

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

EUGENE HARDY,

APPELLANT

APPELLATE CASE NO. 2017-001934

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO.:2017-GS-26-00310
3
4

5 September 13-14, 2017

6 BEFORE: The Honorable Steven John
7

8 STATE OF SOUTH CAROLINA,
9

10 Plaintiff,
11

12 vs.
13

14 EUGENE HARDY,
15

16 Defendant.
17

18

19

20 APPEARANCES:
21

22

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: State versus Eugene Hardy,
2017-GS-26-310, State of South Carolina versus Eugene
Hardy. Indictment is for possession with intent to
distribute cocaine, third offense. Is the State ready
to go forward with trial?

MR. CARAKER: Yes, sir.

THE COURT: And the defense?

MR. FOX: Yes, Your Honor.

THE COURT: I understand in this matter there was
a motion filed by the State, and we also need a
Jackson v. Denno hearing. My intention is we're going
to bring the jury panel upstairs from the jury
assembly room downstairs, we're going to pick the jury
in this case, get it down to the 12 members of the
jury and two alternates, excuse the balance and then
I'll excuse that jury, not swear them. We'll hear the
motions, and then start trial sometime this afternoon
when we are done with the motions. Any problem with
that?

MR. CARAKER: No, sir, Your Honor.

THE COURT: Mr. Fox?

MR. FOX: No, Your Honor.

THE COURT: All right. Very good. Can we send
word to bring the jury panel upstairs, please?

JURY SELECTION

1 (A recess was taken, and the following is had in
2 the presence of the potential jury panel.)

3 THE COURT: All right, ladies and gentlemen, we
4 are going to pick a jury for the case of State of
5 South Carolina versus Eugene Hardy. The State of
6 South Carolina has charged the defendant, Mr. Hardy,
7 with the criminal offense of possession with intent to
8 distribute cocaine.

9 Now, regarding this particular matter, I'm going
10 to read to you certain information that is contained
11 in the indictment. Before I do that, let me tell you
12 what the indictment is. The indictment is merely the
13 charging document, the document which brings the
14 matter to court. It is not evidence. It cannot be
15 considered by anyone as evidence in the case. The
16 only reason I would read to you information from the
17 indictment is to make sure you don't know anything
18 about this case, you don't have any information about
19 it, you come to this matter not knowing the parties,
20 any of the information about this particular matter,
21 and that is as it should be.

22 So, in the indictment, in the charge against Mr.
23 Hardy, the State alleges that Eugene Hardy did in
24 Horry County, on or about October 3, 2016, possess
25 with intent to distribute, dispense or deliver or did

JURY SELECTION

1 aid, abet, attempt or conspire to distribute a
2 quantity of cocaine, a controlled substance under the
3 provisions of the Code of Laws of the State of South
4 Carolina 1976 as amended, such possession not being
5 authorized by law and being in violation of the Code
6 of Laws in the State of South Carolina.

7 Any member of the jury panel that knows anything
8 about this particular matter, has any information they
9 need to bring to the Court's attention at this time?

10 Very good.

11 The possible or potential witnesses in this case
12 are as follows: Freddy Curry, Drug Enforcement Unit;
13 Chris Costa, Drug Enforcement Unit; Dean Bishop, Drug
14 Enforcement Unit; Donna Bell, Horry County Police
15 Department; Courtney Johnson, Horry County Police
16 Department; Eugene Hardy. Any member of the jury
17 panel related by blood or marriage, close personal
18 friends, acquaintances of, knows of any of these
19 possible or potential witnesses, please stand at this
20 time.

21 All right.

22 Is there any member of the jury panel that
23 either, you, yourself or a member of your immediate
24 family has ever had any matters handled, worked on,
25 touched in any way by the Solicitor's Office; that is

JURY SELECTION

1 the prosecuting office that covers Horry and
2 Georgetown County, 15th Circuit Solicitor's Office; if
3 so, please stand.

4 Yes, ma'am, your name and juror number?

5 JUROR: 129, Debra Gough.

6 THE COURT: Ms. Gough, straightforward question,
7 was it yourself or a family member?

8 JUROR: I was a victim.

9 THE COURT: Don't -- don't -- that's what I'm
10 trying to say, I don't want you to tell me anything,
11 just want to know was it yourself or a family member?

12 JUROR: Myself.

13 THE COURT: Understanding that it was yourself
14 and there was a matter worked on in some manner by the
15 Solicitor's Office, prosecuting office, my question to
16 you is: Can you give to the State of South Carolina
17 and to the defendant a fair and impartial trial, can
18 you be a fair and impartial juror in this case?

19 JUROR: Yes, sir.

20 THE COURT: Thank you very much. Yes, ma'am.

21 JUROR: Jo Lynn Jordan, 164 (sic).

22 THE COURT: Ms. Jordan, regarding this particular
23 matter, was it yourself or a family member?

24 JUROR: Family member.

25 THE COURT: Understanding that the matter was

JURY SELECTION

1 worked on in some manner by the Solicitor's Office,
2 prosecuting office, covered a family member, my
3 question to you is: Can you give to the State of
4 South Carolina and to the defendant a fair and
5 impartial trial, can you be a fair and impartial juror
6 in this case?

7 JUROR: Yes.

8 THE COURT: Thank you very much.

9 Any member of the jury panel related by blood or
10 marriage, close personal friends, acquaintances of,
11 anyone employed at the 15th Circuit Solicitor's
12 office, the prosecuting office, that covers Horry and
13 Georgetown counties; if so, please stand?

14 Any member of the jury panel that either you,
15 yourself, or a member of your immediate family ever
16 had any matters of any kind worked on, touched,
17 handled by the 15th Circuit Public Defender's
18 Office; if so, please stand.

19 Any member of the jury panel related by blood or
20 marriage, close personal friends, acquaintances of,
21 anyone employed at the 15th Circuit Public
22 Defender's Office either here in Conway or in
23 Georgetown?

24 Your name and juror number?

25 JUROR: Morant, I forgot my number.

JURY SELECTION

1 THE COURT: Hold on one second. Your last name?

2 JUROR: Doretha Morant.

3 THE COURT: So Juror 249.

4 JUROR: 249.

5 THE COURT: Because I don't want to talk about
6 matters, I just want to know -- like we did with the
7 other question, was it yourself or a family member?

8 JUROR: Family member.

9 THE COURT: Understanding that the 15th Circuit
10 Public Defender's Office worked on a matter involving
11 a family member, the question to you is: Can you give
12 to the State of South Carolina and to the defendant a
13 fair and impartial trial, can you be a fair and
14 impartial juror in this case?

15 JUROR: Yes.

16 THE COURT: Thank you very much.

17 JUROR: I am also related to two lawyers in
18 Georgetown, brother-in-law.

19 THE COURT: The Morants, yes, ma'am.

20 JUROR: Yes.

21 THE COURT: Thank you.

22 Is there any member of the -- any member of the
23 jury panel related by blood or marriage, close
24 personal friends, acquaintances of anyone employed at
25 the Public Defender's Office?

JURY SELECTION

1 Very good.

2 All right. Next question: Any member of the
3 jury panel, do you believe you have any kind of
4 personal, political, religious, philosophical belief
5 that you believe would prevent you from being a fair
6 and impartial juror in this case; if so, please stand?

7 Yes, ma'am, your name and juror number?

8 JUROR: Sarah Vaught, Juror 364.

9 THE COURT: Come up and talk to me.

10 (The following is a bench conference out of the
11 hearing of the jury.)

12 THE COURT: What did you want to tell me?

13 JUROR: I don't like to serve on this case
14 because I have family members going to jail for the
15 same thing, and I'm not judging no one.

16 THE COURT: Because of your past experiences that
17 involve narcotics in some way, you don't feel that you
18 could set that aside? Because that is what you have
19 to do, you have to set all of that aside and make this
20 decision only on facts and evidence here in the
21 courtroom. That is what a jury has to do, listen to
22 facts and evidence and make your decision solely and
23 completely on that. You can't let anyone that has
24 happened to you or family members or feelings about
25 it, that can't affect your decision; you're telling me

JURY SELECTION

1 you can't do that?

2 JUROR: No, sir.

3 THE COURT: Very good. So in this particular
4 matter, you are excused, Ms. Vaught.

5 JUROR: Yes, sir.

6 THE COURT: I'll set her aside from this
7 particular case. If you would, have a seat, please.
8 Objection by the State?

9 MR. CARAKER: No, Your Honor.

10 THE COURT: Defense?

11 MR. FOX: No, Your Honor.

12 (The following is had in the presence of the
13 potential jury panel.)

14 THE COURT: Any member of the jury panel, either
15 you, yourself, or a member of your immediate family
16 that has been in law enforcement? So it is whether
17 you, yourself, were formerly in law enforcement, or
18 you got a current family member who is now in law
19 enforcement, or was in the past in law enforcement.
20 If any of that applies, please stand.

21 Yes, ma'am, start with your name and juror
22 number.

23 JUROR: Lesley French, 114.

24 THE COURT: Who might it be?

25 JUROR: Step-father was a DC police officer.

JURY SELECTION

1 THE COURT: Can you give to the State of South
2 Carolina and to the defendant a fair and impartial
3 trial, can you be a fair and impartial juror in this
4 case?

5 JUROR: Yes, I can.

6 THE COURT: Yes, ma'am.

7 JUROR: Angela Thomas, 344.

8 THE COURT: Tell me the circumstances.

9 JUROR: I have family members, I have a fire
10 chief, police officer and a judge.

11 THE COURT: They are in which state?

12 JUROR: South Carolina.

13 THE COURT: Locally, or another county.

14 JUROR: Both.

15 THE COURT: Can you give to the State of South
16 Carolina and to the defendant a fair and impartial
17 trial, can you be a fair and impartial juror in this
18 case?

19 JUROR: Yes, sir, I can.

20 THE COURT: Next to her.

21 JUROR: Juror 104, Robert Elwood, New York State.

22 THE COURT: You were an officer in New York
23 State?

24 JUROR: New York State for 17 years.

25 THE COURT: Can you give to the State of South

JURY SELECTION

1 Carolina and to the defendant a fair and impartial
2 trial, can you be a fair and impartial juror in this
3 case?

4 JUROR: I believe I can.

5 THE COURT: Is that a yes?

6 JUROR: Yes.

7 THE COURT: Very good. Thank you. Yes, sir.

8 JUROR: 152, Michael Hastings. My daddy was a
9 correctional officer.

10 THE COURT: In South Carolina?

11 JUROR: No, New York state.

12 THE COURT: Can you give to the State of South
13 Carolina and to the defendant a fair and impartial
14 trial, can you be a fair and impartial juror in this
15 case?

16 JUROR: Yes, sir.

17 THE COURT: Thank you very much.

18 Any member of the jury panel you, yourself, or a
19 member of your immediate family a member of victim's
20 rights or law enforcement supporter, and I'll give you
21 a couple of examples, but I can't give you an
22 exhaustive list, but Mothers Against Drunk Driving,
23 Citizens Against Violent Crimes, South Carolina
24 Sheriff's Association, South Carolina Law Enforcement
25 Officers Association, some kind of victim's rights or

JURY SELECTION

1 law enforcement support organization, either you,
2 yourself, or a member of your immediate family; if so,
3 please stand?

4 Very good.

5 All right. The next question I'm going to ask,
6 ladies and gentlemen, is whether or not you, yourself,
7 or a member of your immediate family has ever been the
8 victim of a crime. Now, I'm not going to ask you what
9 occurred. I do not want you to volunteer any
10 information to me about what occurred. The question
11 is going to be straightforward, was it yourself or a
12 family member, and then I'll ask you for the
13 qualifications for the question. So is there any
14 member of the jury panel, either you, yourself, or a
15 member of your immediate family, that's ever been the
16 victim of a crime; if so, please stand?

