't remember exactly what time it was. It was --
14 it was over in the afternoon I believe.

15 Q Was it nighttime, daytime, sun out?

16 A It was -- I think we started daytime and ended up
17 going into the night.

18 Q All right, tell us a little bit about what happened
19 when you first arrived at the parking lot across from
20 Goodtime Charlies.

21 A I was actually down the road from Goodtime Charlies.
22 Investigator Bowers was across the road, had a better
23 viewpoint than I did. He was watching the location a
24 little bit better. We were there for support. Got a call
25 from Investigator Bowers that a black Dodge Charger had

BRANDON ROLLINS - DIRECT BY MR. KNIGHT

139

1 pulled up, was met in the parking lot by a white male; a
2 black male and the white male ended up -- the black male
3 exited the car, ended up going into the bar with the white
4 male; short time later, black male exited the bar and got
5 into the Dodge Charger and left.

6 Q And you said you -- you got a call from Investigator
7 Bowers. Was this on the radio or phone?

8 A Yes, it was on the radio.

9 Q Okay. What happened after that?

10 A Investigator Bowers pulled out; I pulled out; we began
11 to follow the Charger. We followed that vehicle to
12 Springdale Road and Small Street, and then Investigator
13 Bowers initiated the traffic stop on it.

14 Q Okay, and you were the car behind Investigator Bowers?

15 A Yes, sir, I was.

16 Q Did you see the black Dodge Charger -- did you
17 maintain visual contact with that car from the point that
18 he left the bar all the way to the point where y'all
19 stopped it at Springdale?

20 A Yes, sir, I believe I did.

21 Q All right. What happened after the car was stopped?

22 A Once the car stopped, Investigator Bowers was the
23 first initial car behind the Charger, I pulled up right
24 behind him, noticed the passenger of the vehicle exited the
25 car and began to run up Small Street. I pursued him, got

BRANDON ROLLINS - DIRECT BY MR. KNIGHT

140

1 close enough to him and I ordered him to the ground. We
2 got him down on the ground and Investigator Bowers made
3 contact with the driver of the car.

4 Q Okay. And you said Lieutenant -- who was with you
5 with the passenger?

6 A In the midst of my pursuit of the passenger,
7 Lieutenant Mclemore joined me chasing him. By time he
8 caught up, I had -- I had the subject on the ground
9 already, and Investigator -- I mean Lieutenant Mclemore
10 walked up to me then.

11 Q Okay. What was the name of the passenger that ran?

12 A Dyvonne Jowers.

13 Q Did you know him prior to this car stop?

14 A I did not.

15 Q Okay. Did you -- did y'all find -- you and Lieutenant
16 Mclemore, did y'all find anything on Mr. Jowers?

17 A Lieutenant Mclemore ended up patting him down, ended
18 up observing the butt of a pistol sticking out of his pants
19 pocket, located that and also located some plastic baggies
20 hanging out of his pants pockets. Lieutenant Mclemore
21 pulled those out and in it contained what we believed to be
22 crack cocaine and cocaine.

23 Q Okay. At this time I ---

24 MR. KNIGHT - May I approach?

25 THE COURT - Yes, sir.

BRANDON ROLLINS - DIRECT BY MR. KNIGHT

141

1 Q State's Exhibit ---

2 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
3 WHICH WAS NOT REPORTED.)

4 MR. LIFSEY - I don't have any objection to that,
5 Judge.

6 Q I'm showing you now what's marked as State's Exhibit
7 3. Do you know what that is?

8 A That is a chain of custody for a BEST kit.

9 Q What's a BEST kit?

10 A A BEST kit is a drug evidence kit that we send in to
11 SLED to have them test different drugs.

12 Q And is your name located anywhere on that piece of
13 paper?

14 A Yes, sir, it is.

15 Q And what does that piece of paper say about -- did you
16 ever receive this particular BEST kit or what is that paper
17 telling you?

18 A On this -- the paper shows that Lieutenant Mclemore
19 actually seized the white powder substance and also the
20 white rock substance. He turned that over to me. I signed
21 it stating that I had received it and I packaged it into
22 the BEST kit to be sent to SLED.

23 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
24 STATE'S EXHIBIT 5.)

BRANDON ROLLINS - DIRECT BY MR. KNIGHT

142

1 THE COURT - All right, solicitor, was that
2 previous document he just testified about introduced into
3 evidence?

4 MR. KNIGHT - It was, State's Exhibit 3.

5 THE COURT - Okay.

6 Q So you said you sealed the evidence that you found off
7 the car stop from Dyvonne Jowers, you said you sealed it up
8 in a BEST kit?

9 A Yes, sir.

10 MR. KNIGHT - At this time may I approach?

11 THE COURT - Yes, sir.

12 Q This is what's marked as State's Exhibit 5 for
13 identification purposes that I hold in my hand. Would you
14 tell me what that is?

15 A This is a BEST kit.

16 Q Okay. And is your name on that BEST kit anywhere?

17 A Yes, sir, it's on here printed as the person sealing
18 the envelope and also signed as the person sealing the
19 envelope.

20 Q And what is that -- in your course of -- have you ever
21 done a BEST kit before this one?

22 A Yes, sir.

23 Q What do y'all usually do when you seal it up?

24 A Once we seal it up, you sign it, and you put the --
25 the tape on it that's sealed up, where it seals, and that

BRANDON ROLLINS - DIRECT BY MR. KNIGHT

143

1 way it can show whether it's been tampered with or not.

2 And once we -- once you seal it up, it's got a chain of
3 custody form, which is this, that goes with it; we take it
4 to the evidence locker at the sheriff's department and we
5 deposit it there.

6 Q Okay. And the best of your knowledge, that particular
7 State's Exhibit Number 5, that's the same BEST kit that you
8 packaged and sealed up, placed in the evidence locker at
9 the sheriff's office in regards to the car stop -- the
10 drugs that were seized off Dyvonne Jowers at the car stop?

11 A Yes, sir.

12 Q Do you know who would've received this BEST kit after
13 you deposited it into the evidence locker?

14 A Our evidence custodian, Ms. Ann Horton.

15 Q Turn back now to the car stop. What happened after --
16 you packaged the drugs and the BEST kit back up, what
17 happened after that?

18 A Both the occupants of the vehicle were placed under
19 arrest; they were placed into my vehicle. At that time
20 Investigator Bowers and Lieutenant Mclemore responded back
21 to Goodtime Charlies. I stood by until a deputy came and
22 transported the two subjects to the detention center. From
23 there I responded back to Goodtime Charlies and met with
24 Lieutenant Mclemore and Investigator Bowers.

1 Q Okay. And how long was that before you got back to
2 the Goodtime Charlies bar?

3 A Probably 15 minutes or so.

4 Q Okay. What did you do after you got back to the bar?

5 A Once I got back to the bar, I met with Lieutenant
6 Mclemore and was instructed to go obtain a search warrant
7 for Goodtime Charlies.

8 Q Okay. And where did you obtain the search warrant
9 from?

10 A I went back to our task force office which was located
11 down the road from the sheriff's office, typed that up and
12 presented it to Judge Fred Thomas, and he signed the
13 warrant.

14 Q Okay. And what was the search warrant based off of?

15 A It was based off ---

16 MR. LIFSEY - I object -- Judge, I object to the
17 relevance of that issue. I don't see how it's relevant.
18 Search warrant -- I'm not challenging the ---

19 THE COURT - I -- I mean I -- I sustain that
20 objection.

21 Q What time -- do you remember what time you came back
22 to the bar approximately?

23 A I don't.

24 Q Okay. Was -- you said the search warrant was signed
25 though?

BRANDON ROLLINS - DIRECT BY MR. KNIGHT

145

1 A Yes, sir, it was signed by Judge Fred Thomas,
2 magistrate's office.

3 Q And what'd you do after you got it signed?

4 A Once I got it signed, I responded back to Goodtime
5 Charlies and turned the search warrant over to Investigator
6 Bowers who executed the search warrant.

7 Q Okay. Was the car stop on Rico Green earlier, was
8 that in Lancaster County?

9 A Yes, sir, it was.

10 Q Was Goodtime Charlies bar that you got the search
11 warrant for and you brought back to the scene, was that in
12 Lancaster County?

13 A Yes, sir, it was.

14 Q Do you recall having any -- did you help execute the
15 search warrant? Did you -- what'd you do when you got to
16 the bar after you brought the search warrant back?

17 A Once we got the search warrant back, Investigator
18 Bowers executed it and I assisted in the search on location
19 of the bar.

20 Q You didn't -- other than the BEST kit that I handed up
21 to you earlier, you didn't seize anything from the bar?

22 A No, sir, I did not.

23 Q Do you remember seeing anybody at the bar when you
24 were up there?

BRANDON ROLLINS - CROSS BY MR. LIFSEY

146

1 A Mr. Starnes was at the bar; Crystal Jowers (sic) was
2 at the bar, and there was a -- possibly another female at
3 the bar.

4 Q Okay. So when you got back there was probably three
5 people at the bar?

6 A Yes, sir.

7 MR. KNIGHT - Beg the Court's indulgence.

8 THE COURT - Yes, sir.

9 MR. KNIGHT - I think we have no further
10 questions. Please answer anything Mr. Lifsey has for you.

11 CROSS EXAMINATION

12 BY MR. LIFSEY -

13 Q Officer Rollins, I think we've established so far that
14 Officer Bowers was the case agent in this case. Is this
15 correct?

16 A Yes, sir.

17 Q And Lieutenant Mclemore was the head of narcotics at
18 that time. Is that correct?

19 A Yes, sir.

20 Q So -- I don't mean this insulting you, but you were
21 not in charge out there.

22 A No, sir.

23 Q Okay. You were just showing up, doing your job as
24 directed by others.

25 A Yes, sir.

BRANDON ROLLINS - CROSS BY MR. LIFSEY

147

1 Q Other -- you participated in the car stop, but when it
2 came time to the search of the car, you were not in a
3 position to make orders to others as to who needs to come,
4 what needs to happen, ---

5 A No, sir.

6 Q --- you just did what you were instructed ---

7 A No, sir.

8 Q --- to do. Correct?

9 A No, sir.

10 Q Okay. Let me do ask you. At some point did you --
11 when you seized the gun out of the traffic stop -- Okay? --
12 -

13 A (Indicating yes)

14 Q --- car -- and I'm going to show you, in case there's
15 any question, part of the incident report you prepared on a
16 supplement or whatever exactly that is.

17 A Yes, sir.

18 Q Okay. And it's going to sound like an odd question.
19 I guess it'll make more sense later, but did the -- did the
20 vehicle appear to have been recently cleaned?

21 A No, sir, it did not.

22 Q Okay. Thank you.

23 MR. LIFSEY - I don't believe I have any further
24 questions for this witness.

25 THE COURT - Any re-direct?

CRYSTAL JONES - DIRECT BY MS. COLLINS

148

1 MR. KNIGHT - None from the State, Your Honor.

2 THE COURT - All right, thank you, sir. You can
3 step down. You're free to leave. You can call your next
4 witness.

5 MS. COLLINS - State calls Crystal Jones. Madam
6 Bailiff, can you have Ms. Jones come in?

7 (WHEREUPON, MS. JONES ENTERS THE COURTROOM)

8 MS. COLLINS - Ms. Jones, please come forward to
9 the bible to be sworn in; it's right there, all the way
10 just before the line.

11 CRYSTAL JONES, AFTER BEING FIRST DULY SWORN,

12 TESTIFIES AS FOLLOWS -

13 DIRECT EXAMINATION

14 BY MS. COLLINS -

15 Q Could you state your name for the record?

16 A Actually, it's Crystal Dawn Donahue now; I'm not
17 married anymore.

18 Q At the time of this incident in August of 2011, was
19 your name Crystal Jones?

20 A Yes, ma'am.

21 Q What is your current occupation? You say your name's
22 Ms. Donahue now?

23 A Right.

24 Q What is your current occupation, Ms. Donahue?

25 A I'm a cook.

CRYSTAL JONES - DIRECT BY MS. COLLINS

149

1 Q Where do you work?

2 A At Frog's Bar and Grill.

3 Q Okay. In August of 2011, what was your occupation?

4 A Bartender.

5 Q And where were you a bartender?

6 A Goodtime Charlies.

7 Q And is that on Meeting Street in Lancaster, South
8 Carolina?

9 A Yes, ma'am.

10 Q And you stated you were a bartender. What did those
11 duties entail? Were they limited to the bar, or did you do
12 other things in there?

13 A No, I did pretty much everything there, cook, clean,
14 bartend, run the register.

15 Q Okay. Who did you answer to?

16 A Nick, Steve and Pete.

17 Q Do you know the Defendant, Mr. Starnes?

18 A Yeah, that was my manager.

19 Q And when you stated Nick, are you referring to Mr.
20 Starnes?

21 A Yes, ma'am.

22 Q And that's what you called him?

23 A Yes, ma'am.

24 Q And you said that was -- he was your manager.

25 A Yes, ma'am.

1 Q Is that right? So if you were late to work, did you
2 call Nick and tell him you were going to be late to work?

3 A I didn't really call anybody, because I.-- I wasn't
4 usually late; I was there before we opened.

5 Q All right. But if there was an issue and you needed
6 to go to someone in charge to tell them about that issue,
7 whether it was a rowdy customer or you were running short
8 of Jack Daniels or whatever, who did you go to?

9 A I would usually go to Pete, not Nick.

10 Q Okay, but Nick Starnes was the manager of the bar.
11 Right?

12 A Yes, ma'am.

13 Q Now, you had a key to the bar. Correct?

14 A Right.

15 Q And by saying key to the bar, that's to the front door
16 of the bar?

17 A Yes, ma'am.

18 Q Okay. And -- but there was an office area near the
19 pool tables in the bar. Correct?

20 A Yes, ma'am. Right.

21 Q And that office area was locked. Correct?

22 A Yes, ma'am.

23 Q And you didn't have a key ---

24 MR. LIFSEY - I object to her leading, Judge. I
25 think she can ask ---

CRYSTAL JONES - DIRECT BY MS. COLLINS

151

1 MS. COLLINS - I'll rephrase.

2 Q Who had a key to the office area?

3 A The managers did.

4 Q What key did you have? What's the only key you had?

5 A I had the door key.

6 Q To the front door.

7 A Right.

8 Q Okay. And so do you know whether or not the defendant

9 had a key to the office area?

10 A Yeah.

11 Q Okay. Yes, you know?

12 A Yes. Yes, ma'am.

13 Q And did he?

14 A Yes, ma'am.

15 Q All right. Did you ever see the Defendant in the

16 office area?

17 A Yes, ma'am.

18 Q Within the locked office, within the office?

19 A Yeah, I'm sure I did.

20 Q Okay. Did you ever see him take his key and unlock

21 the office door and go in?

22 A I'm not sure if I paid attention to that.

23 Q All right. Was it unusual to see him in the office?

24 A No, I mean he didn't stayed in the office, but if they

25 needed to go in the office.

1 Q All right. I want to direct your attention to the
2 specific day of August 4th, 2011. Were you there at work at
3 Goodtime Charlies at about 6:20 in the evening?

4 A August 4th?

5 Q Pardon?

6 A What day did you say?

7 Q August 4th, 2011.

8 A I guess I was. I'm not sure.

9 Q Were you there when the law enforcement came into the
10 bar?

11 A Oh, yeah, I was there that day.

12 Q All right. Okay. Prior to the law enforcement coming
13 into the bar on that day, you were there at work. Correct?

14 A Yes, ma'am.

15 Q Was the defendant there at work?

16 A Yes, ma'am.

17 Q He was the on-duty manager at that time. Correct?

18 A (Indicating yes)

19 Q Did you see the defendant go into the locked office --

20 -

21 MR. LIFSEY - I continue to object to her
22 continual leading of the witness. I think she can ---

23 THE COURT - Well, I'm going to overrule that one.

24 Q Did you see the defendant go into the locked office
25 area with anyone?

CRYSTAL JONES - DIRECT BY MS. COLLINS

153

1 A Um, I recall -- yeah.

2 Q Okay. Who'd you see go into the locked office area
3 with the defendant?

4 A Him and another guy went in there.

5 Q Did you know that other guy?

6 A I didn't at the time. I know who he is now, but I
7 don't know him personally.

8 Q Okay. Who is he?

9 A James Green, I mean Rico Green.

10 Q All right. Rico Green?

11 A Yeah.

12 Q Is -- what's his race?

13 A He's African American.

14 Q All right. Prior to that day had you ever seen him
15 before?

16 A I mean people were in and out of there; I'm not sure,
17 possibly.

18 Q But prior to the police coming you're stating that you
19 saw Mr. Green, an African American gentleman, go into the
20 office area with Mr. Starnes. Is that right?

21 A Yes, ma'am.

22 Q And when they went into the office area, did they
23 leave the door open or did they close the door behind them?

1 A I -- I'm not real sure if I paid attention. I think
2 it was closed, but I can't be -- I mean that was like four
3 years ago.

4 Q Do you recall meeting with me a little bit earlier
5 today ---

6 A Yeah.

7 Q --- in the witness room?

8 A Yeah.

9 Q Do you recall telling me then the door was closed?

10 A Well, you asked was the door closed and I said yeah,
11 but I mean I thought about it, it's four years ago. I
12 really can't be sure if the door was open or not.

13 Q But earlier today ---

14 A Yeah, I did.

15 Q --- you told me yeah the door was closed. All right.
16 In any event, when they went into the office area together,
17 did you see what they were doing, ---

18 A No.

19 Q --- what was going on in there?

20 A No, ma'am.

21 Q How long were they in the office together?

22 A Just a couple of minutes.

23 Q Anybody else in the office with them at that time?

24 A No, ma'am.

25 Q And when they came out of the office, what happened?

CRYSTAL JONES - CROSS BY MR. LIFSEY

155

1 A Nothing, he -- the other guy left.

2 Q Okay. The other guy being Mr. Green?

3 A Right.

4 Q The African American gentleman?

5 A Yes, ma'am.

6 Q Okay. Mr. Starnes stay there at the bar?

7 A Yes, ma'am.

8 Q And about how long were you -- did you say they were
9 in that office?

10 A Just a couple of minutes.

11 MS. COLLINS - Nothing further.

12 THE COURT - Mr. Lifsey?

13 CROSS EXAMINATION

14 BY MR. LIFSEY -

15 Q The solicitor asked you who you answer to. Is that
16 correct?

17 A Yes, sir.

18 Q Do you remember her asking you that?

19 A Yeah.

20 Q And you said you answered to Nick, Steve and Pete. Is
21 that correct?

22 A Correct.

23 Q All right, you said Nick is my client. Who's Steve?

24 A Steve is -- as far as I knew he was part owner of GTC
25 with Pete.

1 Q Okay, and Pete's -- I know that's a dumb question, but
2 Pete's the other part owner.

3 A Correct.

4 Q Okay. And you said -- she asked you who had keys to
5 the office, and I believe you said the managers, plural.

6 A Managers, correct.

7 Q Plural. Correct?

8 A Right.

9 Q So at least all three of them.

10 A Oh, yeah.

11 Q Okay. And it's been a long time.

12 A Yeah, it has. It has.

13 Q And you don't remember all the details of what
14 happened that day, do you?

15 A No.

16 Q Okay. Let me ask you something, and I don't mean to
17 insult you, but I'm going to ask you. Did you have any
18 kind of relationship with Rico Green?

19 A I did not know Rico Green prior to this. I ---

20 Q If anybody suggests that, that's a lie. Right?

21 A Exactly.

22 MR. LIFSEY - Okay. Thank you. I don't have any
23 further questions.

24 MS. COLLINS - One question in follow-up.

25 RE-DIRECT EXAMINATION

CRYSTAL JONES - RE-DIRECT/COLLINS; D. JOWERS BY KNIGHT 157

1 BY MS. COLLINS -

2 Q Did you see any of the other managers as you called it
3 there that day, ---

4 A No, ma'am.

5 Q --- at any time?

6 A No, ma'am.

7 Q Only Mr. Starnes?

8 A Yeah.

9 MS. COLLINS - Nothing further.

10 THE COURT - Thank you, ma'am. You may step down.
11 Y'all need her still?

12 (WHEREUPON, NO RESPONSE)

13 THE COURT - You're free to leave.

14 MS. JONES - Thank you.

15 THE COURT - Call your next witness.

16 MR. KNIGHT - At this time the State would like to
17 call Dyvonne Jowers to the stand.

18 DYVONNE JOWERS, AFTER BEING FIRST DULY SWORN,

19 TESTIFIES AS FOLLOWS -

20 DIRECT EXAMINATION

21 BY MR. KNIGHT -

22 Q Good afternoon.

23 A Afternoon.

24 Q Could you please state your name for the record?

25 A Dyvonne Jowers.

1 Q Where are you from, Mr. Jowers?

2 A Lancaster.

3 Q Let's go ahead and get into it. Could you tell us, if
4 you remember, where you were at on August the 4th of 2011?

5 A I was at home earlier that day, then left and went
6 down to where Green live at. I forgot the name of the
7 place where he live out there. Anyway earlier, then that
8 day we left off to go wash his car - what I was going to do
9 and prior to he had to make a couple stops before he could
10 drop me off, before I could take his car to be washed.

11 Q Let me back up a little. You say Green. Who is
12 Green?

13 A Well, Rico is all -- is the only thing I know, Rico
14 Green.

15 Q Rico Green?

16 A (Indicating yes)

17 Q What kind of car was he driving that day?

18 A A black Charger.

19 Q Black Dodge Charger?

20 A Yeah.

21 Q And how long have you known Mr. Green?

22 A Maybe about a year.

23 Q What was the nature of y'all's relationship?

24 A He was just a friend of the family.

DYVONNE JOWERS - DIRECT BY KNIGHT

159

1 Q Okay. So going back, do you remember around what time
2 Mr. Green picked you up in that black Charger?

3 A It's probably around 4:00 o'clock.

4 Q And what'd y'all do after he picked you up?

5 A That's when we left to go to drop him off or wherever
6 he was going, but he made a couple stops prior to where he
7 was going to be dropped off at.

8 Q Were you riding or were you driving?

9 A I was riding.

10 Q You remember going to a bar on West Meeting Street
11 here in Lancaster known as Goodtime Charlies or the
12 Chatterbox?

13 A Yes, I do.

14 Q What'd y'all do at that bar?

15 A I didn't do anything. I didn't get out of the car. I
16 didn't leave the car. He went inside for a few moments. I
17 didn't know what for, the nature of or anything of that
18 sort. I just sat there.

19 Q Okay. Do you remember around what time this was? Was
20 it ---

21 A Right after we left, 4:30, 5:00 o'clock at that time.

22 Q So afternoon, that afternoon?

23 A Yeah.

24 Q Okay. And you stated he went inside the bar for a few
25 minutes?

1 A Yes, sir.

2 Q Did you see anybody come outside the bar for a few
3 minutes?

4 A Well, a guy greeted him at the door, both -- come and
5 -- because he greeted him at the door.

6 Q Do you remember what the guy that greeted him at the
7 door kind of looked like?

8 A No, that's the first time I ever seen him; I didn't
9 really pay him a whole lot of attention.

10 Q Was he -- was he a white guy? Was it a -- do you
11 remember that much?

12 A Yeah, he was a white guy, yeah.

13 Q Was a white guy? Okay. And was Rico Green on the
14 phone with him prior to y'all arriving at the bar or on the
15 phone with somebody? Do you remember?

16 A No, I don't remember that part.

17 THE COURT - Sir, make sure you speak up into the
18 microphone. Okay?

19 Q How long was Mr. Green inside the Goodtime Charlies
20 bar?

21 A Maybe no more than 15 to 20 minutes.

22 Q And you just waited outside in the parking lot?

23 A That's right.

24 Q What happened when -- what happened when he came back
25 out, when Rico came back out?

DYVONNE JOWERS - DIRECT BY KNIGHT

161

1 A Nothing; he just got in the car and we left.

2 Q Where were y'all going?

3 A I guess he was going to the point to where he was
4 going to get dropped off at and stay or whatever ---

5 Q So ---

6 A -- and the car get washed.

7 Q Oh, okay, so you were going to wash the car after
8 that?

9 A Yeah, right.

10 Q What happened after -- after y'all left the bar a few
11 moments after y'all pulled out?

12 A Well, we left the bar and we started out riding on
13 Memorial Park Road; he begin to notice there was a grey
14 pickup behind him and he was saying something in a manner
15 that I don't know what he was saying, and he says -- he
16 says uh -- then that's when he starts reaching up under the
17 seats and his pockets and laying stuff in my lap and I said
18 -- I said what are you doing, I mean what's going on.

19 Q Do you remember what he put in your pocket (sic) - or
20 in your lap?

21 A Huh?

22 Q Do you remember what Mr. Green put in your lap while
23 y'all were riding down the road?

24 A It was drugs and a gun.

25 Q Drugs and a gun?

1 A (Indicating yes)

2 Q Was it -- do you remember kind of what it looked like?

3 Was it in baggies? Could you kind of describe what the
4 drugs and the gun looked like that he put in your lap?

5 A Far as -- yeah, it was in a bag. The gun wasn't, but
6 the drugs was.

7 Q And what did -- did he say anything to you when he
8 gave you these drugs, or did he just throw them in your
9 lap?

10 A He asked me something about had I ever had a charge
11 before, and I said, no, I hadn't had a charge and they -
12 whatever -- I'm -- I'm totally lost; I don't know what's
13 going on, you know.

14 Q Okay. What happened after he threw the stuff in your
15 lap?

16 A And then that's when he told me to take it and run. I
17 said, run, what am I going to run for? You know, totally -
18 --

19 Q So did Mr. Green pull over the Dodge Charger?

20 A Did he pull it over?

21 Q Yeah.

22 A When we were surrounded, yeah.

23 Q And what did you do?

24 A Startled, I mean I - I tried to get out ---

25 Q So did you put the drugs on you at that point?

DYVONNE JOWERS - DIRECT BY KNIGHT

163

1 A That was them -- they was laying in my lap -- trying
2 to get them out of my lap, because I don't know really
3 what's going on, you know, totally lost.

4 Q Did you run as soon as the car was stopped?

5 A Yeah, I really -- yes, because -- like I say I was
6 totally -- not know what's going on and I hesi -- I
7 hesitated, you know. So I didn't know anything about
8 what's going on here.

9 Q What happened after you ran after the car was stopped?

10 A I mean really just got out and ---

11 Q Were you arrested?

12 A Yes, I was.

13 Q Okay. They find certain items of drugs on you?

14 A Well, by them -- I just -- when I got out said it was
15 going be on me. (sic)

16 Q Okay. Do you remember giving a statement in this
17 case?

18 A Yes, I do.

19 Q Do you remember who you gave it to?

20 A Officer Bowers.

21 Q Do you remember when you gave it? Was it after you
22 were arrested or before? Do you remember?

23 A The next day.

24 Q Was it the next day?

25 A Next day.

1 Q So on August the 4th, 2011 you were at the bar at
2 Goodtime Charles with Rico Green.

3 A That's correct.

4 MR. KNIGHT - I think I have no further questions
5 of this witness. Please answer anything Mr. Lifsey has for
6 you.

7 THE COURT - Mr. Lifsey.

8 CROSS EXAMINATION

9 BY MR. LIFSEY -

10 Q You had washed Rico Green's car earlier that day?

11 A Was going to.

12 Q Oh, you were going to.

13 A Yes, sir.

14 Q You had not done it.

15 A Yes, sir.

16 Q I got you. You don't know what -- you testified just
17 a minute ago in response to the solicitor that you really
18 don't know what was said between Rico Green and the guy he
19 talked to at the bar. You don't ---

20 A Yes, sir, no, I don't.

21 Q Nobody said anything to you before or after about
22 that.

23 A No.

24 Q Okay. That's been a long time.

25 A Yeah.

DYVONNE JOWERS - CROSS/LIFSEY; GREEN - DIRECT BY COLLINS 165

1 Q Anybody talk to you about this case in the last four
2 years?

3 A No.

4 MR. LIFSEY - All right. Thank you. I don't have
5 any further questions.

6 THE COURT - All right, thank you; you can step
7 down. Y'all need him anymore?

8 MR. KNIGHT - Nothing further from the State, Your
9 Honor.

10 THE COURT - All right. He's free to leave. You
11 can call your next witness.

12 MS. COLLINS - Your Honor, the next witness is
13 Rico Green.

14 THE COURT - All right.

15 MS. COLLINS - Mr. Green, will you please come
16 forward to the bible to be sworn in as a witness?

17 RICO GREEN, AFTER BEING FIRST DULY SWORN,

18 TESTIFIES AS FOLLOWS -

19 DIRECT EXAMINATION

20 BY MS. COLLINS -

21 Q Would you please tell us your name for the record?

22 A Rico Green.

23 Q Mr. Green, I see that you're in attire that would
24 indicate that you're in the department of corrections. Is
25 that right?

- 1 A Yes, ma'am.
- 2 Q You're serving a prison sentence. Is that right?
- 3 A Yes, ma'am.
- 4 Q And what are you serving a prison sentence for?
- 5 A Trafficking.
- 6 Q And was that in trafficking drugs from August the 4th,
- 7 2011 at Goodtime Charlies bar?
- 8 A Yes, ma'am.
- 9 Q You pled guilty to that?
- 10 A Yes, ma'am.
- 11 Q You received a ten-year sentence?
- 12 A Yes, ma'am.
- 13 Q And you're serving that time now. Is that right?
- 14 A Yes, ma'am.
- 15 Q When are you due to get out?
- 16 A 2020.
- 17 Q And has anybody promised you anything for testifying
- 18 here today?
- 19 A No, I -- really I got appeal in and I want to talk to
- 20 my lawyer if I can get up here, because I got a on-going
- 21 appeal going on in this case.
- 22 Q You filed an appeal?
- 23 A I filed an appeal. I got appeal going on.
- 24 Q And you want to talk to your lawyer?
- 25 A Yes, I want to talk to my lawyer.

RICO GREEN - IN CAMERA BY COLLINS

167

1 Q Okay.

2 MS. COLLINS - Judge, can we have a matter outside
3 the presence of the jury?

4 THE COURT - Yeah. Ladies and gentlemen of the
5 jury, I've got some legal issues I need to deal with with
6 the lawyers. Let's take a break right now, mid-afternoon
7 break. Don't discuss the case.

8 (WHEREUPON, JURY EXITS THE COURTROOM)

9 IN CAMERA EXAMINATION

10 BY MS. COLLINS -

11 Q Have you filed a PCR or an appeal?

12 A I didn't -- now appeal. (sic) I'm in a PCR right now.

13 Q You're in a PCR right now?

14 A Yes, ma'am.

15 THE COURT - All right, the jury's not present.

16 MS. COLLINS - Okay, thank you, Judge.

17 THE COURT - All right, go ahead.

18 Q Okay. So you filed a PCR to try to get the conviction
19 overturned.

20 A Get my case overturned, yes, ma'am.

21 Q All right. Who was your attorney for the plea?

22 A Frick, William Frick.

23 MR. LIFSEY - I can answer that William Frick

24 represented him in his trial -- or his plea -- I'm sorry.

RICO GREEN - IN CAMERA BY COLLINS

168

1 Q And you're saying that you'd like to have Mr. Frick or
2 another attorney talk to you before you testify further
3 here today?

4 A Yes, ma'am.

5 MS. COLLINS - Your Honor, it would be the
6 position of the State that having pled -- the direct appeal
7 having been denied, I don't think he has the right to
8 invoke the Fifth Amendment. He hasn't quite said that yet,
9 although he's saying that he'd like to speak to an
10 attorney, and I seek the Court's guidance in terms of
11 having an attorney talk to him at this point.

12 THE COURT - Solicitor?

13 MR. LIFSEY - Well, I think him asking for an
14 attorney is an indication of his rights under at least the
15 Sixth, if not possibly also the Fifth, and I haven't really
16 thought this through. And I want to represent to the Court
17 I have not never researched this issue at this level. He
18 is at post-conviction relief, which means he is seeking to
19 -- he's alleging that his attorney didn't represent him
20 properly, which if successful would mean he'd have a new
21 trial, so I think -- I don't know if his PCR's going to be
22 successful or not; I know nothing about it other than Mr.
23 Frick represented him, beyond what I've learned in this
24 case, but if he were to succeed at his -- at his PCR,
25 anything he says here would be used against him, could be

RICO GREEN - EXAMINATION BY THE COURT

169

1 used against him, so I think he does have a constitutional
2 right to remain silent at this point.

3 THE COURT - Well, let's find out -- let's find
4 out some information. First, -- sir, I'm going to ask you
5 some questions. I'm not going to -- just answer my -- this
6 deals with the procedural aspect of it. Okay?

7 EXAMINATION

8 BY THE COURT -

9 Q All right, you pled guilty and you were sentenced.
10 Correct?

11 A Correct.

12 Q All right. And did you appeal that guilty plea or the
13 sentence you were given?

14 A Yes, sir.

15 Q Okay. What happened to that appeal?

16 A They denied it.

17 Q Who denied it?

18 A Uh ---

19 Q Court of Appeals?

20 A Court of Appeals.

21 Q Did you appeal that to the Supreme Court?

22 A No, I'm going through a PCR now, filed for a PCR.

23 Q All right, so the Court of Appeals ended your appeal
24 on the guilty plea, so then you filed a post-conviction
25 relief action.

1 A Yes, sir.

2 Q And one of the things you allege in that is
3 ineffective assistance of counsel. Correct?

4 A Correct.

5 Q All right. And so you're seeking a new trial as a
6 result of that?

7 A Yes, sir.

8 Q Have you had a hearing in this type of Court on that
9 PCR case?

10 A Not yet.

11 Q Just -- there's just a pending PCR application.

12 A Yes, sir.

13 Q Have you been appointed a lawyer on your pending PCR
14 application?

15 A No, sir.

16 Q Okay. Has that application been filed in the
17 Lancaster County courthouse?

18 A Yes, sir.

19 Q Okay.

20 THE COURT - We need to find that application.

21 MR. LIFSEY - Yes, sir. And see if he's been
22 appointed counsel. I do know that a couple of lawyers
23 handle those case on a contract for ---

24 MR. GREEN - I mean -- but I can - I mean while
25 I'm here though, to make a long story short, when we first

RICO GREEN - EXAMINATION BY THE COURT

171

1 got locked up there was some things went on; I was promised
2 something; it didn't go right. They tried to get me to lie
3 on Mr. Starnes. The day that I went to that bar, I went to
4 see Crystal Jones. I did not have no dealings with Mr.
5 Starnes, but I was told to say that, and they promised me
6 something, and I never did get it. I would not get up in
7 Court today and lie on that man like that. I gave some
8 pills; it was never no drugs involved. Crystal Jones
9 called me to that bar and I gave her some pills, some
10 Lortab 5 (sic), had two drinks and left. I never did do no
11 dealing with that man. They told me to say I did some
12 dealing. I had them drugs when I had already went there.
13 I went to drop some pills off, no drugs. Make a long story
14 short while here though.

15 Q But that would be your testimony today?

16 A That's my testimony. I ain't going to lie, because
17 they had me to lie and they still gave me ten years and
18 sent me to the department of corrections. I ain't going to
19 lie and get that man locked up for no reason. I gave them
20 pills to Crystal Jones. I knew him, but I ain't never had
21 no dealing. I go and deal with Crystal Jones. I gave her
22 some pills but it wasn't no drugs. They tried to get me to
23 lie to get the man locked up. I ain't going to do that; it
24 won't be right. I took my charge, because they did find my
25 drugs in my car when they pulled us over. I took that

1 charge, but they pulled me over for no reason, because
2 Crystal called and told me to bring the pills and stuff.
3 She put them on me. But that man hadn't had nothing to do
4 with it; I didn't sell that man nothing and he didn't sell
5 me nothing. I gave -- I gave some pills to her.

6 Q Of course one of the things they're going to ask you
7 is about the statement you made to law enforcement
8 implicating Mr. Starnes.

9 A I was told -- they promised me something.

10 Q Okay.

11 A Then after -- after it went down ---

12 Q And you're going to testify -- you want to testify
13 about it.

14 A I will -- I will testify to that. Yeah, I will
15 testify that ---

16 THE COURT - All right. You want to further
17 develop that testimony? I mean -- you know, Mr. Lifsey, I
18 don't ---

19 MR. LIFSEY - I'm okay with that testimony.

20 THE COURT - Yeah, I figured you would be okay
21 with that testimony and that doesn't incriminate -- in the
22 Court's opinion it really doesn't incriminate him at all.

23 MR. LIFSEY - I don't think it incriminates him at
24 all. I think he ought to tell the truth and ---

25 Q You understand what I'm saying to you?

RICO GREEN - EXAMINATION BY THE COURT

173

1 A Yes, sir, yes, sir.

2 Q I mean I -- you've been sworn to tell the truth and I
3 mean ---

4 A I been sworn to the truth and that's the truth.

5 Q --- you tell the truth as you believe it to be, and
6 now, of course, you know, whether the jury agrees with you
7 or not, you know, that's not up to you, but you've been
8 sworn to tell the truth, and I don't see that implicating
9 any -- at all with your pending PCR application.

10 A I don't want that man to get -- get something, you
11 know, ---

12 Q Okay. Well, then you testify ---

13 A Crystal -- Crystal to be the one. That's who I took
14 some pills to. I never did sell no drugs. It was pills.

15 Q Yes, sir.

16 MS. COLLINS - So my understanding is, he's not
17 asking -- or the Court feels that he will not need the
18 assistance of counsel at this point, that I can go forward
19 and question him, and obviously, at this point as a hostile
20 witness ---

21 THE COURT - Yes.

22 MS. COLLINS - --- and impeach him with a former
23 statement.

RICO GREEN - PROFFERED EXAMINATION BY MS. COLLINS

174

1 THE COURT - Well, what questions do you intend on
2 -- now, let's go ahead and proffer the questions you intend
3 on asking him to make sure before the jury comes back in.

4 MS. COLLINS - All right.

5 PROFFERED EXAMINATION

6 BY MS. COLLINS -

7 Q Mr. Green -- you don't need to look at him -- I'm
8 asking you questions right now. Okay?

9 MR. LIFSEY - He can look wherever he wants to in
10 the courtroom.

11 MS. COLLINS - He's looking at the defendant and
12 winking ---

13 THE COURT - All right, let's -- come on.
14 Everybody settle down. Ms. Collins, just ask him the
15 question.

16 MS. COLLINS - All right.

17 Q Do you remember signing this piece of paper saying
18 that you had received no promises or threats?

19 A That what Lieutenant Mclemore told -- if anybody ask
20 me about any promise, he say I'm say no.

21 MS. COLLINS - Mark that please ---

22 A That's what I was told.

23 MS. COLLINS - --- as State's exhibit, whatever
24 the next one is.

RICO GREEN - PROFFERED EXAMINATION BY MS. COLLINS

175

1 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
2 STATE'S EXHIBIT NUMBER 6.)

3 MS. COLLINS - Go ahead and mark this one, too.

4 (WHEREUPON, DOCUMENTS MARKED FOR IDENTIFICATION
5 AS STATE'S EXHIBIT NUMBER 7.)

6 Q Mr. Green, I'm going to show you first of all what's
7 been marked as State's Exhibit 6. Do you recognize that
8 document?

9 A Yes, ma'am.

10 Q Okay. You recognize the signature at the bottom of
11 that document?

12 A Yes, ma'am.

13 Q Is that your signature?

14 A Yes, ma'am.

15 MR. LIFSEY - May I note one note for the record?
16 I don't object at all to this procedure in this hearing. I
17 think at trial she's going to have to comply with the rule
18 about asking him if he remember giving a statement,
19 advising him of time and place before she offers extrinsic
20 proof of that statement. So as long ---

21 THE COURT - We'll deal with that ---

22 MR. LIFSEY - --- as we follow that rule in front
23 of the jury I don't care what we address in here.

24 THE COURT - Okay, we'll deal with that then. Go
25 ahead.

1 Q Did you initial each of these on the side?

2 A Yes, ma'am.

3 Q Okay. So you initialed that you understood you had
4 the right to remain silent?

5 A Yes, ma'am.

6 Q You initialed that you understood that anything you
7 say can and will be used against you in a Court of law?

8 A Yes, ma'am.

9 Q You initialed that you had the right to talk to an
10 attorney and have him present with you while you're being
11 questioned?