17 All right. Yes, ma'am on the front row.

18 JUROR: Debra Gough, 129.

19 THE COURT: Was it yourself or family member?

20 JUROR: Myself.

21 THE COURT: Can you give to the State of South
22 Carolina and to the defendant a fair and impartial
23 trial, can you be a fair and impartial juror in this
24 case?

25 JUROR: Yes.

JURY SELECTION

1 THE COURT: Thank you very much. Behind her,
2 ma'am.

3 JUROR: Lesley French, Juror 114.

4 THE COURT: Yourself or family member?

5 JUROR: Myself and family member.

6 THE COURT: You can give to the State of South
7 Carolina and to the defendant a fair and impartial
8 trial, can you be a fair and impartial juror in this
9 case?

10 JUROR: Yes.

11 THE COURT: Yes, ma'am.

12 JUROR: Debra Marsh, 225.

13 THE COURT: Yourself or family member?

14 JUROR: Myself.

15 THE COURT: Can you give to the State of South
16 Carolina and to the defendant a fair and impartial
17 trial, can you be a fair and impartial juror in this
18 case?

19 JUROR: Yes, sir.

20 THE COURT: Yes, ma'am.

21 JUROR: Sarah Vaught, 364.

22 THE COURT: Yourself or family member?

23 JUROR: Family member.

24 THE COURT: Can you give to the State of South
25 Carolina and to the defendant a fair and impartial

JURY SELECTION

1 trial, can you be a fair and impartial juror in this
2 case?

3 JUROR: No, sir.

4 THE COURT: I'm sorry, I already excused you
5 because of the other question you answered. Thank
6 you.

7 Yes, sir.

8 JUROR: Robert Cox, 84.

9 THE COURT: Yourself or family member?

10 JUROR: Both.

11 THE COURT: Can you give to the State of South
12 Carolina and to the defendant a fair a impartial
13 trial, can you be a fair and impartial juror in this
14 case?

15 JUROR: Yes, sir?

16 THE COURT: Yes, sir.

17 JUROR: 296, Scott Ruedger.

18 THE COURT: Yourself or family member?

19 JUROR: Myself.

20 THE COURT: Can you give to the State of South
21 Carolina and to the defendant a fair and impartial
22 trial, can you be a fair and impartial juror in this
23 case?

24 JUROR: Yes, sir.

25 THE COURT: Thank you. Yes, ma'am.

JURY SELECTION

1 JUROR: 164 (sic), Jo Lynn Jordan.

2 THE COURT: Yourself or family member?

3 JUROR: Both.

4 THE COURT: Can you give to the State of South
5 Carolina and to the defendant a fair and impartial
6 trial, can you be a fair and impartial juror in this
7 case?

8 JUROR: Yes.

9 THE COURT: Thank you very much.

10 I'll ask you what I classify as my general
11 question. Do you know of any reason, have any
12 question in your mind, any doubt in your mind that you
13 believe you cannot give to the State of South Carolina
14 and to the defendant a fair and impartial trial, that
15 is for any reason, whatsoever, you believe you cannot
16 be a fair and impartial juror in this case; if so,
17 please stand?

18 Very good.

19 Further questions from the State?

20 MR. CARAKER: None, Your Honor.

21 THE COURT: Further questions from the defense?

22 MR. FOX: None, Your Honor.

23 THE COURT: Very good. All right. Ladies and
24 gentlemen, let me explain the process to you and how
25 it will go. Your names have been selected in a random

JURY SELECTION

1 order, not some chronological or alphabetical order.
2 The clerk will call out a name. If and when your name
3 is called, you will stand up, come forward, come
4 around, come to a place that is basically right in
5 front of the court reporter right here, seated right
6 in front of me. So right in front of the bench you
7 will stand there, turn and face to the back of the
8 courtroom. At that point in time, the clerk's
9 representative will ask of the State to present or
10 excuse the juror. If you are presented by the State,
11 then the clerk will inquire of the defense to seat or
12 excuse the juror. If you are excused either by the
13 State or defense, go back and have a seat from whence
14 you came. If you are presented by the State and
15 seated by the defense, the clerk will instruct you to
16 go over to the jury box and have a seat in the jury
17 box. So if you happened to have any personal items,
18 purse, book, whatever it may be, your name is called,
19 bring it with you in case you are seated, you can go
20 directly to the jury box.

21 Madam clerk.

22 THE CLERK: 69, Kevin Chapman. What say the
23 State?

24 MR. CARAKER: Please present the juror.

25 THE CLERK: Defense?

JURY SELECTION

1 MR. FOX: Please seat the juror.

2 THE CLERK: No. 42, Alexandria

3 Boutakova-klintworth. What say the State?

4 MR. CARAKER: Please present the juror.

5 THE CLERK: Defense?

6 MR. FOX: Please excuse the juror.

7 THE CLERK: You're excused from this particular
8 case.

9 185, Jo Lynn Jordan. What say the State?

10 MR. CARAKER: Please present the juror.

11 THE CLERK: Defense?

12 MR. FOX: Please seat this juror.

13 THE CLERK: Please be seated in the jury box.

14 No. 93, Michelle Dixon. What say the State?

15 MR. CARAKER: Please present the juror.

16 THE CLERK: Defense?

17 MR. FOX: Please seat this juror.

18 THE CLERK: Please be seated in the jury box.

19 308, Roger Scott. What say the State?

20 MR. CARAKER: Please present the juror.

21 THE CLERK: Defense?

22 MR. FOX: Please seat this juror.

23 THE CLERK: 280, Thomas Pugh. What say the
24 State?

25 MR. CARAKER: Please present the juror.

JURY SELECTION

1 THE CLERK: Defense?

2 MR. FOX: Please seat this juror.

3 THE CLERK: 129, Debra Gough. What say the
4 State?

5 MR. CARAKER: Please present the juror.

6 THE CLERK: Defense?

7 MR. FOX: Please seat this juror.

8 THE CLERK: 249, Doretha Morant. What say the
9 State?

10 MR. CARAKER: Seat the juror.

11 THE CLERK: Defense?

12 MR. FOX: Please seat the juror.

13 THE CLERK: Please be seated in the jury box.
14 246, Tina Monahan Daigle. What say the State?

15 MR. CARAKER: Please present the juror.

16 THE CLERK: Defense?

17 MR. FOX: Please seat the juror.

18 THE CLERK: Please be seated in the jury box.

19 No. 150, Deidre Harrington. What say the State?

20 MR. CARAKER: Please seat the juror.

21 THE CLERK: Defense?

22 MR. FOX: Please seat this juror.

23 THE CLERK: 344, Angela Thomas. What say the
24 State?

25 MR. CARAKER: Please present the juror.

JURY SELECTION

1 THE CLERK: Defense?

2 MR. FOX: Please excuse this juror.

3 THE CLERK: 213, Christopher Lee. What say the
4 State?

5 MR. CARAKER: Please present the juror.

6 THE CLERK: Defense?

7 MR. FOX: Please seat the juror.

8 THE CLERK: 225, Debra Marsh. What say the
9 State?

10 MR. CARAKER: Please present the juror.

11 THE CLERK: Defense?

12 MR. FOX: Please excuse this juror.

13 THE CLERK: 350, Charlie Tindal. What say the
14 State?

15 MR. CARAKER: Please present the juror.

16 THE CLERK: Defense?

17 MR. FOX: Please seat the juror.

18 THE CLERK: 254, John Nelson. What say the
19 State?

20 MR. CARAKER: Please present the juror.

21 THE CLERK: Defense?

22 MR. FOX: Please excuse this juror.

23 THE CLERK: Juror 263, James Parnell. What say
24 the State?

25 MR. CARAKER: Please present the juror.

JURY SELECTION

1 THE CLERK: Defense?

2 MR. FOX: Please seat the juror.

3 THE COURT: We'll need two alternates, so
4 regarding the two alternates it will be one and two,
5 as far as the strikes.

6 THE CLERK: 114, Lesley French.

7 MR. CARAKER: Please present the juror.

8 MR. FOX: Please excuse the juror.

9 THE CLERK: You are excused for this particular
10 case.

11 Kathleen Kowal, Juror 194. What say the State?

12 MR. CARAKER: Please present the juror.

13 THE CLERK: Defense?

14 MR. FOX: Please excuse this juror.

15 THE CLERK: You're excused from this particular
16 case.

17 195, Robert Kownacki. What say the State?

18 MR. CARAKER: Please present the juror.

19 THE CLERK: Defense?

20 MR. FOX: Please seat the juror.

21 THE COURT: So you are one of the alternates.

22 THE CLERK: 228, Larry Martin. What say the
23 State?

24 MR. CARAKER: Please present the juror.

25 THE CLERK: Defense?

JURY SELECTION

1 MR. FOX: Please seat the juror.

2 THE COURT: All right, sir. You are the other
3 alternate.

4 Any objections to the jury as a panel from the
5 State?

6 MR. CARAKER: No, sir, Your Honor.

7 THE COURT: Any objections to the jury as a panel
8 from the defense?

9 MR. FOX: No, Your Honor.

10 THE COURT: I find the jury has been properly
11 impaneled pursuant to Batson versus Kentucky and J.E.B
12 versus Alabama.

13 Ladies and gentlemen of the jury, in this
14 particular matter, in just a few minutes, I'll send
15 you to the jury room and ask you to do one thing for
16 me, and that is going to be select your foreperson for
17 this particular jury. So let me tell you briefly what
18 the duties and responsibilities of the foreperson are.

19 If we are here in the courtroom and the jury
20 needs attention, the witness needs to speak up or the
21 lawyers, or whatever the issue is, the foreperson will
22 raise their hand, get the Court's attention and we'll
23 handle the matter. If you are back in the jury room,
24 there is a pad and pen provided, you will write out a
25 note, sign it, give it to the bailiff and it will come

JURY SELECTION

1 to me, and we'll handle that matter, whatever it might
2 be. When we have gone through the evidentiary portion
3 of the trial, we have heard all of the witnesses that
4 will testify in this matter, and testify under oath,
5 before you receive any documents or physical evidence
6 that might be introduced in this particular matter,
7 and we've gone through the whole evidentiary portion,
8 then you've heard the closing arguments of the
9 attorney, then the Court will give you the law that
10 you will apply to the facts and evidence in this
11 particular matter to decide whether or not the State
12 can prove the defendant guilty beyond a reasonable
13 doubt. After that, I will submit the case to you for
14 your deliberations and your unanimous decision. In
15 that regard, when you go back to the jury room, the
16 foreperson's duty and responsibilities change in this
17 regard. The foreperson is going to act like the
18 chairperson at a meeting, guide the decisions, if
19 necessary. An important duty and responsibility is to
20 make sure that everybody that wants to, has an
21 opportunity to speak, everyone's voice has an
22 opportunity to be heard that wants to be heard.

23 Now, the foreperson's voice and vote carries no
24 more weight than any other member of the jury.
25 Everyone is equal in that regard, but the foreperson

JURY SELECTION

1 remains in charge if there is some question or issue,
2 write out that note, sign it and give it to the
3 bailiff and it will come to me and we'll respond as
4 proper.

5 The final responsibility of the foreperson is
6 once the jury has well and truly deliberated, you have
7 reached your unanimous verdict in this particular
8 matter, the foreperson will take the printed verdict
9 form that the Court will provide to you, check the
10 appropriate blocks or write out the appropriate words,
11 thereafter signing your name as foreperson indicating
12 it is the unanimous verdict of each and every member
13 of the jury in this particular case.

14 So understanding the duties and responsibilities
15 of the foreperson, what I'm going to ask is that you
16 go back to your jury room, talk about it, select your
17 foreperson, knock on the door and let the bailiff know
18 who the foreperson is. Now, the two alternates, Mr.
19 Martin and -- Mr. Kownacki?

20 JUROR: Close enough.

21 THE COURT: As the alternates, you can vote on
22 the foreperson, but being the alternates, you cannot
23 be the foreperson. Everyone else is eligible to be
24 the foreperson. So if you would accompany the bailiff
25 to the jury room, select your foreperson, knock on the

JURY SELECTION

1 door and let the bailiff know who that is, please.

2 (The jury exits at 11:51 a.m., and the
3 following is heard out of the presence of the jury.)

4 THE COURT: As to the remainder of the panel, Ms.
5 Gill, I didn't have anything to do with you being
6 selected, even though you have some affiliation with
7 Krispy Kreme and I love them, but I really didn't have
8 anything to do -- it was definitely by computer
9 program that you got selected, but you were -- just so
10 that you know -- you were the next person to stand up.
11 So if they would have struck anyone else, you would
12 have been on the jury, and then I would have told you
13 to bring donuts as a member of the jury. If you
14 happen to want to send some anyway, we'll take them.

15 But, anyway, as to the panel itself, obviously
16 we're going forward with this trial. I'll have you
17 call back on that juror information line tonight after
18 6 o'clock. Follow those instructions, however they
19 may be, whatever it says, call back or report,
20 whatever those instructions are, follow those. Again,
21 it was on that little piece of paper you got when you
22 checked in downstairs. If for some reason you don't
23 know which number it is or have a question about it,
24 make sure you see one of the representatives of the
25 clerk's office and make sure you have a right number.

JURY SELECTION

1 With that, you're now excused. Thank you very much.

2 (The remaining prospective jury panel exits at
3 11:53 a.m.)

4 THE COURT: All right. So in this matter,
5 gentlemen, I understand that we need to do a Jackson
6 v. Denno hearing, and the State also has filed a
7 motion requesting to be allowed to tell this jury
8 about prior sales and playing videos of those prior
9 sales. We'll have to have that motion heard. So
10 knowing those are the two motions, as best you can
11 estimate it, how long do you think that will take,
12 Solicitor?

13 MR. CARAKER: Your Honor, I think the Jackson v.
14 Denno hearing is rather short, depending on the level
15 of cross-examination, maybe 10 minutes, maybe 15
16 minutes. I anticipate that the motion to be allowed
17 to discuss prior sales would take a bit longer. There
18 is, obviously, some case law involved there, and I'm
19 sure that Mr. Fox has definitely a different
20 perspective. So I imagine 20, 30 minutes probably to
21 discuss legal issues involved in that matter, Your
22 Honor.

23 THE COURT: All right. So, Mr. Fox, do you agree
24 or disagree with the estimate? Do you think it needs
25 to be longer?

MOTIONS

1 MR. FOX: No, I agree. And, Judge, to be clear,
2 and to be honest, I'm not sure I raised this this
3 morning. Out of an abundance of caution, I would have
4 a motion -- and really would be tied very much with
5 the Jackson v. Denno, the same circumstances anyway --
6 this arrest came from a stop. There were warrants,
7 they stopped -- Mr. Hardy has a different version of
8 the purpose of his stop than as relayed by law
9 enforcement, and what I expect law enforcement to say,
10 so I will move to suppress the drugs that were found
11 as a result of an illegal stop.

12 As a practical matter, we can address that at the
13 same time -- it would be a separate determination, but
14 at the same time of the Jackson v. Denno, because
15 Officer Curry was involved with both of those, and we
16 can address -- the statement occurred at the scene
17 after he was pulled over, so I believe we can do it
18 with the same witness and without greatly expanding
19 it, but I'll move to express the drugs as being a
20 result of an unlawful stop.

21 THE COURT: All right. Do you think there would
22 be other --

23 MR. FOX: And Mr. Hardy might testify in that
24 motion.

25 THE COURT: Besides the one officer that you plan

MOTIONS

1 to call for the Jackson v. Denno, do you think there
2 is other witnesses that the State would have regarding
3 that motion to suppress the drugs?

4 MR. CARAKER: No, sir, Your Honor.

5 THE COURT: Very good. All right. So with all
6 of that, I think we'll go forward and -- let me ask,
7 is the officer here?

8 MR. CARAKER: Yes, sir.

9 THE COURT: For the Jackson hearing and the
10 illegal -- motion regarding the illegal stop?

11 MR. CARAKER: Yes, sir.

12 THE COURT: So we'll probably do that, do that
13 motion, we'll break for lunch when that is done, and
14 then we'll come back and do -- hear the State on its
15 motion regarding the prior sales, all right?

16 With that, I'll tell the panel to come back at
17 3:30. Hopefully I'm not having them come back too
18 soon so they are sitting around, that is what I'm
19 trying to avoid.

20 Have they selected their foreperson, can you
21 check and see?

22 If you want to -- if you would instruct the
23 bailiff to tell them to be back at 3:30, thank you.
24 For your information, the jury has selected Juror 93
25 as the foreperson.

FREDDY CURRY - DIRECT EXAMINATION - JACKSON v. DENNO

1 State ready to proceed with the Jackson v. Denno
2 and the other motion?

3 MR. CARAKER: Yes, sir.

4 THE COURT: Call your first witness.

5 MR. CARAKER: We call Freddy Curry.

6 (FREDDY CURRY, having been duly sworn,
7 testified as follows:)

8 THE WITNESS: Freddy Curry, C-U-R-R-Y.

9 DIRECT-EXAMINATION

10 BY MR. CARAKER:

11 Q Where are you employed?

12 A Town of Surfside Beach Police Department.

13 Q What is your current duties?

14 A I'm currently assigned to the 15th Circuit Drug
15 Enforcement Unit, Solicitor's Office here in Horry and
16 Georgetown County.

17 Q How long have you been in law enforcement?

18 A A little over 23 years.

19 Q What part has been dedicated to working narcotics
20 cases?

21 A Approximately 18 of them.

22 Q 18 of the 23 years?

23 A Most likely, yes, sir.

24 Q Did you come into contact with this defendant on
25 October 3rd of 2016?

FREDDY CURRY - DIRECT EXAMINATION - JACKSON V. DENNO

1 A Yes, sir.

2 Q Can you tell the Court how that came about?

3 A After a situation dictated where we were able to
4 secure three warrants for Mr. Hardy.

5 Q What did you have warrants for?

6 A Distributions.

7 Q Distribution of?

8 A Crack cocaine.

9 Q And just to get back, you had those warrants in
10 hand?

11 A Yes, sir.

12 Q What happened next after you got the warrants?

13 A We set up an operation where we would take a
14 marked unit to conduct a traffic stop on Mr. Hardy's
15 vehicle when he left work and he was away from
16 everyone. This was supposedly done where no one would
17 pay us any attention and we would have an opportunity
18 to talk with him. The day we set up on the place out
19 there, R.H. Moore where he was working. A little after
20 5:00 he pulled out. We had Andy Cooper from the
21 Sheriff's Office conduct a traffic stop for us.

22 Q Let me stop you right there. You knew Mr. Hardy
23 prior to this, correct?

24 A Yes, sir.

25 Q You knew what he looked like?

FREDDY CURRY - DIRECT EXAMINATION - JACKSON v. DENNO

1 A Yes, sir.

2 Q You knew what he drove?

3 A Yes, sir.

4 Q So when he left his place of business, there is
5 no doubt in your mind that the person that Deputy
6 Cooper was stopping was, in fact, Mr. Hardy?

7 A Yes, sir. As soon as Mr. Hardy went by my
8 vehicle and I laid eyes on him, I told Officer Cooper
9 to go ahead and make the stop on that vehicle, that he
10 was in the vehicle alone. He was driving.

11 Q Did Deputy Cooper stop him at that time?

12 A Yes, sir. He followed him down the road a little
13 bit and then pulled him over.

14 Q And once the defendant pulled over and Deputy
15 Cooper got him stopped, what did you do?

16 A I pulled up behind the traffic stop, behind the
17 police car. We instructed Officer Cooper to ask him to
18 step out of the car and walk him to the back where we
19 could talk with him.

20 Q And did he do so?

21 A Yes, sir.

22 Q And at some point did you place this defendant
23 under arrest?

24 A After I spoke with him, after I made proper
25 identification, what was going on, who I was, I asked

FREDDY CURRY - DIRECT EXAMINATION - JACKSON v. DENNO

1 him to step in my vehicle where we could talk. I got
2 him in the vehicle and explained I have three warrants
3 for your arrest, and at that time I spoke to him about
4 other people involved in this investigation. After we
5 spoke, I asked him to step out of the car, you are
6 going to be placed under arrest.

7 Q What did he do at that point?

8 A He opened the door and stepping out and I'm
9 getting ready to get out of my side and he turns around
10 and bends over, so I stopped to look at him, and he
11 takes off his shoe and pulls out a plastic bag
12 containing four small, tied, closed plastic baggies
13 each containing a white powder substance. He threw the
14 baggy on the ground and tried to step on it, but they
15 were doing the road construction out there and so the
16 ground was very hard. At that time, I ran across the
17 front -- or walked across the front of the truck to the
18 passenger's side and placed him under arrest, picked up
19 the baggy, searched his other pockets, gave him his
20 Miranda.

21 Q Let's talk about his Miranda rights. Did you say
22 his Miranda rights from memory, or read them from a
23 card?

24 A I carry a card with me.

25 Q Did you read him his rights from that card?

FREDDY CURRY - DIRECT EXAMINATION - JACKSON v. DENNO

1 A Yes, sir.

2 Q Did he appear to have any trouble understanding
3 you?

4 A No, sir.

5 Q Were his answers to you after you read him his
6 Miranda rights, and in his conversations with you, did
7 they appear to be rational and responsive to your
8 questions?

9 A Very collected, very calm and collected, yes.

10 Q Did you or anyone else threaten the defendant?

11 A No, sir.

12 Q Did you point your gun at him?

13 A No, sir.

14 Q Did you yell at him?

15 A No, sir.

16 Q Did you curse at him?

17 A No, sir.

18 Q Did he ever tell you after you read his Miranda
19 rights that he wished to speak with an attorney?

20 A No, sir.

21 Q Did he ever tell you after you read him his
22 Miranda rights that he wanted to remain silent?

23 A No, sir.

24 Q As far as you could tell, were his statements and
25 conversation with you freely and voluntarily given?

FREDDY CURRY - DIRECT EXAMINATION - JACKSON v. DENNO

1 A Yes, sir.

2 Q And during the time that you spoke with him, did
3 he ask for food or water during that time?

4 A No, sir.

5 Q Did he appear to be under the influence of
6 alcohol or drugs at that time?

7 A No, sir.

8 Q Did he appear to have his mental faculties about
9 him?

10 A Yes, sir.

11 Q When you read him his Miranda rights and spoke
12 with him, was it just the two of you there together?

13 A At that moment I think it was just he and I.
14 When we stepped in the truck, the two other officers
15 were searching his vehicle. As soon as they finished
16 searching it, then Agent Costa came back and got in the
17 truck with us. Eugene Hardy was in the front seat with
18 me, I was the driver and Chris Costa got in the seat
19 and got behind Agent Hardy. He got in the vehicle
20 while we were still talking.

21 Q Let's get back to the narcotics or baggy that the
22 defendant dropped. Let's talk about your training and
23 experience for a minute. You've been working narcotics
24 around 18 years?

25 A Yes, sir.

FREDDY CURRY - DIRECT EXAMINATION - JACKSON v. DENNO

1 Q And in that 18 years, have you become familiar
2 with how illegal substances are bought and sold?

3 A Yes, sir.

4 Q And how they are packaged?

5 A Yes, sir.

6 Q Are you familiar with how much they cost?

7 A Yes, sir.

8 Q And are you familiar with the street lingo that's
9 used to describe it?

10 A Yes, sir.

11 Q Do you have a general working knowledge of what
12 it looks like when you see it?

13 A Yes, sir.

14 Q And is it that training and experience that you
15 use to identify what he threw on the ground that day as
16 potentially being illegal drugs?