12 A Yes, ma'am.

13 Q You initialed that you if you cannot afford to hire an
14 attorney, one will be appointed to represent you before any
15 questioning if you wished?

16 A Yes, ma'am.

17 Q And you initialed that you can decide at any time to
18 exercise these rights and not answer any questions or make
19 any statements?

20 A Yes, ma'am.

21 Q You initialed that you understood each of those rights
22 as they were explained to you?

23 A Yes, ma'am.

RICO GREEN - PROFFERED EXAMINATION BY MS. COLLINS

177

1 Q And you initialed that having those rights in mind
2 that you were willing to talk to them at that time. Is
3 that right?

4 A Yes, ma'am.

5 Q And then underneath with waiver of rights did you read
6 over this before you signed it that you were waiving your
7 rights?

8 A Yes, ma'am.

9 Q Okay. And so you read that you have read this
10 statement of your rights and you understand what those
11 rights are. Right?

12 A Yes, ma'am.

13 Q And that you were willing to make a statement and
14 answer questions. Right?

15 A Yes, ma'am.

16 Q And that you do not want a lawyer at this time.
17 Right?

18 A Yes, ma'am.

19 Q Okay. And you stated, I understand and know what I am
20 doing. Right?

21 A Right.

22 Q You signed under that. Right?

23 A Yes, ma'am.

1 Q And then it said, no promises or threats have been
2 made to me and no pressure or coercion of any kind has been
3 used against me. Is that right? .

4 A Yes, ma'am.

5 Q And you signed that. Right?

6 A Yes, ma'am.

7 Q Okay. And you signed that in the presence of law
8 enforcement on August 4th, 2011 at 11:06 p.m. Is that
9 right?

10 A Yes, ma'am.

11 Q And after signing and waiving these rights, then law
12 enforcement talked to you about the case. Correct?

13 A Correct.

14 Q All right. And they talked to you about what had
15 happened earlier on August 4th, 2011. Correct?

16 A Correct.

17 Q Okay. And do you remember talking to them?

18 A Yes, ma'am.

19 Q You remember talking to Tony Bowers?

20 A Yes, ma'am.

21 Q Now, you're telling us today that you have been made -
22 - that you were made promises. Right?

23 A Yes, ma'am.

24 Q Have you ever met me before?

25 A No, ma'am.

RICO GREEN - PROFFERED EXAMINATION BY MS. COLLINS

179

1 Q I'm Lisa Collins, by the way, with the solicitor's
2 office. Nice to meet you; I'm sorry it's under these
3 circumstances. Who made you those promises that you were
4 referring to earlier? Who made you the promises earlier?

5 A Lieutenant Mclemore.

6 Q Okay. Lieutenant Mclemore. And what did he promise
7 you?

8 A He promised me if I say that the drugs he found in my
9 car belonged to Mr. Starnes, he would throw my charges out
10 and -- he said he really wanted Mr. Starnes for the charge,
11 because Ms. Jones had already told him that he was selling
12 a lot of quantity of drugs at the Chatterbox.

13 Q And where were you when Lieutenant Mclemore promised
14 you that?

15 A At the SLED building

16 Q In the SLED building?

17 A (Indicating yes)

18 Q And when did that happen?

19 A It was -- it was -- I got locked up August 3rd. That
20 was like -- that was the next day.

21 Q Okay. So it was the day after that?

22 A The day after.

23 Q Now, when you entered the guilty plea, you stood in a
24 courtroom much like this. Correct?

25 A That's right.

1 Q And you answered questions of the Judge about your
2 decision to enter a guilty plea. Correct?

3 A Correct.

4 MR. LIFSEY - Well, I object to these questions as
5 relevant all. I'd direct the Court's attention to Rule
6 613(B) which basically is -- it covers impeachment --
7 impeachment of a prior inconsistent statement. As I
8 understand the rule, she's to ask advisement of the time,
9 the place, ask him if he said that, give him an opportunity
10 to either admit he did it or deny he did it. If he denies
11 that he made the statement, then you can put all kinds of
12 extrinsic proof in, but if he explains it, you can't. I
13 mean so there's a rule on this. She can't get into what
14 she's doing now under Rule 613(B).

15 MS. COLLINS - If Mr. Lifsey would please bear
16 with me a moment. I wasn't going to put in his transcript
17 from his plea, but I was going to ask the witness if he
18 stated during his plea that he had not been promised
19 anything or threatened in any way in order to induce his
20 plea.

21 MR. LIFSEY - I think that's irrelevant. I think
22 we're not ---

23 THE COURT - Y'all give me a moment to look at the
24 rule.

25 (WHEREUPON, BRIEF PAUSE)

RICO GREEN - PROFFERED EXAMINATION BY MS. COLLINS

181

1 THE COURT - All right, what's your argument, Mr.
2 Lifsey?

3 MR. LIFSEY - Well, this is -- this is the way
4 this is supposed to happen. She is supposed to, as the
5 rule says, -- I'll just read the rules. I want to make it
6 clear. I mean I know you have them. Extrinsic evidence of
7 a prior inconsistent statement by a witness is not
8 admissible unless -- and so we begin with it's not
9 admissible -- unless the witness is advised of the
10 substance of the statement the time and place it was
11 allegedly made, the person whom it was made, and is given
12 an opportunity to explain or deny the statement.

13 THE COURT - Right; that's what's happening.

14 MR. LIFSEY - Okay. If a witness does not admit
15 that he made the prior inconsistent statement, extrinsic
16 evidence of the statement is admissible. For example, if
17 he said, I never said that, she can put up any witnesses
18 she wants about that statement.

19 THE COURT - Okay.

20 MR. LIFSEY - That's not what he's saying though.

21 THE COURT - All right.

22 MR. LIFSEY - However, if a witness admits making
23 the prior statement, extrinsic evidence the prior statement
24 was made is inadmissible. So she -- I don't -- he's
25 admitted he made the statement; he says he lied; he has

1 explained why he did what he did. She cannot go further
2 down this path. I mean that's the purpose of the rule is
3 to give ---

4 THE COURT - Well, she can right now, because I
5 want to know. The jury ain't here.

6 MR. LIFSEY - Okay, well, that's fine then.

7 THE COURT - Okay.

8 MR. LIFSEY - I just want to put on the record
9 that I object to any of this in front of the jury ---

10 THE COURT - Right, I understand that. We'll deal
11 with that then. I want to -- I'm trying to determine,
12 number one, right now whether or not he's going to be
13 testifying without the assistance of counsel as to whether
14 or not it's going to prejudice him in any way in his PCR
15 case. Okay?

16 MR. LIFSEY - I see. All right.

17 THE COURT - My initial gut is that no it's not.
18 He's not going to further incriminate himself based upon
19 his testimony that I've heard up to this point, but I am
20 going to allow Ms. Collins to go into the whole thing about
21 the statement that was made, because I've got to determine
22 whether or not he's going to testify, and if so, what the
23 parameters of his testimony's going to be, taking ---

24 MR. LIFSEY - Thank you. I ---

RICO GREEN - PROFFERED EXAMINATION BY MS. COLLINS

183

1 THE COURT - -- into account Rule 611, 612 and
2 Rule 613. Go ahead.

3 MS. COLLINS - Thank you, Judge.

4 Q So you stood in a courtroom, whether it was this one
5 or the one next door in the Lancaster County courthouse and
6 entered your guilty plea. Correct?

7 A Yes, ma'am.

8 Q And when you did that there was a Judge on the bench.
9 Correct?

10 A Yes, ma'am.

11 Q And that Judge asked you questions. Right?

12 A Yes, ma'am.

13 Q And one of the questions that the Judge asked you that
14 day during the course of your guilty plea hearing was, had
15 anybody promised you anything or threatened you in any way
16 in order to make you plead guilty. Is that right?

17 A Yes, ma'am.

18 Q And what -- and did you answer to him no, that they
19 had not promised you anything?

20 A Yes, ma'am.

21 Q Okay. And because you answered no, the Judge asked
22 you some more questions and ultimately accepted your guilty
23 plea. Correct?

24 A Yes, ma'am.

1 Q Is that right? Okay. And so you did plead guilty
2 that day. Right? Right? You need to answer out loud.

3 A Yes, ma'am.

4 Q I'm sorry. She just needs a verbal answer. Thank
5 you. Now, you are saying that you were promised by
6 Lieutenant Mclemore that if you made a statement against
7 Mr. Starnes that your charge would be thrown out. Is that
8 what you said?

9 A Yes, ma'am.

10 Q And yet you were entering a plea to the charges.
11 Right?

12 A Right.

13 Q Okay. And when you entered the plea, again, you
14 didn't say anything about that promise. Right?

15 A No, ma'am.

16 Q And you knew at that moment when you were entering the
17 plea, your charge was not being thrown out. Right?

18 A Right.

19 Q Because you were standing there and you were about to
20 go to prison. Right?

21 A Right.

22 Q And, in fact, you did enter your plea and you did go
23 to prison. Right?

24 A Yes, ma'am.

RICO GREEN - PROFFERED EXAMINATION BY MS. COLLINS

185

1 Q Mr. Green, why didn't you tell the Judge that day
2 then, but Judge, I ---

3 A I did. I ---

4 Q I'm sorry. Let me finish. Why didn't you say, Judge,
5 I was promised something and this was supposed to be
6 dismissed; I'm not supposed to be sitting here pleading to
7 it and going to prison. Why didn't you tell the sentencing
8 Judge or the plea Judge that that day?

9 A I didn't -- I just -- really argue about my illegal
10 search -- I went all the way through my suppression hearing
11 before I pleaded out. That's why I -- I was able to file
12 for appeal, because I already knew that the detective had
13 railroad me, so I said ain't no need in me going to trial
14 and get 25, 30 years when I can just plead and try to come
15 back and win on appeal with ten years.

16 Q And I understanding you were trying to ---

17 A That's why -- that's why I did that.

18 Q -- cut your -- you were trying to cut your losses
19 basically. Is that right?

20 A Cut my losses, yeah, in case I can't get back on
21 appeal. I just do -- eight years instead of 20 or 30.

22 Q I understand. But if the promise was that they were
23 going to just kick it, they were going to throw your charge
24 out, why didn't you tell the Judge that that day so that he
25 could do something about it?

1 A I don't know. I just did it. I mean I just did it.

2 Q Okay. All right. I want to ask you about a statement
3 after you waived your Miranda rights that you gave to law
4 enforcement on August 4, 2011 at about 11:06 p.m. All
5 right?

6 A Yes, ma'am.

7 Q You said you remember talking to Investigator Bowers.
8 Correct?

9 A Correct.

10 Q All right. And do you recall that you told him what
11 had happened earlier in that evening near Goodtime
12 Charlies?

13 A Yes, ma'am.

14 Q Okay. I want to summarize the statement that you gave
15 ---

16 MS. COLLINS - Well, Judge, let me just stop and
17 ask -- since we don't have the jury here. I know Mr.
18 Lifsey is being quite adamant that it has to be a type
19 summation. I believe I'm not putting in extrinsic evidence
20 unless I'm entering it. I believe I can ask him, did you
21 tell him such and such ---

22 MR. LIFSEY - Yes.

23 MS. COLLINS - --- to go forward.

24 MR. LIFSEY - I believe that.

25 MS. COLLINS - Okay.

1 MR. LIFSEY - What I object to -- once again, I
2 know we're not in front of the jury, but what I would
3 object to is all the rest of this stuff about the plea
4 colloquy, about why did you not do it. I don't have any
5 objection to her asking him specifically did you say this,
6 did you say that. That's what I ---

7 THE COURT - All right, I understand -- Ms.
8 Collins, talk to me about that, because I am concerned
9 about you getting into the plea colloquy with the Trial
10 Judge. That's an issue for the PCR Judge to determine.

11 MS. COLLINS - I understand that. I think it's
12 relevant and necessary as to his credibility on the issue
13 of was he promised anything. I mean he's coming in here
14 today saying for the first time that he was promised
15 something that they didn't bear fruit on.

16 THE COURT - I think -- I think you can -- I think
17 you can get your point across without going through and
18 hammering all about the guilty plea and the question that
19 the Judge asked during the guilty plea. I think the fact
20 that he's coming here today and it's under oath and is
21 saying he was promised something and he didn't get he was
22 promised, so he's recanting that prior statement, that's
23 enough. Now, I don't -- you know, I'm not going to allow
24 you then to get in -- the State to get into the guilty plea
25 colloquy. I think you can ask him about the prior

1 statement. I --- and he admits making the statement and
2 then he denies that that's the truth now and he can testify
3 as to why he's making a different statement now and then
4 try to -- trying to -- you know, you're impeaching your own
5 witness, and in impeaching your own witness I'm not going
6 to allow you to talk about the plea and colloquy with the
7 Judge on the plea, because I think that potentially could
8 affect his pending PCR in his case.

9 MS. COLLINS - I understand. If I may ---

10 THE COURT - And I'm protecting his right there
11 since he doesn't have appointed counsel here for his PCR,
12 which he's entitled to under the law.

13 MS. COLLINS - I understand, but I -- if I may, if
14 I may just set forth ---

15 THE COURT - Yeah.

16 MS. COLLINS - --- I do think that there is a
17 distinction and the distinction may well be drawn by
18 opposing counsel to the jury that he didn't have an
19 attorney here and he's being promised something in a room
20 with law enforcement here, and yet now he says he didn't
21 have any promises and signed that to being in front of a
22 Judge where he's able to tell the Judge if he had any
23 promises or not ---

24 THE COURT - Well, let's remember -- I understand
25 where you're going, Ms. Collins. Let's remember he's

1 already testified that he's in jail for ten years in front
2 of the jury. He's -- because he pled guilty to trafficking
3 involving the incident on August 4th, 2011 at Charlies.
4 He's already said that. They know he's pled guilty to it.
5 What else you want?

6 MS. COLLINS - Because they don't know that in the
7 course of pleading guilty he said he wasn't promised
8 anything, ---

9 THE COURT - But the statement says that.

10 MS. COLLINS - --- so it -- yes, at that time.

11 THE COURT - You can talk about that. You can --
12 you can ask him about that, that he wasn't promised
13 anything, and yet you still -- now you changing your
14 testimony. I think you can go into that.

15 MS. COLLINS - Thank you for that, Judge.

16 THE COURT - Okay.

17 MS. COLLINS - I just -- I just do believe that
18 the additional time of saying in an open Court to a Judge
19 that he also at that time said I was not promised anything
20 goes to the issue of his credibility and we should be able
21 to ask about that.

22 THE COURT - All right, well, I'm not going to
23 allow you to go into that, but ---

24 MS. COLLINS - All right, thank you.

1 THE COURT - --- I will allow you to go into the
2 credibility of the other thing.

3 MS. COLLINS - Thank you.

4 THE COURT - All right, what else have we got to
5 do other than this proffer outside the presence of the
6 jury? I mean because I think, you know -- all you're going
7 to do is just ask him about the statement now. What else
8 do we need? I've already made a finding it doesn't
9 implicate any constitutional issue for him. The only issue
10 that I saw being implicated was his possible PCR rights,
11 and that's why I'm cutting that off. You understand what
12 I'm doing?

13 MR. GREEN - Yes, sir.

14 THE COURT - Okay. Anything else?

15 MR. LIFSEY - Nothing I can think of.

16 THE COURT - All right, let's take a recess.
17 We're reconvene before the jury comes back in; let me think
18 about it a little bit more and if y'all want to think about
19 it a little bit more, we can put something else on the
20 record.

21 (WHEREUPON, RECESS TAKEN)

22 THE COURT - All right, we'll come back to order.
23 Y'all good. Bring the witness back up, please. All right,
24 while we're bringing the witness back out, having
25 considered the matter further, I'm not going to revisit my

1 prior ruling on the objection. The State will be allowed
2 to question the witness about his prior statement, his
3 prior inconsistent statement, and, of course, the witness
4 can testify as he witnesses to testify, and on the -- as
5 far as the State getting into his guilty plea colloquy, I'm
6 not going to revisit my ruling on that. I think that has
7 everything to do with his pending PCR case and since he's
8 not represented, I'm not going to make Mr. Green go through
9 cross-examination about his guilty plea. Okay? I do find
10 the State will be allowed to ask, if they wish to, that you
11 still pled guilty though, correct, and then he can say yes,
12 because he did plead guilty, but the circumstances of the
13 plea, he can certainly -- the circumstances of why he did
14 that based upon his previous testimony, he can testify
15 about that.

16 Anything else?

17 MR. LIFSEY - No, sir.

18 MS. COLLINS - No, sir.

19 THE COURT - All right, bring the jury back in.

20 (WHEREUPON, JURY ENTERS THE COURTROOM)

21 THE COURT - All right, all members of the jury
22 present. Thank you very much for your patience. Solicitor.

23 MS. COLLINS - Thank you.

24 DIRECT EXAMINATION

25 BY MS. COLLINS (CONTD.) -

1 Q Mr. Green, as we stated earlier, you entered a guilty
2 plea to the offense of -- was it trafficking cocaine?

3 A Yes, ma'am.

4 Q And you received a sentence of ten years. Is that
5 right?

6 A Yes, ma'am.

7 Q And you're serving that sentence in the department of
8 corrections now. Right?

9 A Yes, ma'am.

10 Q And that charge that you pled to arose from an
11 incident in Lancaster County on August 4th, 2011. Is that
12 right?

13 A Yes, ma'am.

14 Q And in the course of that incident -- let's just back
15 up and say -- do you know Dyvonne Jowers?

16 A Yes, ma'am.

17 Q You know Mr. Jowers. Right?

18 A Yes, ma'am.

19 Q He was riding with you that day?

20 A Yes, ma'am.

21 Q Okay. And did y'all go to the Goodtime Charlies bar?

22 A Yes, ma'am.

23 Q Okay, what happened that day?

24 A I had got a call from a good friend of mine, Crystal
25 Jones, and she asked me did I have some pills; I say I had

RICO GREEN - DIRECT BY MS. COLLINS (CONTD.)

193

1 a couple on it, (sic), because she told me to bring her a
2 few there. So me and Mr. Jowers, we left my house Green
3 Peace (sic) Road. I had a little bit of cocaine and stuff
4 in the car with me, so I went to the bar; I gave Ms. Jones
5 the pill; I probably had about two drinks, and I pulled off
6 -- I left; I was heading back to my house; I got about
7 probably half a mile from Goodtime Charlies, Chatterbox or
8 whatever, that when Detective Bowers put the blue-lights on
9 me. Mr. Bowers (sic) jumped out of the car and run with
10 the drugs and stuff.

11 Q Let's back up to that, Mr. Jowers jumping out of the
12 car and running with the drugs and stuff. Who gave him
13 those drugs at that point to run with?

14 A He had the drugs on him all along. When we left my
15 house he had them on him.

16 Q Oh, so they weren't your drugs?

17 A They were my drugs.

18 Q Oh, but Mr. Jowers olds your drugs for you?

19 A Yes, ma'am.

20 Q Why's that? Why can't you hold your own drugs?

21 A Because I don't want to get caught with them.

22 Q Okay. So you gave them to Mr. Jowers and he jumped
23 out running?

24 A Yes, ma'am.

1 Q But those were his drugs that were recovered -- your
2 drugs that were recovered ---

3 A My drugs.

4 Q --- off Mr. Jowers. Right?

5 A They were mine, yeah.

6 Q Okay. How about the drugs in the bar? You know
7 anything about drugs being in the bar?

8 A No, ma'am.

9 Q Okay. You don't know anything about cocaine being in
10 the back office of the bar?

11 A I hadn't never been there. As far as I've been to the
12 bar was Crystal Jones.

13 Q Okay.

14 A I don't know about all that.

15 Q So anything found inside the office area of the bar at
16 Goodtime Charlies was nothing to do with you.

17 A No, ma'am.

18 Q Okay. So you didn't put drugs back there. Right?

19 A I ain't go but from the front door to the bar and
20 walked back out.

21 Q You didn't have access to the office area. Right?

22 A No, ma'am.

23 Q Okay. And so if there were any baggies or scales or
24 anything at all back there in that office area, none of
25 that related to you putting it there. Right?

RICO GREEN - DIRECT BY MS. COLLINS (CONTD.)

195

1 A No, ma'am.

2 Q okay. So what you're saying today is that the drugs
3 that were recovered off of Mr. Jowers were, in fact, your
4 drugs. Is that right?

5 A That what I pleaded out to and got ten years for.

6 Q Okay. All right. Now, let's back up in terms of
7 where you got those drugs. Didn't you tell law enforcement
8 that those drugs, you received, you bought off of Mr.
9 Starnes earlier on August 4th, 2011?

10 A No, ma'am. When I first got locked up I told them
11 they were my drugs, but Lieutenant Mclemore had told me to
12 say that I bought them drugs off of Mr. Starnes.

13 Q Okay. So on August 4th, 2011 about 11:00 o'clock that
14 night, do you recall meeting with Tony Bowers?

15 A I talked to Mr. Bowers and Mr. Rollins. I talked to
16 all of the detectives.

17 Q All right. And do you deny that you told Mr. Bowers
18 on August 4th, 2011 right after this happened at 11:00
19 o'clock that, in fact, you had bought that cocaine, those
20 drugs that Mr. Jowers ultimately had from -- those drugs
21 that you say are yours, you deny telling them that you
22 bought that from Mr. Starnes earlier that evening at the
23 bar?

24 A No, ma'am, Lieutenant Mclemore had told me to say
25 that, write that statement.

1 Q Okay. So you're admitting that you said it?

2 A I'm admitting that that was what Lieutenant Mclemore
3 told me to say.

4 Q Okay.

5 A He promised he would let me go if I write that
6 statement so he could lock Mr. Starnes up.

7 Q So you're admitting that you said it, ---

8 A I'm admitting it.

9 Q --- but you're saying it was because he made a promise
10 to you.

11 A He made a promise to me.

12 Q A promise to you that what?

13 A He would let me go.

14 Q That your charge would be dismissed, that you could
15 just walk?

16 A Yes, ma'am.

17 Q Okay, but you didn't just walk, did you?

18 A No, ma'am.

19 Q In fact, you ultimately pled guilty to that charge.
20 Right?

21 A Yes, ma'am.

22 Q And that's what you're serving your sentence for.

23 Correct?

24 A Right.

RICO GREEN - DIRECT BY MS. COLLINS (CONTD.)

197

1 Q So is it your testimony here today that your only
2 transaction at Goodtime Charlies was handing pills to
3 Crystal Jones?

4 A Yes, ma'am.

5 Q You're denying that you gave those pills to Mr.
6 Starnes?

7 A When I came in the bar Mr. Starnes and two more other
8 dudes over by the pool table. I never did -- the only
9 person I ever dealt with in that bar was Crystal Jones. I
10 probably hadn't met Mr. Starnes but two or three times. I
11 ain't really know him like that.

12 Q Okay. So you're denying that you gave Mr. Starnes
13 those Hydrocodone pills.

14 A Exactly. I put them in Crystal's hands, Crystal
15 Jones.

16 Q And is that what they were, Hydrocodone pills?

17 A I think, Loratol (sic) 5s (sic). I ain't sure. I
18 think that's what they was. That what I was told they was.
19 That what she asked for.

20 Q Okay. And how many were there?

21 A I think it was about three or four of them. I can't
22 remember. I was kind of intoxicated. I can't remember.

23 Q Kind of intoxicated?

24 A Yes, ma'am.

25 Q What had you had to drink that day?

- 1 A Been drinking some, couple Coors Light.
- 2 Q Okay. Did you have any drugs that day?
- 3 A Yes, ma'am.
- 4 Q What'd you have, ---
- 5 A Drugs they found off of Mr. Jowers in my car.
- 6 Q Tell me what kind of drugs you'd had that day?
- 7 A Used or I had in my ---
- 8 Q That you used.
- 9 A I don't use drugs. I just drink.
- 10 Q Okay. So you said you were a little intoxicated.
- 11 That was just from alcohol?
- 12 A Coors Light.
- 13 Q Okay. All right. So you say you don't quite remember
- 14 in terms of the pills or how much?
- 15 A I think about three or four, probably three or four
- 16 pills. I ain't exactly sure.
- 17 Q But you -- so you had drunk enough to make your memory
- 18 a little fuzzy on that?
- 19 A I remember handing them pills to Crystal Jones.
- 20 Q All right. So anything that was found in the office
- 21 area of the bar -- you denied going in the office area of
- 22 the bar at all?
- 23 A I did not go in the office; I went straight to the
- 24 bar.
- 25 Q Okay. And then you left.

RICO GREEN - DIRECT BY MS. COLLINS (CONTD.)

199

1 A Then I left. I stayed probably about five, ten
2 minutes and I left.

3 Q Okay. And you admit that you told law enforcement --
4 when they asked you about the incident, you admit that you
5 said to law enforcement that you bought that cocaine that
6 ultimately Mr. Jowers had when he ran, that you had just
7 bought that from the Defendant, Mr. Starnes.

8 A Yes, ma'am.

9 Q You admit saying ---

10 A That what Lieutenant Mclemore had told me to -- that
11 what he told me to write in -- in the writing, that he --
12 he would let me go, crack belonged to Mr. Starnes.

13 Q Okay. When the police talked to you about that, do
14 you remember that before they even talked to you -- now you
15 were under arrest. Correct? Right?

16 A Yes, ma'am.

17 Q You were in custody; you weren't free to go. Right?

18 A Right.

19 Q And do you remember that they told you you had certain
20 rights.

21 A Yes, ma'am.

22 Q And do you remember that they told you you had the
23 right to remain silent?

24 A Yes, ma'am.

1 Q And do you remember that they told you that anything
2 you say could and would be used against you in a Court of
3 law. You remember that?

4 A Yes, ma'am.

5 Q And do you remember that they told you, you have the
6 right to attorney and to have that attorney present with
7 you while you're being questioned? You remember that?

8 A Yes, ma'am.

9 Q And you remember that they told you that if you
10 couldn't afford to hire a lawyer, that one would be
11 appointed to represent you before any questioning if you
12 wished. You remember that?

13 A Yes, ma'am.

14 Q And do you remember that they told you that you can
15 decide at anytime to exercise these rights and not answer
16 any questions or make any statements? You remember that?

17 A Yes, ma'am.

18 Q And you remember that you -- they asked you, having
19 these rights in mind, are you willing to talk to us at this
20 time? You remember them saying that?

21 A Yes, ma'am.

22 Q And you remember initialing each of those rights that
23 you understood them? Right?

24 A Yes, ma'am.

RICO GREEN - DIRECT BY MS. COLLINS (CONTD.)

201

1 Q Okay. And then after that, there's a place on the
2 State's Exhibit 6 where you -- they asked you about had you
3 been promised anything. Do you remember signing that no
4 promises or threats had been made to you and no pressure or
5 coercion of any kind has been used against you. Do you
6 remember that?

7 A Yes, ma'am.

8 Q You signed your name to that.

9 A Yes, ma'am.

10 Q And you signed your name to that at 11:00 o'clock on
11 August 4th, 2011. Right?

12 A Yes, ma'am.

13 Q And that was immediately before you gave this
14 statement to law enforcement. Right?

15 A Yes, ma'am.

16 Q But you're telling us now that that was wrong, that
17 was a lie by you. Right?

18 A Yes, ma'am, I lied.

19 Q You're telling us now that, in fact, you had been
20 promised something. Right?

21 A Yes, ma'am.

22 MS. COLLINS - Ask the Court's indulgence.

23 THE COURT - All right.

24 Q You friends with Mr. Starnes?

1 A No, ma'am, I might've seen him about two or three
2 times.

3 Q You saw him that evening. Right?

4 A Yes, ma'am, him and about two more other dudes over by
5 the pool table shooting pool when I walked in.

6 Q You remember earlier when the jury had to go out
7 looking over at Mr. Starnes and winking at him?

8 A I ain't winked at him.

9 Q You remember ---

10 A I probably blinked my eyes, but I don't remember
11 winking.

12 Q You blinked one eye. You remember that?

13 A I got a lazy eye, too. My right eye lazy eye.

14 Q You blinked your left eye at him. You remember that?
15 You don't remember that?

16 A No, ma'am, I don't.

17 Q Law enforcement isn't your friend. Right? Would you
18 agree? Law enforcement is not your friend. Right?

19 A I ain't got nothing against them; they got a job to
20 do.

21 Q But your lifestyle, what you pled guilty to involved
22 drugs. Right?

23 A Yes, ma'am.

24 Q And that day you were caught with drugs. Right?

25 A Yes, ma'am.

RICO GREEN - DIRECT BY MS. COLLINS (CONTD.)

203

1 Q Okay. That day you didn't get out and run or confront
2 law enforcement. Mr. Jowers got out and run. Right?

3 A Yes, ma'am.

4 Q You deny telling Mr. Jowers to run with that?

5 A Yes, ma'am, I did; that's why I took the charge.

6 Q Okay.

7 A When he got out of the car, if he would've got away, I
8 would've been all right, but he got caught, so I wasn't
9 going to let him go to jail for it; that's why I took the
10 charge.

11 Q So you did tell Mr. Jowers to take it and run?

12 A I did. I exactly did.

13 Q Okay. So you were trying to evade ---

14 A Avoid being caught with it.

15 Q And you were trying to evade the truth. You were
16 trying to evade the truth that you had drugs on you that
17 day. Right?

18 A As soon as he got caught I told them the same day,
19 right there and there they were mine.

20 Q But when you gave the drugs to Mr. Jowers and told him
21 to run, you were trying to evade the truth, weren't you?

22 A Yes, ma'am.

23 Q That's right. And right after this happened, when you
24 talked to law enforcement and you told them you were going
25 to make a true statement to them and that you hadn't been

1 promised anything -- anything in any way, at that time you
2 said to them that you had bought those drugs from the
3 Defendant, Mr. Starnes. Right?

4 A I didn't say I was going to make no true statement.
5 He told me if I just say them drugs belonged to Mr. Starnes
6 he'd let me go. I didn't never say nothing about no true
7 statement. He say he wanted Mr. Starnes.

8 Q But on that day you could've remained silent. Right?

9 A Yeah; exactly right. I lied.

10 Q You could've said I ---

11 A I lied.

12 Q --- want a lawyer. Right?

13 A I lied that day. I lied. That's why I'm
14 straightening the truth up today.

15 Q And the statement you gave that day to law enforcement
16 ---

17 A I lied.

18 Q --- was that you had bought the drugs from Mr.
19 Starnes. Right?

20 A I lied thinking he was going to do what he said he was
21 going to do instead, but he lied to me, that's why I'm
22 straightening it up today. I ain't going to let an
23 innocent man go to prison for something he ain't done.
24 Them was my drugs. I accept responsibility for it.

25 MS. COLLINS - Nothing further.

RICO GREEN - CROSS BY MR. LIFSEY

205

1 THE COURT - Mr. Lifsey.

2 CROSS EXAMINATION

3 BY MR. LIFSEY -

4 Q You've been locked up for a long time I guess. Right?

5 A Yes, sir.

6 Q You've never met with me or anybody working for me
7 about this case.

8 A No, sir.

9 Q In fact, I guess today as I'm asking you these
10 questions is the first time I've ever even said a word to
11 you. Is that right?

12 A Yes, sir.

13 Q Have you ever -- since you've been arrest, I mean has
14 my client talked to you or anybody on his behalf or
15 anything?

16 A I ain't seen him since he made bond. I ain't had no
17 words, no dealings, no nothing with him.

18 Q Did you -- you met with the solicitor's office though
19 about this case, haven't you?

20 A Yes, sir, I done talked to the narcotic agents three
21 times.

22 Q What'd you tell them most recently? Because you --
23 you talked to them yesterday?

24 A Yeah, I talked to them yesterday.

RICO GREEN - RE-DIRECT BY MS. COLLINS

206

1 Q Did you tell them yesterday the same thing that you're
2 getting ---

3 A I told them this today, I said I am not going to get
4 up there and lie on that man, the drugs were mine.

5 Q Did they tell you about a program that if you ---

6 A A downward ---

7 Q --- testified, could get a year ---

8 A I could get a downward departure. They said if I get
9 up here and testify I could get a downward departure; I
10 said I ain't going to do that.

11 Q So you could've gotten -- if you'd have testified the
12 way they wanted you to, you could've gotten a year -- time
13 off your sentence?

14 A Yes, sir, that's what I was told yesterday.

15 Q Why aren't you doing it?

16 A Because it wouldn't be right. I be locking a innocent
17 man up for my own drugs, what I had.

18 MR. LIFSEY - I don't have any further questions.

19 MS. COLLINS - Briefly in follow-up.

20 THE COURT - All right.

21 RE-DIRECT EXAMINATION

22 BY MS. COLLINS -

23 Q You met in the holding area downstairs in this
24 building with Assistant Solicitor Luke Knight and with Tony
25 Bowers of the sheriff's department. Right?

RICO GREEN - RE-DIRECT BY MS. COLLINS

207

1 A Yes, ma'am.

2 Q And that was yesterday. Right?

3 A Yesterday.

4 Q And I wasn't in there. Right?

5 A No, ma'am.

6 Q All right. And when these gentlemen met with you
7 yesterday, they made you aware of a statute or a law that
8 provides for the possibility of taking time off your
9 sentence if the Judge grants it if you cooperate with law
10 enforcement. Correct?

11 A Yes, ma'am.

12 Q But they didn't promise you that they would ask the
13 Judge for that or put that law into effect with you, did
14 they?

15 A Yes, ma'am, that there what they told me.

16 Q You're saying they promised you that yesterday.

17 A They told me if I get up on the stand and testify
18 saying that the drugs were his, it's downward departure
19 that I could get as far as my sentence if I testified.

20 Q They told you that law existed. Did they tell you
21 that they would file the motion asking the Court for that?
22 They did not, did they?

23 A No, but they say it was a downward departure if I
24 would just get up there and testify.

25 Q They told you the statute existed ---

RICO GREEN - RE-CROSS BY MR. LIFSEY

208

1 A They said ---

2 Q --- but they did not promise to you that the they
3 would file the motion.

4 A No, they didn't promise it to me, but they said it
5 existed if I get up here and testify.

6 Q They made you aware that it existed.

7 A Yeah, they made me aware, but I told I wouldn't do it.

8 MS. COLLINS - That's all.

9 RE-CROSS EXAMINATION

10 BY MR. LIFSEY -

11 Q Just briefly then on that. I mean so right now the
12 way you're testifying, there's zero percent chance of them
13 doing anything to help you. Isn't that right?

14 A That's right.

15 MR. LIFSEY - Okay. I don't have anything else.

16 THE COURT - All right, thank you, sir. You can
17 step down. State call its next witness.

18 MS. COLLINS - Your Honor - I'm sorry about that.
19 Could we recall Ryan Mclemore?

20 THE COURT - Yeah.

21 MS. COLLINS - Thank you.

22 THE COURT - Get Mr. Mclemore, Madam Bailiff. Mr.
23 Mclemore.

24 Mr. Witness, if you'll please go back outside.

25 Thank you, sir.

RYAN MCLEMORE - DIRECT BY MR. KNIGHT

209

1 MR. LIFSEY - May we approach?

2 THE COURT - Yes, sir.

3 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
4 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
5 WHICH WAS NOT REPORTED.)

6 THE COURT - All right, Mr. McClemore, you're
7 still under oath, sir.

8 RYAN MCLEMORE, AFTER BEING PREVIOUSLY SWORN,
9 TESTIFIES AS FOLLOWS -

10 DIRECT EXAMINATION

11 BY MR. KNIGHT -

12 Q Could you please state your name?

13 A Lieutenant Ryan Mclemore.

14 Q All right, let's turn now -- let's get right into. Do
15 you remember in regards to this case promising anything to
16 Rico Green in order for him ---

17 MR. LIFSEY - I -- I just want to renew my
18 objections under 613(B), Judge.

19 THE COURT - Yes, sir, objection noted; objection
20 overruled.

21 MR. LIFSEY - Thank you.

22 Q Was Rico Green promised anything in regards to this
23 case to make any kind of statement any kind of way?

24 A No, he was not.

25 Q Did you speak with Mr. Green involving his statement?

RYAN MCLEMORE - CROSS BY MR. LIFSEY

210

1 A No, I did not.

2 Q And do you recall any involvement you had with Mr.
3 Green regarding him giving the statement about the incident
4 that occurred on 8/4/2011?

5 A No, I wasn't present when Mr. Green gave a statement.

6 Q Do you know who -- who did take the statement from ---

7 A Investigator Bowers took the statement from Rico
8 Green.

9 Q And do you know if any other law enforcement officer
10 other than yourself offered Mr. Green any kind of promises
11 or any kind of conditions for giving the statement that was
12 taken on 8/4/ ----

13 A No.

14 Q ---- 2011?

15 A None, no.

16 MR. KNIGHT - Thank you. No further questions.

17 THE COURT - All right, any questions on that?

18 CROSS EXAMINATION

19 BY MR. LIFSEY -

20 Q Did you in any way -- I mean the sheriff's office has
21 the ability to record statements. Correct?

22 A We do now; we didn't then.

23 Q Well, you say you did. I mean, come on -- I mean if I
24 pull out my phone -- and you have a phone; everybody's got
25 a phone that can record something. The sheriff's office

RYAN MCLEMORE - CROSS BY MR. LIFSEY

211

1 may not have had an office attached, but you have the
2 ability to record something. Correct?

3 A No, sir, not then.

4 Q You mean you're telling me in 2011 -- of course, that
5 was four years ago, I guess, but in 2011 no one connected
6 with the Lancaster County Sheriff's office had the ability
7 to hit a button that said record while somebody's talking?

8 A I'm sure they had a phone, but that's not a practice
9 and it's not policy.

10 Q So it could've existed, but then the policy was not to
11 record statements?

12 A Not with a cell phone.

13 Q Well, wouldn't you agree that if there were a recorded
14 statement, there's no dispute about what was said or not
15 said. Right?

16 A But we did not have that ability.

17 Q So you're saying either you as the head of the
18 narcotic's unit, the whole narcotic's unit for the
19 Lancaster County Sheriff's office did not have the ability
20 to record statements.

21 A Even though I'm the head of the narcotic's unit, I
22 don't have anything to do with funding or having any type
23 of recorded rooms at the sheriff's office.

24 Q And no one -- I mean y'all wire-up CIs.

25 A Sure.

1 Q Those are recorded.

2 MR. KNIGHT - Objection. Objection, asked and
3 answered. He already asked that question three different
4 ways and he answered it.

5 THE COURT - Okay.

6 MR. LIFSEY - Well, let me just ---

7 THE COURT - Move on.

8 Q CIs are recorded. Correct?

9 A The CI themselves aren't recorded; the suspects we go
10 after are recorded.

11 Q That's right. So if you equip a CI and you send a CI
12 in to talk to somebody, you record that.

13 A Sure.

14 Q But you don't record when you interview somebody.
15 Correct?

16 A We do now, because we have the ability to. Then we
17 did not have the ability to record.

18 Q What -- what was invented between 2011 and 2015 that
19 allows you to make those recordings that did not exist in
20 2011?

21 A I'm sure there were cameras that did exist in 2011,
22 but there again, that wasn't anything up to me. I don't
23 make the decisions to have interview recording rooms built
24 at the sheriff's office or anywhere like that. That's
25 totally out of my control.

RYAN MCLEMORE - RE-DIRECT BY MR. KNIGHT

213

1 Q And the policy is that if you or Tony Bowers or Grant
2 (sic) Rollins or anybody at the sheriff's office would've
3 had, say, a phone or any device to record, the policy is
4 you wouldn't have recorded?

5 A We didn't have a policy to say not record, but we sure
6 didn't have a policy that says pull your phone out and
7 record a conversation with your phone, no.

8 MR. LIFSEY - Thank you. I don't have any further
9 questions.

10 THE COURT - All right.

11 MR. KNIGHT - Just a couple questions.

12 THE COURT - Okay.

13 RE-DIRECT EXAMINATION

14 BY MR. KNIGHT -

15 Q Were you present when Tony Bowers took the interview
16 from Rico Green on 8/4/2011?

17 A No, I was not.

18 Q Would you have the ability to take out your cell phone
19 or any kind of recording device at -- when the statement
20 was taken?