17 A Yes, sir.

18 Q That is another reason why you placed him under
19 arrest?

20 A Yes.

21 Q In addition to the three warrants you had in his
22 hand?

23 A Yes, sir. He was being placed under arrest
24 outside of my truck, and he popped out with the bag
25 after he was told he was being placed under arrest.

FREDDY CURRY - CROSS-EXAMINATION - JACKSON v. DENNO

1 MR. CARAKER: Court's indulgence one moment.

2 THE COURT: Yes, sir.

3 MR. CARAKER: No further questions, Your Honor.

4 Please answer any questions Mr. Fox has.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. FOX:

8 Q Mr. Curry, you say you read the Miranda questions
9 from a card you keep?

10 A Yes, sir.

11 Q Did you have with you a form for Mr. Hardy to
12 sign?

13 A No, sir. I have a card with me while we're out
14 on the road. Once I take him inside, I read a piece of
15 paper and have them sign it. On the road, just read it
16 to him from the card.

17 Q All right. Now, it was a sheriff's deputy who
18 pulled Mr. Hardy over?

19 A Yes, sir.

20 Q What was -- he was told to make a traffic stop?

21 A Yes, sir.

22 Q And as in find a traffic violation and pull him
23 over?

24 A No, sir, just pull him over on the side, identify
25 him coming out of the business area. I said that is

FREDDY CURRY - CROSS-EXAMINATION - JACKSON v. DENNO

1 the vehicle he is driving, he's alone, he's the driver
2 of the vehicle, go ahead and pull the car over.

3 Q Just to be clear for the record. What was the
4 basis or the purpose of Deputy Cooper pulling Mr. Hardy
5 over?

6 A If you walk up to someone based on our protocol,
7 one, we do not make traffic stops on the vehicles.
8 They are unmarked, undercover vehicles. Plus, it was
9 going to draw a lot more attention if blue lights come
10 on on an undercover vehicle behind someone, and in past
11 we've had people run from the vehicles, et cetera.
12 This is the safest way to do it for the public and
13 everyone involved.

14 Q My question -- let me rephrase it. What was the
15 legal purpose or basis? I understand the tactical
16 reason why you do it that way. But what was the legal
17 basis or reason?

18 A We had warrants for his arrest.

19 Q When were those arrest warrants signed?

20 A Sorry?

21 Q When were the arrest warrants obtained?

22 A That day of his arrest, that morning.

23 Q What was the last part?

24 A That morning. We secured the warrants that
25 morning. He was not arrested until after 5 o'clock

FREDDY CURRY - CROSS-EXAMINATION - JACKSON v. DENNO

1 that day.

2 Q When he was brought back to your truck, you had
3 him get inside, and you all spoke?

4 A Yes, sir.

5 Q And you informed him at that time that he was
6 under arrest?

7 A No, sir. I said I have warrants for your arrest.
8 When we get done here, you are going to be placed under
9 arrest. I asked him about other people involved in his
10 organization. He basically told me one or two and he
11 would not say the other ones' names, so if you can't do
12 anything, I understand that, I respect that, but, you
13 know, you're under arrest. Please step out of the car,
14 you are under arrest. He stepped out of the vehicle,
15 and that is when the incident occurred.

16 Q I don't mean to be thick, but was it if he leaves
17 the car, he's under arrest?

18 A No, sir. He was told he was arrest.

19 Q So he was not free to leave at that point?

20 A I told him as soon as we got together that I had
21 warrants for your arrest. Can you step back so I can
22 talk to you for a minute? We got into the truck. I did
23 not ask him about anything involving this case, I asked
24 him about suppliers.

25 Q I understand he didn't want to talk about that?

FREDDY CURRY - CROSS-EXAMINATION - JACKSON v. DENNO

1 A Well, he didn't come with the information we were
2 -- that we knew about, so I said, well, step out, you
3 are under arrest on the warrants. So he stepped out
4 and that's when he did the thing with his bags.

5 Q Was that so he could be transported by the
6 deputy?

7 A He was going to be transported over there. He
8 was not in the handcuffs to begin with. I just asked
9 him to step in the car to talk.

10 Q But not free to leave at that point?

11 A I told him after we got in the truck and sat down
12 that I have three warrants for your arrest.

13 Q I understand.

14 A I want to talk to you a minute. I asked him
15 about that and said you're under arrest, step out of
16 the car, we're going to put handcuffs on, and that's
17 when the incident took place.

18 Q This occurred in the front seat of your truck?

19 A Yes, sir.

20 Q What kind of truck?

21 A Tahoe.

22 Q Is it lifted up, or normal?

23 A Two wheel, duo.

24 Q So he got out the passenger's side?

25 A Yes, sir.

FREDDY CURRY - REDIRECT EXAMINATION - JACKSON v. DENNO

1 Q And you were still inside the vehicle?

2 A Pretty much stepping out of the vehicle, but when
3 he bent over, I stopped to look to see what he was
4 doing, because he stepped out away from the truck to
5 get out. I'm not saying this to be negative, but he
6 was a shorter man. He stepped out and stepped forward
7 and instantly bent over, and of course what is he
8 doing, so I'm standing to see what it is. I watched
9 him take his shoe off, grab a plastic bag, throw it on
10 the ground and try to stomp on it.

11 Q And then you did what?

12 A Come around the truck, told him to put his hand
13 behind his back, he's under arrest, and I picked up the
14 plastic bag he had.

15 MR. FOX: That's all I have of this witness, Your
16 Honor.

17 THE COURT: Any redirect?

18 MR. CARAKER: Just one question.

19 REDIRECT-EXAMINATION

20 BY MR. CARAKER:

21 Q Did this occur in Horry County?

22 A Yes, sir.

23 MR. FOX: One moment, Your Honor.

24 (A brief pause in the proceedings.)

25 MR. FOX: No -- no further questions.

FREDDY CURRY - REDIRECT EXAMINATION - JACKSON v. DENNO

1 THE COURT: Let me be -- before the witness goes
2 down, let me be clear on this. I understand Mr. Fox'
3 motion as far as the purpose of the stop and
4 suppression motion. The Jackson v. Denno, is there a
5 statement -- any statements that the State intends to
6 either play to the jury or to have this witness say to
7 the jury that the defendant told him at the time of
8 the arrest?

9 MR. CARAKER: Yes, sir, Your Honor. It is --
10 nothing is recorded, we would elicit testimony from
11 Agent Curry.

12 THE COURT: I would like to hear what the
13 statements are.

14 MR. CARAKER: Yes, sir, Your Honor. If I may?

15 THE COURT: Yes, sir.

16 REDIRECT-EXAMINATION (CONT.)

17 Q (MR. CARAKER) Agent Curry, you Mirandized the
18 defendant, did he make any statements or have a
19 conversation with you?

20 A Yes.

21 Q Could you please tell the Court what you guys
22 talked about after that?

23 A I asked Eugene why did you even take something
24 like that to work with you?

25 THE COURT: Move up a little bit closer to the

FREDDY CURRY - REDIRECT EXAMINATION - JACKSON v. DENNO
1 microphone.

2 A I asked Mr. Hardy why did he even take it to work
3 with him, and he says, well, I had it left over from
4 bike week. This was on Monday. The Harley fall bike
5 rally was over the weekend. Mr. Hardy had a tent
6 washing where he washed motorcycles on the location
7 down there. So when he spoke about that, talking about
8 that is what he had left over. He was selling what is
9 called "bumps," or commonly known as "bumps," which is
10 approximately less than a half a gram of cocaine.

11 At the rallies and all of that it is a lot easier
12 to walk around and do a snort of cocaine than to smoke
13 crack. One, you can't fire up a crack pipe out there
14 in front of anyone, but a lot of them come down here
15 to party, and they will buy what they call a "bump,"
16 quarter to half gram of powder cocaine. If they buy
17 it, they can walk over anywhere and just (indicates),
18 one time, up their nose. That is what he was
19 basically doing that, is what I got through the
20 conversation.

21 Q (MR. CARAKER) Is that the gist of your
22 conversation, that he was -- he set up a bike wash
23 tent and was selling -- as you referred to it -- bumps
24 out of that tent during the fall rally?

25 A Yes, sir.

FREDDY CURRY - RECROSS-EXAMINATION - JACKSON v. DENNO

1 Q And you got that through the conversation with
2 this defendant?

3 A Yes, sir.

4 Q And he told you that is what he had left over --
5 you said this was on a Monday, so I'm assuming from
6 that immediately prior weekend?

7 A Yes, sir.

8 MR. CARAKER: I believe that is the gist of it,
9 Your Honor.

10 THE COURT: Very good. Cross-examination on
11 that, Mr. Fox?

12 RECROSS-EXAMINATION

13 BY MR. FOX:

14 Q Did Mr. Hardy specifically tell you he was
15 selling bumps, or did you infer that from the situation
16 of having the tent at a bike rally?

17 A I knew for a fact he had his tent set up and he
18 was selling from what I was told through different
19 people, and he was washing motorcycles there. Based on
20 that and the knowledge of each other, and knowledge of
21 what was going on, I felt that we both knew exactly
22 what we were talking about.

23 Q What exactly did he say?

24 A He said, That is what I had left over from bike
25 week, man.

FREDDY CURRY - RECROSS-EXAMINATION - JACKSON v. DENNO

1 Q So you put that together with other things you
2 knew, and you came to the conclusion that he was
3 selling at bike week?

4 A That we had information that he had been doing at
5 every bike rally, yes.

6 Q But in terms of a statement made to you --
7 because that is what this hearing is, that is what the
8 judge has to determine, and what was said was, That is
9 what I have left over from bike week at Suck Bang Blow?

10 A Yes, sir. And inside the packaging were four
11 small -- if a person is using cocaine or carrying for
12 themselves, you are not going to see a package and four
13 separate little tiny plastic quarter to half gram bags.
14 Those are considered -- as soon as you see it, you know
15 they are selling bumps, meaning a tiny bit of cocaine,
16 enough where you put it on your hand, snort it and keep
17 literally walking through the crowd without being
18 noticed.

19 Q You couldn't buy four bumps to use at four
20 separate -- I mean they are small amounts, a half gram,
21 you couldn't buy four bumps to have it along?

22 A Excuse me? For personal use, you mean?

23 Q We'll deal with that later. In terms of the
24 statement, because that is all we're dealing with now,
25 what he said is, That is what I had left over from bike

FREDDY CURRY - REDIRECT EXAMINATION - JACKSON v. DENNO

1 week, correct? That is the statement?

2 A That is his statement, yes.

3 MR. FOX: Okay. Thank you.

4 THE COURT: Any redirect?

5 REDIRECT-EXAMINATION

6 BY MR. CARAKER:

7 Q That was not the only statement he made, right?

8 You had a complete conversation about him having a bike
9 tent at SBB; is that correct?

10 A Yes, sir.

11 Q And it was in the context of that conversation
12 that he told you that is what I had left over from the
13 fall rally; is that correct?

14 A Yes, sir.

15 MR. CARAKER: Thank you.

16 THE COURT: Anything on that question or
17 questions by the State?

18 MR. FOX: No, Your Honor.

19 THE COURT: Very good. You may step down.

20 Further witnesses by the State?

21 MR. CARAKER: No, sir, Your Honor.

22 THE COURT: Witnesses from the defense?

23 MR. FOX: One moment.

24 (A brief pause in the proceedings.)

25 MR. FOX: We'll call Mr. Hardy just as to the

1 EUGENE HARDY - DIRECT EXAMINATION - JACKSON v. DENNO
2 stop. We don't have -- so I'll limit my questioning
3 to the circumstances of the stop.

4 THE COURT: All right.

5 (EUGENE HARDY, having been duly sworn,
6 testified as follows:)

7 THE WITNESS: Eugene Hardy, H-A-R-D-Y.

8 THE COURT: Before you ask him any questions,
9 Mr. Fox, do you want to cover anything as far as his
10 understanding of -- that he's under oath and the
11 information that he gives can be used by the State?

12 MR. FOX: I discussed that with him, and I'll
13 repeat.

14 DIRECT EXAMINATION

15 BY MR. FOX.

16 Q You are under oath and a hearing in your trial.
17 Any testimony you give at this point perhaps could be
18 used -- depending what it is -- could be used as
19 evidence in the State's trial in chief when we get in
20 front of the jury. If you choose to testify at trial,
21 they'll be looking for any inconsistencies and may use
22 what you testified to now to impeach or attack your
23 credibility if you testify at trial; do you understand
24 that?

25 A If I testify now?

Q Yes. They may, and I can't speak for them, but

ARGUMENT ON MOTION

1 this is sworn testimony, and just like any witness, the
2 State could use anything that you testify to
3 differently; in other words, if you say one thing now
4 and something different is different, if you testify,
5 they can use that, okay?

6 A Yes.

7 Q And you may provide information in testifying
8 that the State could use to present to the jury; does
9 that make sense?

10 A I understand.

11 Q In other words, you may be opening the door to
12 other evidence that they may be able to get.

13 THE COURT: Mr. Hardy, make sure you are directly
14 behind the microphone. Speak directly into that.

15 MR. HARDY: I choose not to.

16 MR. FOX: You choose not to testify now?

17 MR. HARDY: Yes, sir.

18 MR. FOX: That would be all from the defense.

19 THE COURT: Thank you very much. Let's do it
20 this way. As to the Jackson v. Denno, Solicitor, I'll
21 hear from the state.

22 MR. CARAKER: With regards to Jackson v. Denno
23 matter, it is clear from the evidence and from Agent
24 Curry that they had warrants for the defendant. He
25 was under arrest. He wasn't free to go, which brings

ARGUMENT ON MOTION

1 us to was the statement freely and voluntarily given.
2 He was given his Miranda rights off a card, not from
3 memory; this is something that Agent Curry does. He
4 says he does it that way on the side of the road. I
5 asked Agent Curry a series of questions regarding
6 whether he could tell if he overborn Mr. Hardy's will,
7 if he understood what was going on, did his responses
8 appear to be freely and voluntarily given, and Agent
9 Curry responded affirmative to all of those things.
10 He didn't appear to be under the influence of alcohol.
11 His answers were rational and responsive to Agent
12 Curry's questions. He didn't yell or jump up and down
13 or point his finger at him or point his gun at him or
14 bring a gaggle of officers to pressure to make a
15 statement. He just sat in the car and talked to him.
16 As you could tell from Agent Curry's testimony, he is
17 a veteran officer and very even keeled. He is very
18 soft spoken and conducts himself the same way in the
19 field. Your Honor, we feel we certainly met the
20 burden of proving freely and voluntarily nature of the
21 defendant's statements, conversation, with Agent
22 Curry.

23 THE COURT: Very good. Your argument on the
24 Jackson versus Denno.

25 MR. FOX: Judge, the only thing I would add is

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1 certainly Mr. Hardy was in custody, there is no
2 question about that. He was under arrest, not free to
3 leave. He was in a confined space. He was not --
4 although the testimony was he was read Miranda rights,
5 there was no Miranda form, which is a standard
6 practice where he acknowledges, as his rights are read
7 to him, where he initials and signs the bottom showing
8 he not only heard, but understood what was read to
9 him, and that was not done. So that would be our
10 position, Your Honor, it is not freely and voluntarily
11 made.

12 THE COURT: Very good. In this particular
13 matter, the Court finds, certainly, that the
14 defendant, Mr. Hardy, was under arrest at the time of
15 the statements, that the Miranda warnings were
16 properly given to him. There is no requirement that
17 they be in writing or there be some written
18 acknowledgment by the defendant as to the Miranda
19 warnings, just that they were given to the defendant.
20 The evidence and the testimony presented to the Court
21 is that he understood them, that he gave proper,
22 rational answers, there was no threats, he was not
23 coerced in any manner and did not ask for an attorney.
24 He chose not to remain silent. He was not under the
25 influence. Testimony is that he had his wits about

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1 him. He had his mental faculties present so that it
2 is clear in the requirements of the Jackson v. Denno
3 hearing that he was properly advised of his rights.
4 He waived them. It is a free and voluntary statement,
5 and I'm going to allow the State to testify about that
6 through their witnesses and to introduce in the trial
7 of this matter. Obviously, as with any statement, it
8 is ultimately up to the jury to determine, again,
9 voluntariness and the believability and credibility.
10 All right. So the statement is in.

11 Now, Mr. Fox, you had a motion to suppress the
12 drugs in this matter, and I'll hear from you.

13 MR. FOX: I'll be brief since Mr. Hardy exercised
14 his right not to provide testimony; however, the
15 argument is that this was a traffic stop that was
16 pretextual. It was not a traffic stop that he was not
17 -- it was bootstrapped after the fact. They certainly
18 had these warrants -- that's not disputed -- for his
19 arrest signed earlier that day, but that he was
20 stopped without cause under a pretextual basis for a
21 made-up traffic violation that they then used to make
22 a contact and serve these warrants. So that is a
23 truncated version since Mr. Hardy exercised his right
24 not to testify.

25 THE COURT: Very good. Argument from the State?

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1 MR. CARAKER: Thank you, Your Honor. I think it
2 is clear from the testimony, Your Honor, Agent Curry
3 it was -- was familiar with the defendant and he knew
4 him and he saw him, ID'd him to make sure that he had
5 the right person. He had arrest warrants in hand.

6 As far as being a pretextual stop, under the Rand
7 case, pretextual stops are allowed because he had
8 warrants in hand. Agent Curry had probable cause. We
9 believe that Mr. Hardy committed the offense of
10 distribution of cocaine base at that time, a day
11 prior. I don't believe there was any testimony as to
12 some made-up traffic violation. He saw the defendant,
13 knew him, identified him, knew he had warrants for him
14 and pulled him over and effected an arrest. I think
15 the arrest, and the stop for that matter, should
16 stand.

17 THE COURT: All right, sir. Based upon the
18 testimony before the Court, I do find that there was a
19 proper stop. The police, through testimony of Agent
20 Curry, had proper arrest warrants for the defendant.
21 Agent Curry saw the defendant, identified him, knew
22 what he drove. He was in that vehicle. He was in an
23 unmarked police car equipped with lights, he, for
24 public safety reasons and safety of himself, the
25 defendant and the public in general, he had a duly

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1 authorized law enforcement agent stop the vehicle so
2 as to effect the service of the lawful arrest warrants
3 that they had on the defendant. That was a proper
4 reason to stop the defendant. You have proper arrest
5 warrants in hand, you see the person. You can have
6 other duly authorized law enforcement agents who are
7 in marked police cars and in uniform stopped so that
8 the arrest warrants can be served on the defendant,
9 and based upon the circumstances, there's no question
10 that thereafter the defendant, after being told that
11 he was under arrest for the arrest warrants, in the
12 sight of Agent Curry, then took out what Agent Curry
13 says in his training and experience in the law
14 enforcement area, and in particular the narcotics law
15 enforcement area, appear to be drugs that the
16 defendant clearly took out of his shoe and threw down.
17 The agent recovered them thereafter immediately from
18 the place that the defendant threw them down, so the
19 motion to suppress by the defense in this matter is
20 hereby denied, and I will allow the drugs to come into
21 evidence assuming, of course, that the testimony
22 follows as was presented to the Court here today. All
23 right. Thank you.

24 So what is left is the motion by the State
25 regarding the prior offenses. We'll break for lunch.

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1 Let's be back at, say, 1:50 and we'll get started on
2 the State's motion, and I'll hear the State's
3 presentation and the defense's argument on that, and
4 then we'll make our decision. All right. Is Mr.
5 Hardy out on bond?

6 MR. FOX: He has, Your Honor, and has made all of
7 his court appearances so far.

8 THE COURT: Mr. Hardy, the jury has not been
9 sworn, so the trial has not started, but I'm telling
10 you that we are starting this trial this afternoon,
11 all right. I'm directing you to be back here at
12 1:50 p.m. here in this courtroom. If you fail to do
13 so, that would be a disobedience of a direct order,
14 that is I'm ordering you to be here. If you fail to
15 appear, a bench warrant will be issued for your
16 arrest. They'll pick you up and take you to the
17 detention center and transport you over at the Court's
18 convenience. If you decide not to come back, that
19 will not stop the trial. The trial will proceed in
20 your absence. It will proceed to a conclusion. If
21 you are not brought back before the Court before its
22 conclusion and the jury finds you guilty, a sentence
23 will be rendered and sealed and read to you upon your
24 presentation to the Court by law enforcement; you
25 understand me?

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1 MS. HARDY: Yes, sir.

2 (A lunch recess was taken.

3 THE COURT: Solicitor, you filed a motion to be
4 allowed to introduce in the trial of this case
5 evidence or testimony regarding the prior sales of
6 narcotics by this defendant, so I'll be glad to hear
7 from you as to any presentation you would like to
8 make.

9 MR. CARAKER: Yes, Your Honor. May it please the
10 Court. Evidence of prior sales of drugs by this
11 defendant is probative, Your Honor, of what he planned
12 to do, his intent, to distribute the drugs found in
13 his possession that day.

14 I cited three cases in my brief, Your Honor,
15 supreme court cases, the matter of State versus Gore.
16 The state supreme court affirmed a conviction for
17 possession with intent after the trial court allowed
18 testimony that the defendant had sold drugs in the
19 location twice in the last month. The Court also
20 engaged in a 403 balancing test in that matter and
21 found that the probative value outweighed its
22 prejudicial effect.

23 Your Honor, in the next case, that being State
24 versus Wilson, the Court also similarly affirmed the
25 conviction under similar circumstances. The Court

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1 called that type of evidence, evidence of prior drug
2 sales, especially probative in that particular matter.
3 And in the State versus King, the Court even went so
4 far, Your Honor, as to say evidence of King's past
5 drug-related activities is integral to proving his
6 intent to distribute the cocaine seized from the
7 trailer.

8 Mr. Hardy is charged -- in addition to this
9 particular possession with intent to distribute, he's
10 also charged with three distributions, one occurring
11 in February, one occurring in June and one occurring
12 in August of 2016. That certainly suggests, Your
13 Honor an ongoing criminal enterprise, the fact that it
14 stretched out over the course of six; seven or eight
15 months during this time period. You have not only
16 that fact, you have his statements regarding that this
17 particular cocaine that he got arrested with on this
18 particular day was left over from a bike wash tent
19 that he was selling out of at a biker bar down in
20 Murrell's Inlet called Suck Bang Blow.

21 Also, Your Honor, we listened to some testimony
22 from Agent Curry from the DEU, a veteran police
23 officer of 23 years, 18 of which has been spent in
24 narcotics investigations. He's familiar with, as he
25 testified, generally speaking with the drug king. He

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1 knows how they packaged, bought, sold, how much they
2 sell for. He knows narcotics when he sees it. In his
3 testimony, I believe, hey, this is how drugs are sold
4 on the street. It might be four little bags, but that
5 is how drugs are sold.

6 Your Honor, we plan to elicit testimony from
7 Agent Curry that, you know, sure you could -- you
8 could go buy four bags for your own personal use, but
9 it doesn't make sense to do that. That is not the way
10 things are done. You could walk around with a kilo in
11 your backpack if that is what you choose to do, but
12 that is not the way things are done, not the way
13 things are done on the retail level.