21 A No, I would not have.

22 MR. KNIGHT - No further questions.

23 THE COURT - All right, thank you, sir. You can
24 step down. State call its next witness.

25 MR. KNIGHT - State would like to call Ken Taylor.

KEN TAYLOR - DIRECT BY MR. KNIGHT

214

1 THE COURT - Mr. Taylor.

2 KEN TAYLOR, AFTER BEING FIRST DULY SWORN,

3 TESTIFIES AS FOLLOWS -

4 DIRECT EXAMINATION

5 BY MR. KNIGHT -

6 Q Good afternoon, Mr. Taylor.

7 A Good afternoon.

8 Q Could you please state your name and occupation for
9 the record?

10 A Yes, sir. My name is Ken Taylor. I'm a crime scene
11 investigator for the Lancaster County Sheriff's office.

12 Q How long you been with the Lancaster County Sheriff's
13 office?

14 A Full-time, December of this year will be ten years.

15 Q Okay. And how long have you been in law enforcement?

16 A Just a little over ten years started as a reserve
17 about six months prior to going full-time.

18 Q All right. What do you do for the Lancaster County
19 Sheriff's office?

20 A Currently a crime scene investigator.

21 Q Crime scene investigator. How long have you been in
22 that capacity at the sheriff's office?

23 A Crime scene investigator, about six years.

KEN TAYLOR - DIRECT BY MR. KNIGHT

215

1 Q Okay. And could you tell us a little bit about your
2 training and your qualifications that led to your position
3 as a crime scene investigator?

4 A Yes, sir. Of course, I started out on patrol as a
5 patrol deputy. In 2009 was promoted to our crime scene
6 investigations unit or crime scene unit, was able to go to
7 some classes at the South Carolina Criminal Justice Academy
8 for basic fingerprint comparison and recognition, took a
9 ten-week course, residence course at the National Forensics
10 Academy in Oakridge, Tennessee for crime scene
11 investigation which entailed a lot of other things that we
12 do on a daily basis and just a lot of continuing education
13 related to that.

14 Q And you said ten weeks in Tennessee?

15 A Yes, sir.

16 Q Did you take any specialized training or get any
17 specialized qualification in fingerprinting?

18 A Yes.

19 Q Okay, what would that consist of?

20 A Well, in late 2009 took a 40-hour course at the South
21 Carolina Criminal Justice Academy in basic fingerprint
22 evaluation and comparison or recognition and comparison,
23 excuse me, and as part of the forensic academy in 2010 we
24 also had a block on latent print recognition and

1 fingerprint examination and had some continuing education
2 courses again with everything that I do daily.

3 Q As far as fingerprinting analysis goes, were you ever
4 certified by any state or national certification in
5 analyzing fingerprints?

6 A No, sir, no certification.

7 Q Just you certified that you completed those courses?

8 A Yes, sir. As far as the South Carolina Criminal
9 Justice Academy, finished that -- completed that 40-week
10 course -- excuse me -- 40-hour course and of course, a
11 block of training with the forensic academy which I
12 completed.

13 Q Okay. And, approximately, how many fingerprints have
14 you in the course of your career analyzed or looked at or -
15 --

16 A Probably about 4,000 as far as examinations are
17 concerned.

18 Q Okay, and have you ever been qualified or testified in
19 any other Court as an expert on fingerprints?

20 A Just here in Lancaster County.

21 Q How many times?

22 A I believe it was twice in the past.

23 MR. KNIGHT - At this time I'd move to admit
24 Investigator Taylor as an expert in fingerprint analysis.

KEN TAYLOR - DIRECT BY MR. KNIGHT

217

1 MR. LIFSEY - I agree. I don't have any objection
2 to that.

3 THE COURT - All right, thank you. Ladies and
4 gentlemen, when someone's qualified -- when the Court
5 qualifies somebody as an expert -- and you just heard Mr.
6 Lifsey have no objection to that, so I do find this witness
7 is qualified to testify as an expert in the field of
8 fingerprint analysis -- when someone is qualified that way
9 in Court, that means they can give opinions about what they
10 find or what they don't find. Normally when a witness,
11 another witness or what's called a lay witness testifies
12 they can't give an opinion. They can only testify about
13 what they say, heard or smelled or something of that
14 nature. Now, just because an expert gives an opinion,
15 doesn't mean you have to accept the opinion. Okay? That's
16 up to you. That's how you determine the credibility and
17 believability of witnesses and you weigh all that together
18 at the end when you review all the evidence when you
19 deliberate. Okay?

20 Q All right, well, let's go ahead and get started.
21 Let's turn to August the 4th of 2011.

22 A Yes, sir.

23 Q Do you remember if you were working on that day?

24 A Yes, sir.

1 Q You remember going out to West Meeting Street in the
2 County of Lancaster on that day?

3 A Yes, sir, I do.

4 Q Do you remember where exactly you went out to on West
5 Meeting Street?

6 A It was on West Meeting Street. I believe the club or
7 the place was referred to as Goodtime Charlies.

8 Q Had you ever been there before?

9 A Uh, had been by there and around there in the course
10 of my patrol, patrol days, yes, sir.

11 Q Okay, and what capacity were you working -- were you
12 working with CSI when you went to the location?

13 A At that time, yes.

14 Q What time -- approximate time did you -- did you go
15 out to the bar?

16 A I believe it was between 9:00 and 10:00 p.m., sometime
17 around that time if I recall.

18 Q And why did you go out to the bar?

19 A I was called out to assist Lieutenant Mclemore and
20 some of the other investigators on a search warrant they
21 were conducting at the location.

22 Q Did you bring your camera when you went out there?

23 A Yes, sir, I did.

24 Q You take any photographs?

25 A Yes, sir, I did.

KEN TAYLOR - DIRECT BY MR. KNIGHT

219

1 MR. KNIGHT - At this time I'd like to show the
2 witness what's marked as State's Exhibit 1 on the podium --
3 -

4 THE COURT - All right.

5 MR. KNIGHT - --- 1.1 through 1.38.

6 Q I'm going to show you -- back up to the beginning -
7 I'm going to show you a series of pictures. Do you
8 remember this first picture as 1 -- State's Exhibit 1 1.1.
9 You remember taking this picture?

10 A Yes, I did.

11 Q What is this picture of?

12 A This is the front of the business from where I was
13 standing in the parking lot?

14 A Okay.

15 Q This picture?

16 A Yes, sir, from the same vantage point, just moved over
17 a little toward the door.

18 Q Okay. This picture?

19 A And that was just a close-up on one of the tags from
20 one of the vehicles in the parking lot.

21 Q This picture?

22 A Yes, sir, that's inside the bar.

23 Q (Indicating)

24 A And that's also inside the bar showing just a couple
25 of pool tables.

1 Q This picture?

2 A This picture here is inside the office of the bar
3 which appeared to be a -- looked like an old bathroom room
4 that had been converted into a small office.

5 Q This taken in the same location?

6 A Inside that same office, yes.

7 Q Same location?

8 A Yes, sir.

9 Q (Indicating yes)

10 A And same location. Yes, sir, that is a -- part of the
11 desk that was against a wall there, and that is a file
12 cabinet drawer that's open inside that same office. And
13 that's another picture of the file cabinet, and that one as
14 well. And those are also the same file cabinet. Yes, and
15 that one also.

16 Q Okay. We'll move on. I -- just to -- do you recall
17 seizing anything from the bar when you arrived?

18 A Yes, I did. Okay, do you remember ---

19 MR. KNIGHT - Beg the Court's indulgence.

20 THE COURT - Okay.

21 Q So you said y'all seized some stuff from the bar?

22 A Yes, sir, we did.

23 Q I'm handing over now what's marked as State's Exhibit

24 4, State's Exhibit 9 for identification purposes. Could

KEN TAYLOR - DIRECT BY MR. KNIGHT

221

1 you tell me what each one of those things are? First,
2 Exhibit 4 and then Exhibit 9.

3 A Exhibit 4 appears to be one of the chain of custody
4 papers out of what's referred to as a BEST kit for
5 packaging unknown substances for submission to SLED, and
6 Exhibit 9 appears to be the actual kit as it's referred to
7 as a BEST kit and the return information or the return
8 package back from SLED.

9 Q All right, on Exhibit 4 that I just handed you, ---

10 A Yes, sir.

11 Q --- is your name on there at all?

12 A Yes, it is.

13 Q And what relation is it on there? Does it say if it -
14 - did you collect the BEST kit or was this -- why is your
15 name on that -- on that exhibit?

16 A I'm the person that collected it from the club there
17 and actually transported it to our evidence facility.

18 Q And what do you do when you collect certain items of
19 evidence?

20 A Of course, we package them however necessary to
21 protect them, secure them, and then we transport them to
22 our evidence facility and then turn them in there along
23 with whatever chain of custody or paperwork necessary to
24 identify that or keep that chain of custody.

1 Q Do you have notes of what you put in that BEST kit
2 that you have in Exhibit 9?

3 A Yes, it is going to be, according to our list here, it
4 says three bags of a white powder substance.

5 Q Okay. How did you package it? Did you package it in
6 that BEST kit that you've got right in front of you,
7 Exhibit 9?

8 A Yes, sir. The original kit is sent -- that you see, I
9 would say inside this plastic envelope, and then once SLED
10 processes it, it's my understanding they repackage it in
11 this outer envelope and send it back to us for our storage.

12 Q Do you have a notation of when you collected that and
13 where you collected it from?

14 A Yes, it was collected on -- let's see -- I'm showing
15 here that it was sealed or the chain of custody was turned
16 over on 8/16/2011 it says here.

17 Q Okay, so -- but you collected it at the bar that
18 night?

19 A Yes.

20 Q Okay. And do you remember where you collected that
21 and what the contents of what's in that BEST evidence bag -
22 - do you remember where you collected that in the bar?

23 A I believe this one was down in the back file -- back
24 of a file cabinet drawer -- or, no excuse me -- behind or

KEN TAYLOR - DIRECT BY MR. KNIGHT

223

1 beside the file cabinet down on the floor, I believe it
2 was.

3 Q Okay. All three -- how many bags were in the BEST
4 kit?

5 A There are -- three bags, I'm sorry.

6 Q And do you know where -- do you remember where each
7 bag was located?

8 A There was one bag -- again, the larger bag, I believe,
9 was down on the floor beside the file cabinet, somewhere
10 behind the desk, somewhere in that area, and two of the
11 smaller baggies were actually found in the file cabinet
12 drawer kind of staggered within some of the files.

13 Q And this was located in the office of the bar area?

14 A Yes.

15 Q And do you remember if that door was opened or if it
16 was unlocked when you got there?

17 A If I recall, it was closed when I got there.

18 Q But y'all were able to open the door and ---

19 A I don't remember if I participated in opening that or
20 if it was Lieutenant Mclemore or one of the other
21 investigators.

22 Q All right. Do you know who those were given to after
23 you collected them?

KEN TAYLOR - DIRECT BY MR. KNIGHT

224

1 A They would've been put in our evidence drop facility,
2 which Ms. Horton would then have been the second person to
3 have probably have taken control of that.

4 Q Do you remember seizing anything else from the bar on
5 that night?

6 A Yes, there were several other items.

7 Q So you said you seized several other items from the
8 bar?

9 A Yes, sir.

10 Q And this was -- do you remember -- was this seized
11 pursuant to the search warrant that was obtained?

12 A Yes.

13 MR. KNIGHT - May I approach?

14 THE COURT - Yes, sir.

15 Q I'm showing you now what's marked as State's Exhibit
16 10. Do you know what this is?

17 A Yes, sir. This is a bag that I labeled as a green
18 leafy substance.

19 Q And do you know based on what's on the front of the
20 bag when it was collected?

21 A Yes, it was collected on August 4th, 2011.

22 Q And do you know where it was collected from?

23 A I believe it was in one of the drawers of that same
24 metal file cabinet, if I recall.

KEN TAYLOR - DIRECT BY MR. KNIGHT

225

1 Q What do you do when you collect -- this isn't a BEST
2 evidence bag, is it?

3 A Correct. This is just one of our standard paper
4 evidence packaging bags.

5 Q And what do you do with the items that you don't place
6 in the BEST bag? How do you collect those and what do you
7 do with them after you collect them?

8 A Again, if we package it in a paper bag, a plastic bag
9 or whatever it calls for, it's again put in the evidence
10 facility and it's stored and if further processing is
11 needed, then it's either sent to whoever it needs to go to,
12 be it our State lab or for some kind of processing that we
13 would do in-house. It's all again kept packaged and
14 secured that way.

15 Q Okay. Do you know what you do with it? Do you
16 remember what you did with that State's Exhibit 10?

17 A Once this was turned in, I didn't have anything to do
18 with it after that. Once it was submitted into evidence
19 and secured there, I didn't have anything to do with it
20 after that.

21 Q Could you kind of explain just briefly about how
22 evidence is secured, how you drop it off? You said you
23 dropped it off in evidence.

24 A At the time in 2011 we were in another facility, and
25 be it either our investigators or our patrol deputies or

1 whoever was bringing in evidence, any of our law
2 enforcement folks, we had a drop box, as we referred to it,
3 which was a secure lock -- secured slot through a secured
4 door into our evidence room where things were kind of
5 dropped like a mailbox. If it was an item that was too big
6 to fit through there, then someone was contacted to open up
7 the evidence facility and secure it in there, but it was
8 all kept secured by lock doors and kept in locked
9 containers.

10 Q And who usually receives that type of evidence, or who
11 would've received it back in 2011 once you dropped it off
12 in the lock box?

13 A That would've been our evidence custodian, Ms. Ann
14 Horton.

15 Q Okay. You said there were several other items you
16 seized from the bar on that night. Do you remember seizing
17 a firearm that night?

18 A Yes.

19 Q Where'd you seize it from?

20 A I believe it was in one of the drawers in -- that was
21 in the -- of the wooden desk that was in the office there,
22 the same office that we've been speaking about.

23 Q Do you remember what type of firearm it was?

24 A I believe it was a Ruger 9 millimeter.

KEN TAYLOR - DIRECT BY MR. KNIGHT

227

1 Q So it was a pistol?

2 A Yes, sir, handgun, semi-automatic.

3 MR. KNIGHT - At this time I'd -- may I approach?

4 THE COURT - Yes, sir.

5 (WHEREUPON, ITEM MARKED FOR IDENTIFICATION AS
6 STATE'S EXHIBIT NUMBER 11.)

7 MR. KNIGHT - State's Exhibit 11.

8 Q I'm handing you what's marked as State's Exhibit 11.

9 A Yes, sir.

10 Q Could you tell me what that is?

11 A Yes, sir. This is a Ruger Model P95 pistol with a
12 nylon holster and two loaded magazines.

13 Q Okay. And I see it's in a box, packaged.

14 A Yes, sir.

15 Q When you take evidence from a location, non-drug
16 evidence like, say, this gun, what do you do -- how do you
17 know that this gun came from this location? How is it
18 packaged and stored?

19 A Well, again, we have an evidence submission form that
20 whoever the collecting officer is, they fill out that
21 paperwork, and in this case it was me. I fill out the
22 paperwork showing where I got it, the date and things like
23 that, and then it's secured in either a box, as you see
24 here, or a paper bag, plastic bag, metal can (sic) whatever

KEN TAYLOR - DIRECT BY MR. KNIGHT

228

1 the requirement is, and in this case we typically secure
2 handguns in this kind of a one-size-fits-all-type box..

3 Q And to the best of your knowledge this handgun was
4 found in the desk drawer of the office at the bar at
5 Goodtime Charlies?

6 A Yes, sir, that's exactly right.

7 Q Was it loaded when you found it? Do you recall?

8 A I don't recall if either of the magazines was in
9 there. Again, we collected the two magazines with the
10 pistol, but in all truthfulness, I don't recall whether --
11 what state it was in, whether it was loaded or not. I
12 don't recall.

13 Q Thank you.

14 MR. KNIGHT - At this time I'd move to enter
15 State's Exhibit 11 into evidence.

16 MR. LIFSEY - Without objection, Judge.

17 THE COURT - Without objection introduced into
18 evidence.

19 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
20 EXHIBIT NUMBER 11.)

21 THE COURT - Solicitor, bring the evidence up
22 here. Put it on that table right in front of her.

23 (WHEREUPON, ITEM MARKED FOR IDENTIFICATION AS
24 STATE'S EXHIBIT NUMBER 12.)

KEN TAYLOR - DIRECT BY MR. KNIGHT

229

1 Q All right, Investigator Taylor, you seized some more
2 items from the bar that night?

3 A Yes.

4 Q I'm going to pass up what's been marked as State's
5 Exhibit 12. Do you know what that is?

6 A Yes, sir, it's a digital scale that was collected at
7 the club that night.

8 Q Okay. And do you remember from where -- where was it
9 collected from, what part of the club and the bar?

10 A It was in the office. I don't recall if it was -- I
11 think it was in the file cabinet, again, kind of pressed
12 between some of the files I believe.

13 Q How was packaged and stored after you seized that?

14 A Again, it's just kind of general evidence. We were
15 able to just include it in a paper bag and seal the bag up
16 and again put it in evidence and secure it that way.

17 MR. KNIGHT - At this time I move to enter this as
18 State's Exhibit 12.

19 MR. LIFSEY - Without objection, Judge.

20 THE COURT - Without objection introduced into
21 evidence, State's next in order.

22 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
23 EXHIBIT NUMBER 12.)

24 Q All right, let's talk about -- did you seize any other
25 items from the club that night, ---

1 A Yes.

2 Q --- that you recall?

3 A Yes.

4 Q Do you remember which items in particular?

5 A I can remember a box of plastic sandwich-type bags, I
6 think it was. We had some -- looked like plastic corners
7 that had been -- appeared to have been cut out of some
8 plastic bags were found. I think Investigator -- well,
9 another investigator actually had found those in the men's
10 bathroom or the ladies bathroom along with a couple of
11 straws and had brought those out and laid on the -- one of
12 the pool tables there for me to collect when we kind of
13 gathered everything together when I packaged it all up and
14 brought it to the office.

15 Q Okay. Were there any -- anything else seized other
16 than the plastic bags?

17 A Other -- several times -- I may have to actually see a
18 list that I compiled to faithfully answer that to you.

19 MR. KNIGHT - At this time may I approach the ---

20 MR. LIFSEY - Oh, sure, that's fine.

21 A You want me to look at these items, just look over it?

22 Q Yeah, if you wouldn't mind -- if you could -- if
23 there's any items you haven't already testified about, if
24 there are anymore items on that list that you recall
25 seizing.

KEN TAYLOR - DIRECT BY MR. KNIGHT

231

1 A There was one pair of scissors that was taken from on
2 top of a book shelf and we also seized a computer and some
3 video-monitoring equipment that was monitoring the inside
4 of the club. We seized those times. And the cables --
5 assorted cables for that. Again, another investigator had
6 turned over the other few items to me of the plastic bag
7 with the corners removed and two plastic straws and some
8 plastic bags with the corners cut out that he said he had
9 taken from the men's bathroom and the ladies' bathroom. He
10 turned those over to me.

11 Q Okay. What'd y'all do with the computers that y'all
12 seized?

13 A They were seized and kept there in evidence. I'm not
14 -- I wasn't involved in what was eventually done with those
15 or processed with those. I think one of the other
16 investigators actually handled that and I believe at some
17 point they were turned back over to the owner or released
18 to the owner I believe.

19 Q Okay. So to your knowledge during this investigation
20 nothing was found on the computers?

21 A To my knowledge nothing was found. Correct.

22 Q Was -- what'd you do after -- so you seized all these
23 items that we've just talked about. You took photographs
24 at the bar. What else did you do in regards to the
25 investigation in this case?

1 A One of the final things that I did was to actually
2 process some of the plastic bags that we -- were seized -
3 well, all the plastic bags that were seized, some of the
4 cut ends, the corners that were cut out, the plastic straws
5 and the plas -- or excuse me -- the box containing the
6 other plastic bags that hadn't been cut, tried to process
7 those for fingerprints. Did find some partial and faint
8 fingerprints on several of the items. Do you want me to go
9 ahead and elaborate on that?

10 Q Yeah, please, please do.

11 A Yeah, and as far as being able to work with any of
12 those prints, the several that were lifted and examined,
13 only two were really good enough to be even compared with
14 an exemplar, like, you know, a possible suspect. Had two
15 of those.

16 Q Do you remember where you got those two prints from?

17 A I don't recall right off hand what items those came
18 off of, the two that were somewhat usable. Several were
19 recovered, but many of them were just too poor quality to
20 even -- to even compare to anything. I don't remember
21 where those two particular came off of. They would've been
22 either the plastic baggies, the straws or the cardboard box
23 containing the plastic bags.

24 Q And when you say there wasn't a good enough print,
25 what do you mean by that?

KEN TAYLOR - DIRECT BY MR. KNIGHT

233

1 A Correct. Of the prints that were lifted, they were
2 very faint. Many of them were very faint and poor quality.
3 You could tell that it was a fingerprint left by a person,
4 but there was just not enough good detail there to really
5 make a faithful comparison with an exemplar, an example.
6 We did have two that I felt were -- were comparable for
7 that, and I did try to make a comparison by the use of our
8 AFIS system to try to get a list of respondents, and no
9 identifications were determined at that time.

10 Q How do you -- how do you attempt to locate a print on
11 an object, prints as in this case you said possibly on the
12 baggies or somewhere in the office? How do you do that? I
13 mean do you use dust? I mean how ---

14 A Different methods. We can use a dust, like a light
15 powder of dust. We can also use chemicals, different
16 lighting effects and things like that. On this particular
17 job, if you will call a print job, if I recall I used dust
18 on everything, tried to dust everything.

19 Q And you stated earlier that you were unable to find
20 any prints that you could compare to?

21 A Of the ones that I found I had two that I thought I
22 could make a comparison with, and I tried to compare those
23 to some of the AFIS respondents after I plotted the prints
24 and deposited into the AFIS database and had the system

1 checked, but no identifications were determined from any of
2 the respondents that were returned by the system.

3 Q What is AFIS?

4 A AFIS is a -- it's a database that the State of South
5 Carolina employs. It's referred to as an the Automated
6 Fingerprint Identification System, and essentially it's
7 just a -- it's just a mathematical system that searches a
8 database of fingerprints that are on file for people; for
9 instance, law enforcement applicants' fingerprints are on
10 file in that database, anyone who's been booked of a crime,
11 their fingerprints are going to be in that database. Each
12 state has their own, and at that time we had access to
13 South Carolina's database, so I plotted those prints in and
14 compared them directly to any of the respondents that the
15 system kicked back out, and I didn't find an identification
16 or a matching print out of those.

17 Q Nothing came back to the prints you put in AFIS?

18 A Correct, yes, sir.

19 Q Out of the prints that you put into AFIS, you said you
20 found no more usable prints to place in AFIS?

21 A Correct. Only the two that I felt were worthy of even
22 trying to make a comparison to.

23 Q And what goes into your analysis of what you think a
24 worthy print is? Does it have a size requirement or ---

KEN TAYLOR - DIRECT BY MR. KNIGHT

235

1 A Not so much a size but more-so a quality, quality of
2 the individual ridges -- ridge detail and the amount of
3 identifiable points or minutia as is referred to, which
4 would be an ending ridge point or a point where the ridge
5 splits into two or bifurcates, whether it's a whirl
6 pattern, whether it's a loop pattern, whether it's an arch
7 pattern, things like that that kind of help classify the
8 print. If there's a not enough identifiable points there,
9 then there's really not enough to make a comparison with a
10 known sample, and so you really -- the poorer the quality
11 is, the less chance you're going to have to do that.

12 Q And how many cases regarding fingerprints have you
13 worked on?

14 A Individual cases I don't know. I couldn't -- I don't
15 have a number for that. Identifications, maybe about 320
16 identifications out of about 4,000 prints that I've looked
17 at probably.

18 Q Are there a lot of cases that you've been involved
19 with that you've worked with doing fingerprint analysis
20 that you don't have a good enough print to put in AFIS? Is
21 that common or ---

22 A Very common, yes.

23 Q Thank you.

24 MR. KNIGHT - Beg the Court's indulgence one
25 second.

1 THE COURT - Okay.

2 Q Let's go back to -- I believe it's State's Exhibit 9,
3 which was the green leafy substance that you testified that
4 you seized at the bar.

5 A Yes, sir.

6 Q It's actually State's Exhibit 10. Why -- why is
7 marijuana not placed in a BEST kit like other -- the other
8 drugs we've seen here today?

9 A Marijuana is one item that we can actually test at our
10 office. We have -- our evidence custodian, Ms. Horton, is
11 actually certified to do those test and make an opinion
12 about whether it is or is not test positive for the THC and
13 all that. And so, therefore, there's no need for us to
14 send it to SLED. One of SLED's requirements is to use that
15 kit that's referred to as a BEST kit, so since it's not
16 going to SLED, we can just package it in our normal
17 packaging and process it ourselves.

18 Q Okay. So you don't -- you don't need to send it to
19 SLED if ---

20 A Correct.

21 Q --- it's marijuana, because y'all can do it in-house?

22 A Yes, sir.

23 Q And that's why that particular marijuana wasn't put in
24 a BEST kit.

25 A Exactly.

KEN TAYLOR - CROSS BY MR. LIFSEY

237

1 Q All right.

2 MR. KNIGHT - I think I have no further questions.

3 Please answer anything Mr. Lifsey has for you.

4 MR. TAYLOR - Yes, sir.

5 THE COURT - Mr. Lifsey?

6 MR. LIFSEY - Thank you.

7 CROSS EXAMINATION

8 BY MR. LIFSEY -

9 Q You told -- let's talk -- I'm going to sort of divide
10 this into the things you attempted to fingerprint and then
11 the things you didn't.

12 A Yes, sir.

13 Q What exactly did you attempt to make a fingerprint
14 comparison on? What items did you dust for fingerprints?

15 A Dusted the box of plastic bags that we recovered, the
16 -- some of the plastic corners that were cut out of some of
17 the plastic baggies and some of the plastic bags that were
18 found along with -- I think it was two plastic straws.

19 Q Okay. And when you say those things, just so there's
20 no confusion, the plastic bags -- are you counting the
21 plastic bags that actually contained the crack or -- and
22 powder cocaine, or just the plastic bags that were found
23 unused for lack of a better word or ---

1 A If I recall, I dusted all the bags that I collected,
2 other than the ones that were brand new in the box that
3 hadn't been pulled out of the box yet.

4 Q I got you. Of all that you dusted, you indicated
5 there were really only two fingerprints that you thought
6 were even possible to make comparisons on.

7 A Yes, sir.

8 Q Is that correct?

9 A Yes, sir.

10 Q And you told -- the solicitor asked you about your
11 review of the AFIS system, the South Carolina database --
12 first of all, was -- did you only compare them to South
13 Carolina or did you compare nationally?

14 A At the time we were only utilizing the South Carolina
15 database, yes, sir.

16 Q Got you. So obviously if someone were in, say, North
17 Carolina, then ---

18 A It wouldn't ---

19 Q --- it wouldn't have had access to them.

20 A Right.

21 Q Okay. All right. So of those two prints that you
22 got, you compared them to AFIS and didn't get a match.
23 Correct?

24 A Correct.

KEN TAYLOR - CROSS BY MR. LIFSEY

239

1 Q But then didn't you a few months ago specifically
2 compare them to my client and the other -- to the
3 defendant. The solicitor didn't ask you about this. But
4 didn't you specifically compare them to the fingerprints of
5 my client and the two co-defendants in this case?

6 A Yes, sir. Along that time, a few months ago, we were
7 just looking over cases to see what was coming up, and I
8 noticed that I had not made a direct comparison with
9 anybody related to this case, so we did that, I believe,
10 oh, October, somewhere this past year.

11 Q And when you did that, one of those prints was still
12 not sufficient to make an identification of. Right?

13 A Correct. I couldn't find enough reliable points of
14 interest in that to really make a comparison with.

15 Q But the other one was of sufficient quality that you
16 could eliminate my client as a possible contributor to
17 that. Correct?

18 A Yes, he was -- he was excluded as a source on that one
19 final print.

20 Q And so were the other two defendants for that matter.
21 Right?

22 A Excuse me?

23 Q So were the other two people you compared.

24 A Yes, all -- all three of those people were excluded as
25 a possible source for that one print.

1 Q So it was more than just an AFIS comparison. You
2 specifically compared to my client's prints.

3 A Yes.

4 Q Okay. All right, now, you tested baggies. Correct?
5 You -- baggies, straws and the -- other thing. (sic)

6 A Yes.

7 Q Let's talk about what you didn't test. And I don't
8 mean this as any criticism. I assume you generally test
9 what you're told to test? Is that -- that the way this
10 works or ---

11 A Sometimes.

12 Q Okay. First of all, the majority of the items that
13 were seized in this case -- certainly the drugs -- were
14 found in a office. Is that correct?

15 A Yes.

16 Q And I want to -- I want to kind of go through them a
17 little bit. There were -- there was a pistol, which I
18 believe has already been introduced into evidence, found in
19 a desk drawer. Is that correct?

20 A- Correct.

21 Q Did you dust the pistol for fingerprints?

22 A I don't recall if I tested the pistol or not.

23 Q Did you test the desk drawer for fingerprints?

24 A No, not that I recall.

KEN TAYLOR - CROSS BY MR. LIFSEY

241

1 Q Okay. Digital scales, which I believe have been
2 introduced into evidence, were found in a top file cabinet.

3 Is that correct?

4 A Yes, sir.

5 Q Matter of fact they -- it appears here it looks in the
6 report had a powder substance on it. Is that correct?

7 A I don't -- I don't know about that.

8 Q Did you test the scales for fingerprints?

9 A I don't believe I tested the scales, no, sir.

10 Q Did you test the cabinet drawer which they were found
11 in?

12 A No.

13 Q Did you test the file cabinet at all?

14 A Not that I recall.

15 Q There were more drugs found in a vacuum seal bag in a
16 bottom file cabinet drawer where -- is that correct? Do
17 you believe ---

18 A I -- I don't recall for certain on those.

19 Q Well, let me just -- hypothetically, did you test any
20 -- the bottom file cabinet drawer ---

21 A No.

22 Q --- for any fingerprints? Did you test the baggy of
23 marijuana? Do you remember?

24 A If I recall, I tested all the plastic baggies ---

25 Q Got you.

1 A --- that I found or they were turned into ---

2 Q There was some testimony about cocaine found behind a
3 wooden cabinet in the office, and I think you've mentioned
4 that when you testified. Correct?

5 A Yes.

6 Q Did you test the wooden cabinet ---

7 A No.

8 Q --- for fingerprints? Okay. You mentioned you seized
9 a computer and some computer equipment?

10 A Yes.

11 Q Did you dust any of that for fingerprints?

12 A No, sir.

13 Q You mentioned you found some scissors.

14 A Yes.

15 Q Did you dust the scissors for fingerprints?

16 A No, I did not dust the scissors.

17 Q You mentioned there was video equipment. Did you dust
18 the video equipment for fingerprints?

19 A No.

20 Q All right. In addition to fingerprint analysis, you
21 sometimes collect DNA evidence. Is that right?

22 A Correct.

23 Q Didn't do any of that for any of these items I have
24 already asked you about. Is that correct?

25 A No, sir.

1 Q Okay.

2 MR. LIFSEY - Thank you. I don't have any further
3 questions, sir.

4 THE COURT - Any re-direct?

5 MR. KNIGHT - Nothing further.

6 THE COURT - All right, thank you, sir. You can
7 step down. You're free to leave.

8 Solicitor, y'all approach?

9 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
11 WHICH WAS NOT REPORTED.)

12 THE COURT - All right, let's take about a seven
13 minute comfort break. We all know what that means. And
14 we'll reconvene then. I think we have two more witnesses
15 for the day. The lawyers assured me we should be out of
16 here before 5:00. Okay? So, let's keep our fingers
17 crossed. So we'll take a brief recess. Don't talk about
18 the case.

19 (WHEREUPON, JURY EXITS THE COURTROOM)

20 THE COURT - All right, anything before I leave?

21 (WHEREUPON, NO RESPONSE)

22 (WHEREUPON, RECESS TAKEN)

23 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
24 STATE'S EXHIBIT NUMBER 13.)

1 THE COURT - All right we're going to finish these
2 two witnesses today, then we have just one chemist in the
3 morning and then -- we'll rest tomorrow and then we'll ---

4 MR. LIFSEY - I can't imagine I've got many
5 questions for either of these two witnesses.

6 THE COURT - So one witness, argue and charge in
7 the morning.

8 MR. KNIGHT - Yes, sir.

9 (WHEREUPON, DISCUSSION IS HELD REGARDING JURY
10 CHARGES WHICH WAS NOT REPORTED.)

11 THE COURT - All right, we're ready for the jury;
12 bring them in.

13 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

14 THE COURT - All right, all members of the jury
15 are present. Call your next witness.

16 MS. COLLINS - Next witness, we're going to recall
17 Crystal Jones to the stand. Would you get Ms. Jones,
18 please. Judge, this will be brief.

19 THE COURT - Okay.

20 MS. COLLINS - Ms. Jones, if you'll please come
21 back to the witness stand, and I don't know if the Judge
22 wants you re-sworn or not, but if he does ---

23 THE COURT - Ma'am, you're still under oath.

24 CRYSTAL JONES, AFTER PREVIOUSLY BEING SWORN,

25 TESTIFIES AS FOLLOWS -

CRYSTAL JONES - DIRECT BY MS. COLLINS/ CROSS BY LIFSEY 245

1 MS. COLLINS - Ms. Jones, sorry to make you come
2 back, but we had a few more questions, and as the Judge
3 stated, you're still under oath.

4 MS. JONES - Okay.

5 DIRECT EXAMINATION

6 BY MS. COLLINS -

7 Q I want to draw your attention to the date in question,
8 August 4th, 2011. On that day when you saw Rico Green, you
9 stated he came in the bar. Correct?

10 A Yes, ma'am.

11 Q Did Rico Green give you any pills that day?

12 A Any pills?

13 Q Yes.

14 A No.

15 Q Did he give you any type of drugs at all that day?

16 A No. I have not ever had any kind of association with
17 Rico Green.

18 MS. COLLINS - Thank you.

19 THE COURT - Mr. Lifsey?

20 CROSS EXAMINATION

21 BY MR. LIFSEY -

22 Q And just -- I think I asked you this the first time
23 you were on the stand, but just to clarify since I asked
24 you before, you don't have any relationship with Rico
25 Green.

ANN HORTON - DIRECT BY MR. KNIGHT

246

1 A No, I don't, ever.

2 Q I got you. So if would've said that back after he was
3 arrested, he was lying about that.

4 A He was lying. Anybody was lying. I'll take a lie
5 detector. It doesn't matter to me. He was lying. Whoever
6 said it was a lie.

7 Q I got you. Thank you.

8 THE COURT - Thank you, ma'am; you're free to
9 leave. Call your next witness.

10 MS. COLLINS - Thank you, Judge.

11 MS. KNIGHT - At this time I'd like to call Ann
12 Horton of the Lancaster County Sheriff's office.

13 ANN HORTON, AFTER BEING FIRST DULY SWORN,

14 TESTIFIES AS FOLLOWS -

15 DIRECT EXAMINATION

16 BY MR. KNIGHT -

17 Q Good afternoon, Ms. Horton. How you doing?

18 A Good.

19 Q Could you please state your name and occupation for
20 the record?

21 A My name is Ann Horton. I am the evidence custodian
22 for the Lancaster County Sheriff's office.

23 Q And how long have you been the evidence custodian for
24 the Lancaster County Sheriff's office?

25 A For the past six years.

ANN HORTON - DIRECT BY MR. KNIGHT

247

1 Q And what are your general duties as evidence custodian
2 with the Lancaster County Sheriff's office?

3 A When the deputies are investigating or just bring in
4 any type of evidence, it comes through me whether it goes
5 to a locker and I empty the lockers every morning or
6 whether they actually bring it and hand it straight to me.
7 Each piece of evidence gets a unique number for that one
8 piece of evidence so that it can be tracked through the
9 system whether I hold it at the sheriff's office, take it
10 to SLED for analysis or send it back to our crime scene
11 investigators for analysis.

12 Q Could you explain the locker system that evidence is
13 placed into and you receive? Could you kind of explain to
14 the jury how that works and ---

15 A Sure. In our facility the -- any of the officers that
16 would have the opportunity to bring us evidence have a scan
17 card where they may come in a portion of the building where
18 we are in, which is crime scene and evidence. At that time
19 there is a window directly in front of them that they can
20 discuss with me or pass evidence to me if they need to. If
21 I am not in the office, they will turn to the right and
22 they scan again, so there is a double door before you can
23 get to any part of our evidence. At that place we have
24 four lockers. Each locker has three individual containers
25 in it where we could house a long gun, hand guns, two

1 drawers that may keep drugs or whatever they bring in, and
2 then we do have another set of lockers that has six places
3 available in it right now to store any type of evidence.
4 We also have a refrigeration unit in that room. If they
5 bring in any biological evidence that needs to be stored in
6 a refrigerator, they can leave it there. They have their
7 packaging station that they can package any kind of
8 evidence they have according to the SLED regulations, and
9 then they drop a key through a secure door into my office.
10 I am the only one that has those keys, and then in the
11 morning I go through and collect what they brought me.

12 Q And was this procedure of the locker how evidence is
13 brought into the evidence room, was this different in
14 November of 2011, or August of 2011?

15 A Yes, it is. It basically worked the same. At that
16 point we did have the set of lockers that we have now, and
17 they could drop in there. They also -- we had a secure
18 door that was in front of our more secure evidence room
19 which means drugs and guns were housed in that room, not
20 just general storage evidence, and they would drop their
21 keys in there. Now, at that time, also, if they had CDs or
22 little small pieces of evidence, they can drop it in that
23 door, and I would empty that evidence in the morning.

24 Q And so basically the big door would be locked and
25 there'd be like a drop box that they just dropped in?

ANN HORTON - DIRECT BY MR. KNIGHT

249

1 A That's correct. I had the key to the door, and then I
2 would go into the drop box, and it was like a mail chute
3 back there.

4 Q All right. And have you had any training or
5 certification on marijuana analysis?

6 A I have. We have certification that will last for
7 three years at the time when we do it. It's basically a
8 two-day course, and they teach us how to do analysis of
9 marijuana. Before we complete that course, we -- the first
10 time I had to do 100 cases, and last time I had to do 50
11 cases on recertification with 100 percent accuracy on what,
12 you know, how to analyze marijuana.

13 Q And when you say analyze, how do y'all analyze --
14 analyze marijuana? Is it a test you perform?

15 A It is. It's relatively a simple test. We do what's
16 called a Duquenois-Levine test, and it's just named for the
17 two men that came up with the test and basically there's
18 two -- two things that have to happen in this test; first,
19 you have to be able to do a microscopic test, and we're
20 looking for three things in that microscopic test. We're
21 looking for unicellular hairs, multi-cellular hairs and
22 cystolithic hairs. Unicellular are just like the fine
23 hairs that you have on your head. Multi-cellular will be
24 where you see the THC, which is tetrahydrocannabinol and
25 that is what the drug is in marijuana, and it basically

1 looks like a water fountain that comes up, and it's a
2 reddish-brown crystal-looking substance, kind of like brown
3 sugar would look glistening. And then the multi-cellular
4 hair or the cystolithic hair is shaped -- and they tell us
5 to say it's shaped like a bear claw. It's a little point
6 on the end and it's thick. I can basically see those three
7 hairs. I must see those. In addition to that I may see
8 leaves with serrated edges or odd number of leaves on the
9 plant. There may be seeds in there that I can tell belong
10 with the marijuana. After I find those three things that
11 must be found, then I do a chemical test, which is, we use
12 a reagent on a little piece of marijuana and then we use
13 hydrochloric acid on that which causes a chemical reaction,
14 and at that point the color will change, and it will change
15 from a blue to a purple-type color, sometimes pink, and
16 then you do a dot of chloroform in that, and it'll form a
17 little circle in the place -- in the dish that I do it in,
18 and it looks like a contact that you put in your eye, and
19 when that con -- the color changes and the contact comes
20 up, then we know that it's marijuana.