14 So there is case law in those three cases, the
15 two from the supreme court and the one from the court
16 of appeals, affirming this type of evidence and this
17 type of case. Because, Your Honor, we must prove
18 intent beyond a reasonable doubt, that is an element
19 of the crime for which he is charged, otherwise, we
20 would just be here on a possession case. So for us to
21 be able to make our case for the intent of what he had
22 to do with the drugs in his possession, his prior
23 distributions are evidence of his intent. The supreme
24 court has affirmed convictions under that, one court
25 calling it especially probative, one court calling it

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1 an integral part of the State's case in proving
2 intent.

3 So for those reasons, we ask that we be allowed
4 to discuss the defendant's prior drug dealings in this
5 matter.

6 THE COURT: And be specific, and I know you did
7 talk about it, but what your intention is is to talk
8 about the three alleged drug sales that were the
9 underlying factual situation that led to the three
10 arrest warrants for which they stopped him; is that
11 correct?

12 MR. CARAKER: That is correct, Your Honor.

13 THE COURT: So those three that you intend to
14 elicit testimony from the agent; is that correct?

15 MR. CARAKER: Yes, sir, Your Honor.

16 THE COURT: All right, Mr. Fox, let me hear from
17 you.

18 MR. FOX: I think to further clarify and explain
19 my understanding is that the intent is not to just
20 elicit testimony, but play videos from the sales. So
21 it goes a step beyond about eliciting testimony,
22 but -- am I correct?

23 MR. CARAKER: We can avoid a little bit -- Your
24 Honor, in speaking with Agent Curry, I believe we made
25 a decision not to play the videos in that matter, so

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1 we would just limit our motion to testimony from Agent
2 Curry.

3 THE COURT: As to what -- first, as to
4 background, what he actually observed of the
5 defendant's activity?

6 MR. CARAKER: Yes, sir. It is my belief, Your
7 Honor, that we'll elicit on testimony that Agent Curry
8 personally observed these sales via an audio
9 transmitting device and was monitoring the sales as
10 they happened.

11 THE COURT: Very good. All right. Mr. Fox.

12 MR. FOX: Judge, in the interest of privacy, I'll
13 address the last first. If Mr. Curry personally
14 observed these things, I'm not sure how that was
15 possible by monitoring through the ear piece. My
16 understanding is that they listened to, you know --
17 not a radio, but an auditory feed. They don't have a
18 monitor, but the visual feed, so he didn't personally
19 observe anything. The starting point of a prior bad
20 act 403 analysis is that that is a rule of exclusion,
21 that is the starting point for any analysis. These
22 things, prior bad acts, evidence of other crimes,
23 evidence of other bad acts are not admissible, but
24 then there are some clearly delineated exceptions.

25 So, number one, I would say the starting point is

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1 these should not come in. That is the default, and
2 then see if this leads into the exception, and in this
3 case it would be to prove intent. Judge, all three
4 cases cited by the State are easily distinguishable.
5 In all three, they did involve prior sales alleged by
6 the defendants, but in all three cases the person with
7 knowledge of those, person who observed those
8 firsthand was required to come to court and did
9 testify. In one case, it was a girlfriend of the
10 defendant who lived with and was present for multiple
11 transactions and could say I, myself, witnessed and
12 observed these sales at these times in this location
13 with that defendant. And the other two were
14 informants who came to court, testified, subject to
15 cross-examination, satisfied the defendant's right to
16 confront the witnesses against him, and, again, there
17 in court subject to cross-examination.

18 Mr. Curry would be subjected to
19 cross-examination, certainly he is here; however, he
20 merely monitored, and that is auditory. He heard what
21 was going on or what he thought was going on, he did
22 not have eyes on the person that was there. He did
23 not see what happened as it happened. He did not
24 observe what happened. He doesn't know if there were
25 other people around that he didn't hear. So he hears,

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1 you know, a portion of what is there, of what is
2 occurring, not the entire thing. It certainly is not
3 even as good as if he had video, certainly not as
4 good. So I don't think it meets the criteria or the
5 threshold of the cases cited by the State. I think it
6 has to be clear and convincing evidence. Number, one,
7 they are not subject to a conviction at this point. I
8 don't believe it is clear and convincing, and I also
9 worry, Judge, if you become the first judge in this
10 state to allow this thing, there would be no logical
11 reason why it can't be as a principal that it would be
12 allowed in a trial, if they ever do bring Mr. Hardy to
13 trial on any of the sales, as they had the option to
14 do this week, that they would avoid, from their point
15 of view, the hassle of having the informant come to
16 court with all of the baggies that informants
17 typically bring and simply have a law enforcement
18 testify, one that didn't observe the transaction, but
19 basically getting around that requirement to have the
20 person with the best knowledge and with the firsthand
21 knowledge, eyewitness, come to court and testify and
22 thereby also undermining the defendant's right to
23 confront the witnesses against him.

24 THE COURT: So, Solicitor, let me be clear as to
25 the facts that Agent Curry would testify to. Was he

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1 in a position to observe what Mr. Hardy was doing and
2 that is the basis of his testimony, or is he in a case
3 where he is listening to someone else who was engaging
4 Mr. Hardy and listening to that conversation?

5 MR. CARAKER: He was listening, Your Honor.

6 THE COURT: So he was not in a position to
7 observe what was happening regarding the third party
8 and Mr. Hardy?

9 MR. CARAKER: Only after the third party returned
10 and he was able to view the video.

11 THE COURT: Okay.

12 MR. CARAKER: If Your Honor would allow, I can
13 make an offer of proof on the record, we could put
14 Agent Curry on the stand.

15 THE COURT: I would be fine for you to do that,
16 but what I'm -- and I understand the State does not
17 want to apparently put the person who he actually
18 engaged in the sale on the stand, but since Mr. Hardy
19 (sic) did not actually observe what was going on. If
20 he was in a position of observing what was going on
21 and listen to it, and you could tie the two together,
22 but if he is not in a position to say, I see John Doe
23 and Eugene Hardy, and prior to that we had
24 communicated and -- I don't know, was this a CI?

25 MR. CARAKER: Yes, sir.

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1 THE COURT: So we communicated with John Doe, did
2 all of these things they talk about regarding the CI,
3 searched him, money and all and sent him on, and then
4 I see John Doe talking to Mr. Hardy, they have some
5 movements that based upon my prior experience appears
6 to be an exchange of money for drugs, he comes
7 directly back, we search him and he has drugs, we have
8 a video, that is a different story.

9 But if it is totally out of his eyesight and he's
10 hearing it, then he doesn't know exactly what is going
11 on. He can believe he does based on what he's
12 hearing, but he does not know it because he did not
13 see it. I guess then the question is: If you have
14 video evidence, was this video recorded by the CI?

15 MR. CARAKER: Yes, sir.

16 THE COURT: All right. So then the question
17 is -- video evidence, if it clearly shows Mr. Hardy
18 and clearly shows a transaction regarding drug sales,
19 is that sufficient without the testimony of the CI?
20 You can put Agent Curry on, but I don't know that it
21 will answer these questions. If you tell me he didn't
22 see it, then I've got a problem with that since you
23 are not going to call the CI.

24 Now, if he had personally observed it, that would
25 be a different story, but just listening to it, he can

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1 say I believe this is what is going on, but he can't
2 know it. I mean, things can be said, and in actuality
3 that is not what is occurring. People might be saying
4 something, but that might not be actually what
5 transpired, but he didn't see it.

6 So without the CI saying -- you know, you could
7 have Agent Curry talk about what they did and then the
8 CI said, yeah, I took the money, approached Mr. Hardy,
9 I gave him the money, he gave me the drugs, I came
10 back and gave the drugs to the agent. You know, then
11 that is what the cases are talking about, someone that
12 has actual knowledge. Just thinking now about the
13 video evidence, I'm not sure that that can be
14 stretched or not.

15 I mean, I'll hear from both of you on that
16 particular idea, but I'm not comfortable allowing it
17 without some eyewitness testimony about the
18 transaction, from whomever it might come.

19 MR. CARAKER: Yes, sir. We don't want to play
20 the video for the same reason that we're not trying
21 the actual distribution.

22 THE COURT: I understand. I understand that part
23 of it.

24 MR. CARAKER: Yes, sir.

25 THE COURT: But that gives me not only concern,

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1 but I just don't think we can get past the probative
2 prejudicial battle without the person being here
3 subject to cross-examination. I just don't think we
4 can get passed that.

5 You are not supposed to admit prior bad acts to
6 prove something unless it might actually be an
7 element, and I can see prior sales could be a
8 possession with intent. You have four little baggies
9 you sold in the past, so that is an indication, but
10 you have to have someone who has actual knowledge,
11 someone who actually participated in it to say, Mr.
12 Hardy did that, rather than, I think this is what
13 happened because I heard it, didn't see it, so I can't
14 swear that it actually happened, it is just what I
15 think happened because that is what I heard.

16 MR. CARAKER: Yes, sir.

17 THE COURT: So that's my problem. Understanding
18 the problems the State has regarding that, but without
19 that lynch pin testimony, I'm not comfortable allowing
20 that testimony in.

21 MR. CARAKER: Yes, sir, I understand. Then that
22 raises the question, Your Honor, with regards to their
23 stopping the defendant on that day having an arrest
24 warrants in hand for distribution, how would the Court
25 advise?

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1 THE COURT: Well, I don't think there is any
2 problem with saying there are outstanding arrest
3 warrants for the defendant, we saw him, knew it was
4 him, knew it was his vehicle, you know. I knew that
5 was the defendant, so we initiated the stop and
6 affected the arrest based on outstanding arrest
7 warrants, without going into what the arrest warrants
8 are for.

9 You can clearly talk about the reasons for the
10 stop, we didn't just randomly pull this guy over,
11 there is active arrest warrants, the agent testifies I
12 know that to Mr. Hardy, we saw him so we stopped him,
13 and this is what happened when we were serving him
14 with the arrest warrants. The conversation, statement
15 he made, throwing drugs down, this takes place as a
16 result of serving him with the arrest warrants.

17 Now, obviously, Mr. Fox, you know, dependent on
18 what question you might ask the agent, then you have
19 to be careful about those questions because, you know,
20 you might get an answer that you don't want, all
21 right.

22 So that is the Court's ruling regarding the
23 State's motion. Overall, I don't think there is a
24 problem with doing that. It is just we don't have the
25 proper person to give that evidence to the jury.

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1 MR. CARAKER: Yes, sir, Your Honor.

2 THE COURT: Thank you. Anything else?

3 MR. FOX: No, sir.

4 THE COURT: I told the jury to be back at 3:30.
5 We have a little time. Get organized. As soon as
6 they are back, we'll call them, swear them and get
7 started with the case. Obviously, we'll have time to
8 go into some testimony. Regarding the people, is
9 there -- if we get started at 3:30, you know, I don't
10 -- let me just say, I don't want to keep them anywhere
11 past 5 o'clock, so if you can gauge your introduction
12 of evidence to say that -- I would like to stop around
13 5 o'clock as I can, because, you know, they are a
14 captive audience. We have to be here; they don't.
15 They have lives outside of the courthouse, I want them
16 go as close to 5 o'clock as I can.

17 MR. CARAKER: With that in mind, maybe just
18 anticipate calling Agent Curry and Agent Costa, and
19 then deal with the chain witnesses in the morning.

20 THE COURT: I'm fine with that. I don't have a
21 problem with that. I'm just saying, try to take into
22 consideration the sensibilities of the people that we
23 have forced to be here. Thank you very much.

24 (A recess was taken.)

25 (State's Exhibit 1 marked.)

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1 THE COURT: The jury is here. Is the State ready
2 for the jury to come in?

3 MR. CARAKER: Yes, Your Honor.

4 THE COURT: Defense?

5 MR. FOX: Yes, Your Honor.

6 THE COURT: If you could ask the jury to come in,
7 please, sir.

8 (The jury enters at 3:27 p.m., and the
9 following is heard in the presence of the jury.)

10 THE COURT: The jury has requested that you be
11 the foreperson for this jury; is that correct?

12 JUROR: Yes, sir.

13 THE COURT: So I'll ask that you occupy that
14 particular seat when you come back to the jury room,
15 and Mr. Kownacki and Mr. Martin, if you would occupy
16 the seats you are in now as the alternates so I know
17 where the foreperson and alternates are. The rest of
18 the ladies and gentlemen fill in wherever it is that
19 you happen to come in from the jury room. Those are
20 the only three seats that need to be assigned.

21 Very first thing that is going to happen in this
22 trial is the clerk's representative is going to
23 administer the oath, so if you would stand at this
24 time.

25 (Whereupon, the jury was sworn.)

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1 THE COURT: If any member of the jury room did
2 not affirmatively take the oath just given by the
3 clerk's representative, if you would, please, stand.

4 No juror having stood, I find the jury is
5 properly sworn in this matter.

6 All right, ladies and gentlemen, I'm sure you
7 have been sitting there and wondering what am I doing
8 here, what is going to be my job. You, collectively,
9 are going to be the judge of the facts of this case.
10 I will not indicate in any way what I think the facts
11 in this case are. It is your job and responsibility
12 to evaluate the facts and evidence presented in this
13 case and determine whether or not the State has proven
14 the defendant guilty of the crime charged beyond a
15 reasonable doubt. I told you at the beginning that
16 the indictment states, charges, the defendant with the
17 crime of possession with intent to distribute cocaine,
18 and that indictment or charge can't be considered by
19 you as evidence, but when the indictment is brought
20 against the defendant, that charge is brought against
21 the defendant, he pled not guilty to this crime, so
22 that puts the burden of proof immediately upon the
23 State of South Carolina to prove the defendant guilty
24 beyond a reasonable doubt. That is the State's
25 burden. That is the State's job in this particular

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1 matter.

2 The defendant has nothing to show or prove to
3 you. I tell juries all the time the defendant need
4 not even show up to trial because they don't have
5 anything to prove to you. The State has to prove its
6 case by the evidence, by the witnesses, testimony, if
7 there is some physical evidence that they introduced,
8 by all of that, to see if they can prove the defendant
9 guilty of the crime charged beyond a reasonable doubt.

10 How this case will proceed is we will go through
11 the opening statements of the attorneys, then we'll
12 hear the evidentiary portion of the trial witnesses
13 that come before you testify under oath as to what
14 they know about this particular matter, there may be
15 the introduction of certain evidence through those
16 witnesses.

17 When we get done with the testimony, the
18 evidence, then we'll have the closing arguments of the
19 attorneys, then I'll give you the charge of the law,
20 law that you will apply to the facts and evidence that
21 you have heard in this matter, and that is the
22 evidence that you'll determine whether or not the
23 State proved the defendant guilty beyond a reasonable
24 doubt based upon the law that the Court has told you
25 about, then I'll give the case to you for your

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1 deliberations and unanimous decision.

2 In being the judge of the facts, an important job
3 and responsibility you would have is to judge the
4 credibility, that is the believability, of the
5 witnesses that come before you and testify under oath.
6 In that, you can consider any myriad of things, how
7 the witness testifies, what they know, what took place
8 in their presence, what happened. I'll go over this
9 all at the end, but you can believe a portion of what
10 the witness says, none of it based upon your view of
11 the evidence, assuming that you have a good, sound
12 reasoning for doing so. If you wonder about how do I
13 judge someone's believability and creditability, you
14 do it every single day of your life. When someone
15 tells you, you are automatically judging in your own
16 mind whether or not you believe that person. How do
17 you do that? Good commonsense, good judgment in
18 conducting your own affairs. That is what we're
19 asking you to do here today. Use your good
20 commonsense, use your good judgment, apply it to the
21 facts and evidence you heard in this case, and
22 determine whether or not the State has proven the
23 defendant guilty beyond a reasonable doubt based upon
24 the evidence that has been presented.

25 During the course of the trial, the attorneys may

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1 raise certain matters to the Court, an objection or
2 ask for a ruling on a certain matter. If I rule on it
3 in your presence, it is going back to the fact that I
4 won't make any comments on the evidence as to who to
5 believe or not believe, someone's believability or
6 creditability, but one of my jobs is to make sure that
7 one the evidence you receive is proper evidence, so I
8 may decide that certain things are proper for you to
9 hear, or not proper for you to hear in this particular
10 matter.

11 In making that determination -- again, I'm not
12 making a determination who to believe, it is just
13 whether or not this evidence comes in for your
14 consideration or not. We understand that we'll be
15 asking you to collectively arrive at a verdict,
16 unanimous verdict, in this particular matter, and that
17 will require -- I don't expect this case to last any
18 more than the rest of today, a portion of tomorrow, so
19 it is not going to be that long, but it is required of
20 you to pay attention to all of the facts and evidence
21 in this case so that you are able to fully discuss
22 those and make your decision based upon all of the
23 facts and evidence.

24 With that, I'll turn it over to the lawyers for
25 their opening statements.

OPENING STATEMENT - MR. CARAKER

1 MR. CARAKER: I'm David Caraker. I represent the
2 State of South Carolina along with my colleague,
3 George Henry Martin, and more specifically the
4 citizens of Horry County. We brought a charge against
5 the defendant for possession with intent to distribute
6 cocaine. We're going to prove our case by presenting
7 evidence on the witness stand. The evidence is going
8 to show, ladies and gentlemen, that on October 3,
9 2016, Agent Freddy Curry with the 15th Circuit Drug
10 Enforcement Unit had warrants for the defendant's
11 arrest. He had a sheriff's deputy stop him. He
12 pulled him over and said, oh, that is the guy I have
13 warrants on, let's stop him. They stop him and pull
14 him over. During the course of that stop, Agent Curry
15 saw the defendant reach down and pull a baggy out, and
16 inside that baggy was four other baggies of what later
17 tested positive for cocaine. That's the gist of the
18 case. It is not sexy. There is no chase. There is
19 no blue lights. There is no million dollar yachts or
20 anything, but what we have is no less important
21 because we're accusing the defendant of intending to
22 sell or distribute or give away, whatever the verb is
23 you want to use, the drugs that he had in his
24 possession.

25 You will hear evidence that the drugs were

OPENING STATEMENT - MR. CARAKER

1 packaged for sale. It was in four baggies rather than
2 one. You will hear Agent Curry tell you about his
3 training and experience and why he thinks that is the
4 case.

5 When you finally have heard all of the evidence
6 and the judge has given you the law, he'll talk to you
7 about circumstantial evidence and direct evidence.
8 He'll tell you there is no difference between the two.
9 Sometimes there is a lot of hubbub about, oh, it is
10 just circumstantial evidence. Well, in this
11 particular matter, that is all we have to prove his
12 intent. I can't cut his head open and show you that
13 part of his brain and point and say, see, this is why
14 he intended to sell those drugs. I have to show you
15 by the intended circumstances, okay. So we're going
16 to do that by putting Agent Curry on the stand. He
17 will tell you about his breath of experience.

18 At the end of the day, you will have no doubt in
19 your mind, much less a reasonable doubt, that, number
20 one, the defendant possessed that cocaine on that day.
21 You will also be firmly convinced that he intended to
22 distribute the cocaine on that day.

23 I thank you for your attention, and we'll talk a
24 little bit later after that.

25 THE COURT: Mr. Fox.

OPENING STATEMENT - MR. FOX

1 MR. FOX: Thank you, Your Honor. May it please
2 the Court?

3 THE COURT: Yes, sir.

4 MR. FOX: Good afternoon, ladies and gentlemen.
5 I'm Eric Fox, and it is my privilege to be here on
6 behalf of Eugene Hardy. Stand up, Mr. Hardy. He is
7 the accused citizen, accused in this case. You will
8 hear a lot of talk about Mr. Hardy today. I don't
9 generally get into back-and-forth in opening arguments
10 with the Solicitor about the facts of the case.
11 Needless to say, there is a dispute or disagreement
12 over what the evidence will show, otherwise, we
13 wouldn't be here.

14 It obviously goes without saying that the
15 government believes that Mr. Hardy was in possession
16 of these drugs with the intent to sell them, or they
17 wouldn't have arrested him. It goes without saying
18 that if he admitted that fact, we wouldn't be here
19 having a trial. I definitely do disagree with some of
20 the conclusions that the State will ask you to draw.
21 I will bring those to your attention at the end of the
22 case. Listen carefully to the instructions that the
23 judge will give you. Bear in mind, I always like to
24 tell the jury at the beginning, the entire burden of
25 proof rests with the State of South Carolina. Mr.

OPENING STATEMENT - MR. FOX

1 Hardy has nothing to prove. He is a citizen accused
2 of a crime, and he bears no burden of proving his
3 innocence. That burden is entirely on the State of
4 South Carolina, and it is beyond a reasonable doubt.
5 The judge will define that for you at the end of the
6 case, but it is pretty much what it sounds like, not
7 just any doubt, not just a silly doubt. Judge Floyd
8 used to say you can doubt whether there is salt in the
9 ocean at Myrtle Beach. I mean, that is kind of silly.
10 You may doubt it, but you know the water in Myrtle
11 Beach is salty. So it is not any doubt, it is a doubt
12 that comes from what you hear or don't hear, what is
13 or isn't presented as evidence. It does not mean it
14 has to be the same doubt for all 12 of you. Your
15 verdict must be unanimous, whatever that verdict may
16 be, guilty or not guilty. It must be unanimous, all
17 12 of you must agree, but you may have different
18 reasons to doubt the evidence presented to you. You
19 do not have to agree unanimously what that doubt is.

20 A reasonable doubt often says a doubt that leaves
21 you less than firmly convinced that a person is guilty
22 of what is charged, okay. So I agree with
23 Mr. Caraker, as the judge told you, I don't think it
24 is an extremely long trial. It is an extremely
25 important trial, certainly to Mr. Hardy. His liberty

FREDDY CURRY - DIRECT EXAMINATION

1 is at stake, but I don't think it will be a long,
2 drawn out affair. I thank you for your time.

3 THE COURT: All right. Solicitor.

4 MR. CARAKER: We call Agent Curry.

5 (FREDDY CURRY, having been duly sworn,
6 testified as follows:)

7 THE WITNESS: My name is Freddy Edward Curry,
8 C-U-R-R-Y.

9 DIRECT-EXAMINATION

10 BY MR. CARAKER:

11 Q Good afternoon, Agent Curry. With whom are you
12 employed?

13 A Employed by the Town of Surfside Beach Police
14 Department, and currently assigned to the 15th Circuit
15 Drug Enforcement Unit for the past ten or more years.

16 Q How long in total have you been in law
17 enforcement?

18 A A little over 23 years.

19 Q And of that 23 years, how much of that time has
20 been dedicated to working narcotics or drugs?

21 A Approximately, 18 years.

22 Q And in that 18 years of working narcotics or
23 drugs, did you receive any specialized training?

24 A Yes, sir. Worked in -- sent to different classes
25 for working undercover. Undercover managing

FREDDY CURRY - DIRECT EXAMINATION

1 confidential informants, high risk search warrants,
2 everything from marijuana analysis where you are
3 testing drugs, et cetera, to conducting high risk
4 search warrants and writing those search warrants.

5 Q And did you also mix practical, real world
6 experience in with that schooling during your 18 years
7 as a narcotic detective?