21 Q All right, how many -- you said you were currently
22 certified from the South Carolina Justice Academy?

23 A From ---

24 Q Or Criminal ---

25 A --- SLED.

ANN HORTON - DIRECT BY MR. KNIGHT

251

1 Q From SLED. Okay.

2 A Yes. Yeah.

3 Q And do you remember when you were certified?

4 A My first certification was in September of 2009. I
5 have re-certified since then, and I actually have to go
6 prior to December of this year to be recertified again.

7 Q Have you ever testified as a marijuana expert in any
8 other cases or ---

9 A I have. I have.

10 Q Do you know approximate amount?

11 A I think it's about six, Luke, but I'm not -- I'm not
12 sure.

13 Q Have you ever been qualified as an expert in marijuana
14 analysis in any other court?

15 A Just some magistrate level courts besides general
16 sessions.

17 MR. KNIGHT - At this time we move to introduce
18 Ms. Ann Horton as an expert in marijuana analysis?

19 MR. LIFSEY - I have no objection to Ms. Horton
20 being so qualified, Judge.

21 THE COURT - All right, so qualified. And y'all
22 remember what I said about expert witnesses.

23 Q Let's get now to your role as an evidence custodian
24 for the Lancaster County Sheriff's office. I'm going to
25 hand you now what's marked as State's Exhibit 2 and State's

ANN HORTON - DIRECT BY MR. KNIGHT

252

1 Exhibit 8. Could you tell me what both of these items are,
2 State's Exhibit 2 and State's Exhibit 8?

3 A Yes, sir. The first form is a chain of custody form.
4 This is what the deputy or investigator brings to me inside
5 of a BEST kit that says he seized these drugs on this date
6 at this time from this person at this place. He signs it,
7 and then he signs it again to relinquish that piece of
8 evidence to me, and then after that I sign to relinquish it
9 to SLED when I take it there.

10 Q And is it -- on that chain of custody, is it assigned
11 a case number through the BEST kit number any other way?

12 A Let me follow your question, the control number ---

13 Q Yeah, how ---

14 A --- is that what you're asking me?

15 Q --- do you take the number that's located on that
16 chain of custody and match it up with the case that you
17 have in the system?

18 A Okay. When an officer gets what's called a BEST kit,
19 it doesn't look like this initially. It is a manila
20 envelope, and on the front it says it's certified by SLED.
21 It's a BEST evidence sampling testing kit is what's on the
22 front. It will have the control number, which is this
23 little number right here that's up in the green where when
24 an officer puts his drugs in here or the drugs that he
25 seized in here, when he seals that, it's like a jelly in

ANN HORTON - DIRECT BY MR. KNIGHT

253

1 there, and you cannot pull it apart without knowing it's
2 been tampered with. That number will always be under
3 there, and that's a B number. It's a BEST kit control
4 number. That will be on the front of the envelope, and
5 then they must take the chain of custody page and the B
6 number that they put at the top of here, the control
7 number, must be the same number on here. So when I check
8 before I go to SLED, I'm checking that their paperwork has
9 the number here, has the number here and has the same
10 number on the front of the manila envelope that it goes in.

11 Q On that particular BEST kit, can you tell me who gave
12 that to you and when -- when did it come in your possession
13 and who gave it to you?

14 A Yes, sir. This particular BEST kit came from
15 Investigator Tony Bowers. It came in on -- he collected it
16 on August the 4th. He put it in my drop box on August the
17 5th and all the numbers were checked and are correct that
18 follows the same control number. When I receive it, this
19 will be my writing here, and it -- this is folded over.
20 It's long like this. But I put the case number on there,
21 and I don't know if you can see it, but it'll say evidence
22 number and I've given it its individual number, and then
23 usually I put the defendant's name on there, so I have a
24 check system of exactly whose case this goes with.

1 Q Okay. And where did you take it after it came into
2 your possession? Can you -- do you have any notes of where
3 you took it after ---

4 A I know exactly, because I do the same thing every
5 time. I do the same thing with my evidence. Once I gave
6 this a specific number, I have a box which I call my SLED
7 lab box, for lack of a better name, and it has a closure on
8 it. It stays in the high security room, which is a
9 evidence room inside of an evidence room, so it's really on
10 lock-down. It's where the drugs and guns are, and I -- I
11 keep it in that room until I am ready to go to SLED with
12 it.

13 Q Okay. And do you know that particular BEST kit, when
14 it was taken to SLED?

15 A There is another form that you will have; it's a
16 receipt from SLED that'll say when I took it.

17 Q You did take it to SLED though?

18 A I did. I did. Because I -- I signed off on it and
19 the SLED chemist signed off on it, but I cannot tell you
20 the exact date, because I don't have that form and I don't
21 remember.

22 Q Okay. We'll come back to that. And when you drop it
23 off to SLED, any BEST kit, this one in particular, is it
24 maintained in the same sealed condition that you receive
25 it?

ANN HORTON - DIRECT BY MR. KNIGHT

255

1 A Yes, it is. When I check in at the evidence intake at
2 SLED, the people that are in that room will take it and
3 they, of course, put it in their computer with all the same
4 numbers in it, and then it's then closed up and a chain of
5 custody is started electronically, and it goes upstairs to
6 be -- to be checked.

7 Q At this time I'm handing you what's marked as State's
8 Exhibit 3, State's Exhibit 5. Could you tell me what this
9 is?

10 A This is the same. It is a -- it's a chain of custody
11 that said Lieutenant Ryan Mclemore took these drugs on
12 August the 4th and he gave them to Investigator Brandon
13 Rollins, and Investigator Rollins gave them to me and I
14 turned them into SLED. And this is the same BEST kit and
15 it would've followed the same procedure, and this shows
16 that they had been tested with the chemist's initials and
17 their findings on the inside of the package.

18 Q And those particular BEST kits came from this case
19 that we're here on today, based on your notes and the
20 number -- case number you assigned to them?

21 A Yes, sir. They did.

22 Q At this time I'd like to show you what's marked as
23 State's Exhibit 4 and State's Exhibit 9. What are those
24 two things?

ANN HORTON - DIRECT BY MR. KNIGHT

256

1 A This is also a chain of custody that Investigator Ken
2 Taylor brought me these. He collected them on August the
3 4th. He signed them over to me, and I took them to SLED.
4 The control numbers match and the case number and
5 defendant's names match, and this would be from the same
6 case.

7 Q Now I'm showing you what's marked as State's Exhibit
8 10. Can you tell me what this is?

9 A May I open ---

10 Q Yes.

11 A The outside tells me that it is green leafy substance.
12 That is what all items that are believed to be marijuana
13 are called until they are determined to be marijuana. This
14 was collected by Investigator Ken Taylor on August the 4th.
15 This indicates that I am the one that tested it, and it has
16 my name across the seal of where I had closed it back up,
17 and I had put my findings on the outside, the weight and
18 the case number and then I complete that analysis sheet.

19 Q Do you remember when you tested it?

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

21 Q Do you remember when tested the -- opened the
22 marijuana bag and tested it?

23 A It will be on my evidence -- on my worksheet.

24 Q At this time I'm showing you what's marked as State's
25 Exhibit 13. Could you please tell us what this is?

ANN HORTON - DIRECT BY MR. KNIGHT

257

1 A Yes. This is a marijuana analysis worksheet that I
2 complete as I am doing a marijuana analysis. It gives the
3 case number, the date I'm doing analysis, which was July
4 the 8th, 2013. The arresting officer I have on here is Tony
5 Bowers, Defendant James Starnes, and I have the evidence
6 item number, the weight and my findings for that piece of
7 evidence, that it was indeed marijuana.

8 Q Is that the report you made in reference to State's
9 Exhibit 10, this piece of evidence?

10 A Yes, sir, it is.

11 Q And you're sure of that based on the number you
12 assigned it?

13 A Yes, sir. It has the same number here as on that
14 package, and the weight is on that package; the same weight
15 is on here and the case number is on here.

16 MR. KNIGHT - At this time I'd move to admit
17 State's Exhibit 13 which is marijuana analysis worksheet
18 performed by Ms. Horton.

19 MR. LIFSEY - Without objection.

20 THE COURT - Without objection entered into
21 evidence.

22 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
23 STATE'S EXHIBIT NUMBER 13.)

24 Q So you tested -- the marijuana contained in this bag,
25 you tested it a couple years after the incident?

ANN HORTON - DIRECT BY MR. KNIGHT

258

1 A I tested it on July the 8th, 2013, yes, sir.

2 Q What were your findings?

3 A That is was positive; the visual exam found the three
4 hairs that I needed to find, and the chemical test did show
5 positive color and eye formation, and it was positive for
6 the presence of marijuana.

7 Q And did you weigh the amount of marijuana tested?

8 A Yes, I did. It weighed 28.04 grams, which translated
9 to ounces is 0.98 ounces.

10 Q Okay. And you stated that State's Exhibit 10 was the
11 marijuana you analyzed?

12 A It is.

13 Q You said you received it from Ken Taylor?

14 A I did.

15 MR. KNIGHT - At this time I'd move to enter
16 State's Exhibit 10 into evidence.

17 MR. LIFSEY - Without objection.

18 THE COURT - Without objection entered into
19 evidence.

20 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
21 EXHIBIT NUMBER 10.)

22 Q How do you weight the marijuana when you test it?

23 A The marijuana -- we have special scales, very
24 expensive scales, that get to the minute amount, and what I
25 do is when I open the package, I actually -- when I -- I

ANN HORTON - DIRECT BY MR. KNIGHT

259

1 set a tear (sic) on the scale, which means that I either
2 have what we call a weigh boat or a weigh paper that I put
3 on that scale, and then I set a tear (sic) so that it
4 deducts that amount from what I am going to weigh. And
5 then when I pull the marijuana out, I have it on a piece of
6 what we just call craft paper. If it has very large stems
7 or seeds, of course, we want to not weigh that; we want to
8 only weigh what would actually be considered marijuana.
9 It's impossible to remove all of that, but I do try to
10 remove a considerable amount of that to get -- get rid of
11 what we can, and then it's weighed, and then after that,
12 the microscopic test is done and then the chemical test.

13 Q Do you remember receiving any ---

14 MR. KNIGHT - I'd like to mark this as ---

15 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION AS
16 STATE'S EXHIBIT NUMBER 14.)

17 Q Did you receive any cash related to this case?

18 A I did. I did.

19 Q Explain how you take seized cash or any kind of
20 seizure of currency? How is that accomplished?

21 A When currency is seized, the officer that receives it
22 or seizes it, must do what we call a currency inventory
23 sheet, and by that they have to take the denominations of
24 currency that they get -- if they have -- for example --
25 and I'm not speaking of this case, because I can't

1 obviously remember -- but like they have two five dollar
2 bills, three one dollars bills, two hundred dollar bills --
3 they have to do it in denominations. We have a two person
4 rule at all times. When they collect, they do have
5 somebody there counting with them, and then when I receive
6 it in evidence, we have a two person rule in evidence that
7 somebody has to cut that bag open with me, and we count
8 again together, then we sign off, then we do have -- after
9 money is seized we take it to the county treasurer's office
10 for them to have a holding place for it.

11 Q Okay. At this time I'm showing you what's marked as
12 State's Exhibit 14.

13 A Okay.

14 Q Are you familiar with those pages one, two -- I think
15 there's two or three pages with it. Are you familiar with
16 what that is?

17 A Yes, sir, I am. This is the -- Officers Mclemore and
18 Bowers received the money or seized the money in this case
19 and brought it to me. It was found to be correct when we
20 counted it, and this is a receipt where I took it to the
21 county treasurer's office to be held in the drug seizure
22 account.

23 Q Okay, and how do you know that that particular, what I
24 just handed you, is related with this case?

ANN HORTON - DIRECT BY MR. KNIGHT

261

1 A Because it has the case number at the top of it. It
2 has the defendant's name; it has the offense charges, and
3 it has the officers, and it's also put into the drug
4 seizure account.

5 MR. KNIGHT - At this time I'd move to introduce
6 State's Exhibit 14 into evidence.

7 MR. LIFSEY - Without objection, Judge.

8 THE COURT - All right, entered into evidence.

9 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
10 STATE'S EXHIBIT NUMBER 14.)

11 Q And I had a question earlier. I'm showing you what's
12 marked as State's Exhibit 2 and State's Exhibit 8.

13 A Yes, sir.

14 Q And earlier you stated that you -- you were uncertain
15 of when that particular BEST kit was dropped off at SLED?

16 A I am.

17 MR. KNIGHT - At this time may I approach to
18 refresh the witness's memory?

19 MR. LIFSEY - I don't -- that's fine.

20 Q Could you tell me, based on the document I've just
21 shown you to refresh your memory on, on when you submitted
22 that?

23 A Yes, I took this to SLED on August the 19th, 2011 at
24 1300 hours, and I gave it to forensic technician Nicki
25 Perry Hughes.

ANN HORTON - CROSS BY MR. LIFSEY

262

1 Q Okay.

2 MR. KNIGHT - Beg the Court's indulgence.

3 THE COURT - Okay.

4 MR. KNIGHT - I think I have no further questions.

5 Please answer anything Mr. Lifsey has for you. Thank you.

6 THE COURT - All right, Mr. Lifsey?

7 MR. LIFSEY - Hang on one second.

8 MS. HORTON - Mr. Knight?

9 (WHEREUPON, DOCUMENT HANDED TO MR. KNIGHT)

10 MR. KNIGHT - Thank you.

11 CROSS EXAMINATION

12 BY MR. LIFSEY -

13 Q Let me ask you briefly about State's Exhibit 14. I'm
14 going to show it to you one more time, just because I think
15 I misspoke, which was pointed it out to me earlier in the
16 trial. How much of the money -- how much money is that?

17 A One thousand two hundred and ten dollars.

18 Q Thank you very much. I just wanted to clarify the
19 amount of money ---

20 A Okay. Sure.

21 Q --- because I think I said it wrong earlier. Ms.
22 Horton, this is obviously a very important job making sure
23 everything goes down to SLED properly and evidence is
24 preserved; that's real important, but that -- that's
25 basically your job in this case. Is that correct?

ANN HORTON - CROSS BY MR. LIFSEY

263

1 A Yes, sir.

2 Q You're not an investigator; you don't go to crime
3 scenes; you don't interview witnesses; you don't do things
4 like that. You make ---

5 A I do not.

6 Q You make sure the evidence is preserved properly,
7 chain of custody is maintained and SLED gets what they
8 need. Is that correct?

9 A That is correct.

10 MR. LIFSEY - Okay. Thank you. I don't have any
11 further questions.

12 THE COURT - All right, thank you, ma'am. You may
13 step down. Anything further from the State?

14 MR. KNIGHT - Not at this time, Your Honor.

15 THE COURT - Not today. All right, we're going to
16 break for the day, ladies and gentlemen. The lawyers came
17 through for you with ten minutes to spare. Thank you very
18 much. All right, I know it's been a long day. I want you
19 to have a good, relaxing evening. I'm going to reiterate
20 to you the instructions I gave you yesterday. Don't do any
21 independent research on the case; don't talk to anybody
22 else about the case. You know, if your significant other
23 asks, you know, what kind of trial it is, just say the
24 Judge said I can't talk about it. Okay? Blame it on me.
25 We'll see you tomorrow morning at 9:30. Okay? Be in your

1 jury room tomorrow morning at 9:30, be ready to roll.

2 Okay? Y'all have a good evening.

3 (WHEREUPON, JURY EXITS THE COURTROOM)

4 THE COURT - All right, anything else before we
5 end the day?

6 MR. LIFSEY - Not that I can think of right now.

7 MR. KNIGHT - Nothing further, Judge.

8 THE COURT - All right. Thank you. We'll see
9 y'all in the morning. Y'all be ready to go at 9:30.

10 MR. LIFSEY - Thank you, Your Honor.

11 THE COURT - We're in recess.

12 (WHEREUPON, COURT IN RECESS FOR THE DAY AT 4:48
13 P.M.)

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER) CASE NO.: 2011-GS-29-1278, 1279
) 1280, 1281, 1282

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
)
 JAMES NICHOLAS STARNES) VOLUME II (PAGES 265 - 373)

JUNE 3, 2015
LANCASTER, SOUTH CAROLINA

BEFORE THE HONORABLE BRIAN GIBBONS

APPEARANCES:

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I-N-D-E-X

WITNESSES: Direct Cross Re-Direct Re-Cross

*PRE-TRIAL TESTIMONY:

*Ryan Mclemore				
By Mr. Knight	17			
By Mr. Lifsey		26		
*Tony Bowers				
By Ms. Collins	29			
By Mr. Lifsey		35		
Opening statements	47			
Tony Bowers				
By Mr. Knight	54			
By Mr. Lifsey		72		
By Mr. Knight			80	
By Mr. Lifsey				82
Ryan Mclemore				
By Mr. Knight	92			
By Mr. Lifsey		120		
By Mr. Knight			130	
By Mr. Lifsey				131
Brandon Rollins				
By Mr. Knight	136			
By Mr. Lifsey		146		
Crystal Jones				
By Ms. Collins	148			
By Mr. Lifsey		155		
By Ms. Collins			157	
Dyvonne Jowers				
By Mr. Knight	157			
By Mr. Lifsey		164		
Rico Green				
By Ms. Collins	165			
In camera:				
By Ms. Collins	167			
By The Court		169		

Proffered:				
By Ms. Collins	174			
Rico Green (contd.)				
By Ms. Collins	192			
By Mr. Lifsey		205		
By Ms. Collins			206	
By Mr. Lifsey				208
Ryan Mclemore				
By Mr. Knight	209			
By Mr. Lifsey		210		
By Mr. Knight			213	
Ken Taylor				
By Mr. Knight	214			
By Mr. Lifsey		237		
Crystal Jones				
By Ms. Collins	245			
By Mr. Lifsey		245		
Ann Horton				
By Mr. Knight	246			
By Mr. Lifsey		262		
Douglas Robinson				
By Mr. Knight	266			
By Mr. Lifsey		293		
Closing statements	314			
Jury Charge	343			
Verdict	363			
Sentencing	373			

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
S-1	Photos (1.1 - 1:38)	39	110
S-2	Chain of Custody form	65	67
S-3	BEST kit - chain of custody		100
S-4	BEST kit - chain of custody		265
S-5	BEST kit - B178913 - drugs	141	282
S-6	Miranda waiver		
S-7	Green's statement		
S-8	BEST kit - drugs		274
S-9	BEST kit - drugs - 3 bags		289
S-10	Paper bag with marijuana		258
S-11	Ruger P95 pistol with holster And magazines	227	228
S-12	Paper bag containing digital Scale	228	229
S-13	Marijuana analysis worksheet	243	257
S-14	Money paperwork	259	261
S-15	SLED chain of custody Lab #L11-09616		272
S-16	SLED chain of custody Lab #L11-09614		279
S-17	SLED chain of custody Lab #L11-09615		288
C-1	Note from jury	361	

1 (WHEREUPON, COURT RESUMES ON JUNE 3, 2015)

2 THE COURT - All right, anything before we bring
3 the jury in?

4 MR. KNIGHT - I have one motion to introduce this
5 chain of custody sheet into evidence. I believe this was
6 marked as State's Exhibit 4, and it was testified to
7 yesterday by Ken Taylor and Ann Horton from the sheriff's
8 office. I didn't move to enter it in yesterday but ---

9 THE COURT - Any objection, Mr. Lifsey?

10 MR. LIFSEY - No, sir, I don't object.

11 THE COURT - All right, without objection,
12 introduced into evidence.

13 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
14 STATE'S EXHIBIT NUMBER 4.)

15 THE COURT - All right, let's bring the jury in.

16 (WHEREUPON, JURY ENTERS THE COURTROOM)

17 THE COURT - All right, all members of the jury
18 are present. Good morning, ladies and gentlemen. I know
19 y'all are ready to get started fresh this morning. We'll
20 jump right into. The State will call its next witness.

21 MR. KNIGHT - Yes, Your Honor, at this time we'd
22 like to call Douglas Robinson with the South Carolina Law
23 Enforcement Division.

24 THE COURT - All right.

1 DOUGLAS ROBINSON, AFTER BEING FIRST DULY SWORN,

2 TESTIFIES AS FOLLOWS -

3 DIRECT EXAMINATION

4 BY MR. KNIGHT -

5 Q Good morning.

6 A Good morning.

7 Q Could you please state your name and occupation for
8 the record?

9 A My name is Douglas Robinson, and I am a forensic
10 chemist assigned to the drug analysis department at The
11 South Carolina Law Enforcement Division commonly known as
12 SLED.

13 Q All right. How long you been working at the South
14 Carolina Law Enforcement Division?

15 A Little over seven years.

16 Q How long have you been the -- the drug and chemical
17 analyst division?

18 A I've been assigned to the drug analysis department the
19 entire time.

20 Q All right. Let's talk a little bit about your
21 education and training. Where were you -- what kind of
22 education have you received over the years?

23 A I received my bachelor in chemistry from the
24 University of South Carolina. After graduating, I spent
25 approximately three years performing chemical analysis in

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

267

1 the environmental chemistry field. Upon being hired at
2 SLED I received law and legal training through the South
3 Carolina Criminal Justice Academy as well as in-house
4 training in the analysis of controlled substances through
5 the SLED Drug Analysis Department, and I've also attended
6 the Drug Enforcement Administration's Forensic Chemist
7 seminar.

8 Q All right. Have you ever testified in court as an
9 expert to drug analysis?

10 A Yes, sir.

11 Q What courts have you testified in?

12 A Various ones throughout the State total of 18 times.

13 Q So you've been qualified as an expert in drug analysis
14 a total of 18 times?

15 A That's correct.

16 MR. KNIGHT - At this time I would move to
17 introduce Mr. Robinson as an expert witness.

18 THE COURT - Any further voir dire?

19 MR. KNIGHT - No, sir, Your Honor. I agree he's
20 an expert.

21 THE COURT - All right, this witness is qualified
22 as an expert -- as an expert in the field of drug analysis.
23 Ladies and gentlemen of the jury, you remember what I
24 charged you about what an expert witness is yesterday.

25 All right, go ahead.

1 Q And at this time I'm going to ---

2 MR. KNIGHT - May I approach?

3 THE COURT - Yes, sir.

4 Q --- hand up first exhibit which is State's Exhibit 15
5 and State's Exhibit 8. I'm going to refer you first to
6 State's Exhibit 8 which is a bag, a BEST kit bag. Could
7 you explain what that is that you're holding in your hand?

8 A Yes. There are several packages that I have here in
9 my hand. The outer package is a clear, plastic heat-sealed
10 bag, we refer to it as a K-pack. This bag is designed to
11 be a tamper-evident bag that I can reseal the evidence in
12 after I perform my analysis. In this case -- it may be a
13 little hard to see from the jury box, but there is actually
14 two heat seals that are side-by-side here, and handwritten
15 are my initials and the date 8/23/11. This was the date
16 that the seal was made. This would've been the date that I
17 performed the actually physical prep-work on the evidence,
18 and then after that it was sealed for security purposes.
19 Within this outer bag we've got this, the inner bag with
20 the green strip across the top. This is called a BEST bag.
21 It's short for best evidence sample testing. This is part
22 of a program that allows officers in the field to seal the
23 evidence and submit it through the various pieces of the
24 chain of custody to me for analysis. It's a -- also a
25 tamper-evident bag so that we can have confidence to know

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

269

1 the evidence has not been tampered, any removed, any added.
2 There's different security features on it. The green top
3 is a blue strip. That's what allows the officer just pull
4 the back of the blue strip off, fold it over, seal it up.
5 There's also a unique swirl pattern that runs the length
6 down the sides and also across the bottom. If any attempt
7 was made to stretch or tear the bag open, that swirl
8 pattern would distort, so it would be readily apparent that
9 someone made an attempt to open it. On the back we also
10 have a small Ziploc bag. In this case it holds a portion
11 of a white tablet.

12 Q All right. And is there a number, lab number or case
13 number that y'all give to -- to that particular bag that
14 you've got in front of you? Is there some kind of SLED lab
15 number anywhere?

16 A It does. May I refer to my notes for comparison
17 purposes?

18 Q Yes.

19 A (Pause) So in this particular case there -- well, in
20 any case really there's two unique numbers that would
21 follow this evidence. The first one is printed on the
22 actual BEST kit. In this case it's B218351. This number
23 is printed during production of the BEST kit. It's a
24 unique number. It's never duplicated again. So this BEST
25 kit will be the only one that's ever assigned to that

1 number, which we refer to as a tracking number or a control
2 number. That will follow it throughout the life of the
3 bag. Once it's submitted to SLED and it comes in through
4 our evidence control department, it is at that point issued
5 a unique lab number. In this case L11-09616, and that
6 number will never be duplicated either, so this will be the
7 only number that's submitted to the lab under that number.
8 We can use these two numbers to track the evidence and
9 associated documentation throughout the case.

10 Q Are you familiar with how evidence is brought into
11 SLED, BEST kits, for example?

12 A Yes, I am.

13 Q Could you explain the general process of how evidence
14 is brought into SLED and how it's maintained and stored
15 before it gets to you?

16 A Certainly. As a general practice, the evidence
17 technician from the submitting agency will bring the
18 evidence in. The evidence will be submitted through our
19 evidence control department. We have technicians that work
20 in this department who are trained to maintain the custody
21 and to maintain security throughout the process. They
22 would take the evidence, assign a lab number as I spoke of,
23 and then they would physically take the evidence and store
24 it in a secure location, a vault room, within their

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

271

1 department, and it would stay there until it was requested
2 for analysis by myself.

3 Q Would it be opened by anybody except the person
4 testifying the BEST kit prior to it coming to you? Would
5 one of the techs open it up and look at it or anything like
6 that?

7 A The tech -- the technicians may do a visual
8 examination of the bag itself to see if it was sealed, but
9 they would do -- they would not alter it in anyway; they
10 would not mark on it in any way. I would be the first
11 person to do any kind of actual alterations of the bag.

12 And, again, whether it be them or anyone else, it would be
13 apparent if the bag was tampered with through our security
14 measures on the bag.

15 Q All right. Are you familiar with how records are
16 stored at SLED, how they're maintained and stored?

17 A Well, SLED, generally, is a paperless agency. Once
18 it's logged in, there are paper documents created, but it's
19 all stored within our LIM system, laboratory information
20 management system, so the electronic chain of custody is
21 created at the time that the evidence is logged in and that
22 case is created. There are paper copies that can be
23 generated of this chain.

1 Q And now I'm going to reference Exhibit 15 that you've
2 got in front of you, on page, the second page of Exhibit
3 15. I think it's page 2 and 3. What is that?

4 A This is a certified chain of custody that's released
5 for Court purposes.

6 Q Okay. Is that -- you said you knew how records were
7 stored and how they're maintained at SLED. Is that chain
8 of custody that you've got in front of you, does that
9 fairly and accurately depict the chain that was followed in
10 this particular BEST kit?

11 A Yes, I mean this is a -- this is a standard hard copy,
12 paper copy, of what would be in our LIM system in the
13 electronic chain. We will prepare copies for Court
14 purposes if requested. So in this case, this is a paper
15 copy for that case, of the chain, yes.

16 MR. KNIGHT - At this time I move to enter State's
17 Exhibit 15, page 2 and 3 into evidence.

18 MR. LIFSEY - Without objection.

19 THE COURT - Without objection, entered into
20 evidence.

21 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
22 STATE'S EXHIBIT NUMBER 15.)

23 Q Could you please tell us the chain of custody that you
24 have in front of you, Exhibit 15, 2 and 3, could you read
25 for us the chain of custody for that particular BEST kit?

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

273

1 A Yes. This -- this evidence was received by Nicki
2 Hughes, which is a -- well, formerly a forensic technician.
3 She has since moved on to a different job -- but received
4 on August 19th, 2011. That evidence on the same day within
5 a very small timeframe was also then transferred to the
6 drug evidence intake storage which was that secured
7 location that I spoke of. Within that room the evidence is
8 subdivided into various disciplines, and we have a section
9 of that room assigned to drug analysis, so they can quickly
10 retrieve the evidence for us when it's requested. So the
11 same day the evidence was transferred to that location
12 within the room. It stayed in that location until 8/22/11
13 when the same technician, Nicki Hughes, retrieved the
14 evidence and transferred that evidence to me.

15 Q Okay. And Nicki Hughes worked at SLED?

16 A She was an evidence technician assigned to the
17 evidence control department. Yes.

18 Q And to the best of your knowledge, was that BEST kit
19 opened or anything tampered with prior to you getting that
20 from Nicki Hughes?

21 A Based on the condition of the BEST kit I'm confident
22 that it was not tampered with by her or anyone else.

23 Q Okay.

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

274

1 MR. KNIGHT - At this time I would move to admit
2 the BEST kit, State's Exhibit 8, into evidence based on the
3 entire chain.

4 MR. LIFSEY - Without objection.

5 THE COURT - All right, without objection entered
6 into evidence.

7 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
8 STATE'S EXHIBIT NUMBER 8.)

9 Q Did you also -- what date did you say you actually got
10 the BEST kit? Do you recall?

11 A Yeah, according to the chain, on 8/22/11 I retrieved
12 that evidence.

13 Q Did you perform any test on the pill located in the
14 BEST kit?

15 A Yes. It was given a full analysis.

16 Q Did you prepare any kind of report ---

17 A Yes.

18 Q --- after you analyzed this pill?

19 A Yeah, as a result of the analysis which consists of an
20 indicative or preliminary test followed by a confirmatory
21 test, the -- the report that was issued is as follows:
22 Item 1.1, evidence bag containing oblong white tablet, the
23 result was Hydrocodone and Acetaminophen C3 found, one
24 tablet.

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

275

1 Q And how do you -- could you kind of explain what test
2 you use and how do you come up with the testing positive of
3 the Hydrocodone?

4 A Sure. As I just mentioned we do an indica -- I'm
5 sorry -- an indicator - can't say the word now --
6 preliminary test. And in this case we used published
7 literature. These are trusted sources that have
8 photographs of the tablets with also the markings. This
9 gives us a general idea to start with or really a good idea
10 what it probably is going to be, our expected result, if
11 you will. From this point we take a sample of the tablet
12 and run it for confirmatory analysis through gas
13 chromatography, mass spectrometry, which is GCMS for short.
14 This instrumentation allows us to confirm the identity of
15 the substance to exclusion of all other compounds. It's
16 very similar to a human fingerprint being unique to a
17 individual.

18 Q Okay. And what were your findings after you did those
19 tests?

20 A All right, yes, the results were Hydrocodone and
21 Acetaminophen C3 found, one tablet.

22 Q And Exhibit 15 that you're looking at, page 1, is that
23 the report you prepared in reference to this particular
24 BEST kit?

25 A This is a copy of the report that was issued, yes.

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

276

1 MR. KNIGHT - At this time I'd like to introduce
2 the report into evidence.

3 MR. LIFSEY - If I could just glance at one
4 second. I don't believe I have an objection.

5 (WHEREUPON, MR. LIFSEY REVIEWS REPORT)

6 MR. LIFSEY - I don't have any objection, Judge.

7 THE COURT - All right, without objection.

8 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
9 STATE'S EXHIBIT 15.)

10 Q What do you do after you analyze the BEST -- the item
11 in the BEST kit, particularly that Exhibit 15?

12 A Well, as I mentioned, I'll take a sample of the tablet
13 in this particular case. Once that sample is taken, the
14 remainder of the tablet would then get resealed inside of
15 the outer packaging, that K-pack that we talked about. It
16 would then get put into a secure vault within our
17 department inside, so we have a secure department and then
18 a secure vault within that department, and that's where the
19 evidence would stay. At that point I would then do the
20 extraction for the confirmatory testing, but the evidence
21 would actually be resealed before that ever happens.

22 Q Are you familiar with the classification of controlled
23 substances in South Carolina?

24 A I am.

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

277

1 Q Is Hydrocodone a controlled substance in South
2 Carolina?

3 A It is. The reference C3 that I spoke of during the
4 results is a reference to that control status.

5 Q And what does that mean, I guess, basically?

6 A Controlled substances are classified into five
7 different categories. There is C1 down to the C5 and they
8 range in severity, C1 being the most severe. C1s have no
9 medical use; they're highly addictive and highly prone to
10 abuse, whereas C5s are typically substances that do have
11 medical use, but also have a low potential for abuse and a
12 low potential for addiction, so they're also deemed
13 dangerous enough to be controlled. In this case this is a
14 C3, so it -- it falls in between the two classifications --
15 a medical use, however, it does have a moderate to high
16 level of potential for abuse, as well as potential for
17 addiction.

18 MR. KNIGHT - May I approach?

19 THE COURT - Yes, sir.

20 Q At this time I'm showing you what's marked as State's
21 Exhibit 16 and State's Exhibit 5. Could you please tell me
22 what State's Exhibit 16 consists of?

23 A State's Exhibit 16 is a copy of the report that I
24 issued on another case, as well as a copy of the chain of
25 custody for that case.

1 Q All right. And to the best of your knowledge that is
2 records that are maintained through SLED and those are
3 copies that would've been maintained by your office and
4 accurately reflect your analysis on that particular case
5 number and the chain of custody for that particular case
6 number?

7 A Yes. The top two pages are a copy of the report that
8 issued and it matches the -- a copy that I brought with me
9 today that I printed out personally. So the report is
10 consistent, and then the other document is a copy that,
11 again, is a copy of the chain of custody that was released
12 for Court purposes.

13 Q Do both of those -- copies of those reports, do they
14 have like a BEST kit number in each of the -- a way you can
15 reference the BEST kit with those two reports?

16 A Yes, again, as I testified to earlier, the BEST kit,
17 the control number, this B number, follows this bag all the
18 way through, and that doesn't stop at our doors. We track
19 that number all the way through the case as well, and there
20 actually is what we refer to as a custody line on the
21 report, and that custody line gives us the date that it was
22 submitted, who it was submitted by, the agency they're
23 associated with and it lists the control number in the
24 case.

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

279

1 Q What's the -- on Exhibit -- the BEST kit that I gave
2 you, ---

3 A Yes, sir.

4 Q --- what's the BEST kit number on that?

5 A The BEST kit number listed here is B178913, and that
6 number is also reflected in the custody line of the report
7 that I issued for this case, B178913.

8 MR. KNIGHT - At this time I'd like to move to
9 introduce Exhibit -- I believe it's 15 -- into evidence.

10 MR. ROBINSON - 16.

11 MR. KNIGHT - 16. I'm sorry.

12 MR. LIFSEY - Without objection.

13 THE COURT - All right, without objection, entered
14 into evidence.

15 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
16 STATE'S EXHIBIT NUMBER 16.)

17 Q All right. Could you tell us about the BEST kit
18 first? Could you kind of talk about what that is and the
19 contents of that BEST kit?

20 A Again, as I testified to earlier, it's multiple
21 packaging, it's identical except for control numbers, and
22 obviously the evidence that's in it; that's unique to each
23 case, but again, I've got two heat seals going across the
24 bottom here with my initials, noting that I made the seals,
25 inside the same type of BEST kit with the swirl marks that

1 are tamper-evident, the green blue strip. In this
2 particular case, we've got several Ziploc bags with
3 various, what we refer to as rock substance and also powder
4 substance, and also several other bags that were used as
5 packaging that came through the door as the original
6 packaging. The Ziploc bags all have the words bag added
7 written across the bottom, also with my initials the lab
8 number and the sub-item number that I created to assign to
9 the evidence, but the bag added just means that I added
10 these bags to the case as secure packaging once I finished
11 my analysis of that item. That way the evidence wouldn't
12 be loose inside of the BEST kit and cross contaminate each
13 other.

14 Q Okay. Based on the Exhibit 16 that you have up there,
15 is there a chain of custody in that?

16 A Yes, sir.

17 Q Could you tell me when the South Carolina Law
18 Enforcement Division received that particular BEST kit
19 according to your records?

20 A Again, on 8/19/11 Nicki Hughes received this evidence
21 from Ann Horton of the Lancaster County Sheriff's office.
22 It was then transferred on the same day to that drug
23 evidence intake storage for secure storage. Again, on 18 -
24 - I'm sorry -- on 8/22/11 Nicki Hughes received --
25 retrieved the evidence from that intake, transferred it to

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

281

1 herself, and then subsequently transferred it to me on 8/22
2 as well, so it follows the same chain as the previous one I
3 testified to.

4 Q She was the only person that touched that particular
5 BEST kit after y'all received it from SLED on August the
6 19th, of 2011?

7 A She was the only technician that transferred it from
8 the locations between the time it was submitted and the
9 time I received it.

10 Q And according to your records, it was sealed when
11 y'all got it, the BEST kit, and it was sealed when you got
12 it from ---

13 A Well, the condition of the seal is not noted when it
14 comes through the door. They -- the policy is to not
15 accept evidence if it's not sealed. However, as part of my
16 analysis, the first thing that I do before anything else is
17 to insure that it is sealed. We don't work the case if
18 it's not sealed. So it's actually noted in two locations
19 on my worksheet; my analysis worksheet there's a section
20 that we fill out before we do anything else, and is simply,
21 was the evidence sealed, yes or no. The evidence in this
22 particular case on my worksheet I have marked that the
23 evidence was, in fact, sealed; secondarily, the words seal
24 intact, my initials and the date of the analysis are on the
25 BEST kit. So in two different places I noted that the seal

1 -- all the seals were intact and the evidence was good to
2 perform analysis on.

3 MR. KNIGHT - All right, at this time I'd move to
4 introduce State's Exhibit 8.

5 Q Is that 8?

6 A It's marked 5.

7 MR. KNIGHT - State's Exhibit 5 into evidence
8 based on the chain that ---

9 MR. LIFSEY - Without objection, Judge.

10 THE COURT - Without objection introduced into
11 evidence.

12 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
13 STATE'S EXHIBIT NUMBER 5.)

14 Q All right, so tell us a little bit about -- do you
15 remember the day you tested the items in that BEST kit?

16 A Yes, sir, the actual analysis, the pre-work, if you
17 will, where I would've taken an initial testing and the
18 sample for a confirmatory testing took place on 8/23/11.

19 Q And tell us a little bit about your findings when you
20 analyzed the items in that BEST kit.

21 A Okay. Again, with any item we do a preliminary test
22 followed by a confirmatory. With unknown powders and rock
23 substances as we describe it, we do a chemical test; it's a
24 chemical spot test that gives us a color reaction, and that
25 gives us an idea of what the substance may be. So in all

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

283

1 of the items in this bag we used a two-part reagent test
2 called cobalt thiosyanate stannous chloride. This is a
3 test geared towards various types of cocaine. If you have
4 a blue -- blue reaction, you're more likely to have cocaine
5 powder or cocaine hydrochloride. If you have a no color
6 change on the first half followed by a blue reaction,
7 you're more likely to have cocaine base form. So these
8 tests were performed individually on each item, and then
9 based on these results, confirmatory testing followed that.

10 Q Do you know how many items were in that particular
11 BEST kit? Was it more than one?

12 A It was -- the sub-items follow the -- the item 1,
13 whole number would be the actual BEST kit. That's one of
14 the ways we track. So we keep number 1, item 1 as the BEST
15 kit that comes in the door. The items were subsequently
16 assigned 1.1, which would've been an evidence bag
17 containing plastic sandwich bag containing the following.
18 Item 1.1.1 was two plastic sandwich bags containing
19 compressed powder substance. 1.1.2 was a plastic corner
20 bag containing rock substance, and item 1.2 was an evidence
21 bag containing two plastic bags containing rock substance.
22 So as far as evidentiary items, we had a total of five
23 separate items that were tested.

24 Q Could you tell us about the results of the test on --
25 and just go through item 1.1 on down?

1 A Sure. So as a result of the testing, item 1.1.1,
2 which was two plastic sandwich bags containing compressed
3 powder substance, the result was cocaine C2 found with a
4 combined weight of 23.8 grams, 367.2 grains. Item 1.1.2,
5 plastic corner bag containing rock substance, cocaine base
6 crack C2 found, 0.3 grams, 4.6 grains. And item 1.2,
7 evidence bag containing two plastic bags containing rock
8 substance, cocaine base crack C2 found with a combined
9 weight of 11.8 grams, 182.0 grains.

10 Q Could you explain -- you listed weights. How do
11 y'all-- do y'all actually do the weighing as you're
12 testing it or how's that ---

13 A Sure. Once the evidence is inventoried by myself once
14 the bag is open, I will designate what needs to be
15 separated out itemized accordingly and that's where the
16 1.1, 1.2 came from. Once this is separated out, we test
17 each item separately. Even the ones where we have a
18 combined weight, these items were tested completely
19 separate, remained separate from each other in every way
20 from packaging as well, so they remained separate. We
21 combine them for reporting purposes, if you will. But the
22 very first thing that happens once the item is separated
23 and designated to be tested as an item, that packaging is
24 removed and an initial weight is taken. So the weights
25 that are reported are the initial weight absent of all

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

285

1 packaging. There is also a final weight taken after
2 analysis, but that final weight is not included in the
3 report.

4 Q So the final weight is not the weight of the plastic
5 bags included; it's just the weight of the substance that
6 you test.

7 A Well, all weights reflected on my report and work
8 sheet are just the weight of the substance. It's not in
9 any way the weight of the packaging.

10 Q You talked about grams. Is that a unit of measuring?

11 A Yes, sir. Grams are the standard unit we report out
12 in.

13 Q Okay. And what are grains? You talked about grains.
14 What are they?

15 A Grains are kind of a carry-over from old English
16 standard measurement from colonial times, if you will.
17 It's a -- it's a unit of measurement that was found
18 prominently in our law a long time ago. It still does have
19 some occurrences in the current law, and therefore, just to
20 accommodate those rare occurrences, we include both a gram
21 weight, and we also do a grain conversion, so when I say
22 grams and grains, we're talking about the same amount of
23 substance; we're just talking about converting between the
24 two units.

1 Q Okay. You testified earlier that in one of the items
2 contained 23.8 grams of cocaine, and there were two other
3 items that included crack cocaine. What's the difference
4 between cocaine and crack cocaine?

5 A So cocaine as is reported in the law and recorded in
6 law, cocaine by itself is the salt form, is the powder
7 form. It's essentially a cocaine hydrochloride. At SLED
8 we don't specifically identify salt forms and it's not
9 listed in law that way either, so we -- we simply say
10 cocaine found. The other version, cocaine base, is
11 actually cocaine without the hydrochloride attached, the
12 salt form. It is simply a basic form of cocaine. Crack is
13 just another terminology that's also used in the law, so we
14 designate that with the report.

15 Q Okay. What was done with that particular BEST kit,
16 based on your notes after you got done testing?

17 A Once again, once the initial physical prep-work was
18 done and the samples were taken for confirmatory analysis,
19 the evidence, all of it, including the BEST kit was placed
20 back in the K-pack, sealed with my initials and the date
21 and then this evidence would've been stored in that secured
22 vault until it was taken back down to evidence control.

23 Q Is crack cocaine and cocaine, are they a controlled
24 substance?

25 A They're both considered C2s.

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

287

1 Q All right, at this time -- at this time I'm handing
2 you what is marked as State's Exhibit 9 and State's Exhibit
3 17. I refer you to State's Exhibit 9. Could you tell me
4 what that is?

5 A This is the BEST kit contained within the K-pack
6 that's associated with control number B222916 and also SLED
7 lab number L1109615.

8 Q And the other exhibit I handed you, I believe it was
9 17, could you tell me what that is?

10 A This is a copy of the report that was issued for SLED
11 lab number L119615 (sic), as well as a copy of the chain of
12 custody for that case number that was released for Court
13 purposes.

14 Q And that's the report, the chain of custody for the
15 BEST kit that you've got up there with you right now, to
16 the best of your knowledge?

17 A Yes.

18 Q It's got the same number?

19 A Yes, sir.

20 Q All right. And has that -- to your knowledge, is that
21 a true and accurate copy of your report that you made and
22 the chain of custody for that particular BEST kit?

23 A It is.

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

288

1 MR. KNIGHT - At this time I'd move to introduce
2 State's Exhibit 17 which is the report and the chain of
3 custody for that BEST kit?

4 MR. LIFSEY - Without objection.

5 THE COURT - Entered into evidence.

6 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
7 STATE'S EXHIBIT NUMBER 17.

8 Q All right, let's go back to State's Exhibit 17. Could
9 you tell me where you received State's Exhibit -- I believe
10 it was 9 -- when you received it or when South Carolina Law
11 Enforcement Division received it?

12 A This appears to -- all three of these cases seem to
13 have come through the same submission process on the same
14 date, so this chain of custody is very similar to the
15 others. It was received by Nicki Hughes from Ann Horton of
16 Lancaster County Sheriff's office on 8/19/11. It was then
17 transferred to the drug evidence intake storage area, which
18 was the secured area within their -- in their department.
19 It was then transferred back from that vault location to
20 Nicki Hughes on 8/22 and subsequently transferred to me on
21 8/22/11.

22 Q To the best of your knowledge was that -- State's
23 Exhibit 9, was that BEST kit sealed up when you received
24 that for testing?

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

289

1 A It was. Again, as I testified to previously, the
2 words seal intact with my initials and the date of the
3 prep-work is located on the actual BEST kit, as well as
4 evidence sealed is marked yes on my analysis worksheet, so
5 it was, in fact, sealed.

6 Q Okay, so nobody -- from the time that South Carolina
7 Law Enforcement Division received it to the time that you
8 opened it up for testing, it appeared to you that it hadn't
9 been tampered with or opened up or anything like that?

10 A That's correct.

11 MR. KNIGHT - At this time we move to introduce
12 State's Exhibit 9 into evidence.

13 MR. LIFSEY - Without objection.

14 THE COURT - All right, entered into evidence.

15 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
16 STATE'S EXHIBIT NUMBER 9.)

17 Q Could you tell me a little about the BEST kit, State's
18 Exhibit 9, with what's located in that particular BEST kit?

19 A So, it's -- again, the packaging is all very, very
20 similar, if not identical, to the other two. The unique
21 part about this one again is what's the actual evidence
22 inside. We've got several plastic bags that are located in
23 there, and that would be the original packaging that it was
24 received in, and then there are several Ziploc bags, all of
25 which, again, have the words bag added, so I added these

1 for secure storage within the K-pack so there was no cross
2 contamination after the analysis. They also have the case
3 number and the item number and my initials on each bag.

4 Q Okay. How many different items were located in that
5 BEST kit?

6 A In this particular case there were three total items
7 that were submitted for analysis.

8 Q And what were those three items?

9 A The three items were designated as follows: 1.1,
10 plastic sandwich bag containing compressed powder
11 substance, 1.2, plastic corner bag containing powder
12 substance, 1.3, plastic corner bag containing powder
13 substance.

14 Q Could you tell us about the -- your findings in your
15 analysis of item 1.1?

16 A 1.1 result -- well, the item description again,
17 plastic sandwich bag containing compressed powder
18 substance, results, cocaine C2 found 26.3 grams, 405.8
19 grains.

20 Q And item 1.2?

21 A Plastic corner bag containing powder substance,
22 results, methylene found, 0.3 grams, 4.6 grains.

23 Q And item 1.3?

24 A Plastic corner bag containing powder substance,
25 results, cocaine C2 found, less than 0.1 grams.

DOUGLAS ROBINSON - DIRECT BY MR. KNIGHT

291

1 Q Okay. And what tests did you use in analyzing 1.1,
2 1.2, 1.3?

3 A The preliminary test was the same as the second case
4 we discussed with cobalt thiosyanate stannous chloride.
5 The first and third bags gave a blue blue result indicating
6 the presence of cocaine hydrochloride, which was
7 subsequently confirmed by confirmatory analysis. Item 1.2
8 gave a light blue reaction the first half and that blue
9 color actually faded back to clear with the addition of the
10 second reagent.

11 Q Could you tell us -- you said 1.2 there was methyldone?

12 A Yes, sir.

13 Q Could you tell us what that is?

14 A Methyldone is one of the class of compounds call
15 substituted cathinones. Increasingly these have been in
16 the media referred to as bath salts. This is one of the
17 early compounds that we saw in this -- in this class.

18 Q Was it controlled methyldone at the time?

19 A At the time of the analysis it was not a controlled
20 substance. We reported it out, included in the report just
21 -- for information purposes because it was an emerging
22 trend and we wanted to get the information out there.

23 Q Okay. In item 1.1 and 1.3 you said it was cocaine,
24 not cocaine base. Is that correct?

25 A Correct. It was cocaine.

1 Q All right. And what was the total weight of the
2 cocaine located in that BEST kit?

3 A For reporting purposes it would stay at 26.3 grams.
4 Item 1.3 did have a weight associated, but every balance
5 that's used in any kind of analysis has a lower threshold.
6 The threshold that we designate for our balance is 0.1
7 grams, so anything that weighs less than that generally is
8 going to be reported out simply as less than 0.1 grams.
9 And so because we don't have a specific weight on that, the
10 total weight for reporting purposes would be 26.3 grams.

11 Q Okay. What'd you do with the items after you -- in
12 that particular BEST kit after you analyzed them?

13 A Once all the prep-work was done, again, samples were
14 taken for the confirmatory analysis and then all evidence
15 was packaged within the Ziploc bags and marked accordingly
16 and all evidence was sealed within the K-pack and stored in
17 our secured vault within the department.

18 MR. KNIGHT - I think I have no further questions.
19 Please answer any questions Mr. Lifsey might have. Thank
20 you.

21 THE COURT - Mr. Lifsey?

22 MR. LIFSEY - Thank you.

23 CROSS EXAMINATION

24 BY MR. LIFSEY -

DOUGLAS ROBINSON - CROSS BY MR. LIFSEY

293

1 Q Very briefly, sir. Can I see your -- those two
2 reports? Or do you have them or do they -- you still got
3 those?

4 A I have the third report here.

5 Q Can I see it?

6 A Sure.

7 Q Let's see the other report. This is item 17, so item
8 16. Okay, thank you. All right, -- I'm sorry - Mr.
9 Robinson?

10 A Correct.

11 Q Mr. Robinson, these are two different reports from two
12 different BEST bags. Is that correct?

13 A Yes. Each one -- each one of them that I discussed
14 today are separate SLED lab cases, therefore, they would
15 have separate SLED lab numbers and were submitted in
16 individual BEST bags.

17 Q Sure. So for example, this item 9 goes with one of
18 these reports and another BEST bag containing drugs goes
19 with the other report you generated. Correct?

20 A Yes, sir.

21 Q All right. So just so I understand -- can I see that
22 one more time?

23 A Sure.

24 Q I'll hand it back to you to confirm. And let's start
25 with item 16. Item 16, to get cocaine, you've got 23.8

1 grams of -- what I will call regular powder cocaine -- on --
2 -- from one BEST bag. Correct?

3 A That's correct.

4 Q Then from the other BEST bag you have 26.3 and then
5 less than a tenth of a gram, so we'll call it 26.3 I guess
6 even if I gave you the tenth of a gram, 26.4. Is that
7 correct?

8 A Yes, sir.

9 Q Okay. So to get to more than 28 grams, you got to
10 aggregate these two different bags, added together.
11 Correct?

12 A To achieve more than 28, yes.

13 Q Okay. Thank you. When were these reports completed
14 from your office?

15 A May I?

16 Q Yes, please look at them.

17 A This report ---

18 Q Which one are you referring ---

19 A Well, actually both of these have the date of August
20 29th, 2011. That would be the date that all review process
21 was completed and the report was issued.

22 Q Does that information indicate -- so -- so August 29th,
23 2011 you were done with this -- with your work on this
24 case.

DOUGLAS ROBINSON - CROSS BY MR. LIFSEY

295

1 A That was the day that the evidence or the report was
2 completed and what we refer to as locked -- that would've
3 been the day that it was available to the law enforcement
4 agency to get there results, yes.

5 Q So there was nothing more you needed to do after
6 August 29th, of 2011 on this case.

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

8 Q Okay. Is there -- is there an indication on there of
9 when law enforcement picked this material back up?

10 A It would be included in the chain of custody, yes.

11 Q Do you have the chain of custody right there?

12 A I have -- I have two of them. Yes, I have them for
13 both ---

14 Q Can you - you've seen on there when law enforcement --
15 and certainly they would've been available August 29th, 2011
16 for law enforcement to pick back up. Correct?

17 A Not necessarily, because the evidence is stored in our
18 department in a secured vault, but I still have to return
19 that evidence to the evidence control department before it
20 can be retrieved to be returned to the agency.

21 Q How long does that process usually take?

22 A It just depends. We don't have any technicians within
23 the department, so it's one of the many duties ---

24 Q I mean is it -- you talking about days, weeks, months,
25 years?

1 A Definitely not months or years. It could -- it's
2 typically days, but it could be months, depending -- it's a
3 secured location ---

4 Q What is your information ---

5 A Yes, in this particular case it was returned on the
6 29th, so in this particular case it was returned the day the
7 report was issued, and it was at that point returned to
8 Nicki Hughes. Nicki on that same day transferred the
9 evidence back to the drugs for return shelf, which is a
10 location within the evidence control department; it's
11 within that same room. It's basically just a different
12 shelf within the same room, and then on 9/22/11 it was
13 scanned to Patricia Crooks and returned in person to Ken
14 Taylor of Lancaster County at that point.

15 Q Both pieces of evidence at that time on September 22nd?

16 A That's specific to case number 9615 being the last
17 four -- the chain of custody for case number L1109614 also
18 follows the same chain. It was returned to evidence
19 control on 8/29, transferred to the drugs for return shelf
20 within the department in evidence control on the 29th. On
21 9/22 evidence technician Patricia Crooks transferred it to
22 her custody and then to the custody of Ken Taylor for
23 return.

24 Q So just to summarize then, you are done with your lab
25 analysis on August the 29th of 2011, and the Lancaster

DOUGLAS ROBINSON - CROSS BY MR. LIFSEY

297

1 County Sheriff's office picks it up from SLED on September
2 22nd of 2011.

3 A Yes, sir.

4 Q Okay. Thank you.

5 MR. LIFSEY - I don't have any further questions,
6 Judge.

7 THE COURT - All right, any redirect?

8 MR. KNIGHT - Nothing from the State, Your Honor.

9 THE COURT - All right, thank you, sir. You may
10 step down; you're free to leave. State would call its next
11 witness.

12 MS. COLLINS - Your Honor, at this time the State
13 would rest. We do have a few matters to take care of out
14 of the presence of the jury.

15 THE COURT - All right, thank you. Ladies and
16 gentlemen, the State has rested. There are some legal
17 issues I need to take up with the lawyers at this time. So
18 now is a good time for a mid-morning break. Y'all head on
19 back to your jury room, and don't discuss the case. Okay?

20 (WHEREUPON, JURY EXITS THE COURTROOM)

21 THE COURT - All right, the jury's gone. Mr.
22 Lifsey?

23 MR. LIFSEY - All right, thank you. Do you have
24 anything else, Ms. Collins, first? I'm sorry.

25 THE COURT - Okay.

1 MS. COLLINS - I do. I don't think it's
2 necessary, but in terms of proving all the elements, if you
3 would just please take judicial notice that trafficking is
4 considered a violent crime under 16-1-60. We discussed
5 that yesterday.

6 THE COURT - Okay.

7 MR. LIFSEY - Yeah, and I think you can instruct
8 the jury that. I ---

9 THE COURT - Yeah, I'm going to instruct the jury
10 of that. In fact, I -- my proposed -- we're going to go
11 over this outside the presence during this time as well and
12 after I speak with your client, Mr. Lifsey, but I'm going
13 to charge when I get to the weapon violation, in order to
14 find the defendant guilty of possession of a weapon during
15 the commission of a violent crime, you must first find the
16 defendant guilt of either committing a violent crime or
17 attempting to commit a violent crime. Trafficking in
18 cocaine base and trafficking in cocaine are violent crimes
19 under the law. Okay?

20 MR. LIFSEY - Yes, sir, I agree with that.

21 MS. COLLINS - Thank you.

22 THE COURT - Anything else from the State?

23 MS. COLLINS - I did want to confirm that all the
24 exhibits were in, but by my count everything except for 6
25 and 7 are in.

1 COURT REPORTER - Yes, that's correct.

2 MS. COLLINS - Thank you.

3 THE COURT - What are 6 and 7?

4 MS. COLLINS - We did not actually enter them. We
5 just marked them. Those were the Miranda waiver and Rico
6 Green's statement itself.

7 THE COURT - Okay.

8 MS. COLLINS - I marked them just to question him
9 about it, but I did not ---

10 THE COURT - Okay, thank you. All right, Mr.
11 Lifsey?

12 MR. LIFSEY - Thank you, Your Honor. At this time
13 I would move for a directed verdict as to all the charges
14 on the basis that taking in the light most favorable to the
15 State, the State doesn't have enough evidence to go
16 forward. I make that general motion as to all charges. I
17 would make it specifically as also I would direct the
18 Court's attention in addition to a general motion
19 specifically to the charge of trafficking in an amount
20 greater than 28 grams, but less than 100, because to get to
21 that amount you basically got to aggregate drugs found in
22 two separate locations, because you've got the drugs found
23 in Rico Green's car, then the drugs found in the bar, and I
24 don't see how they can aggregate both those when it's their
25 own testimony they were found in two different places, so I

1 would ask you to direct -- Judge, at -- besides my general
2 directed verdict motion, I would ask you to direct a
3 verdict on the higher charge of 28 to a 100 and only submit
4 10 to 28 grams.

5 THE COURT - All right.

6 MS. COLLINS - Respectfully, Your Honor, we did
7 have some evidence to establish all of the elements of each
8 of the offenses, and we would submit that under the
9 standard for denying a direct verdict motion, that the
10 direct verdict motion of the defense should be denied,
11 particularly as to the issue of the aggregate --
12 aggregation of the drugs to get the -- over the 28 grams
13 level, we would submit that we do have the statement that
14 was given by Rico Green. He did admit he made the
15 statement, although he says it was a lie, now he says it
16 was lie, because he was promised something, that he had
17 just bought those drugs, that all the drugs he had, that he
18 had just bought those from the white dude at the bar, and
19 therefore, I think that there is some evidence that from
20 that that the jury could take and determine that,
21 therefore, they could be aggregated even though it was
22 found at two separate places, and if you would also look at
23 the time and that the fact that the officers followed that
24 vehicle and did not lose sight of that vehicle as well as
25 it was immediately after they saw the interaction of the

1 defendant with the -- Rico Green at the bar and then they
2 followed it and immediately stopped him and secured the
3 drugs where he had given them to Jowers and Jowers ran, I
4 would submit that the jury would be able to ascertain if
5 they feel like Rico Green's not credible as to saying now
6 that it was a lie, that they can then aggregate that and
7 get over 28 grams. Thank you.

8 THE COURT - All right, any other argument on, I
9 guess, that specific DV motion as to that specific charge,
10 Mr. Lifsey?

11 MR. LIFSEY - No, no, sir, on that charge.

12 THE COURT - All right, I'm going to respectfully
13 deny your motion for a directed verdict given the standard
14 that the Court needs to give it on a DV motion. I do
15 believe there's enough evidence that a reasonable jury
16 could consider the aggregation issue as the State presented
17 to find the defendant guilty of 28 to 100. Now, having
18 said that and before I speak to your client, let's talk
19 about lesser included. Okay?

20 MR. LIFSEY - Obviously, I think you should --
21 that -- the 28 to 100 grams, I think he's entitled to 10 to
22 28 grams as a lesser included.

23 THE COURT - I will tend to agree with you. Any
24 argument against that from the State?

25 MS. COLLINS - No, sir. We agree with that.

1 THE COURT - All right, what about the lesser
2 included then of possession with intent to distribute
3 cocaine? I don't think there's any evidence of that.

4 MR. LIFSEY - He denied -- he denied -- I don't
5 think there's -- I think it's -- the two levels of
6 trafficking -- that's it -- on the cocaine. Now, the
7 marijuana is actually an interesting sort of question,
8 Judge. The marijuana ---

9 THE COURT - Well, hang on a second. Let's deal
10 with one.

11 MR. LIFSEY - I don't think he's entitled -- I
12 don't think we're entitled to anything less on ---

13 THE COURT - All right. So it's either going to
14 be trafficking 28 to 100 or trafficking ---

15 MS. COLLINS - 10 to 28.

16 THE COURT - --- 10 to 28.

17 MR. LIFSEY - Yes, sir, on the one indictment.

18 THE COURT - Okay. We've got three different
19 versions of verdict forms. Hang on.

20 MS. COLLINS - As to the crack ---

21 THE COURT - Hang on.

22 MS. COLLINS - All right.

23 THE COURT - All right, so we're taking out
24 possession with intent to distribute cocaine, but we're
25 leaving in the lesser of 10 to 28. Hang on. (Pause)

1 All right, let's deal with -- let's deal with
2 cocaine base. He's charged with trafficking in cocaine
3 base. All right, I mean the chemist testified it was 12.1
4 grams. I mean I -- is there any evidence suggesting that
5 he's entitled to a lesser included charge on that?

6 MR. LIFSEY - Not that I know of, Judge.

7 THE COURT - Okay. All right, so I'm going to get
8 rid of possession with intent to distribute cocaine base as
9 a lesser included offense. Hang on. Trying to get
10 everything straight while we do it.

11 MR. LIFSEY - Well, let me -- let me just -- may I
12 say one thing, Judge?

13 THE COURT - Yeah.

14 MR. LIFSEY - Just to clarify on the record, if I
15 understand it, the cocaine base was found in Rico Green's
16 car, so I am arguing that he should not be attributed that,
17 but, of course, you ruled otherwise on the aggregation
18 issue, just ---

19 THE COURT - Right.

20 MR. LIFSEY - --- wanted to make sure for the
21 record I'm covered on that.

22 THE COURT - Okay.

23 MR. LIFSEY - Yes, sir. But other than that I
24 have no ---

1 THE COURT - All right, let's -- talk to me about
2 the marijuana then. Let's stay in order. Trafficking in
3 cocaine base 10 to 28 grams; the only evidence in the
4 record other than Rico Green, you know, and him allegedly
5 working together, the only evidence in the record as to the
6 weight of cocaine base is 12.1 grams.

7 MR. LIFSEY - Correct.

8 THE COURT - All right, so then I'm not going to
9 charge the lesser offense of possession with intent to
10 distribute cocaine base.

11 MR. LIFSEY - I think unfortunately that's the
12 law.

13 THE COURT - Right. Okay. The trafficking in
14 cocaine 28 to 100 grams, I do believe that there is enough
15 facts in dispute where a reasonable jury could find him
16 guilty of the lesser offense due to the two different BEST
17 kits involved, because one was 23.8 grams and the other one
18 was 26.3 for a total of 50.1. If they aggregate it,
19 there's enough for the 28 to 100. If they don't aggregate
20 it, there's reasonably enough for the 10 to 28, so I'm
21 going to leave the lesser offense of trafficking in cocaine
22 10 to 28 in but not -- not anything less than that.

23 MR. LIFSEY - Yes, sir.

24 THE COURT - Okay. Now, we're on the marijuana.
25 Talk to me about that.

1 MR. LIFSEY - Well, the marijuana's an interesting
2 questions, because as the Court knows, you know, the --
3 possession with intent to distribute which is an inference,
4 the jury doesn't have to believe -- I believe the testimony
5 was it was just under an ounce, so it was under the
6 inference level. I think -- you know, I -- I think because
7 that's a permissive inference, Judge ---

8 THE COURT - Hang on a second ---

9 MR. LIFSEY - Oh, I'm sorry.

10 THE COURT - --- I'm trying to -- I was talking
11 with my law clerk. What'd she say the weight was?

12 MS. COLLINS - She said it was 28.4, ---

13 MR. KNIGHT - 28.1.

14 MS. COLLINS - --- and then she said that was just
15 under an ounce, but ---

16 MR. LIFSEY - 0.9 something.

17 MS. COLLINS - --- she -- but it's 28.4 grams was
18 her testimony. I think it's 28. -- over 28 grams is the
19 inference, and then it says or ---

20 THE COURT - Possession of more than 28 grams or
21 one ounce of marijuana creates an inference that the
22 defendant possessed marijuana with intent to distribute.

23 MR. LIFSEY - Well, I -- sorry -- then I'll
24 certainly -- that's correct. Okay? But it's still a
25 permissive inference. You understand? I mean it's not

1 like -- I -- contrast it to the trafficking. Okay?
2 Trafficking, the weight is an element of the crime. In
3 other words, if someone possesses more than 10 grams of
4 crack cocaine, they are guilty of trafficking. Possession
5 with intent to distribute -- of really of any drug -- it's
6 a permissive inference. In other words, a jury may infer
7 intent to distribute from the weight, but they may not, so
8 I ---

9 THE COURT - So you think you're entitled to a
10 possession charge.

11 MR. LIFSEY - Yes, sir.

12 THE COURT - All right. Ms. Collins?

13 MS. COLLINS - Well, I believe that Mr. Lifsey is
14 correct in terms of comparing that it's an element of the
15 offense with the cocaine versus it's a permissive inference
16 with the marijuana. I would note that there's not been any
17 evidence to the contrary that it was otherwise, that it was
18 simple possession, that the defendant never -- there's no
19 evidence that the defendant ever admitted or stated, well,
20 I just had some marijuana. You also have the issue that
21 there were scales, there were baggies, there were baggies
22 with corners cut out, there where the marijuana was found,
23 and of course, the high amount of money coupled with the
24 gun, so I would submit that that is enough for it to be
25 possession with intent to distribute marijuana or nothing.

1 However, I do concede that it is different from the cocaine
2 because it is a permissive inference.

3 THE COURT - Anything else on that issue?

4 MR. LIFSEY - No, sir.

5 THE COURT - I agree with the State's analysis.
6 I'm not going to charge possession.

7 MR. LIFSEY - Thank you, Judge.

8 THE COURT - Okay. All right, possession of
9 controlled substance, I think that's straight-forward,
10 Hydrocodone. All right, and then possession of firearm
11 during the commission of a violent crime, I believe that's
12 straight-forward. All right, so while we're on these
13 charging issues, I've ruled the way I'm going to rule on
14 the individual charges. Let's talk about specific charges
15 which I intend on charging. Okay? And I'm going to go
16 through -- and I welcome both of y'all if you want to come
17 up here and look at it -- the proposed charge. I have it
18 ready if you want to. That means come on up.

19 MS. COLLINS - And we didn't mention it yesterday
20 in chambers, but we would ask that -- and you probably have
21 it in there -- that in defining possession, you address
22 both actual and constructive possession.

23 THE COURT - I've got in there.

24 MS. COLLINS - Thank you, Judge.

1 THE COURT - All right, we'll be off the record
2 just for a moment, then we'll go back on.

3 (WHEREUPON, BENCH CONFERENCE IS HELD WHICH WAS
4 NOT REPORTED.)

5 THE COURT - All right, first of all -- we're back
6 on the record -- the lawyers have reviewed the verdict
7 form. Any objection as to the proposed verdict form?

8 MR. LIFSEY - No, sir.

9 MS. COLLINS - No, Your Honor.

10 THE COURT - All right, thank you. All right
11 y'all -- we have gone -- we have had a charge conference at
12 the bench; you've seen what I've proposed to charge. Of
13 course, you'll be given another opportunity at the
14 conclusion of the charge to offer any exceptions or
15 additions at that time, but any objections to the Court's
16 proposed charges?

17 MS. COLLINS - No, Your Honor.

18 MR. LIFSEY - My only objection was as to the
19 charge of -- where the Court charged that two or more
20 persons may possess one drug, which I believe is a comment
21 on the facts, and I would object to that. Beyond that, I
22 have no objection, of course.

23 THE COURT - All right, thank you. I intend on
24 charging that. You're protected in the record.

25 MR. LIFSEY - Thank you.

1 THE COURT - All right, let me have -- Mr.
2 Starnes, if you'll please stand for me and raise your right
3 hand.

4 (WHEREUPON, THE DEFENDANT, JAMES NICHOLAS
5 STARNES, IS DULY SWORN BY THE COURT.)

6 THE COURT - All right, thank you. You can be
7 seated. Slide that microphone up to you so I can make sure
8 and get your testimony.

9 Now, at this time, Mr. Starnes, I'm going to
10 explain certain rights that you have to you. If you don't
11 understand anything I say to you, please let me know and if
12 you want me to explain anything more to you, I'll be glad
13 to do that. You understand?

14 MR. STARNES - Yes, sir.

15 THE COURT - All right, now we've now reached the
16 stage of the trial where you may present your defense. You
17 have the right to claim protections given to you by the
18 Fifth Amendment of the United States Constitution which
19 states in part that no person shall be compelled in any
20 criminal case to be a witness against himself. In other
21 words, you cannot be required to testify in this case.
22 Now, you do have the right to testify on your own behalf if
23 you want to, but nobody can make you testify. This is a
24 personal right and nobody can give up this right except for
25 you. Do you understand?

1 MR. STARNES - Yes, sir.

2 THE COURT - Now, if you do decide to testify,
3 you'll be subject to the same rules that govern other
4 witnesses, and you may be examined and cross examined on
5 any relevant issue in the case. Just like your lawyers
6 tried to make witnesses look bad by cross examining them,
7 just like the State's lawyers will try to do the same
8 thing, you'd be subject to those same rules. Do you
9 understand that?

10 MR. STARNES - Yes, sir.

11 THE COURT - All right, and in addition, if you
12 have any convictions involving dishonesty or a false
13 statement, which you do -- I believe there was a forgery
14 charge -- and if -- that's correct?

15 MS. COLLINS - That was all, but yes from 2000 ---

16 THE COURT - All right, so if you did testify, the
17 State would bring that up, which could hurt your
18 believability and credibility with the jury. Do you
19 understand that?

20 MR. STARNES - Yes, sir.

21 THE COURT - All right. Now -- so if you decide
22 to testify, you have to make that decision freely,
23 voluntarily and intelligently with knowledge of your Fifth
24 Amendment right. Now, here's the thing. If you decide not
25 to testify, I will specifically instruct the jury that they

1 cannot give that fact that you did not testify any
2 consideration whatsoever and that there is absolutely no
3 prejudice to you because you didn't testify. It's left
4 entirely up to you whether you decide to testify or not.
5 Now, you can talk to your lawyer, your family or friends or
6 anybody else, but the final decision is entirely left up to
7 you. Do you understand everything I've explained to you?

8 MR. STARNES - Yes, sir, I do.

9 THE COURT - Do you have any questions about what
10 I've explained to you?

11 MR. STARNES - No, sir.

12 THE COURT - Have you discussed with your lawyer
13 about what -- whether you should or should not testify?

14 MR. STARNES - Yes, sir, I have.

15 THE COURT - All right, and do you wish to discuss
16 with him that issue any further now?

17 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR.
18 STARNES AND MR. LIFSEY WHICH WAS NOT REPORTED.)

19 MR. STARNES - Yes, could I have moment with ---

20 THE COURT - Yeah, sure, go ahead.

21 (WHEREUPON, DISCUSSION IS HELD BETWEEN MR.
22 STARNES AND MR. LIFSEY WHICH WAS NOT REPORTED.)

23 MR. LIFSEY - Thank you, Judge.

24 THE COURT - All right, thank you. Now, Mr.
25 Starnes, do you wish to testify?

1 MR. STARNES - No, sir, I don't.

2 THE COURT - All right, so you understand
3 everything I've gone over with you?

4 MR. STARNES - Yes, sir.

5 THE COURT - All right, thank you. And, Mr.
6 Lifsey, do you agree with your client's decision to not
7 testify?

8 MR. LIFSEY - I do.

9 THE COURT - All right, thank you very much. Does
10 the defense intend to offer any defense?

11 MR. LIFSEY - No, sir.

12 THE COURT - Okay, thank you. Any questions about
13 how that -- what that means for closing arguments,
14 solicitor? That means he gets to go last. Y'all
15 understand that. Just want to make sure.

16 MR. LIFSEY - Just so the jury's not confused, it
17 might not hurt when they come back in, whenever we get to
18 that point, you say something like the defense has opted
19 not to present any evidence, so we're going to go directly
20 into the closing arguments.

21 THE COURT - All right. If I remember I'll do
22 that.

23 MR. LIFSEY - If you do.

24 THE COURT - If I remember.

25 MS. COLLINS - And can we have about 15 minutes?

1 THE COURT - Yeah, let's take a ten minute --
2 let's take a ten minute break to compose ourselves, go to
3 the restroom, do whatever we do, so we plan on moving --
4 y'all didn't have anything in reply, no other -- y'all
5 done.

6 (WHEREUPON, NO RESPONSE)

7 THE COURT - I'm sorry. He didn't say anything.

8 MS. COLLINS - He hasn't put anything up, so I
9 don't ---

10 THE COURT - Right. What we intend on -- I intend
11 on going straight from argument into the charge and then
12 they'll begin to deliberate. Okay? So let's take about
13 ten minutes.

14 MR. LIFSEY - Thank you, Your Honor.

15 (WHEREUPON, RECESS TAKEN)

16 THE COURT - All right, y'all ready? All right,
17 let's bring the jury in.

18 (WHEREUPON, JURY ENTERS THE COURTROOM)

19 THE COURT - All right, all members of the jury
20 are present. Thank you very much, ladies and gentlemen,
21 for your patience. We will now proceed with the remainder
22 of the trial. The State has rested. Mr. Lifsey?

23 MR. LIFSEY - The defense rests, Your Honor.

24 THE COURT - The defense has rested. Ladies and
25 gentlemen, we have completed the testimony and evidence

1 phase of the trial. We will now move into what's called
2 closing arguments. Remember, I told you earlier about what
3 closing arguments are. After the conclusion of the closing
4 arguments, that's when I'm going to instruct you on the law
5 of South Carolina. Y'all should all be rested up and ready
6 to go. Please pay very close attention to what the lawyers
7 tell you and what I tell you when I give you the law.
8 Okay? Solicitor.

9 MR. KNIGHT - May it please the Court.

10 THE COURT - Yes, sir.

11 MR. KNIGHT - Mr. Lifsey?

12 Good morning, ladies and gentlemen of the jury.
13 We've heard a lot and seen a lot throughout this trial that
14 began yesterday against Mr. Starnes sitting over there.
15 First we heard from several witnesses; I'm going to go
16 through each one of those witnesses and talk a little bit
17 about what they told you and what testimony and evidence
18 they presented in this case.

19 We first heard from Tony Bowers from the
20 sheriff's office. He told you about that night on August
21 the 4th of 2011. He told you that he responded to the
22 location outside of Goodtime Charlies bar on Meeting Street
23 in Lancaster. He told you that he set up surveillance on
24 the parking lot of the bar. He told you that he viewed the
25 defendant seated there come out of the bar, meet with the

1 guy driving a black Charger who was later identified as
2 Rico Green, go back into the bar, come out of the bar after
3 a few minutes, and then proceed to drive down -- down the
4 road away from the bar and then Mr. Bowers told you about
5 the car stop they performed on Rico Green and the black
6 Dodge Charger. He told you that the passenger in the car
7 ran, and he ran; they recovered a certain amount of drugs,
8 I believe that are located in this BEST kit, and in this
9 BEST kit they recovered approximately 23 grams of cocaine
10 and 13 grams of crack cocaine. They recovered it from
11 Dyvonne Jowers. He also testified up here. He told you
12 that he was a passenger in the car and that Rico Green, the
13 driver, gave him the drugs and he ran out with them. Mr.
14 Bowers also told you that on the site that night after he
15 pulled over Rico Green, that Rico Green told him when he
16 asked him where did you buy the drugs from, he told him he
17 bought them from the white dude at the bar at Goodtime
18 Charlies bar. Now, Tony Bowers also told you that during
19 this time from the point the black Dodge Charger left the
20 bar to the point that it was pulled over a couple miles
21 away from the bar that the car didn't stop anywhere, it
22 didn't -- that he maintained sight with that black Dodge
23 Charger the entire time. After that, Investigator Bowers
24 told you that he went back to the bar after making the
25 arrest on Rico Green and Dyvonne Jowers, he went back to

1 Goodtime Charlies, and when he went back to Goodtime
2 Charlies bar, he testified that he did a pat-down search of
3 the defendant, and when he did that, he found what's
4 located in this BEST kit a Hydrocodone pill. He said he
5 found it in the defendant's pant's pocket, that it was in
6 the actual possession of the defendant, the Hydrocodone
7 pill in that BEST kit.

8 Next, we heard from Investigator Ryan Mclemore,
9 and just to back up, Tony Bowers also told you about the
10 two statements that he took from Mr. Rico Green, the driver
11 of the black Charger, and he told you the statement that he
12 took from -- from Mr. Green and what he stated to him that
13 night about where he got the drugs and how he obtained the
14 drugs. He also told you that he took a statement from
15 Dyvonne Jowers, the passenger in that black Charger than
16 ran that night to which those certain amount of drugs were
17 recovered.

18 Next, we heard from Ryan Mclemore from the
19 Lancaster County Sheriff's office. He told you about how
20 he set up that night surveillance at the bar with
21 Investigator Bowers; they were working together. He told
22 you that he was on the car stop with Rico Green, and that
23 after the car stop happened with Rico Green, he went
24 directly back to the bar, Goodtime Charlies. When he got
25 back to the bar, they suspected certain drug activity at

1 the bar, so they were going to get a search warrant, so --
2 so to make sure the bar was controlled, nobody went in or
3 out, he detained the defendant. When he detained the
4 defendant, he mirandized him. He gave him his rights and
5 told him, you know, he had the right to an attorney and
6 went through the whole thing. And at that point, some time
7 in that timeframe, Mr. -- Lieutenant Mclemore discovered
8 that he was the owner -- not the owner of the bar, but the
9 general manager of the bar that had control and custody of
10 the bar that night. He stated that defendant told him that
11 he had the keys in his pocket to unlock the door to the
12 bar, unlock the door to the office in the back of the bar
13 and also that he was basically running the show that night,
14 that it was -- he was managing the bar that night, nobody
15 else was there managing it. Lieutenant Mclemore also told
16 you that while he was at the bar that night that
17 Investigator Brandon Rollins came back with the search
18 warrant for the bar, and when he came back with the search
19 warrant, the search warrant was signed saying they could
20 search the entire bar for drugs, and that included the
21 office in the back, and he testified, and you'll see in the
22 photographs that are admitted into evidence that the office
23 was locked; it was locked, had like a regular lock on it, I
24 think a deadbolt, and that Lieutenant Mclemore had to use
25 the keys found in the defendant's pocket to unlock that

1 door. He testified to you that when he entered the office
2 area and started searching around looking for different
3 things, he found several things. He found baggies of
4 cocaine in the amount of -- I believe it was 26 grams
5 approximately of cocaine. He found little baggies cut out,
6 little sandwich bags cut out with -- consistent with what
7 people use to sell and deal drugs with. He found scales
8 which are entered into evidence. He also found a bag of
9 marijuana which is also in evidence in the amount -- I
10 believe it was approximately 20 -- 28 grams, and he also
11 told you the condition of the bar that night. He told you
12 that there weren't a lot of people in the bar. There
13 weren't people coming in and out of the bar. He testified
14 that when he arrived back on location at Goodtime Charlies,
15 it was the defendant, Crystal Jones, the bartender, and
16 another female located in the bar. He also testified that
17 this office in the back part of the bar was locked up, and
18 the only way that he could've got in that back office that
19 was locked up was the keys he found on (sic) the
20 defendant's pocket.

21 The next we heard from Investigator Brandon
22 Rollins. He testified that he was at the car stop that
23 night with Rico Green; he was on surveillance with the bar
24 at Goodtime Charlies with the other two officers, and he
25 testified that he went and got the search warrant, came

1 back with it. And, of course, we've seen the pictures and
2 the drugs that were recovered from that search warrant at
3 the bar that night.

4 Next, on the law enforcement side, we heard from
5 Ann Horton. She's the Lancaster County's sheriff's office
6 custodian of evidence. She testified how evidence is taken
7 from scenes, how it's stored, how it's maintained, how we
8 know that the evidence that was entered is the same
9 evidence that was seized from the various locations in this
10 case, how it is seized from the bar, how it is seized from
11 the traffic stop. She testified that she took this
12 evidence into her possession, and as far as the BEST kits
13 go, she took those pieces of evidence, these three baggies,
14 packaged, made sure they were -- everything was done right
15 on them and sent them off to SLED for testing, for analyst,
16 for -- so the chemist, Mr. Robinson, that testified, could
17 analyze these baggies and tell you what they were and the
18 weight on each BEST kit. She also testified that she got
19 the marijuana from Ken Taylor, and she analyzed the
20 marijuana using her certification as a marijuana analyst,
21 she was able to analyze and confirm that this was, indeed,
22 marijuana, and that the weight was 28 gram -- 28.04 grams
23 of marijuana.

24 Next, we heard from Ken Taylor from the Lancaster
25 County Sheriff's office. He testified that he was part of

1 the crime scene unit, crime scene investigator from the
2 sheriff's office. He testified that he took all the
3 photographs that you'll see into evidence. He testified
4 that he actually seized the items that were found in the
5 office in -- locked in the bar, which would include the
6 approximately 26 grams of cocaine seized from the office.
7 He testified to you that he also did some fingerprinting.
8 He testified that he wasn't able to get any matchable
9 prints based on the fingerprints he took from the various
10 locations and the various items. Defense might bring up --
11 did bring up, well, why didn't you fingerprint everything,
12 why didn't you just go in there and fingerprint on the file
13 cabinets and over here and over there. Well, at the time
14 he testified that they believed that this was the
15 defendant's office, that he had control over it.
16 Fingerprinting an office where you have control over, where
17 you're in regularly would be of no avail, you wouldn't --
18 your fingerprints would be everywhere. If you were in your
19 office, your fingerprints would be everywhere, all over the
20 office, so that's one of the reasons that, you know, he
21 didn't spend, you know, a significant amount of time
22 fingerprinting everything in the office, because we knew --
23 he knew that there was going to be the defendant's
24 fingerprints in the office, because that was the
25 defendant's office; that's where he conducted business

1 activities, and that's where he worked, so that's one
2 reason, something the defense is going to bring up -- did
3 bring up, and that's one reason that the whole office
4 wasn't just fingerprinted, you know, top to bottom.

5 Next, we heard law enforcement Douglas Robinson
6 from SLED. He testified that he was a drug analyst, that
7 he had significant training and expertise on how to weigh
8 drugs, how to test drugs and what his findings were. He
9 testified that these three BEST kits that he -- he actually
10 made sure that they were sealed when he got them, that they
11 were the same drugs that were sent to him by the Lancaster
12 County Sheriff's office and he testified which bag
13 contained what and the weights. He testified first that
14 the first bag sent down was a Hydrocodone pill. He told
15 you how he tested it and what the results were. He also
16 said he tested another BEST kit that contained
17 approximately 13 grams of crack cocaine or cocaine base and
18 also contained approximately -- I believe it was 23 grams
19 of cocaine in one BEST kit. And finally, he tested the
20 last bag that came back positive for 26 grams of cocaine.
21 He told you how the chain of custody is maintained, how
22 it's stored in their office and how it's tested.

23 Next, we heard from non-law enforcement witness,
24 Dyvonne Jowers. He was the guy that -- if y'all remember
25 he was the guy on the stand that stated he was the

1 passenger with Rico Green on that night, that he got in the
2 car with him earlier in the day, the black Charger, rode
3 around with Mr. Green and finally ended up at the bar, the
4 Goodtime Charlies bar. He stated that Rico Green went into
5 the bar for about 15 or 20 minutes and then came back out;
6 they got back in the car; they drove off; they saw the law
7 enforcement behind them with blue-lights activated. He
8 stated that Rico Green dropped the drugs on his lap and
9 told him to run, and he stated that he did do that. He got
10 the drugs on his lap and took off running, then he was
11 eventually caught by law enforcement.

12 We also heard from Crystal Jones. She was the
13 bartender that night. She was working for Mr. Starnes that
14 night. She was one of three people that were at the bar
15 when Lieutenant Mclemore came to the bar that night after
16 they pulled over Rico Green. She stated that she saw an
17 African American male go -- come in the bar about the same
18 time that Tony Bowers stated that they were watching the
19 parking lot of the bar, that Rico Green came inside the
20 bar. She stated she saw an African American male come
21 inside the bar, go talk -- start speaking with the
22 defendant and then go into the back office, the locked back
23 office. She stated they were in there about 15, 20 minutes
24 and he was in the bar about 15, 20 minutes, and then they -
25 - he came out, left the bar and the defendant stayed at the

1 bar. She also testified that he was the manager of the
2 bar. He wasn't the owner, and I will clear that up, but
3 earlier in opening I said he was part of the owner of the
4 bar; he wasn't. He was the general manager; he ran the
5 bar; he had control of the bar for purposes of that night.
6 She testified that that was -- that was basically her boss
7 that night, that he had the keys to the office, that he ran
8 the bar for all intents and purposes that night.

9 All right, the next biggest -- big witness we had
10 was Rico Green. He told up here and he testified that he -
11 - he did go to the bar that night. He told y'all that he
12 went to bar to sell -- or actually to buy Hyrdocodone for
13 (sic) Mr. Starnes, from Mr. Starnes. He testified that he
14 never, you know, -- the drugs that he got caught with at
15 the car stop had nothing to do with the defendant. He also
16 admitted to giving a statement at the time he was arrested
17 back in August -- I believe it was August 4th of 2011,
18 giving a statement basically saying that all the drugs he
19 got off that car stop were the drugs that he bought from
20 the white guy, which is the defendant, and when he was
21 brought up here he basically recanted on his statement,
22 said, no, that -- that was a lie, I didn't -- that's not
23 what happened. Well, let's talk -- a couple of points
24 about why he told the truth on the night of August the 4th
25 and why the statement he gave to police was, in fact, the

1 statement of what really happened that night. The first
2 thing is -- I don't know if y'all remember this -- but on
3 the stand he -- he said something about he was promised
4 something by Lieutenant Mclemore and that's why he gave the
5 statement he gave that night. We put Investigator Mclemore
6 on the stand; he told us that he didn't take the statement
7 from Mr. Green that night, that it was Tony Bowers of the
8 sheriff's office that took the statement. He wasn't around
9 Mr. Rico Green that night that his statement was taken.
10 Investigator Tony Bowers, he actually told where he got the
11 drugs from to Investigator Bowers right after he was pulled
12 over, right after he was stopped. Another point to bring
13 up regarding Rico Green's testimony is he talks about the
14 pills, that he went there to buy pills from Mr. Starnes.
15 Well, the defendant himself admitted -- admitted to
16 investigator -- one of the investigators that -- he
17 admitted that he was -- that he was buying pills from Mr.
18 Green, so the testimony doesn't match up. The testimony
19 that Mr. Green gave was that he was going to buy pills from
20 the defendant. The defendant is saying that he was
21 actually buying pills from Mr. Green. So there's a big
22 difference in the testimony there, and if Mr. Green was
23 going to buy pills from -- from the defendant or vice
24 versa, it's still a drug deal, they were going to deal
25 drugs at that bar. And the one thing that kind of

1 discredits his testimony, if he was going to buy -- either
2 one of them was going to buy pills from each other, however
3 it was going to work, then would it be necessary for them
4 to go in the back office of the bar as Crystal Jones
5 testified to? Wouldn't it be simpler just to in the
6 parking lot, here's the pills, here's the money, do the
7 exchange right there and get on with where you're going?
8 It would be a lot simpler. He wouldn't need to go in the
9 back office and spend, you know, 10 to 15 minutes. He
10 wouldn't need to do anything of that. He would just need
11 to go in the parking lot, here's the pills, here's the
12 money, and the transaction's done, they go on their way.
13 Another reason to discredit Mr. Green's testimony that he
14 gave when he was on the witness stand, was he talked about,
15 you know, he -- he made all that up, he lied about it, you
16 know, that night. Well, another reason he might not want
17 to testify, he told you he was doing ten years in the South
18 Carolina Department of Corrections, that he started his
19 sentence, I believe, in 2011; he's got some more time down
20 there, and he doesn't want to be labeled as a snitch. He
21 doesn't want to be a snitch, an informant, somebody that
22 went to Court and testified for the police to put somebody
23 else in jail, because he's got more time in SCDC and that's
24 not something you want to be labeled as in the SCDC as a
25 snitch, as an informant, as somebody testifying for the

1 police putting somebody else in jail. That is the biggest
2 reason he got up on the stand and said what he said and
3 recanted his statement.

4 So now we're going to go through some of the
5 recharges and kind of recap. I know y'all have heard a
6 lot, and y'all have been very patient, and I appreciate
7 that. We're going to talk about constructive possession
8 and actual possession. It's two different things in the
9 law, and the best way -- the Judge is going to explain all
10 this to you, but I'm just going to give you my spin on it.
11 Constructive possession versus actual possession. In this
12 case the defendant was in actual possession of the
13 Hydrocodone pill, because it was in his pocket. He
14 actually possessed it. Constructive possession is like
15 this: If a person owns a car that's registered to them and
16 they're driving down the road and they have, say, something
17 illegal in it, it could be inferred that they
18 constructively possessed the entire car, because they have
19 the keys, they're driving it, they own the car. Even if
20 they -- they say, I didn't know it was there, well, because
21 they have control over it, because they're in constructive
22 possession, they might not have the illegal item in their
23 pocket, they might not have it, you know, in their purse or
24 in their wallet, but if it's in their car or the car's in
25 their name, they have control and custody over the car,

1 then that's constructive possession, and I just kind of
2 wanted to explain that before I get into the charges.

3 The first charge is trafficking cocaine. There's
4 different levels of traveling cocaine in South Carolina.
5 Basically all we have to prove -- all the State has to
6 prove is that a person knowingly either sold it or
7 possessed any amount from 28 grams to 100 grams of cocaine
8 or any mixture containing it. So let's see what we got.
9 We got for this charge approximately 26 grams of cocaine
10 was found in the bar, in that locked office in the bar.
11 Okay? 23 grams of cocaine was found on Dyvonne Jowers with
12 Rico Green in the -- in the vehicle stop, which is
13 approximately 49 -- it might've been closer to 50 grams
14 total. Okay. If you -- and the magic number is over 28 to
15 100 grams of cocaine to be guilty of this charge. You
16 don't have to be caught selling it on a corner; you don't
17 have to be caught -- anything -- you just have to either
18 knowingly possess it or knowingly sell it, and in this case
19 I think we can prove that Rico Green bought the 23 grams
20 that was found on him at the car stop from the office that
21 the defendant was selling out of, based on his statements,
22 based on all the witnesses' testimony. Even if you believe
23 Rico Green, what he said on the witness stand, if you
24 believe that he made up that statement and that all the
25 drugs that he had on him was his and he didn't get anything

1 from the bar, you can -- you can convict the defendant of
2 the lesser charge of possession of 10 grams to 28 grams of
3 cocaine, because they found 26 grams of cocaine in the
4 office in the bar. Now, when the officers went in the bar,
5 they -- they didn't testify that, you know, they saw the
6 defendant packaging it up or doing something like that.
7 They -- they testified that they found the keys to the
8 office, the locked office, in the defendant's pockets. He
9 had constructive possession of that back office. There was
10 nobody else in the bar that had a key to get in or out of
11 that office. There was nobody else that could've had any
12 kind of possession over it that night. He was the only one
13 with the key; he admitted to the officers that he had
14 constructive possession of that office. And I would submit
15 to you that based on that -- if you think that Rico Green's
16 statement that he gave to the officers was true that night,
17 that he bought it from the white dude at the bar, then I
18 would say you can convict him of the 28 grams to 100 grams
19 of cocaine. If you do not -- if you believe what Rico
20 Green said on the stand when he was testifying yesterday,
21 then I'd say you can convict the defendant of 10 to 28
22 grams of cocaine based on his constructive possession of
23 the contents of the items found inside that locked office.

24 Now, the next charge he was charged with was
25 trafficking crack cocaine or cocaine base. What we have to

1 prove for that is knowingly to selling or possession 10 to
2 28 grams of crack cocaine. Well, approximately 13 grams of
3 crack cocaine or cocaine base as otherwise known -- or
4 actually it's 12.3 grams was found on the car stop with
5 Rico Green and Dyvonne Jowers. Again, if you -- if you
6 believe the statement that Mr. Green made to law
7 enforcement that night when he got pulled over and stopped,
8 then you convict the defendant of trafficking in crack
9 cocaine in the amount of 10 grams to 28 grams.

10 The next charge is possession with intent to
11 distribute marijuana and the elements of this are basically
12 you knowingly possessed 28 grams or more of marijuana, and
13 you can infer based on the weight -- it's called a
14 permissive inference, that based on the weight alone that
15 the defendant possessed it (sic) marijuana with intent to
16 distribute. This marijuana was -- was tested by Ann Horton
17 with the sheriff's office, weighs approximately 28.04
18 grams, which is just enough to get it to the permissive
19 inference that the defendant was planning on distributing
20 this marijuana. Remember where this was found. This was
21 found in the office. This wasn't found on the traffic
22 stop. This wasn't found anywhere else. This was found in
23 the office that the defendant had constructive possession
24 over, that he had the keys for, that he had been in that
25 night, that -- that the bar that he was running, that he

1 was managing at the time. This was found in one of the
2 file cabinets.

3 The final charge is possession of a firearm
4 during the commission of a violent crime. And what that
5 basically is, under South Carolina law, trafficking in
6 cocaine in any amount or trafficking in crack cocaine in
7 any amount is considered a violent crime in South Carolina.
8 So if you find him -- if you believe he's guilty of
9 trafficking in cocaine or trafficking in crack cocaine,
10 then if he's in possession of this pistol that was located
11 in the drawer of the office that we're saying he had
12 constructive of, he had the keys, he had -- he was running
13 the bar, then you would also convict him of the knowingly
14 possession of a pistol during a violent crime.

15 And I'm going to go back one last time to this
16 possession of how it kind of plays into the charges.
17 Constructive possession can be -- you don't have to have
18 all this stuff on you. It can be -- you can constructively
19 possess something. If you had the keys to the office, as
20 in this case, if you have the control over the office, as
21 in this case, then you can be convicted of possessing
22 without actually having the drugs on you. You don't have
23 to be caught, you know, packaging the drugs up, and you
24 don't have to be caught, you know, with the drugs on you.
25 I would state that -- because the defendant on that night,

1 he was the general manager of the bar. He had -- he had
2 the keys to unlock that locked office and based on
3 everybody else's testimony, I would ask you to convict the
4 defendant of trafficking in cocaine, trafficking in crack
5 cocaine, possession of marijuana with intent to distribute
6 and possession of a firearm during a violent crime.

7 And thank you again for your time and service of
8 the jury.

9 THE COURT - Thank you, Solicitor. And Mr.
10 Lifsey?

11 MR. LIFSEY - Is that good enough? Is that good
12 enough? And I'm been doing this a long time, and the
13 longer I do this, I really become convinced that that's
14 what criminal cases boil down to. You know, on TV you see
15 all these dramatic developments and confessions and all --
16 but that's not what criminal cases are about. Criminal
17 cases are about has -- is it good enough. Is the State's
18 evidence good enough? The reason it is and the reason I
19 say is that good enough, and the reason I want you to
20 continue asking that question as you review this evidence
21 is because we have designed in the United States of America
22 a system that makes it difficult to convict people of
23 crimes. Now, I believe that's a good system. I believe
24 that if we -- we should err -- if we're going to have a
25 system that can't be perfect -- and no system can ever be

1 perfect -- we should err on the side of not convicting
2 innocent people. So we have devised this system to make it
3 difficult. Now, I acknowledge that maybe everyone in
4 America doesn't agree with me. I don't know how y'all feel
5 on that subject, but I do know this, you all took an oath
6 and you all swore to follow the law that Judge Gibbons told
7 you. So he's going to tell you the law, again, in a few
8 minutes, just like he said before, and he's going to tell
9 you some of those principles again that you need to
10 consider in deciding and answering that question, is that
11 good enough. He's going to remind you that my client is
12 presumed innocent, that no one -- everyone charged with a
13 crime has -- is presumed innocent, and that presumption
14 continues with him even when you go back in your jury room
15 and begin to deliberate. Remember what I said at the
16 beginning about thinking about someone you know who's
17 charged with a crime and you just can't imagine he could've
18 done that? That's the attitude you must have. So he's
19 presumed innocent. Judge Gibbons is going to remind you
20 again that the State has the burden of proof, that my
21 client doesn't have to offer any testimony, and we didn't.
22 Okay? My client didn't testify. Judge Gibbons is going to
23 tell you that is not a factor you can consider. It's not
24 even proper for you to discuss it. Okay? If you're mad at
25 anybody about it, be mad at me. Okay? But you can't

1 discuss him not testifying. And there's a good reason, and
2 the reason is that this is America, and you've got --
3 they've got the burden of proof. Is it good enough? Is
4 their evidence good enough? He's going to tell you that in
5 order for you to convict my client or any client in this
6 country of a crime, they've got to prove their case beyond
7 a reasonable doubt, beyond and to the exclusion of any
8 reasonable doubt, any reasonable doubt. If there's a doubt
9 in your mind -- and not -- not just collectively, because
10 your verdict has to be unanimous, but individually -- if
11 there is any doubt that this happened exactly like the
12 State said it is, you've sworn an oath to return a verdict
13 of not guilty. He's going to tell you about circumstantial
14 evidence, and he's going to tell you that, of course,
15 there's certain -- different cases -- and he'll explain to
16 you how evidence can be proven directly and by
17 circumstance, but I wrote this down, because I think it's
18 important, he's going to tell that to the extent the State
19 relies on some -- on circumstantial evidence, all the
20 circumstances must be consistent with each other, and when
21 taken together point conclusively to the guilt of the
22 accused beyond any reasonable doubt. He's going to tell
23 you that. He's going to tell you about the law of actual
24 versus constructive possession. I don't disagree, I don't
25 think, with exactly what the solicitor said, but I don't

1 think he told you the whole story. It is true that if --
2 for example, if these keys in pocket were an illegal
3 substance -- I'm in actual possession of them -- okay? --
4 and it is correct that if you have dominion and control
5 over a place where an illegal substance is found, you are
6 in constructive possession of it, but you have to know it
7 was there. You have to have criminal intent. He's going
8 to charge you that no one can be convicted of a crime
9 without criminal intent. Let me give you an example. My
10 house. I'm not at my house. Okay? I've got a key to my
11 house. Okay? If my TV were an illegal substance, I'm in
12 constructive possession of that television. Okay? But I'm
13 not the only person with keys to my house. My wife has
14 keys to my house; my two teenagers have keys to my house.
15 Knock on wood my two teenagers at this point in their lives
16 have not -- as far as I know -- used drugs or had
17 possessions of drugs, but if one of them brought into her
18 room or his room drugs and put it on a bookshelf or in a
19 cabinet or in one of her drawers, I am not guilty of
20 possession, possessing those drugs, despite having dominion
21 and control over my house because I have keys to my house.
22 And the Judge will explain all that to you. So, please, as
23 you go through this case, ask yourself the question, is
24 that good enough, keeping in mind presumption of innocence,

1 burden of proof, proof beyond a reasonable doubt being
2 required.

3 So I've tried not to take too terribly long
4 talking to you, and I tried not to cross examine people
5 extensively and over and over and over, but I would ask you
6 to bear with me a moment while I talk to you a little bit
7 about the evidence. My client has waited almost four years
8 for his day in Court. Bear with me just a minute or two
9 longer while I talk to you about it.

10 You've got drugs in this case found in basically
11 two different places. You've got the drugs found in the
12 car and you've got the drugs found at Goodtime Charlies.
13 Okay? And I say that because they really are separate
14 places where the drugs are found, and there is separate
15 proof to them, and, of course, to even get to the biggest
16 charge they've piled on to my client, you have to aggregate
17 them together, but I think you have to look at it and
18 analyze the evidence in each of them separately. So let's
19 start with the car, where, I guess, some cocaine is and all
20 the crack is, in the car. What evidence do they have that
21 links my client to the drugs in that car? Nothing beyond
22 Rico Green. Okay? They've got Dyvonne Jowers who
23 testified and said he didn't know anything. He didn't know
24 what -- he didn't know there were drugs there, if I
25 remember Dyvonne Jower's testimony correctly, until Rico

1 Green handed it to him. So you've got Rico Green. Now
2 look, you know, Rico Green. This is a -- this is what
3 (sic) cases are interesting. At the beginning of this case
4 I figured that I was going to be the one calling Rico Green
5 a liar, that the State's star witness, Rico Green, that I
6 would be saying he's a liar, and it turns out the State is
7 the one that's calling Rico Green a liar. The State is the
8 one that tells you don't believe Rico Green. Now, listen,
9 I don't know what Rico Green knows and I don't know how
10 much of Rico Green's telling the truth; I don't know how
11 much Rico Green was lying back then or whether he's lying
12 now, but this is -- this is what I ask you, when I ask you
13 to think is that good enough. Why is what Rico Green said
14 almost four years ago, why is that more believable than
15 what my client said almost four years ago? Rico Green
16 almost four years ago says, oh, yeah, I got -- I got the
17 drugs from the white boy. My client says, I bought
18 Hydrocodone from Rico Green, and I know it's two pills at
19 once, but if you take two pills and you take one and the
20 police pat you down, you're going to have one left, but why
21 I ask you, what reason is there for you to believe Rico
22 Green over my client then? Set aside what he said now,
23 which makes it worse and even harder to believe or
24 understand him, but why would you do that? Why is it good
25 enough? Now, I ask you this. Are there things the State

1 could've done -- keeping in mind is it good enough, have
2 they met their burden of proof -- are there things the
3 State could've done to help you answer that question, in
4 other words to help you figure out whether to believe Rico
5 Green or not? Why didn't get phone records? They've had
6 almost four years, and they didn't bother to get Rico
7 Green's phone records? They didn't bother to get my
8 client's phone records? If they had phone records, we
9 might be able to determine who called who. Did -- I mean I
10 know we won't have a tap and know what's said, but we might
11 -- wouldn't it be -- wouldn't it make sense if Rico Green
12 was wanting to buy drugs from my client he might've called
13 him first, or if my client were wanting to buy drugs from
14 Rico Green he might've called him first? We don't know.
15 Why don't they have that? Is that good enough for them to
16 just say, ah, we didn't know what phone company it was; we
17 didn't think about that. Is that good enough? Were there
18 text messages between them? We'll never know. And the
19 question you've got to ask yourselves in the jury room, is
20 that good enough. Are you going to convict my client of
21 this serious crime based on Rico Green when the State
22 didn't even bother to get phone records? Why didn't they
23 record the interview of Rico Green? See, if they had
24 recorded -- you got to see Rico Green on the stand
25 yesterday and assess his credibility. You got to make a

1 value judgment of whether you believe him or don't believe
2 him. If we had a recording of Rico Green from almost four
3 years ago, you could've done the same thing and could've
4 made an assessment. Why didn't they do that? Is that good
5 enough? Why didn't they? Well, we just didn't have any
6 way to record people. Oh, come on. They wire up
7 informants all the time to buy drug videos. You're telling
8 me they couldn't -- they couldn't operate a camera? One of
9 us gets stop for a DUI on the way home, you think Lancaster
10 County Sheriff's office isn't going to video-tape us doing
11 field sobriety tests? Come on. Is that good enough? You
12 mean to tell me they can't take out a phone and they can't
13 press a button and just at least audio-record it? Is that
14 good enough? That's it. As far as I can tell, that's it
15 on the drugs in the car. You got nothing but Rico, because
16 nobody sees any drugs; nobody says anything; nobody sees my
17 client with any drugs; Rico's it. Okay? Look at the bar.
18 Now, listen, they've got no idea how long those drugs were
19 there. They talk about surveillance and locking down the
20 bar. You're talking about -- if I understand it they were
21 there a fairly short period of time before they see the
22 black Charger come up, then they follow the black Charger,
23 the police chase, the stop, and then they lock down the
24 bar. They didn't observe that bar earlier that day. They
25 didn't observe that bar yesterday, the day before that.

1 They didn't do that. They don't have any idea the drugs in
2 the bar belonged to my client. They don't have any proof
3 of that. What proof do they have? Well, who's their star
4 witness on that? Crystal Jones. Well, this is fascinating
5 to me. They bring Crystal Jones in here, and they ask her,
6 who's your boss. She said she answered to three people,
7 Nick, Steve and Pete. Where's Steve and Pete? Why haven't
8 we subpoenaed Steve and Pete? Why haven't we brought Steve
9 and Pete in here? Why didn't the solicitor's office even
10 want to talk about Steve and Pete? Why didn't the
11 sheriff's office want to talk about Steve and Pete? Why
12 didn't they investigate Steve and Pete? They did to one
13 extent. Lieutenant Mclemore said he tried to talk to
14 Steve. Steve didn't want to talk to him. Well, how about
15 that? You're a business owner, somebody's in your business
16 and somebody's selling drugs out of your business that you
17 don't want to own, what are you going to do? Yes, sir, Mr.
18 Law Enforcement; I had no idea why James Starnes was
19 selling drugs; let me help you; let me cooperate with you.
20 Steve doesn't want to talk to the police. Crystal doesn't
21 even remember the door being closed. You know? The
22 solicitor tried to -- she almost -- it's funny, they
23 directly called -- they directly called Rico Green and liar
24 and they came pretty close to calling Crystal Jones a liar.
25 You heard Solicitor Collins go, didn't you just tell me

1 outside the doors closed -- and thank goodness she said, I
2 don't remember, it's been a long time ago, I don't
3 remember. So that's their star witness. You know, -- at
4 some -- they kept going he's got the keys to the bar, he's
5 got the keys. You remember when they asked -- asked her --
6 asked Crystal who had the keys, and she said the managers,
7 plural, the managers. Okay? So that's Nick, Steve and
8 Pete. Now, their theory, of course, is that my client had
9 access to that room and my client was messing with the
10 drugs. Well, what could they have done, since they don't
11 have any -- any other good proof, and then when you
12 consider that question, is that good enough -- what other
13 evidence could they have looked for and tried to find that
14 would help you answer that question? Fingerprints. Now,
15 listen, you know, it's -- this is -- this is fascinating.
16 They fingerprint baggies and a box of baggies. Now, I'm
17 going to get to why they didn't fingerprint all the rest of
18 in a minute, but they found -- they talked about it being
19 hard to find fingerprints. They found fingerprints, and
20 the fingerprints aren't my client's. The police officer,
21 Ken Taylor, got up there and said it ran it through the
22 AFIS system. This is a couple -- there's two interesting
23 points about that. The AFIS system is only a South
24 Carolina database. Why didn't they look in North
25 Carolina's records? Why didn't they look in a national

1 database? Okay? Why didn't they? The fingerprint that
2 they are able to use doesn't match anything. And then the
3 solicitor sits down and doesn't ask anymore questions. And
4 then I stand up and go, well, wait a minute, that's not the
5 only analysis you did; you didn't just check AFIS. You, in
6 fact, specifically compared that fingerprint to my client's
7 fingerprint and to the two co-defendants, Dyvonne Jowers
8 and Rico Green. Two comments on that. First, why didn't
9 they ask -- why didn't they ask him that? Is that good
10 enough? We're just not going to mention that we checked my
11 client's fingerprints and it wasn't them. Secondly, it's
12 not his, and it's not the two co-defendants. So somebody
13 else is handling those drugs. Don't get me started on the
14 not testing other things. If you're going to accuse
15 somebody of a serious crime like trafficking in drugs,
16 you're going to tell me you don't have time to dust for
17 fingerprints? I don't want -- I don't want to get in
18 people's face, but here's the thing, it's a desk drawer.
19 If you put your hands down on the desk drawer, there's
20 fingerprints. Those will be there for days. They didn't
21 bother. Why didn't -- when Ken Taylor's out dusting
22 baggies, you know, why didn't they dust the desk drawer?
23 Why didn't they dust the gun? They dare you -- they dare
24 to ask you to convict him of the gun charge without even
25 bothering to fingerprint a gun. Why didn't they

1 fingerprint the scales? Their whole theory is, oh, scales,
2 you got to have scales, you got to weigh out the drugs,
3 that's why he went in the room, go -- why didn't they
4 fingerprint the scales? How hard is that? Why didn't they
5 -- why didn't they -- why didn't fingerprint the file
6 drawer? If I understand it correct, contraband is found in
7 this case in two different file drawers. Why didn't they -
8 - why didn't they fingerprint the file drawer? Why didn't
9 they fingerprint down there where presumably you would've
10 had to move files to get to it? What -- some drugs are
11 found -- and I was unclear whether it was between or behind
12 a wooden file cabinet. Why wouldn't they have tested the
13 wooden file cabinet to see if someone had to move it,
14 someone had to make access to it? Were they too busy? Had
15 they not had time in almost four years to do that? Why did
16 they not do that? Why didn't they fingerprint the video
17 equipment? They seized it for some reason. They thought
18 it was important for some reason. They didn't fingerprint
19 any of that. Why didn't they fingerprint the computer
20 equipment they seized? Presumably they took it because
21 they thought it had evidentiary value and no one bothered
22 to fingerprint it. Why didn't they fingerprint the
23 scissors? I mean -- it just -- I could go on and on. Why
24 didn't they get bank records? Why haven't they done a
25 million things? Here's why. They made up their mind the

1 night it happened. And, listen, I'm not faulting these
2 officers. They got a hard job, but their job is not the
3 same as your job. Their job is to get probable cause to
4 arrest somebody. It's the prosecutors who've got to prove
5 their case beyond a reasonable doubt. They've got to ask -
6 - they've got to meet that answer, answer that question, is
7 that good enough. Is that good enough? Is this good
8 enough? My client stands in the shadow of the penitentiary
9 and he ask you, when you are asked that question is that
10 good enough to say no, this is not good enough, not good
11 enough.

12 THE COURT - All right, thank you, Mr. Lifsey.

13 All right, ladies and gentlemen of the jury I'm
14 going to come down -- I find it's easier and you'll pay
15 attention more if I'm down nearer to you, and of course,
16 since I don't get to try cases as a trial lawyer anymore I
17 welcome any opportunity to come down and address juries
18 again. We're now going to proceed to the stage of the
19 trial where I charge you what the law is. You see I have
20 it in writing. You see it's somewhat thick, but there's
21 very big words. All right? So it's not too much. Just
22 bear with me while I charge you the law. Okay?

23 Madam forelady, members of the jury, you have
24 heard the testimony; you've heard -- you've seen the
25 evidence; you're going to look at the evidence in the -- in

1 your jury room, and you've heard the arguments of both the
2 State and the defendant. I will now explain to you the law
3 that applies in this case. Now, under the constitution and
4 laws of South Carolina, you are the finders of fact in this
5 case. I don't have the right to pass upon the facts or
6 even to express any opinion that I may have as to that,
7 because that's your job. As jurors it is your duty to
8 determine the effect, the value, the weight and the truth
9 of the evidence presented during this trial. Now, as the
10 Trial Judge it has been responsibility to preside over the
11 trial of the case and to rule upon admissibility of certain
12 evidence which may have been offered during the trial. You
13 are to consider only the testimony which has been presented
14 from this witness stand together with any exhibits which
15 have been made part of the record. You will have those for
16 your review in the jury room.

17 Now, I'm charging you the law applicable to this
18 case, and as the presiding Judge I am the sole Judge of the
19 law in this case. It's your duty as jurors to accept as
20 correct and to apply the law as I now state it to you and
21 use that to reach your verdict. Now, the fact that I may
22 instruct you on various subjects in this case must not be
23 taken as indicating my opinion as to what you should find
24 the facts to be or what your verdict should be. And,
25 finally, I charge you that you should not be concerned with

1 what you think the law ought to be but rather what I charge
2 you the law is.

3 Now, you are the sole Judges of the credibility
4 also known as the believability of the witnesses who have
5 testified and of the evidence which has been presented
6 during this trial. In the passing upon credibility, you
7 can take into consideration many things such as the
8 demeanor or the manner in which a witness testified,
9 whether or not the witness had a reason to be biased or
10 prejudiced, whether or not a witness's testimony was
11 contradicted on the one hand or supported and corroborated
12 on the other hand. Now, all these things you consider
13 bearing in mind that you should give the defendant the
14 benefit of any reasonable doubt, and it becomes your duty
15 as jurors then to analyze and to evaluate the evidence and
16 to determine that evidence which convinces you of its
17 truth. And again, I'm reading this -- you'll see as I
18 refer -- as I refer down to the pages, because I'm giving
19 you the law as accurately as possible, so if you see me
20 down here reading, I apologize, I want to make sure I get
21 it absolutely right. Okay? Now, a person who has a past
22 criminal record is competent to testify during a trial. A
23 past record does not affect the ability of that witness to
24 testify. The past record may only be considered by you, if
25 at all, in determining that witness's believability.

1 Remember, you're the sole Judges of the facts in the case,
2 and you determine whether or not any witness is believable
3 or not. Now, I instruct and emphasize that the fact that
4 the defendant did not testify is not a factor to be
5 considered by you in any way in your deliberations and in
6 your consideration on the question of the guilt or
7 innocence of the defendant; it must not be considered by
8 you in any manner whatsoever. A defendant has the
9 constitutional right to remain silent, and the assertion of
10 this right must not be considered by you in your
11 deliberations. So I repeat, under your oath you are to
12 draw no conclusion whatsoever from the fact that the
13 defendant in this case did not testify. The fact that he
14 didn't testify should not even be discussed in the jury
15 room. The burden of proof, as I have stated to you, is on
16 the State. The defendant is not required to prove his
17 innocence. The burden of proof remains on the State to
18 proof guilt beyond a reasonable doubt. There has been
19 evidence presented that witnesses have made prior
20 statements which are not consistent with the witness's
21 present testimony. Now, you can use this evidence to
22 decide whether or not to believe the witness. You may also
23 use evidence of the earlier contradictory statement to
24 determine the truth of that statement or these statements.

1 It's up to you to decide whether or not to believe the
2 earlier statement or the testimony to be given at trial.

3 The rules of evidence ordinarily do not permit
4 witnesses to testify as to opinions or conclusions. This
5 means that normally when a person testifies they testify
6 about what they saw, heard or smelled or something of that
7 nature. However, there is an exception when someone is
8 qualified because of education or experience they are
9 permitted to give an opinion in certain areas if the Court
10 qualifies them that way. This is what we call expert
11 witnesses. There were several expert witnesses in this
12 case. Now, to give an opinion testimony in that area
13 doesn't mean you have to accept the opinion, nor does it
14 mean, ladies and gentlemen, that you have to go along with
15 that opinion, but it's evidence for you to use as you see
16 fit and give it the weight and credibility you believe it
17 deserves. An expert witness's testimony is to be given no
18 greater weight than that of other witnesses simply because
19 that witness is an expert. Further, you're not required to
20 accept an expert's opinion even though that opinion may be
21 -- may not be contradicted.

22 Now, let's talk about two different types of
23 evidence. There are two different types of evidence
24 generally presented during a trial. You have what's called
25 direct evidence and what's called circumstantial evidence.

1 I'm going to give you a law school definition, and then I'm
2 going to explain it to you so you can understand. Okay?
3 Direct evidence directly proves the existence of a fact and
4 does require deduction. It's evidence which immediately
5 establishes the main fact to be proved -- Okay? -- such as
6 eye-witness testimony. Okay? Circumstantial evidence is a
7 proof of a chain of facts and circumstances which indicate
8 the existence of a fact. I'm going to explain it to you.
9 It is evidence which immediately establishes collateral
10 facts from which the main fact may be inferred. Now, if
11 the State relies on circumstantial evidence, all of the
12 circumstances must be consistent with each other, and when
13 taken together the circumstances point conclusively to the
14 guilt of the defendant beyond a reasonable doubt.
15 Circumstantial evidence is based on inference and not on
16 personal knowledge or observation. For example, if on a
17 winter night you look outside and you see brown grass on
18 your lawn and you go to bed and then you wake up the next
19 morning and you see snow and footprints on your lawn, well,
20 first you can infer that it snowed even though you didn't
21 see it snow; secondly, you can infer that somebody walked
22 on your lawn, even though you didn't see them walk on your
23 lawn. See, these are things that you can infer even though
24 you didn't see -- see it actually happen. Okay? Now, the
25 law makes absolutely no distinction between the weight or

1 value to be given to either direct or circumstantial
2 evidence, nor is there a greater degree of certainty
3 required of circumstantial evidence than that of direct
4 evidence. You need to weigh all the evidence in the case,
5 and after weighing all the evidence, if you're not
6 convinced of the guilt of the defendant beyond a reasonable
7 doubt, you must find the defendant not guilty.

8 Now, the fact that the defendant has been
9 arrested, charged and indicted is not evidence in this case
10 and cannot be considered by you as evidence of guilt in
11 this case, nor does it create any presumption or inference
12 of guilt. Again, as I told you at the -- at the outset of
13 the trial, the indictments are simply the formal written
14 instruments which contain a description of the charges made
15 against the defendant.

16 Now, the defendant has pled not guilty to the
17 charges in the indictments and that plea, as you know,
18 places the burden upon the State of South Carolina to prove
19 the defendant guilty. A person charged with committing a
20 criminal offense in South Carolina is never required to
21 prove himself innocent. Now, I charge you, ladies and
22 gentlemen, that it is an important rule of law that the
23 defendant in a criminal trial no matter what the
24 seriousness of the charge may be will always be presumed to
25 be not guilty of the crime for which the indictment was

1 issued unless guilt has been proven by evidence satisfying
2 you of that guilt beyond a reasonable doubt, and I'm going
3 to explain reasonable doubt here shortly. The presumption
4 of innocence doesn't end when you begin your deliberations,
5 but it accompanies the defendant throughout the trial until
6 you reach a verdict. This presumption of innocence -- just
7 bear with me -- imagine a robe of righteousness, just like
8 I'm wearing a robe -- just imagine a robe of righteousness
9 placed about the shoulders of the defendant; that
10 presumption remains with him until it has been stripped
11 from the defendant by evidence satisfying you of his guilt
12 beyond a reasonable doubt. Now, the presumption of
13 innocence is not just mere legal theory. It is not just a
14 legal phrase; it is a substantial right to which every
15 defendant is entitled unless you, the jury, are satisfied
16 from the evidence of the defendant's guilt beyond a
17 reasonable doubt. I've said beyond a reasonable doubt
18 about 40 times, so let me describe and explain to you what
19 a reasonable doubt is. Okay? A reasonable doubt is a
20 doubt which makes an honest sincere, conscientious juror in
21 search of the truth to hesitate to act. Now, proof beyond
22 a reasonable doubt must therefore be proof of such a
23 convincing character that a reasonable person would not
24 hesitate to rely and act upon it in the most important of
25 his or her own affairs. Now, proof beyond a reasonable

1 doubt can also be described as proof that leaves you firmly
2 convinced of the defendant's guilt. Now, ladies and
3 gentlemen, there are very few things we know in this world
4 with absolute certainty, and in criminal cases the law does
5 not require proof that overcomes every possible doubt. If,
6 based on your consideration of the evidence, you are firmly
7 convinced that the defendant is guilty, then you must find
8 him guilty. If on the other hand, you think there's a real
9 possibility that he's not guilty, you must then give him
10 the benefit of the doubt and find him not guilty.

11 Let's talk about intent. In order to establish
12 criminal liability, criminal intent is required. For
13 example, the mental state required to be proven by the
14 State for a particular crime might be purpose, intent,
15 knowledge, recklessness or maybe criminal negligence.
16 Criminal intent must be proven by the State beyond a
17 reasonable doubt. Criminal intent is always a matter that
18 must be determined by the jury from the circumstances
19 surrounding the situation. There is no way to prove intent
20 to a mathematical certainty. There is no way medical
21 science can dissect a person's brain and determine what
22 that person had in mind. So the law says that criminal
23 intent can be inferred from the circumstances which have
24 been shown to exist. This is how you make a determination
25 of whether or not the element requiring intent was present.

1 Criminal intent is a mental state, a conscious wrong-doing;
2 it's up to you to determine what the defendant intended to
3 do based upon the circumstances that have been shown to you
4 by the weight and credibility of the evidence as you deem
5 fit to have existed.

6 Now, mere presence at the scene of a crime is not
7 sufficient to prove somebody guilty of a crime. A
8 defendant's presence where a crime is being committed or
9 mere association with a person who commits a crime does not
10 make a defendant an accomplice or an aider and/or abettor
11 of the person committing the crime. The burden is upon the
12 State of South Carolina to prove every element of the crime
13 charged, and if you find after reviewing all the evidence
14 that the State has proved that the defendant was only
15 present at the scene of the crime and that they have not
16 proved beyond a reasonable doubt any other participation,
17 then you must find the defendant not guilty. The law is
18 that proof of a person at the scene a crime is not
19 sufficient to find someone guilty.

20 Now, let's talk about the specific crimes that
21 have been charged. Okay? Trafficking in cocaine base 10
22 to 28 grams. The defendant is charged with trafficking in
23 cocaine base 10 to 28 grams. The State must prove beyond a
24 reasonable doubt that the defendant knowingly sold,
25 manufactured, cultivated, delivered, purchased, brought

1 into this State, provided financial assistance or otherwise
2 aided, abetted, attempted or conspired to sell,
3 manufacture, cultivate, deliver, purchase or bring into
4 this State, was knowingly in actual or constructive
5 possession, knowingly attempted to become in actual or
6 constructive possession of cocaine base. Let me catch my
7 breath after that. Okay? The State must also prove beyond
8 a reasonable doubt that the amount of the cocaine base was
9 10 grams or more but less than 28 grams. Trafficking in
10 cocaine 28 to 100 grams. The defendant is charged with
11 trafficking in cocaine 28 to 100 grams. The State must
12 prove beyond a reasonable doubt that the defendant
13 knowingly sold, manufactured, cultivated, delivered,
14 purchased, brought to this State, provided financial
15 assistance or otherwise aided, abetted, attempted or
16 conspired to sell, manufacture, cultivate, deliver,
17 purchase or bring into this State, was knowingly in actual
18 or constructive possession, knowingly attempted to become
19 in actual or constructive possession of cocaine. The State
20 must also prove beyond a reasonable doubt that the amount
21 of the cocaine or any mixture containing cocaine was 28
22 grams or more, but less than 100 grams. Now, if you
23 determine that the State did not prove beyond a reasonable
24 doubt that the amount of cocaine was not 28 grams or more,
25 but less than 100 grams, then you should then consider.

1 whether or not the State has proven beyond a reasonable
2 doubt that the amount of cocaine was 10 grams or more but
3 less than 28 grams. That's what you call a lesser included
4 offense, and I will describe that to you when I go over the
5 verdict form with you. Okay? Now, the defendant is
6 charged with possession with intent to distribute
7 marijuana. The State must prove beyond a reasonable doubt
8 that the defendant possessed marijuana with the intent to
9 distribute it. Now, let's talk about possession. To prove
10 possession, the State must prove beyond a reasonable doubt
11 that the defendant had both the power and the intent to
12 control the disposition or use of the marijuana.
13 Possession may be either actual or constructive. Okay?
14 Actual possession means that the drugs were in the actual
15 physical custody of the defendant. Constructive possession
16 means that the defendant had dominion and control or the
17 right to exercise dominion and control over either the drug
18 itself or the property on which the drugs were found. Now,
19 as I talked to you earlier, mere presence at the scene
20 where the drugs are found is not enough to prove
21 possession. The defendant's knowledge and possession may
22 be inferred when a substance is found on the property under
23 the defendant's control. However, this inference is simply
24 an evidentiary fact for you the jury to consider along with
25 all the other evidence in the case, and it must be given

1 the weight you decide it should have. Two or more persons
2 may have joint possession of a drug. The State must also
3 prove beyond a reasonable doubt that the defendant intended
4 to distribute the marijuana. Now, distribute means to
5 deliver, other than by administering or dispensing, a drug.
6 Intent can be shown by -- I described to you earlier what
7 criminal intent is -- but as it relates to this specific
8 charge, intent may be shown by acts and conduct of the
9 defendant and other circumstances from which you may
10 naturally and reasonably infer intent.

11 I'm almost through.

12 In determining whether the defendant had the
13 intent to distribute the marijuana, you may consider the
14 circumstances surrounding the defendant's alleged
15 possession, and you may consider the amount of the
16 substance alleged to have been possessed, the manner in
17 which it was allegedly possessed, the place where it was
18 allegedly possessed and other factors which you consider to
19 be important. You must find that the defendant did not
20 intend to have the marijuana solely for his own use. Now,
21 possession of more than 28 grams or one ounce of marijuana
22 creates an inference that the defendant possessed the
23 marijuana with intent to distribute it. This inference
24 doesn't relieve the State from proving beyond a reasonable
25 doubt that the defendant had the intent to distribute it.

1 It's simply an evidentiary fact to be taken into
2 consideration by you, along with the other evidence, and to
3 be given the weight you decide it should have.

4 Possession of a schedule I, II, III, IV or V
5 controlled substance. The defendant is also charged with
6 possession of Hydrocodone, a schedule I, II, III, IV or V
7 controlled substance. The State must prove beyond a
8 reasonable doubt that the defendant knowingly or
9 intentionally possessed this scheduled substance.
10 Hydrocodone is a scheduled substance under the law.
11 Knowingly means with knowledge, consciously, not
12 accidentally. Intentionally means willfully, intending the
13 result which actually occurs, not accidentally or
14 involuntarily. Intent may be shown by acts and conduct of
15 the defendant and other circumstances from which you may
16 naturally and reasonably infer intent. Now, to prove
17 possession the State must prove beyond a reasonable doubt
18 that the defendant had both the power and the intent to
19 control the disposition or use of the Hydrocodone.
20 Possession may be actual or constructive. I have
21 previously defined to you what actual and constructive
22 possession is. Now, the defendant is also charged with
23 possession or display of a firearm during the commission of
24 a violent crime. The State must prove beyond a reasonable
25 doubt that the defendant was in possession of a firearm or

1 visibly displayed what appeared to be a firearm during the
2 commission of a violent crime. A firearm means any weapon
3 which will or is designed to or may be readily converted to
4 expel a projective. In order to find the defendant guilty
5 of possession of a weapon during the commission of a
6 violent crime, you must first find the defendant guilty of
7 either committing a violent crime or attempting to commit a
8 violent crime. Trafficking in cocaine base or trafficking
9 in cocaine are violent crimes under the law. The State
10 must prove beyond a reasonable doubt that the weapon
11 furthered, advanced or helped in the commission of the
12 crime.

13 Now, let me say something about deliberations.
14 We're nearing the end. Okay? Y'all can relax; take a
15 breath. Let me say something about deliberations. The
16 word deliberation is used and is defined as careful
17 consideration, weighing up with a view to a decision. Now,
18 the genius of our jury system, ladies and gentlemen, is
19 that it allows 12 good people, both men and women from
20 differing backgrounds, life experiences and perspectives to
21 consider the evidence, talk about it and ultimately reach a
22 verdict. The task of a juror is called deliberations for a
23 reason. You, the jurors, are to consider the evidence in
24 this case carefully and deliberately. You are to discuss
25 it in a calm, thorough and courteous manner. Now,

1 remember, you are not partisans or advocates for either
2 side, favoring one side over the other. You are the Judges
3 of the facts. Your sole duty is to sort through all the
4 evidence and information you've received in this trial and
5 find the truth from the evidence received in this
6 courtroom. The supreme law of our land, the United States
7 Constitution affords everyone their day in Court and a fair
8 trial. So this case is very important to both sides,
9 because it is their day. Now, I charge you to listen to
10 the views of your fellow jurors, carefully consider their
11 view points, and courteously discuss the evidence.
12 Remember, you're doing something deliberately; you're not
13 in a big hurry; we've called in lunch for you; we're going
14 to feed you lunch. Okay? And you are tasked with a duty
15 of utmost importance.

16 Now, in conclusion, you've been selected by both
17 the State and the defense to be fair and impartial jurors.
18 It is your duty then in your deliberations to determine the
19 truth in this case, giving the defendant the benefit of
20 every reasonable doubt on these charges, and from the facts
21 which you determine to be true, you will take and apply the
22 law which I have just given to you and thus arrive at your
23 verdict which speaks the truth in this case. I've told you
24 the standards that you have to apply to the charges in
25 these indictments. You've heard the evidence and now

1 you've heard the law. Whatever your verdict is as to the
2 indictments, guilty or not guilty, Madam Forelady, you will
3 indicate it by marking the jury's decision in the
4 appropriate blank on this verdict form. You will then sign
5 and date the verdict form. I'm fixing to go over it with
6 you. Okay? Remember, that although the forelady is the
7 only one who can write on this verdict form, it's not her
8 verdict alone. The verdict has to be unanimous. That
9 means all 12 of you have to agree on what the verdict is.
10 Now, Madam Forelady, you're not authorized to write on this
11 verdict form until you've agreed what the verdict -- all of
12 you have agreed on what the verdict should be.

13 Now, let me go over the verdict form with you.
14 They're broken down -- it's a three-page document; it's
15 broken down as to each charge. Okay? The first charge --
16 just in order. The first case was 2011-GS- --- GS stands
17 for general sessions -- 29 stands for Lancaster County --
18 that's Lancaster County's code -- and 1278 -- that's the
19 number of the case that was brought during that year.
20 Okay? That's all these numbers mean. And it's going to
21 say, we, the jury unanimously find the Defendant, James
22 Nicholas Starnes, concerning the offense of trafficking in
23 cocaine base 10 to 28 grams either not guilty or guilty.
24 Okay? Same thing on the trafficking in cocaine 28 to 100
25 grams, but on that one you do have an option of finding him

1 guilty, if all 12 of you agree, of the lesser offense of
2 trafficking in cocaine 10 to 28 grams. Okay? Same thing
3 on number three, either not guilty or guilty, number four,
4 now if you find -- if all 12 of you unanimously agree as to
5 a guilty verdict on either one of the trafficking charges,
6 that's when you will answer number five. Okay? That's the
7 possession of the weapon charge. Okay? And then you'll
8 sign it and date it at the end. Okay?

9 Now, ladies and gentlemen, I'm going to send you
10 to your jury room, but don't begin to discuss the case
11 until you have received all the exhibits along with this
12 verdict form. Once you get this verdict form and all the
13 exhibits, that will be your signal to finally begin to talk
14 about this case. Okay? And once you begin your
15 deliberations, you will deliberate until you have reached a
16 verdict, at which time you'll knock on the door, let the
17 bailiff know and we'll bring you out here to receive it.
18 Okay? So y'all may retire to your jury room right now.

19 (WHEREUPON, JURY EXITS THE COURTROOM.)

20 THE COURT - Any exceptions to the charge?

21 MR. KNIGHT - None from the State, Your Honor.

22 MR. LIFSEY - Just the prior two matters that I
23 mentioned earlier. For the record, I object to your charge
24 that two or more persons may possess a drug, and I had
25 requested simple possession of marijuana as a lesser ---

1 THE COURT - All right, those objections are
2 overruled.

3 MR. LIFSEY - Thank you, Your Honor.

4 THE COURT - All right, anything else? Y'all come
5 look at the evidence. Y'all come -- here's the verdict
6 form. Put that on top. Hand her the verdict form.

7 (WHEREUPON, COUNSEL REVIEWS EVIDENCE AND
8 DISCUSSION IS HELD REGARDING EVIDENCE WHICH IS NOT
9 REPORTED.)

10 (WHEREUPON, JURY DELIBERATES AT 12:34 P.M.)

11 (WHEREUPON, COURT IN RECESS AWAITING VERDICT.)

12 (WHEREUPON, NOTE FROM JURY AT 1:12 P.M.)

13 (WHEREUPON, NOTE MARKED AS COURT'S EXHIBIT NUMBER
14 1.)

15 THE COURT - Bring the jury in.

16 (WHEREUPON, JURY ENTERS THE COURTROOM)

17 THE COURT - All right, all members of the jury
18 are present. Madam Forelady, I received your note. I
19 wanted to get you out here because I didn't want y'all
20 deliberating any further until I answer these questions,
21 because I wanted to make sure you deliberate with the
22 evidence and testimony presented in this courtroom. Okay?
23 And the defendant's not here; he's out eating lunch. All
24 right? So that's why he's not in here right now. I know
25 y'all are eating; I think the pizza just got here, so sorry

1 for the delay. Anyway, so I wanted to go ahead and make
2 sure you got here to answer your questions.

3 The question is: -- it's been marked as Court's
4 Exhibit 1 -- How long was Starnes' -- How long was Starnes
5 manager at the bar? My answer to that question is, you
6 should only consider the testimony and evidence offered
7 during the trial of this case. Okay? The next question:
8 How often did the other two managers come to the bar? My
9 response to that: Only consider the testimony and evidence
10 offered in this case. Number 3: When was the last time
11 the other manager came to the bar? My final response:
12 Only consider the testimony and evidence offered during the
13 trial of this case. Okay? Please return to your
14 deliberations. Thank you very much.

15 (WHEREUPON, JURY EXITS THE COURTROOM AND FURTHER
16 DELIBERATES AT 1:17 P.M.)

17 THE COURT - Anything from the defense?

18 MR. LIFSEY - No, sir.

19 THE COURT - Anything from the State?

20 MS. COLLINS - No, sir.

21 THE COURT - All right, we're in recess.

22 (WHEREUPON, COURT IN RECESS AWAITING VERDICT)

23 THE COURT - All right, thank you very much. Come
24 back to order. It's my understanding we have a verdict.
25 You can bring the jury in.

1 BAILIFF - Jury coming in.

2 (WHEREUPON, JURY RETURNS TO THE COURTROOM WITH
3 VERDICT AT 3:22 P.M.)

4 THE COURT - All right, all members of the jury
5 present. Madam Forelady, it's my understanding that the
6 jury has reached a verdict. Is that correct?

7 FORELADY - Yes, sir.

8 THE COURT - Is the verdict unanimous?

9 FORELADY - Yes, sir.

10 THE COURT - All right, you may hand it to the
11 clerk, please.

12 (WHEREUPON, THE VERDICT IS HANDED UP TO THE COURT
13 AND THEN TO THE CLERK)

14 THE COURT - All right, Mr. Clerk, you may publish
15 the verdict.

16 CLERK - Yes, sir, Your Honor.

17 State of South Carolina versus James Nicholas
18 Starnes, Defendant, we the jury unanimously find the
19 Defendant, James Nicholas Starnes, concerning the offense
20 of trafficking in cocaine base 10 to 28 grams not guilty.

21 We the jury unanimously find the Defendant, James
22 Nicholas Starnes, concerning the offense of trafficking in
23 cocaine 28 to 100 grams, Indictment Number 2011-GS-29-1279,
24 guilty as to the lesser offense of trafficking in cocaine
25 10 to 28 grams.

1 We the jury unanimously find the Defendant, James
2 Nicholas Starnes, concerning the offense of possession with
3 intent to distribute marijuana guilty.

4 We the jury unanimously find the Defendant, James
5 Nicholas Starnes, concerning the offense of possession of
6 schedule I, II, III, IV, V, controlled substance guilty.

7 We the jury unanimously find the Defendant, James
8 Nicholas Starnes concerning the offense of possession or
9 display of firearm or knife during the commission of a
10 violent crime guilty.

11 I certify this decision was the unanimous
12 decision of the jury, Rhonda W. Steele, Madam Forelady,
13 June 3rd, 2015.

14 Ladies and gentlemen of the jury, if this be your
15 verdict, say so you all by the raising of your right hands.

16 (WHEREUPON, JURORS RAISE THEIR RIGHT HANDS)

17 CLERK - Let the record reflect all jurors raised
18 their right hands.

19 THE COURT - All right, ladies and gentlemen of
20 the jury, thank you very much for your jury service. I
21 need you to call this evening after 6:00 p.m. to find out
22 what instructions are as tomorrow. I will tell you based
23 upon the verdict I will be sentencing Mr. Starnes here
24 momentarily. You're more than welcome to stay for that.
25 Of course, you do not have to stay if you do not wish to.

1 Your service has ended in this case, but call back tonight.
2 If you do wish to stick around for sentencing, you may just
3 continue to sit in the jury box, but again, if you don't
4 want to, you can leave now. Thank you very much for your
5 service in Lancaster County and to the State of South
6 Carolina.

7 (WHEREUPON, SOME JURORS EXIT THE COURTROOM; SOME
8 REMAIN IN THE JURY BOX)

9 THE COURT - All right, Solicitor, you're
10 preparing the sentencing sheets?

11 MS. COLLINS - Yes, sir.

12 THE COURT - Did you have some kind of
13 preliminarily prepared?

14 MS. COLLINS - We did, Your Honor.

15 THE COURT - Okay, Mr. Lifsey?

16 MR. LIFSEY - Just for the purpose of the record,
17 Judge, I would move for a new trial based on the same
18 arguments I've made in my motion for directed verdict which
19 you previously ruled upon.

20 THE COURT - Right. That motion is denied.

21 MR. LIFSEY - Thank you. If I could have a moment
22 to speak with my client and his family?

23 THE COURT - Yes, sir.

24 (WHEREUPON, BRIEF PAUSE)

1 THE COURT - Now, ladies and gentlemen, I'll tell
2 you what's going to happen since y'all have never seen this
3 before. Generally, when anybody pleads guilty or is found
4 guilty, sentencing sheets are handed up to the Court and
5 that's what I have to fill out as the Presiding Judge to
6 determine what the appropriate sentence should be for the
7 individual either being -- either being found guilty or
8 pleading guilty, and the State -- the solicitor's office is
9 responsible for filling out the sentencing sheets and
10 there's certain information which sometimes takes a little
11 while to fill out, so that's what the reason for the delay
12 is right now, but we should be done here within the next
13 five, 10 minutes. Okay? Thank you.

14 MS. COLLINS - Judge, we'll hand them up if you'll
15 check behind us though to make sure ---

16 THE COURT - Okay. We'll wait on Mr. Lifsey
17 before we proceed with the sentencing.

18 MS. COLLINS - Yes, sir.

19 THE COURT - You can go ahead and hand them up
20 though, if you would.

21 (WHEREUPON, SENTENCING SHEETS HANDED UP TO THE
22 COURT.)

23 MR. LIFSEY - May I see those?

24 MS. COLLINS - Oh.

1 MR. LIFSEY - If I could just see them for one
2 second.

3 (WHEREUPON, SENTENCING SHEETS HANDED TO MR.
4 LIFSEY FOR REVIEW)

5 (WHEREUPON, PAUSE IN RECORD)

6 Mr. LIFSEY - Your Honor, do y'all want us to
7 approach up here, or do you want to handle this matter from
8 the table?

9 THE COURT - However you want to -- you can bring
10 him up here.

11 All right, well, first let me hear from the State
12 as to sentencing.

13 MS. COLLINS - Your Honor, I would like to state
14 his prior record for the Court and then Solicitor Knight
15 will be heard as to sentencing.

16 THE COURT - Okay.

17 As Your Honor heard previously during a matter
18 outside the presence of the jury, the defendant's currently
19 on probation out of York County for a 2014 conviction which
20 he pled guilty to to forgery. In addition to that, he has
21 other charges that I'll state as follows in terms of the
22 convictions: He was convicted in 1998 of shoplifting in
23 Mecklenburg (sic), North Carolina. In 1998 he was
24 convicted of injury to personal property. This is -- all
25 of these are in North Carolina. Notably, in 2001 he was

1 convicted in North Carolina of maintaining a dwelling or a
2 place or a vehicle for the sale of controlled substances.
3 He also has a possession of drug paraphernalia conviction
4 from 2001 in North Carolina, a conviction for communicating
5 threats in 2001 in North Carolina, intoxicated and
6 disruptive conviction in North Carolina, driving while
7 license revoked 2005 in North Carolina, and habitual
8 impaired driving 2007 in North Carolina. That is the
9 defendant's prior record.

10 THE COURT - Okay. Anything further from the
11 State as to sentencing?

12 MR. KNIGHT - Yes, Your Honor, just a couple of
13 things. The trafficking in cocaine 10 to 28 grams does
14 carry a minimum three years to 10 years, and we would ask
15 based on that charge and the fact that there was a firearm
16 found with this large amount of cocaine, that we would ask
17 for a significant amount of incarceration for this offense.
18 There's also marijuana that carries up to five years, PWID
19 marijuana, and the firearm charge which also carries up to
20 five years. So we would ask that at least six years
21 incarceration would be proper for all these charges.

22 THE COURT - All right, thank you, Solicitor.

23 MS. COLLINS - Thank you.

24 THE COURT - Mr. Lifsey?

25 MR. LIFSEY - May it please the Court, Your Honor.

1 THE COURT - Yes, sir.

2 MR. LIFSEY - My client's 34 years old. He's from
3 Charlotte originally. He's got a lot of family who's out
4 here. I want to tell you who's here right now. I know
5 there's at least two other family members that have been in
6 and out over the course of this week. His wife is
7 Maryellen Starnes. Raise your hand so the Judge can see
8 you. That's his wife. Amber Fields is his sister; Tiffany
9 Wilson is here who is his sister. His -- Christopher
10 Taylor, his brother-in-law is here. His father-in-law and
11 his sister-in-law may come back in the courtroom in a
12 moment. I mean I think everybody's pretty emotional by
13 this. He's from Charlotte originally. He's got two boys,
14 14 and four years old. On the one hand the solicitor is
15 correct that he certainly has some criminal record. I will
16 tell you that as best I can tell, since these charges in
17 2011, really the only thing I think he's gotten is that
18 forgery up in York County for which a Judge felt it
19 appropriate to place him on probation. Your Honor,
20 obviously the jury's made their decision. I don't question
21 jury's decisions and I'm not going to start now questioning
22 them. I will tell you that I don't think this is a case
23 where a defendant was wasting anybody's time by going to
24 trial. I think there were serious questions. I think you
25 can tell by the fact that the jury deliberated as long as

1 they did, the fact that they found him not guilty of some
2 of the charges and reduced charges as to the -- they found
3 him -- of the two most serious charges, they found him not
4 guilty of one and a reduced charge of the other. I say
5 that all to point out to you that I don't think -- and I
6 know the Court doesn't punish people for going to trial --
7 but I do tell you that I don't think this is a case where
8 the client was jerking the system around -- Okay? -- or
9 just wasting everyone's time. Your Honor, obviously the
10 Court -- there's a mandatory minimum you have to give him.
11 I'd ask the Court to consider sentencing him near that
12 mandatory minimum. He's got to get at least three years.
13 It is a violent crime. It is not a -- it's not 85 percent,
14 but it is a sentence for which his ability to earn work
15 credits, his ability -- he's not eligible -- won't be
16 eligible for work release programs in the department of
17 corrections because of its -- because of the trafficking
18 status as a violent crime. I would ask the Court to
19 consider sentencing him to the lower end of that range. I
20 would like to give the opportunity to any one in his family
21 if they -- they're pretty emotional about this thing, but
22 if they feel up to it, I'd like to give them a chance to
23 say a word or two to you about -- about their relative and
24 I'd like you to hear from him if he has anything to say to
25 you, Judge.

1 THE COURT - Sure. I'll be glad to hear from
2 anybody.

3 MR. LIFSEY - If you do, come here, state your
4 full name on the record so that the court reporter can hear
5 you.

6 MS. WILSON - My name is Tiffany Elaine Wilson,
7 and that's my brother. He has two kids of his own, and he
8 also helps with mine, because he -- and that's the only man
9 I have left in my life. My dad -- my brother is the only
10 one that's left. He is loved so much by all of us. Taking
11 him away is not only taking him from his children, but it's
12 taking away from mine as well. I just want him to know
13 that he's loved so much. It's affecting everybody, not
14 just him.

15 THE COURT - Thank you, ma'am.

16 COURT REPORTER - Judge, I didn't get her name.

17 MR. STARNES - Tiffany Wilson.

18 MR. LIFSEY - Tiffany Elaine Wilson.

19 State your name, please.

20 MS. STARNES - I'm Maryellen Starnes. I'm James'
21 wife. He is finally working and, you know, to bring home
22 some extra money, and was really caught up at the wrong
23 place at the wrong time. He is an innocent person. We've
24 had our faults when we were younger, but who hasn't, you
25 know? Those charges from back then, ten years ago, should

1 not even have been submitted, but I have nobody else to
2 help me with our children, but I please beg you to consider
3 lowering his sentence as much as possible. Thank you.

4 MR. LIFSEY - Thank you, Judge.

5 THE COURT - Thank you, ma'am.

6 MR. LIFSEY - If Mr. Starnes wants to say
7 anything, I'd like you to hear from him if he's able.

8 THE COURT - Anything, sir?

9 MR. STARNES - It's just the fact that the guy I
10 was working for, like my wife said, I was at the wrong
11 place at the wrong time. I've always admitted whenever I
12 was wrong. I'd never have taken this case to trial, never.
13 And now I hate that I did do what these officers wanted me
14 to do. So -- and I just love my family, and I'm sorry.

15 THE COURT - Thank you, sir. The sentencing range
16 for the trafficking charge is a minimum of three years up
17 to a maximum of 10 years. You know, I've presided over the
18 trial, obviously, and I heard the evidence that the State
19 had. You know, for whatever it's worth, I thought the
20 evidence was pretty strong as -- from a constructive
21 possession standpoint, and, you know, that does concern the
22 Court that you would be around or have that quantity of
23 cocaine there, and, of course, now the jury did find you
24 not guilty of the 50 grams, the total allotment, so the

1 credibility of Mr. Green was obviously an issue there, but,
2 you know, 26 grams is a lot of cocaine.

3 All right, on Indictment 11-GS-29-1279, the
4 sentence of the Court is five years, five years on the PWID
5 charge, six months on the Hydrocodone charge and five years
6 on the weapon's charge; they all run concurrent.

7 Good luck to you. Take him into custody.

8 Thank you, ladies and gentlemen.

9 (END OF TRANSCRIPT)

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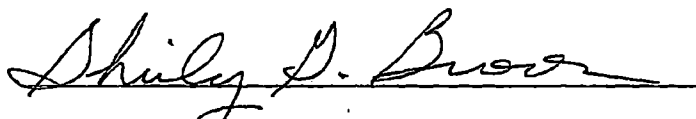
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 373 pages consisting of Volumes I and II is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. James Nicholas Starnes, as taken by me in the Court of General Sessions of the Sixth Judicial Circuit on June 2 and 3, 2015, and provided by me this the 22nd day of June, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

FORM 5

STATE OF SOUTH CAROLINA)

County of LANCASTER)JAMES NICHOLAS STRANGE)

Full name and prison number (if any) of Applicant)

SCDC # 364264)

v.)

State of South Carolina, County of)
LANCASTER, SOUTH CAROLINA)
DEPT. OF CORRECTIONS)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

2016 CP 29 00373

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention KIRKLAND CORRECTIONAL INST 4344 BEARD
RIVER ROAD COLUMBIA SC E-A2-15
2. Name and location of Court which imposed sentence LANCASTER COURT OF
GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) RICO GREEN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS 29-1279 (CONVICTED OF LESSER OFFENSE, 2011 GS 290 1280
 - (b) 2011 GS 290 1281, 2011 GS 290 1282

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CLERK OF COURT
LANCASTER

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) JUNE 3RD 2015 FIVE YEARS ALL TERMS CONCURRENT
- (b) JUNE 3RD 2015 Possession of a Weapon Five Years Not Concurrent
- (c) JUNE 3RD 2015 Poss of Conv Sub. Emphs, Abuse Mani - 6 Months
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty TRIAL
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) WAS NOT AWARE OF ANY LEGAL ERRORS AT THE TIME
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (c) SEE ATTACHMENT
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (c) SEE ATTACHMENT
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

_____ *no* _____

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? YES
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. MIKE LIFSEY

 ii. _____

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

A REDUCTION TO (3) YEARS, A VACATION OF
CONVICTION AND SENTENCE & NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, JAMES STARNES, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Starnes

SWORN to and subscribed before me this 23
 day of March, 2016.

[Signature] (L.S.)
 Notary Public

My Commission Expires

DEVERLE ALBERT
 Notary Public, State of South Carolina
 My Commission Expires May 3, 2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JAMES STARNES, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James Starnes
Applicant

SWORN or affirmed to and subscribed before me this

23 day of March, 2016.

[Signature]
Notary Public

My Commission Expires:

DEVERLE ALBERT
Notary Public, State of South Carolina
My Commission Expires May 3, 2023

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LANCASTER, SC

ATTACHMENT

"HISTORICAL BACK GROUND"

THE APPLICANT WAS INDICTED FOR DRUGS TRAFFICKING IN COCAINE IN VIOLATION OF STATE STATUTE 44-53-0370 (E)(2)(b)1 AND FOUND GUILTY OF A LESSER INCLUDED OFFENSE AND SENTENCE TO FIVE YEARS SEE TRP. 5 LINES (2) (3)

THE APPLICANT WAS INDICTED FOR MANUF. POSS OF OTHER SUB IN SCH I, II, III. OR FLUNATRAZEPAM OR ANALOGUE WITH 1ST OFFENSE AND WAS CONVICTED AS INDICTED AND SENTENCE TO FIVE YEARS FOR VIOLATION OF 44-53-0370 (b) (2)

THE APPLICANT WAS INDICTED FOR DRUGS/POSSESSION OF OTHER CONTROL SUBSTANCE IN SCHED I TO V 1ST OFFENSE AND WAS CONVICTED AS INDICTED AND SENTENCE TO SIX MONTHS.

THE APPLICANT WAS ALSO INDICTED FOR POSSESSION OF A WEAPON DURING A VIOLENT CRIME IN VIOLATION OF 16-23-490 AND WAS FOUND GUILTY BY A JURY AND SENTENCE TO FIVE YEARS NON-VIOLENT IN PRONOUNCING SENTENCE AS REFLECTIVE OF THE TRIAL TRANSCRIPT OF RECORD PAGE 12 LINES 18-21 THE COURT STATED. "ALL RIGHT, ON INDICTMENT 11-GS-29-1279 THE SENTENCE OF THE COURT IS FIVE YEARS."

②

FIVE YEARS ON THE PWID CHARGE SIX MONTHS MONTHS ON THE HYDROCODONE CHARGE AND FIVE YEARS ON THE WEAPONS CHARGE. THEY ALL RUN CONCURRENT NON-VIOLENT ON THE WEAPON CHARGE SEE SENTENCE SHEET

APPLICANTS CLAIM

10A THE DEPARTMENT OF CORRECTIONS HAS ALTERED my SENTENCE AS HANDLED DOWN BY THE COURT AND IS TRYING TO MAKE APPLICANT DO A TOTAL OF FIVE YEARS DAY FOR DAY.

10B THE APPLICANTS SENTENCE IS ILLEGAL AND EXCEEDS THE STATUTORY AMOUNT AUTHORIZED BY LAW

10C THE DEPARTMENT OF CORRECTION HAS ALSO ALTERED APPLICANTS SENTENCE AND IS TRYING TO MAKE THE APPLICANT DO A HUNDRED PERCENT OF FIVE YEARS ON THE WEAPONS CHARGE.

LAW ANALYSIS I

THE OMNIBUS CRIME REDUCTION AND SENTENCING ACT OF 2010 AMENDED SEVERAL SECTIONS COVERING CONTROLLED SUBSTANCES TO ADD THE FOLLOWING LANGUAGE

(B)

③

NOTWITHSTANDING ANY OTHER PROVISION OF LAW. A PERSON CONVICTED AND SENTENCED FOR A FIRST OFFENSE OR SECOND OFFENSE MAY HAVE THE SENTENCE SUSPENDED AND PROBATION GRANTED AND IS ELIGIBLE FOR PAROLE, SUPERVISE FURLOUGH, COMMUNITY SUPERVISION, WORK CREDITS, WORK RELEASE AND GOOD CONDUCT CREDITS.

THE COURT HELD THAT THE PLAIN LANGUAGE OF THE OMMBUS CRIME REDUCTION AND SENTENCING ACT OF 2010 ALONG WITH THE LEGISLATIVE INTENT TO CONSERVE TAXPAYERS DOLLARS BY ALLOWING EARLIER RELEASE DATES FOR INMATE CONVICTED OF A LESS SERIOUS OFFENSE CITING FOWLER V SCDC UNPUBLISHED OPINION 2015-UP-517 AND BOWEN V SCDC OPINION NO 5361.

THE RECORD WOULD REFLECT THAT APPLICANT IS A FIRST TIME OFFENDER AND IS ENTITLED TO THESE BENEFITS AS A MATTER OF LAW.

LAW ANALYSIS II

THE TRANSCRIPT OF RECORD LINES 1-18 ON PAGE 11 WOULD REFLECT THAT COUNSEL FOR APPLICANT TRIED TO OBTAIN THE MANDATORY MINIMUM OF THREE (3) YEARS BUT COMMITTED ERROR BY NOT FAMILIARIZING HIMSELF WITH THE

(4)

CRIME REDUCTION AND SENTENCING ACT OF 2010 BY STATING THAT APPLICANT WOULD BE ELIGIBLE TO EARN WORK CREDITS IN THE DEPARTMENT OF CORRECTION BECAUSE OF THE TRAFFICKING STATUS AS A VIOLENT CRIME.

THE RECORD WOULD REFLECT THAT APPLICANT WAS NOT CONVICTED OF THE VIOLENT OFFENSE OF TRAFFICKING ENUMERATED IN SECTION 16-1-60 WHICH LIST ALL VIOLENT OFFENSES, BUT WAS CONVICTED OF THE LESSER INCLUDED OFFENSE.

THEREFORE A GENUINE ISSUE EXISTS WHETHER THE APPLICANT WAS UNLAWFULLY SENTENCED. BECAUSE THE PRECISE QUANTITY OF DRUGS INVOLVED OVER 10 POUNDS OF MARIJUANA OR 10 GRAMS OF COCAINE IS PERTINENT NOT TO THE CLASSIFICATION OF TRAFFICKING BUT TO THE MINIMUM PENALTY PRESCRIBED CITING STATE V. WILSON SC 1998) 315 SC 289, 483 SE2d 864.

THEREFORE APPLICANT WAS ENTITLED TO THE MANDATORY MINIMUM OF THREE YEARS. SENTENCE

THE APPLICANT WAS NOT INDICTED FOR A VIOLATION OF 44-53-0370 (c) (2) (a) AND BASED UPON INFORMATION AND BELIEF A LESSER INCLUDED OFFENSE OF TRAFFICKING IS POSSESSION WITH INTENT TO DISTRIBUTE.

Law Analysis III

⑤

THE RECORD WOULD REFLECT THAT THE APPLICANT WAS SENTENCE TO FIVE YEARS NON VIOLENT FOR POSSESSION OF A WEAPON. PRIOR TO THE CRIME REDUCTION AND SENTENCING ACT AN INMATE CHARGE WITH A NO PAROLE OFFENSE WAS REQUIRED TO DO EIGHTY FIVE PERCENT OF HIS SENTENCE

FOLLOWING EFFECTIVE DATE OF OMNIBUS CRIME REDUCTION AND SENTENCING REFORM ACT EVEN THOUGH THE ACT DID NOT AMEND DEFINITION OF THE TERM 'NO PAROLE OFFENSE' IN STATUTES DESCRIBING TYPES OF OFFENSES FOR WHICH FOR WHICH OFFENDER WAS NOT ELIGIBLE FOR PAROLE WHERE THE ACT AMENDED SEPERATE STATUTORY PROVISION TO INDICATE, 'NOTWITHSTANDING ANY OTHER PROVISION OF LAW'. A PERSON CONVICTED AND SENTENCE AS FIRST OR SECOND OFFENDER PURSUANT TO THAT SUBSECTION WAS ELIGIBLE FOR PAROLE REPEALING THOSE SECTIONS BY IMPLICATION SEE BOLIN V SCDC OPINION NO 5361 LIKE APPLICANT BOLIN ALSO HAD AND CONVICTED OF A WEAPONS CHARGE AND WAS SENTENCE TO ONE YEAR THEREFORE APPLICANT PRAYER THAT P.C.R BE GRANTED WITHIN THE INTEREST OF JUSTICE

(E)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	SIXTH JUDICIAL CIRCUIT
	)	
James Nicholas Starnes, #364264,	)	2016-CP-29-0373
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed on March 31, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. Applicant was indicted by the November 2011 term of the Lancaster Grand Jury for one count of trafficking in cocaine, 28-100 grams (2011-GS-29-1279), one count of possession with intent to distribute marijuana (2011-GS-29-1280), one count of possession of a schedule I, II, III, IV, and V controlled substance (2011-GS-29-1281), and one count of possession or display of a firearm or knife during the commission of a violent crime (2011-GS-29-1282). Mike Lifsey, Esquire, represented Applicant. On June 3, 2015, Applicant pled guilty as indicted to possession with intent to distribute marijuana, possession of a schedule I, II, III, IV, and V controlled substance, and possession or display of a firearm or knife during the commission of a violent crime. Applicant also pled to the lesser included offense of trafficking in cocaine, 10-28 grams. The Honorable Brian Gibbons sentenced Applicant to a five (5) years' for each charge of trafficking in cocaine, possession with intent to distribute marijuana, and possession

or display of a firearm or knife during the commission of a violent crime. Applicant was sentenced to six (6) months for the possession of a schedule I, II, III, IV, and V. controlled substance. The sentences are set to run concurrently. Applicant did not appeal his convictions or sentences.

II.

In his application for post conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "The Department of Corrections has altered my sentence as handed down by the court and is trying to make applicant do a total of five years day for day." (sic)
2. "The applicant's sentence is illegal and exceeds the statutory amount authorized by law." (sic)
3. "The Department of Corrections has also altered Applicant's sentence and is trying to make the Applicant do a hundred percent of five years on the weapons charge." (sic)

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 *et seq*; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. For the purpose of this Return, Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant's second allegation is that his sentence was illegal. Respondent submits that this allegation is entirely without merit. Applicant's sentence was well within statutory limits. A trial

court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits.

The record shows that before sentencing Applicant the sentencing judge was apprised of all the facts related to Applicant's convictions as well as the Applicant's prior criminal record. The record further shows that the Applicant did not object to the court's sentence. The Applicant's failure to object waived any challenge to the length of the sentence on appeal or collateral review. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981).

IV.

Applicant's remaining claims should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An applicant may commence a post-conviction relief action on the following grounds:

1. United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Applicant is not raising a collateral attack on the validity of his conviction or sentence; rather, he is arguing that the sentence he received is being improperly interpreted by the Department of Corrections. Such a claim is not cognizable in post-conviction relief. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

{Signature Block on Following Page}

VI.

WHEREFORE, the Respondent requests that an hearing be held on Respondent's motion to dismiss.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: PLA
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 23, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	)	
	)	
	)	2016-CP-29-0373
JAMES N. STARNES, 364264,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Nathan J. Sheldon, Esquire
The Law Office of Nathan J. Sheldon, LLC
PO Box 36682
Rock Hill, SC 29732

DATED this 23rd day of November, 2016.


Mallory Morris, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF LANCASTER

4 2016-CP-29-00373

5 James Starnes

6 vs.

7 State of South Carolina

8

9 Lancaster, South Carolina

10 January 10, 2017

11 Before the Honorable William Jeffrey Young

12

13 APPEARANCES

14 For the State: Patrick Schmeckpeper

15 For the Defendant: Nathan Sheldon

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

19

20

21

22

23

24

25

1	Michael Lifsey:	4
2	James Starnes:	18
3	Certificate:	29
4		
5	NO EXHIBITS	
6		
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1 MR. SCHMECKPEPER: Next case is James Starnes versus
2 the State of South Carolina, 2016-CP-29-0373. The
3 applicant was indicted in November of 2011 in Lancaster for
4 one count of trafficking in cocaine 28 to 100 grams, one
5 count of possession with intent to distribute marijuana,
6 one count of possession of a scheduled one, two, three,
7 four and five control substance, and one count of
8 possession or display of a firearm or a knife during the
9 commission of a violent crime. He was represented by Mike
10 Lifsey and proceeded to trial on June 3rd of 2015. He was
11 convicted as indicted on everything except for the
12 trafficking cocaine offense, on trafficking he was
13 convicted of the lesser-included offense of possession --
14 or trafficking in ten to 28 grams. He was sentenced to
15 concurrent terms of five years imprisonment. Your Honor,
16 initially the State filed a return of motion to dismiss for
17 failure to state a claim based on the allegations raised in
18 this application. My understanding is that today the
19 applicant is proceeding on the claim that his attorney was
20 ineffective for failing to advise him that the weapons
21 provision carried five years day for day, and at this point
22 I'll turn it over to counsel.

23 THE COURT: Mr. Sheldon?

24 MR. SHELTON: That's correct, Your Honor, and we're
25 ready to proceed if the Court is.

MICHAEL LIFSEY - DIRECT

1 THE COURT: All right. You may call your first
2 witness.

3 MR. SHELDON: Your Honor, we would call Michael Lifsey
4 to the stand.

5 The witness, MICHAEL LIFSEY, was first duly sworn and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SHELDON:

9 Q Please state your name for the record.

10 A My name is Mike Lifsey.

11 Q And Mr. Lifsey, were you trial counsel for Mr.
12 Starnes?

13 A I was.

14 Q And this case ends up going to trial, doesn't it?

15 A That's correct.

16 Q And first of all before we start, I see you've got
17 your orange tie on, congratulations, I'm sure that was an
18 exciting night for you last night.

19 A Trying to be wide awake today.

20 Q So Mr. Lifsey, Mr. Starnes is originally indicted on
21 two counts of trafficking 28 to 100 in addition to a
22 possession with intent to distribute marijuana and a gun
23 charge; is that right?

24 A Yes, sir, that is correct.

25 Q At trial he ends up being convicted of one count of

MICHAEL LIFSEY - DIRECT

1 trafficking ten to 28 grams; is that right?

2 A Yes, sir.

3 Q And the possession with intent to distribute
4 marijuana.

5 A That's correct.

6 Q And the gun charge.

7 A Yes, sir, not guilty on the other trafficking?

8 Q And the ten to 28 grams that he was convicted on
9 stems -- and the possession with intent to distribute
10 marijuana stems from drugs found in a bar; is that right?

11 A Well, yes, sir, I believe that to be the case.

12 Q It's kind of a strange case so I want to start at the
13 very end and work our way back. At sentencing Judge
14 Gibbons sentenced Mr. Starnes to five years on the
15 trafficking ten to 28 grams; is that right?

16 A Yes, sir. Can I correct one thing? I also have down
17 that he was convicted of a possession of a controlled
18 substance scheduled --

19 Q That's right, some hydrocodone I believe.

20 A Yes, sir.

21 Q And I'm sorry, that's correct? So he sentences him to
22 the maximum six months on that charge.

23 A Yes, that's right.

24 Q Five years on the trafficking ten to 28.

25 A Yes, sir.

MICHAEL LIFSEY - DIRECT

- 1 Q Five years on the gun charge.
- 2 A Yes, sir.
- 3 Q And five years on the possession with intent to
- 4 distribute marijuana.
- 5 A That's correct.
- 6 Q All of those to run concurrent.
- 7 A Yes, sir.
- 8 Q At the sentencing -- and do you have a copy of the
- 9 transcript?
- 10 A I do.
- 11 Q Would it be fair to say that at the time that the
- 12 sentence is issued you didn't know that gun charge was a
- 13 day for day charge?
- 14 A I think that is fair to say. I don't think anyone
- 15 involved in it, me or the solicitor -- I know for a fact
- 16 me and the solicitor didn't realize that, and I'm fairly
- 17 certain based on his comments that Judge Gibbons didn't
- 18 realize that was a day for day five year sentence.
- 19 Q But Judge Gibbons still gave, in fact, the only legal
- 20 sentence available on that charge.
- 21 A That's correct.
- 22 Q And do you agree that it would have been -- had
- 23 someone just actually read the statute that it's pretty
- 24 plain on its face that was the case.
- 25 A Yes, sir.

MICHAEL LIFSEY - DIRECT

1 Q Okay. So with that in mind I want to take you back to
2 the beginning of the case. Was Mr. Starnes offered any
3 sort of plea deal in this case prior to trial?

4 A Yes, sir. This is my -- I'll be glad to tell you my
5 recollection of the plea offers, not to avoid answering
6 your questions. The very first plea offer from my notes
7 from back in 2011 involved him pleading guilty to the
8 marijuana, possession with intent to distribute marijuana,
9 pleading guilty to two counts of trafficking and running
10 all -- and dismissing the weapons charge and the
11 controlled substance charge, and running those concurrent.

12 Q Was there a specific time attached to that?

13 A Not initially. Not initially.

14 Q So would that have been essentially a straight-up
15 plea, I believe, to anywhere from three to ten years?

16 A Yes, sir. That was the plea offer in 2011 when I
17 first got a plea offer from the solicitor and first met
18 with Mr. Starnes about the matter.

19 Q At some point in time after that -- because this case
20 actually takes about four years to get to trial, doesn't
21 it?

22 A That's correct.

23 Q At some point after that was there another plea offer
24 extended -- well, let me back up. Did Mr. Starnes reject
25 that offer?

MICHAEL LIFSEY - DIRECT

1 A He did.

2 Q At some point after that, was there another plea offer
3 extended to Mr. Starnes?

4 A Yes, sir. There was almost two tracks of offers on
5 this case, okay? There was the cooperate with us track
6 and the not cooperate with us track. The cooperate with
7 us, they wanted -- law enforcement wanted Mr. Starnes to
8 testify against the person they believed supplied the
9 drugs to him, which they believed to be a guy that owned a
10 car dealership in McAdenville, North Carolina. We did not
11 receive any formal written plea offer in regards to his
12 cooperation, but it was made clear to all of us that he
13 would not be incarcerated if he cooperated with them.
14 But -- and in fact, Mr. Starnes and I met with agents of
15 the local drug unit and FBI agent, I think it was Agent
16 Daughtery, but -- it may be ATF David Ford, it was some
17 federal person, it was Daughtery with the FBI or Ford with
18 the ATF, but that was if he would cooperate. And this was
19 back in 2011, okay, right after he was arrested and right
20 after we received the not real great plea offer. He did
21 not have any desire to cooperate with them. The case then
22 kind of went into a, for lack of a better word, sort of a
23 holding pattern or into a morass of cases pending in
24 Lancaster County. At some point, and I do not remember
25 the exact day, but when we got closer and it sort of

MICHAEL LIFSEY - DIRECT

1 resurfaced, the solicitor originally talked about ten
2 years, which he had no interest of taking, and then sort
3 of immediately before trial offered five years.

4 Q And do you have any recollection whether that five
5 years offered, would that have -- based on your
6 conversations with the solicitor and with Mr. Starnes,
7 would that have been a parolable five years?

8 A It was all of our intentions -- it was the intention
9 of me and the solicitor for him to get -- if he were to
10 take that plea offer, okay, and this was the pretrial,
11 there was an in-trial plea offer I will discuss if you ask
12 me about it in a minute, but it was our intention that
13 that five year plea offer be a parole eligible five years.

14 Q But would it have been the same as the open -- as
15 essentially the three to ten plea offer or would the gun
16 charge have been incorporated into that five year plea?

17 A The original offer that he received from the
18 solicitor back in 2011 involved dismissing the gun charge,
19 and that was a different solicitor, by the way, than the
20 two that handled the case ultimately at trial. I don't
21 believe we -- and when I say we I mean me and the
22 solicitor at first and then me and the defendant, really
23 discussed the specifics of what he was going to plead to
24 if he took the offer because it was a matter of could he
25 do the time or not do the time. The intention was a five

MICHAEL LIFSEY - DIRECT

1 year parole eligible sentence if he wanted to take that
2 plea offer which he rejected.

3 Q So he rejects the five years and then we get to trial?

4 A Yes, sir.

5 Q And is it fair to say trial was going pretty well?

6 A Well, I mean, you never know, he got convicted so it
7 didn't go well enough, I guess. I thought, and I think
8 the solicitor perceived it so, that we were having some
9 success at trial and so in the middle of trial the five
10 became a three year offer. Now -- and I apologize
11 because -- and my memory, and your client may remember the
12 details of it, I cannot remember whether the solicitor
13 agreed to say three years on the record or whether we had
14 discussed the matter and their offer became a cap of five
15 and Judge Gibbons indicated he would give him three.
16 There was some negotiation, the Judge wanted the case
17 resolved too because most people want cases resolved, but
18 I know the number three was out there. And I told him
19 that, you know, three is a pretty dang good sentence, and
20 like I said, we were having some success with the cases.
21 We were sort of I won't say winning but we were doing all
22 right, but we thought long and hard he didn't want to take
23 the three.

24 Q And just by way of background so the Judge knows,
25 there's a codefendant in this case that pleads out pretty

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1 early on; is that right?

2 A Yeah, he got ten. And I think that's the origin -- I
3 say that's my memory of it, I don't have his file in front
4 of me, but the codefendant pled out to these set of
5 charges I think and some other things too and he got ten.
6 I apologize to you, some of this is coming back to me as
7 we discuss it here, but my memory is that's why ten was
8 the number at one point, and I argued to them that he had
9 other charges so why should my guy get the same, so that's
10 how we get to five at pretrial. There was a codefendant
11 to answer your questions.

12 Q In all of your plea discussions, at no point did you
13 discuss the day for day sentence.

14 A No, sir.

15 Q It was a potential possibility at trial; is that
16 right?

17 A That's correct.

18 Q And in this particular case the gun -- the possession
19 of the weapon during the violent crime, the violent crime
20 being the trafficking, the gun was found basically with the
21 drugs, would you agree with that?

22 A Yeah. Of course, you know, there were drugs in two
23 places. There were drugs in the bar and there were drugs
24 in the car, and it was, of course, the State trying to
25 aggregate them and get to bigger numbers and that way.

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1 But the -- my memory is the gun was found in the bar with
2 the drugs in the bar, which is I believe probably what
3 they ultimately convicted him of.

4 Q The drugs are in the bar and the gun is in the bar.

5 A That's the only way the verdict really makes sense to
6 me is that they kind of said they weren't going to worry
7 about -- the way the verdict makes sense to me is that the
8 jury didn't credit him with the drugs in the car but
9 credited him for drugs in the bar, that's the way I read
10 the verdict.

11 Q Would it be fair to say that the whole time that
12 you're having plea negotiations with Mr. Starnes, he is
13 unaware of the potential of a day for day sentence if he
14 loses at trial?

15 A Absolutely I think that's fair, because I think none
16 of us were aware of it, which, of course, is my fault.
17 Obviously all of us should have been aware obviously, me
18 in particular because I am the defense lawyer, but none of
19 us thought about it. The plea offers that he rejected
20 were a parolable five and parolable three, or 10/5 and
21 three as you take it as it went along.

22 MR. SHELDON: Judge, I don't have anymore questions at
23 this time.

24 THE COURT: Yes, sir?

25 MR. SCHMECKPEPER: Thank you, Your Honor.

MICHAEL LIFSEY - CROSS

1 CROSS EXAMINATION

2 BY MR. SCHMECKPEPER:

3 Q Good morning, Mr. Lifsey. I just want to talk about
4 some of the background in this case, let's start kind of
5 with your experience. How long had you been practicing law
6 at this time?

7 A I can't remember the trial date. I was licensed to
8 practice law in 1991, so 24 years probably, 2015.

9 Q And what percentage of that roughly has been criminal
10 practice?

11 A Almost everything but the first three years. I was
12 in a small town general practice the first three years in
13 Chester, I did some criminal defense but a bunch of other
14 things too. I have been exclusively -- I have been mainly
15 a prosecutor or a public defender since the mid-nineties.

16 Q Let's talk about the negotiations in this case, and
17 you kind of already discussed them at pretty good lengths
18 but I would like to focus on what the applicant, or what
19 Mr. Starnes was thinking. Now, you said started off with a
20 ten year offer.

21 A Well, it started off --

22 Q Or a straight-up offer that --

23 A It basically started off with -- and this is -- the
24 written offer that I received -- and by the way, it is
25 dated October 6th of 2011 that I received from the then

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1 Assistant Solicitor Bill Nowiki involved him pleading
2 to -- and I want to read it right -- one count of
3 trafficking in ten to 28 grams, one count of trafficking
4 28 to 100 grams, and one count of possession with intent
5 to distribute marijuana. So I probably misspoke when Mr.
6 Sheldon asked me about it earlier and I want to make it
7 clear, the very first offer involved him pleading 28 to
8 100 and not just the ten to 28. So he would have -- if he
9 would have taken that offer, which he clearly didn't want
10 to do, and frankly I wasn't encouraging him to do it at
11 all, he would have faced a minimum -- I don't have the
12 statute in front of me, but seven to 25, I think. So that
13 was the very first offer. Of course, keep in mind they
14 were taking that hard line because they really wanted him
15 to tell on the dude from McAdenville, okay? Because I
16 don't think anybody in this case believed that Mr. Starnes
17 was some kind of huge drug dealer. I think everybody
18 involved thought in even the worst case scenario from the
19 State's perspective was he was selling for this guy from
20 North Carolina, and so they wanted to use him against the
21 guy in North Carolina and he made a decision not to do
22 that, which I certainly understand. Because there's some
23 dangers involved in testifying against somebody who was by
24 the State's theory a pretty big drug dealer and he didn't
25 want to do that, and he kind of -- I think he just took

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1 the position and hoped that this would fade away into,
2 like I say for lack of a better word, the morass of
3 Lancaster County. Because at that time our backlog was --
4 the last I looked we're down to about 3,000 warrants,
5 which is still too many, but at that time we had 4,300 or
6 something pending warrants, and that strategy of basically
7 kind of hope it goes away really worked for three or four
8 years because it didn't pop back up on the radar.

9 Q And just to kind of touch back on this again, you just
10 testified to it, he was indicted for trafficking 28 to 100.

11 A Yes, sir, that's my memory.

12 Q And that's, I think you said, 7 to 25?

13 A That's my memory, yes. My memory is the trial comes
14 back not guilty on one trafficking and guilty of the
15 lesser weight on the other trafficking is my memory of the
16 verdict, and then the other, the -- I won't say the
17 insignificant charges because obviously a gun charge is
18 pretty significant based on how much time he's doing, but
19 the other charges.

20 Q And at a certain point you said that the solicitor's
21 office kind of changed their approach when they found out
22 he wasn't going to cooperate and --

23 A Well, it kind of disappeared. Once again, he didn't
24 cooperate so the case kind of goes away for three or four
25 years, and by that time, you know, his cooperation really

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1 I don't think is any big deal to the State. The window
2 for testifying against that codefendant -- he wasn't as
3 valuable four years later when we're getting ready to try
4 him for him to testify, so that window goes away. And
5 basically -- and I can't tell you why it popped back up,
6 if I understood the rhyme or reason of how these old cases
7 came up I don't know, but his case came back up and they
8 get with me. And my memory is at this point Luke Knight
9 is the assistant solicitor who -- Mr. Nowiki has already
10 left their office by this point, my memory is Luke Knight
11 is the assistant originally who has it, the first offer
12 being like I said, my memory is ten, and then it evolved
13 maybe even like the week before trial, Thursday or Friday
14 before the trial, or maybe even when we were picking a
15 jury, evolved into five. And then, like I say, it was
16 mid-trial but when I had a little success to when it gets
17 to be about a three year offer.

18 Q And correct me if I'm mischaracterizing this, he was
19 offered five and then his response was, "No, I'm going to
20 take my chances for 25."

21 A Well, I mean, it wasn't exactly that language.
22 Basically he didn't want to go to jail, okay? And I don't
23 blame him for not wanting to go to jail because nobody
24 wants to go to jail. He had really kind of my memory is
25 kind of turned his life around, kind of moved on with his

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1 life. That's the shame of these cases getting this old is
2 you get people three to four years later when they -- they
3 either get in more trouble I guess where it doesn't really
4 matter or they've kind of cleaned up their act and kind of
5 moved on and it seemed like he kind of cleaned up his act.
6 I remember he was -- the idea of being incarcerated for
7 any period of time just sort of killed him because he had
8 things going on with his family and just didn't want to go
9 to jail, and he kept wanting probation but they just
10 wouldn't offer it.

11 Q But he did understand he was facing 25 years,
12 potentially 25.

13 A Yes, sir. If he would have been convicted at trial
14 certainly.

15 Q And then he was offered three during trial, and maybe
16 didn't say this verbatim but chose to take his chances with
17 the jury.

18 A Yes.

19 MR. SCHMECKPEPER: Your Honor, I have no further
20 questions.

21 THE COURT: Any redirect?

22 MR. SHELDON: No, Your Honor.

23 THE COURT: Thank you, you may step down.

24 MR. SHELDON: Your Honor, we would call James Starnes
25 to the stand.

JAMES STARNES - DIRECT

1 THE COURT: All right. Come forward and be sworn.

2 The witness, JAMES STARNES, was first duly sworn and
3 testified as follows:

4 MR. SHELDON: May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. SHELDON:

8 Q Please state your name for the record.

9 A James Starnes.

10 Q And Mr. Starnes, are you currently incarcerated in
11 SCDC?

12 A Yes, sir.

13 Q Serving a five year sentence on all of the charges we
14 mentioned earlier?

15 A Yes, sir.

16 Q Mr. Starnes, did you go to trial in this case?

17 A Yes, sir.

18 Q You understand -- before we get into that trial, you
19 understand that all the Judge today can do is potentially
20 vacate those convictions and remand this case back for
21 trial?

22 A Yes, sir.

23 Q And that you could end up with, in fact, a 25 year
24 sentence or more in this case.

25 A Yes, sir.

JAMES STARNES - DIRECT

1 Q Knowing all of that you still want to go forward with
2 this PCR?

3 A Yes, sir.

4 Q You heard Mr. Lifsey talk about essentially the
5 evolution of plea offers in this case. Do you agree with
6 the basics of what he said?

7 A Yes, I do.

8 Q Okay. At any point in time during those plea
9 negotiations were you made aware that this possession of a
10 weapon during a violent crime carried a mandatory five day
11 for day?

12 A No, sir.

13 Q When did you first become aware of that?

14 A After I was sentenced and transported to the
15 department of corrections, they let me know then my max
16 out date would be 2020, and that's when I spoke with my
17 case worker and she told me I was doing a day for day
18 sentence on five years on the firearm conviction.

19 Q And I don't want to start with the beginning plea
20 offers, but I want to start with the plea offer of five
21 years.

22 A Uh-huh.

23 Q Do you remember being offered five years?

24 A Yes, sir.

25 Q And did you have a conversation with Mr. Lifsey about

JAMES STARNES - DIRECT

1 that?

2 A Yes.

3 Q Did you turn down that five years?

4 A Yes, I did.

5 Q What was your understanding about how that five year
6 sentence would be calculated?

7 A Violent 65, a parolable offense after a third of my
8 time.

9 Q And you turned that down.

10 A Yes, sir.

11 Q So you end up going to trial. In the middle of trial
12 there's a new offer; is that right?

13 A Yes.

14 Q What was that offer?

15 A Three years.

16 Q And what was -- when did that offer come about, where
17 were you?

18 A After my co-defendant's statement, that's when they
19 offered me that, we was in the middle of trial.

20 Q Did you and Mr. Lifsey have a conversation about that?

21 A He just sat down beside me and told me that they was
22 offering me three years and asked me would I be interested
23 in it and I said no. At that time I felt strong that my
24 case was going to get dismissed.

25 Q And how long did that conversation take place?

JAMES STARNES - DIRECT

1 A Just a few minutes.

2 Q At any point in time during that conversation were you
3 made aware that the gun charge that was about to go before
4 the jury if you turned it down carried a mandatory day for
5 day five?

6 A No, sir.

7 Q What would you have done had you been aware of that
8 day for day sentence?

9 A Probably would have taken it. I definitely would
10 have had to speak with my wife and family members over
11 there just for the chance of facing the five years even
12 though I was wanting to go through with trial. I had a
13 really rough case and I was found guilty. But the three
14 year plea knowing that I had a chance to be out in a third
15 of the time I would have definitely taken that more than
16 likely, I'm positive I would have rather than face five
17 years day for day.

18 Q So you would have taken the three?

19 A Yes, sir.

20 Q Would you have taken the five that was originally
21 offered at the beginning of the trial? I'm sorry, you've
22 got to speak up.

23 A No, sir.

24 Q So would you agree that the day for day sentence is
25 why you're here today?

JAMES STARNES - CROSS

1 A Yes, sir.

2 Q And are you asking the Court to overturn -- to vacate
3 all of the convictions and remand this case back for trial?

4 A Yes, sir.

5 MR. SHELDON: Thank you, Your Honor. I don't have
6 anymore questions.

7 THE COURT: Yes, sir?

8 MR. SCHMECKPEPER: Just briefly, Your Honor.

9 CROSS EXAMINATION

10 BY MR. SCHMECKPEPER:

11 Q Good morning, Mr. Starnes, I just have a couple of
12 questions for you. You were originally -- well, not
13 originally, but right before trial you were offered five
14 years?

15 A Yes, sir.

16 Q And why didn't you take that?

17 A Just due to my trial, I was just basically hoping for
18 the best of being found not guilty.

19 Q But you knew you were facing potentially, I mean, a
20 maximum of 25 years on just the trafficking charge alone,
21 right?

22 A Yes, sir.

23 Q You knew that going into it.

24 A Yes, sir.

25 Q And you rejected a five year charge.

JAMES STARNES - CROSS

1 A Yes, sir.

2 Q I mean sentence. And then you later rejected a three
3 year sentence.

4 A Yes, sir.

5 Q And now you're saying if you would have been offered
6 that five years knowing that there's a mandatory minimum of
7 five years you would have pled guilty instead.

8 A I said I would have taken the three years if I would
9 have known that the five years was a mandatory five years.

10 Q So a mandatory five years scares you more than that
11 maximum 25?

12 A Well, it's just the nature of case as far as 28 to
13 100 grams. They came up with the amount because of what
14 my codefendant had on him and what was found in the bar,
15 and we was strong -- felt strong they wasn't going to be
16 able to convict me of the both of them, so that's
17 basically why I was taking my chance on that.

18 Q You understood you were still facing the 25.

19 A Yes, sir.

20 Q And even on these charges you were still facing ten
21 years on the lower trafficking that you got, right?

22 A Yes, sir.

23 Q And you knew all of that, but now you're saying that
24 if you would have known it was a day for day five years you
25 would have taken this plea offer.

JAMES STARNES - CROSS

1 A Yes, sir.

2 MR. SCHMECKPEPER: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 (Break in proceedings.)

5 MR. SCHMECKPEPER: I don't have anymore questions,
6 Your Honor, I do have a brief argument.

7 THE COURT: Any redirect?

8 MR. SHELDON: No, sir, Your Honor.

9 THE COURT: Thank you, you may step down. Anything
10 else?

11 MR. SHELDON: I have no more witnesses, Your Honor,
12 but I certainly have a brief argument.

13 MR. SCHMECKPEPER: Nothing from the State, Your Honor.

14 THE COURT: All right. Argument?

15 MR. SHELDON: May it please the Court, Your Honor?
16 We're asking the Court to vacate the sentence and remand
17 this case back to trial. Your Honor, I don't think there's
18 any question that it's ineffective assistance of counsel
19 when counsel fails to advise someone as to the --

20 THE COURT: I tend to agree with you, and I think Mr.
21 Lifsey admits that, an attorney should know the
22 ramifications of any sentence that the Judge can give.
23 Where I'm having the problem, though, it's easy to say that
24 after you've been convicted. The problem is he was
25 facing -- he was going to roll the dice on up to 25 years,

1 but he's now telling me after he's been convicted that he
2 would have taken the five years had he known it was --
3 still wouldn't have taken it if he would have known it was
4 day for day, yet he was willing to roll the dice, so the
5 second prong on a test on a PCR disturbs me that would it
6 have made a difference. He rolled the dice, he was wanting
7 to walk, he didn't want to do any time. So I find it a
8 little disingenuous after he gets convicted that, "Oh, I'm
9 sorry, I got the wrong sentence," although that may have
10 been below the standard, I'm not so sure that at the time
11 that it really made a difference. But go ahead -- and I'm
12 not ruling on the case at this point in time.

13 MR. SHELDON: Yes, sir, Your Honor, and I understand
14 that. And in complete candor I don't disagree, and I told
15 Mr. Starnes that. The only hang-up I think that can maybe
16 distinguish kind of what you're saying is that in this
17 particular fact pattern at trial the codefendant owned
18 essentially half of the drugs, and we see that in the jury
19 verdict where they essentially tag him with the drugs that
20 are at the bar and don't tag him with any of the drugs that
21 are on the codefendant, or on the -- and the codefendant is
22 in a different location, in a truck off the premises. And
23 so at the time of the three year offer the defendant had
24 the advantage --

25 THE COURT: Well, he didn't take that, he didn't take

1 that either.

2 MR. SHELDON: And I agree. But I think to distinguish
3 from the seven to 25 year level, the 28 to 100 level, as
4 the trial progressed he could see it was likely, or in his
5 mind, or his lawyer's mind or both, that he was not going
6 to get tagged with the aggregate, which at that point took
7 it to a ten year 65 percent sentence maximum.

8 THE COURT: Which still would have been more than the
9 five year day for day.

10 MR. SHELDON: Assuming that he didn't make parole in a
11 third, which would have been three and a half, I agree.
12 But I think he would have been eligible for parole --

13 THE COURT: I mean, the problem I have is he gets to
14 look backwards through the clarity of 20/20 vision, but
15 when you're going to trial, one of the reasons you take a
16 plea is because you have no idea -- I've had people offered
17 ten years on an assault and battery from a murder charge
18 and they don't take it and a guy got convicted of two
19 murders, he just never saw it coming and would not get on
20 the -- what I call the mercy train, he wanted the justice
21 train and took a chance and the jury just didn't go along
22 with him on that. So --

23 MR. SHELDON: And, Your Honor -- so that would be the
24 extent of my presentation.

25 THE COURT: All right. Yes, sir?

1 MR. SCHMECKPEPER: And just briefly, Your Honor, as
2 you're correct, I think in terms of deciding the facts of
3 this case it really comes down to credibility, and I think
4 having gone forward knowing he was going to face 25 years,
5 or even as Your Honor pointed out, the verdict he got was a
6 maximum of ten years. He knew he had a chance of spending
7 substantially more time than five years in prison and he
8 went for it anyway. Just one more note, Your Honor, I
9 would argue at this point now that the testimony has been
10 heard, I do believe this case is probably not even
11 appropriate for a PCR. I don't think counsel has an
12 obligation to inform clients -- I don't think it's an
13 obligation for counsel to inform clients of collateral
14 consequences at their plea or a trial or conviction and I
15 think that's what this is here. A day for day requirement
16 is collateral consequences of a conviction just like parole
17 eligibility.

18 THE COURT: I'm not so sure about that. I think a day
19 for day - I think an attorney should know where his client
20 falls, whether it's an -- we're required to tell them that
21 it comes down to an 85 percent or where it falls. So I
22 even had a case one time where two lawyers, the prosecutor
23 and the defense were getting ready to plead this 20 year
24 old to illegal possession of a handgun, and just the
25 previous summer the supreme court said that 18 years olds

1 could possess one and they were getting ready to enter a
2 negotiated sentence with time on that, that would certainly
3 be -- the problem I have on this one is, again, he wasn't
4 offered in essence the same thing during trial and he took
5 it to trial and could have received so much more. I'm
6 still going to take this one under advisement and I'll let
7 you know when I make my ruling.

8 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of Common Pleas
8 for Lancaster County, South Carolina, on the 10th
9 day of January, 2017.

10 I do further certify that am neither of kin, counsel,
11 nor interest to any party hereto.

12

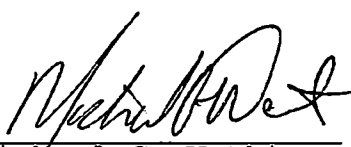
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July 11, 2017

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Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

James Nicholas Starnes,
S.C.D.C. No. 364264

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) SIXTH JUDICIAL CIRCUIT

) C.A. No. 2016-CP-29-0373

ORDER OF DISMISSAL
(with prejudice)FILED
OFFICE OF CLERK
OF COURT
2017 MAY 15 PM 1:32
CLERK OF COURT
LANCASTER, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 31, 2016. Respondent filed its responsive pleadings on or about November 23, 2016. An evidentiary hearing into the matter was convened on January 10, 2017, at the Lancaster County Courthouse. The Applicant was present and testified in his defense. The Applicant's plea counsel, Michael H. Lifsey, Esquire, also testified. The Applicant was represented by Nathan J. Sheldon, Esquire. Respondent was represented by Patrick Schneckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. Applicant was indicted by the November 2011 term of the Lancaster Grand Jury for one count of trafficking in cocaine, 28-100 grams (2011-GS-29-1279), one count of possession with intent to distribute marijuana (2011-GS-29-1280), one count of possession of a schedule I, II, III, IV, and V controlled substance (2011-GS-29-1281), and one count of possession or display of a firearm or knife during the commission of a violent crime (2011-GS-29-1282). Mike Lifsey, Esquire, represented

VJ/b

Applicant. On June 3, 2015, Applicant proceed to trial and was convicted as indicted to possession with intent to distribute marijuana, possession of a schedule I, II, III, IV, and V controlled substance, and possession or display of a firearm of knife during the commission of a violent crime. Applicant was also convicted of the lesser included offense of trafficking in cocaine, 10-28 grams. The Honorable Brian Gibbons sentenced Applicant to a five (5) years' for each charge of trafficking in cocaine, possession with intent to distribute marijuana, and possession or display of a firearm of knife during the commission of a violent crime. Applicant was sentenced to six (6) months for the possession of a schedule I, II, III, IV, and V. controlled substance. The sentences are set to run concurrently. Applicant did not appeal his convictions or sentences.

Allegations

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. "The Department of Corrections has altered my sentence as handed down by the court and is trying to make applicant do a total of five years day for day." (sic)
2. "The applicant's sentence is illegal and exceeds the statutory amount authorized by law." (sic)
 - a. "The Department of Corrections has also altered Applicant's sentence and is trying to make the Applicant do a hundred percent of five years on the weapons charge."

At the evidentiary hearing, the Applicant proceeded solely on the allegation that counsel was ineffective in failing to inform him that the sentence for possession of a weapon during the commission of a violent crime was required to be served day for day.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court has made the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient

performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. Because Applicant pled guilty, he must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have instead insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Where an applicant alleges his attorney's deficient performance led him to reject an offer, he must show that but for the ineffective advice of counsel there is a "reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." Lafler v. Cooper, 132 S.Ct 1376, 1385 (2012).

Failure to Adequately Advise of Day for Day Nature of Sentence

The Applicant's sole allegation at the evidentiary hearing was that counsel was ineffective for failing to advise him that the offense of possession of a weapon during the commission of a violent crime was required to be served day for day. He testified that if he had known the sentence was a minimum five year day for day sentence, then he would have accepted a previous plea offer rather than proceed to trial.

Counsel conceded at the evidentiary hearing that he was not aware that the five year sentence for possession of a weapon during the commission of a violent crime was a day for day sentence. Counsel testified that the solicitor's initial offer was for the Applicant to plead guilty and receive ten years. The Applicant did not express any interest in this deal. Counsel explained that immediately prior to trial, the Applicant was offered a deal of five years. Counsel said the



intention was that the Applicant would have been a "parole eligible five years." Counsel said he did not remember whether the gun charge would have been included in that offer, but the intention was that it would have been a five year, parole eligible sentence if accepted. The Applicant rejected that plea offer.

Counsel testified that during the trial, there was another plea offer from the solicitor's office. While not entirely sure of the details, counsel testified that it was either a cap of five years, with the trial judge indicating he would sentence the Applicant to three years, or a recommended three years. The Applicant rejected that plea offer as well. Counsel ultimately testified that the Applicant rejected the "parolable" five and three year offers "because he didn't want to go to jail."

Discussion

This Court finds the Applicant has failed to meet his burden to prove ineffective assistance of counsel. Specifically, he has failed to convince this court that but for counsel's purportedly deficient performance, he would have accepted any of the previous offers rather than proceed to trial. See Lafler v. Cooper, 132 S.Ct. 1376, 1385 (2012). Counsel's characterization of the Applicant's desire to avoid jail is both probative and credible. The Applicant chose to reject multiple beneficial offers, including a potential three year sentence, and instead proceeded on a charge that carried a maximum of **twenty-five years** imprisonment.¹ Even assuming, as discussed during the hearing, that the Applicant felt he would at most be convicted of the lesser included offense of trafficking between ten and twenty-eight grams, the maximum sentence on that offense was still up to ten years imprisonment. Accordingly, under either scenario, the

¹ The Applicant proceeded to trial on the charge of trafficking between twenty-eight and one hundred grams of cocaine, a crime punishable for a first offense of between seven and twenty-five years imprisonment.



Applicant's self-serving testimony that he would have pled guilty if he had known that upon conviction five of those years would have had to be served day for day is entirely unbelievable, especially when taking into account that he had already *rejected* a potential three year offer during trial.

Having determined that the Applicant's testimony is not credible, this Court finds he has failed to meet his burden to prove ineffective assistance of counsel. This allegation is therefore denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

A handwritten signature in black ink, appearing to be 'WJB' or similar, located in the lower right quadrant of the page.

CONCLUSION

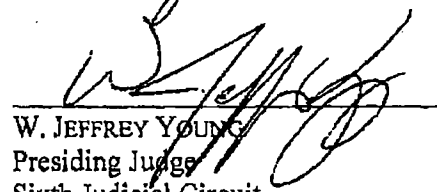
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 10th day of May, 2017.


W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit

Sumter, South Carolina

WITNESSES

Bowers - LCSO #11-24916

ARREST WARRANT NUMBER/DOA

M165591 (DOA-8-5-11)

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

NOV 10 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. ~~2009~~ GS-29-1279

**The State of South Carolina
County of Lancaster**

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2011

**THE STATE
vs.**

James Nicholas Starnes

James Nicholas Starnes
James Nicholas Starnes

Indictment for

**Trafficking in Cocaine
28 to 100 Grams**

SC Code: § 44-53-370(e)(2)(b)
CDR Code: 2359
Class: Felony, B

FILED
CLERK OF COURT
COURT

NOV 11 A 9:40

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on November 10, 2011, the Grand Jurors of Lancaster County present upon their oath:

TRAFFICKING IN COCAINE 28 TO 100 GRAMS

That James Nicholas Starnes did in Lancaster County on or about August 4, 2011, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this state or knowingly actually or constructively possess 28 grams or more but less than 100 grams of cocaine, a controlled substance, in violation of § 44-53-370(e)(2)(b), *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lancaster

STATE VS.

James Nicholas Starnes

AKA:

Race: WHITE Sex: M Age: 33

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Charlotte, NC 28212

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Drugs / Trafficking in cocaine, 10 g or more, but less than 28 g - 1st offense

in violation of § 44-53-0370(e)(2)(a)1 of the S.C. Code of Laws, bearing CDR Code # 0278

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] SC Bar# 100152 Defendant

[Signature] Attorney for Defendant SC Bar# 015154

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years of ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	
TOTAL	\$	288.40

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (03/2011)

Presiding Judge

Judge Code: [Signature]

Sentence Date: 6/3/15

WITNESSES

Bowers - LCSO #11-24916

Library
DOCKET NO. 2011-GS-29-1280

The State of South Carolina
County of Lancaster

FILED
CLERK
OF COURT

NOV 11 A 9 39

CLERK OF COURT
LANCASTER, SC

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2011

ARREST WARRANT NUMBER/DOA

M165588 (DOA-8-5-11)

THE STATE
vs.

James Nicholas Starnes

Divorce James is

James is

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

Date: **NOV 10 2011**

VERDICT

Indictment for

Possession With Intent to Distribute
Marijuana

SC Code: § 44-53-370(a)(1), (b)(2)

CDR Code: 0186

Class: Felony, F

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on November 10, 2011, the Grand Jurors of Lancaster County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

That James Nicholas Starnes did in Lancaster County on or about August 4, 2011, possess with intent to distribute, dispense, or deliver marijuana, a controlled substance in violation of Section 44-53-370(a)(1), (b)(2), *Code of Laws of South Carolina, (1976), as amended.*

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



Douglas A. Barfield, Jr., SOLICITOR

438
STATE OF SOUTH CAROLINA)
COUNTY OF Lancaster)
STATE VS.)
James Nicholas Starnes)
AKA:)
Race: WHITE Sex: M Age: 33)
DOB: [REDACTED] SS#: [REDACTED])
Address: [REDACTED])
City, State, Zip: Charlotte, NC 28212)
DL#: [REDACTED] SID#: [REDACTED])

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Manuf., poss. of other sub. in Sch. I, II, III or flunitrazepam or analogue, w.i.t.d. - 1st offense

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] SC Bar# *100152* Defendant *[Signature]* Attorney for Defendant *015154* SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(I) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$
3% to County (if paid in installments) \$
TOTAL \$ 288.40

Clerk of Court/ Deputy Clerk

Court Reporter: *[Signature]*

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2901280

A/W#: M165588

Date of Offense: 8/4/2011

S.C. Code § : 44-53-0370(b)(2)

CDR Code #: 0186

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date: *6/3/12*

WITNESSES

Bowers - LCSO #11-24916

ARREST WARRANT NUMBER/DOA

M165587 (DOA-8-5-11)

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

NOV 10 2011

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-29-1281

**The State of South Carolina
County of Lancaster**

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2011

**THE STATE
vs.**

James Nicholas Starnes

James Nicholas Starnes

James Nicholas Starnes

Indictment for

**Possession of Schedule I, II, III, IV, V
Controlled Substance**

SC Code: § 44-53-370(c), (d)(2)

CDR Code: 0179

Class: Misdemeanor, Unclassified

FILED
CLERK OF COURT
OF COURT

NOV 11 A 9 39

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

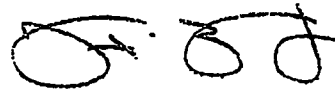
INDICTMENT

At a Court of General Sessions, convened on November 10, 2011, the Grand Jurors of Lancaster County present upon their oath:

POSSESSION OF SCHEDULE I, II, III, IV, V CONTROLLED SUBSTANCE

That James Nicholas Starnes did in Lancaster County on or about August 4, 2011, knowingly and intentionally possess Hydrocodone, a Schedule I, II, III, IV, V controlled substance, not obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice and not otherwise authorized by law in violation of § 44-53-370(c), (d)(2), *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lancaster
STATE VS.

James Nicholas Starnes

AKA:

Race: WHITE Sex: M Age: 33

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Charlotte, NC 28212

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2901281

A/W#: M165587

Date of Offense: 8/4/2011

S.C. Code § : 44-53-0370(d)(2)

CDR Code #: 0179

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0179

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] SC Bar# 100152 Defendant [Signature] Attorney for Defendant SC Bar# 015154

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 6 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$ 285.40

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (03/2011)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: [Signature]

Sentence Date: 10/3/11

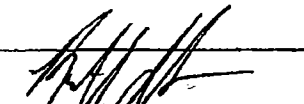
WITNESSES

Bowers - LCSO #11-24916

ARREST WARRANT NUMBER/DOA

M165589 (DOA-8-5-11)

ACTION OF GRAND JURY


Foreperson of Grand Jury
Date:

NOV 10 2011

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

.. DOCKET NO. 2011-GS-29- 1282

The State of South Carolina
County of Lancaster

FILED
CLERK OF CLERK
OF COURT

2011 NOV 11 A 9:39

COURT OF GENERAL SESSIONS

CLERK OF COURT
LANCASTER, SC

NOVEMBER TERM 2011

THE STATE
vs.

James Nicholas Starnes

James Nicholas Starnes
James Nicholas Starnes

Indictment for

Possession or Display of Firearm or
Knife During Commission of a Violent
Crime

SC Code: § 16-23-490
CDR Code: 0549
Class: Felony, F

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

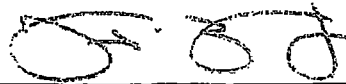
INDICTMENT

At a Court of General Sessions, convened on November 10, 2011, the Grand Jurors of Lancaster County present upon their oath:

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A
VIOLENT CRIME**

That James Nicholas Starnes did in Lancaster County on or about August 4, 2011, possess or visibly display a firearm or knife, to wit: a pistol during his/her commission of a violent crime, to wit: Trafficking Cocaine Base and Cocaine, in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield, Jr., SOLICITOR

444
STATE OF SOUTH CAROLINA

COUNTY OF Lancaster
STATE VS.

James Nicholas Starnes

AKA:

Race: WHITE Sex: M Age: 33

DOB: SS#:

Address:

City, State, Zip: Charlotte, NC 28212

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

100152 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 47.9 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 50-21-114 (BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea \$
Proviso 90.5 (SCCA Surcharge)	\$5 \$
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Sharon B. Boone

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2901282

A/W#: M165589

Date of Offense: 8/4/2011

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date: 6/3/15