8 A Yes, sir. I worked undercover. I did numerous
9 buys, managed many confidential informants and written
10 several hundred or more search warrants, operations, et
11 cetera.

12 Q And in that time period, have you become familiar
13 with how drugs are bought and sold on the street?

14 A Yes, sir.

15 Q And are you also familiar with how they are
16 bought and sold above street level, wholesale street
17 level?

18 A Yes, sir.

19 Q And are you familiar with how they are packaged
20 in street level and wholesale level?

21 A Yes, sir.

22 Q Have you developed familiarity with what you
23 would expect a user to have in his or her possession
24 versus a dealer?

25 A Yes, sir.

FREDDY CURRY - DIRECT EXAMINATION

1 Q Are you familiar with drug weights involving the
2 different drugs and how much those drugs cost based on
3 weight?

4 A Yes, sir.

5 Q And are you familiar with how they are used?

6 A Yes, sir.

7 Q And how are drugs sold at the retail level, based
8 on weight, or how does it work?

9 A Everything is based on weight. No one wants to
10 get caught holding, as they say. In this
11 investigation, when you are talking about whether --
12 where say "four bumps," a bump of cocaine is something
13 you take a gram and break it either into a half a gram
14 or quarter grams. When you sell it, someone can pop
15 the top on the plastic and go (indicates), and it's
16 done. They've ingested it. There is no carrying it
17 around for use and possibly get caught with it. So it
18 is put in and sold as bumps.

19 Q To get back to the Drug Enforcement Unit for a
20 minute, not to say that the DEU never makes possession
21 cases, but is that the primary function, the primary
22 goal, of the DEU?

23 A No, sir. The primary function is to investigate
24 organizations and people that are trafficking and
25 distributions of sales or selling drugs. It is not

FREDDY CURRY - DIRECT EXAMINATION

1 designed to put together for the kid standing on the
2 corner. We're designed specifically to target
3 organizations of people dealing weight.

4 Q And in your capacity and in your training and
5 experience with the undercover work you have done, and
6 the CIs you've worked, them having bought and sold
7 drugs of different types and weights, when someone
8 orders up an amount of drugs that is more than a user
9 amount of drugs, how is that packaged, typically?

10 A Usually in one lump sum. If you are buying
11 wholesale from someone and you are a dealer, I may buy
12 several ounces, but I expect my ounces to be coming in
13 one lump sum where I can turn around and repackage it
14 to where I don't put down 28 grams, I'll put 26, 25 in
15 this bag and maybe 22 in this one, but I'll sell them
16 both for 28. That is how you make your money. If you
17 take cocaine, for instance, you add to it. There is
18 several different ingredients you can add to cocaine to
19 make it a stimulant, but only half would be cocaine,
20 the rest is diet pills crushed up, talcum powders,
21 etc., to where I can take that one ounce or two ounces
22 and turn it into three, four ounces if I add enough cut
23 to it, and then take it and cut it down into packages
24 to sell to make your money. That is how you do it.

25 Q When you do order up, you say you expect it to be

FREDDY CURRY - DIRECT EXAMINATION

1 in one bag; is it cheaper to get it that way?

2 A Yes, sir. When you buy wholesale and try to make
3 any money, you always order up at least quantity. A
4 little bit of weight, be it ounces or kilos. You then
5 take it and bust it down, chop it up and add all the
6 indigents you want, what we call "cut." That's where
7 you take every energy type of diet pill and crush it
8 and put it in there with it. A lot of stuff you buy at
9 GNC, you know, the vitamin stores, you add it to
10 cocaine to make the volume and the weight bigger, and
11 when you mix it up, you still have cocaine in every bit
12 of it, but now you have an extra ounce or two to make
13 money on, so then you repackage it down that way.

14 Q On October 3rd of 2016, did you have occasion to
15 come into contact with the defendant?

16 A Yes, sir.

17 Q How did that come about?

18 A I had three warrants for Mr. Hardy's arrest.

19 Q Where did you come in contact with him?

20 A At R.H. Moore off of Highway 707 in Horry County.
21 We knew that is where he worked, and we knew we were
22 trying to do this somewhat quiet where everyone and his
23 brother wouldn't know we came in contact with him. So
24 we set up outside R.H. Moore on Highway 707 and waited
25 for him to come out of work. We had a deputy sheriff

FREDDY CURRY - DIRECT EXAMINATION

1 in a marked unit and uniform to pull him over to arrest
2 him on the warrants and try to further our
3 investigation going on at the time.

4 Q And did that deputy, in fact, stop the defendant?

5 A Yes, sir. We staged it on Highway 707 out of
6 R.H. Moore there, and when Eugene came out, Mr. Hardy
7 came out, drove out, I personally identified him, said
8 that's him, he is in the vehicle alone and pulling out
9 now headed up north on 707, go ahead and make the stop.
10 As he pulled up and had driven by me, a deputy sheriff
11 pulled behind him and conducted a traffic stop on him.

12 After he stopped the vehicle, he went up -- I
13 told the deputy sheriff after you get him stopped,
14 walk to the window and ask him to step to the back of
15 the vehicle, you need to talk to him. As this was
16 going on, my partner and I, Chris Costa, pulled up
17 behind the patrol car as he is walking to the back of
18 the police car. We walked up, and not only do we make
19 proper identifications, police officers with DEU, Mr.
20 Hardy and I have known each other for several years.
21 We both know each other.

22 I explained I needed to talk to him. I don't
23 want to do it out here on Highway 707 in front of
24 everyone, do you mind stepping in the truck for a
25 minute, we need to talk. He said, Sure. Deputy and

FREDDY CURRY - DIRECT EXAMINATION

1 Agent Costa stood outside. We walked over and got
2 into my truck, Tahoe. It is a two-wheel drive. It is
3 not that high, but you sit with a console between you
4 where you can talk.

5 At that time, I explained to Mr. Hardy -- we've
6 known each other for awhile, but I have three warrants
7 for your arrest right now, and I want to talk to you
8 about them. The conversation did not go as well as we
9 wanted to as far as any information that we wanted to
10 actually try to use. I explained, well, you have to
11 step out, you are under arrest under the warrants. He
12 said, All right. He steps out, and as he steps out of
13 the vehicle, and I'm getting ready to get out of this
14 side, I look and he bends over to take off his shoe,
15 what are you doing, and he pulls out this plastic bag
16 and tosses it, and then he goes as far as takes his
17 foot and push on it where the dirt where they are
18 working on Highway 707, they have lumps of dirt on the
19 sides of the road, he tried to mash it the hill, bank
20 area, of one of those bumps. It didn't go anywhere.
21 It is kind of hard dirt. It just hit it and went to
22 the ground. He's trying to hit it, and I hollered at
23 him and got Agent Costa's attention and the deputy's.
24 I came around, Eugene, turn around, put your hands
25 behind your back, handcuffed him. I said, You know

FREDDY CURRY - DIRECT EXAMINATION

1 you're under arrest, and this here is on top of it.

2 At that time, I read his Miranda rights.

3 The Miranda warning I carry with me, always have,
4 when you were taught how to do something from the
5 Academy, you do it that way all the time. I carry the
6 Miranda card with my credentials, same way today. I
7 pulled it out and read his Miranda warnings off of the
8 card.

9 Q Let me stop you there. We do need to get into
10 that just a little bit, the Miranda part of it. At the
11 time you read his Miranda warnings, did he appear to be
12 under the influence of alcohol or drugs at that time?

13 A No, sir.

14 Q Did he appear to have his mental faculties about
15 him?

16 A Yes, sir.

17 Q And you said earlier that you advised him of the
18 nature and charges against him, correct?

19 A Yes, sir.

20 Q Did he appear to have any trouble understanding
21 his rights?

22 A No, sir.

23 Q Were his answers to you after Miranda and
24 conversation with you after Miranda, did they appear to
25 be rational and responsive to your questions?

FREDDY CURRY - DIRECT EXAMINATION

- 1 A Yes, sir.
- 2 Q Did you threaten him to get him to talk to you?
- 3 A No, sir.
- 4 Q Pointed your gun at him?
- 5 A No, sir.
- 6 Q Curse at him?
- 7 A No, sir.
- 8 Q Yell at him?
- 9 A No, sir.
- 10 Q Did he ever tell you at any time after you read
- 11 his Miranda rights that he wanted an attorney?
- 12 A No, sir.
- 13 Q Did he invoke his right to remain silent?
- 14 A No, sir.
- 15 Q As far as you can tell, was his statement and
- 16 conversation with you freely and voluntarily given?
- 17 A Yes, sir.
- 18 Q Did you deprive him of food or water?
- 19 A No, sir.
- 20 Q Let's talk about what he said. After you
- 21 Mirandized him, did you have a conversation?
- 22 A Yes, sir.
- 23 Q What took place with that conversation?
- 24 A We put him in handcuffs, double locked him and
- 25 searched him and took his money out and everything

FREDDY CURRY - DIRECT EXAMINATION

1 else, put him in the passenger's seat, put the seatbelt
2 on and climbed up in the truck with him. I said,
3 Eugene, why in the world would you carry that to work
4 with you? He said, That is what I had left over from
5 bike week. Well, bike week had just finished, bike
6 rally finished that Sunday. This was a Monday, and
7 he's at work with R.H. Moore with that in his shoe.
8 You have this big plastic bag with four different
9 plastic bags containing coke inside. By looking at it,
10 you are going to have a lot more in that big bag than
11 those four little things if you are a user. You aren't
12 going to carry a big bag if you're a user. You will
13 hide it in something tiny.

14 When he said that, I took it as he hadn't sold it
15 yet over the weekend and he had it with him. Like I
16 said, I thought it was very odd to have it with you at
17 work, at R.H. Moore. So he made that statement to me,
18 he said, That is what I had left over after bike week,
19 man. All right.

20 Q What was the context of the conversation when he
21 made that statement? What were you talking about at
22 that time?

23 A At the time, you know, basically that he had that
24 job plus over bike week -- I mean for many bike weeks,
25 since I've known him, he has worked a tent down there

FREDDY CURRY - DIRECT EXAMINATION

1 washing motorcycles at SBB, during the bike weeks of
2 summer and fall, and have had complaints of what was
3 going on there. So we basically both knew what we were
4 talking about.

5 We went over what we talked about, and I said to
6 him, Why would you even take this with you? He said,
7 That is what I had left over from bike week. State's
8 1 was marked at the beginning.

9 Q I'm showing you State's 1 for identification; do
10 you recognize that?

11 A It is the BEST bag and the contents I turned in
12 as evidence on this particular day.

13 Q Is that the same drugs that the defendant dropped
14 on the ground that day?

15 A Yes, sir. Each one is in a plastic bag, but the
16 big bag that they were all in together is not in here.

17 Q And when you say it is a BEST bag, can you tell
18 the jury what the purpose of that bag is?

19 A BEST bag is when we send drugs to the lab to have
20 it analyzed to show if it is, in fact, cocaine, heroin,
21 whatever. It is put into an envelope here, tamper
22 resistant basically. Once you put it in here and seal
23 it, there is no reopening it. It has a glue. Instead
24 of anything else -- it is a glue you can't take apart;
25 it will tear the bag. This bag seems to be in perfect

FREDDY CURRY - DIRECT EXAMINATION

1 condition except she's taken it out to test it.

2 Q And did you personally put that cocaine in there?

3 A I did, sir.

4 Q And is this your name and signature on the bag?

5 A Yes, sir, it is.

6 Q While it was in your possession, did you tamper
7 or alter it in any way?

8 A No, sir.

9 Q And when you left the scene finally, after your
10 conversation and the arrest, when you finally left the
11 scene, what did you do with those particular drugs?

12 A I took it to the DEU headquarters office where it
13 is photographed, weighed and field tested and placed
14 into a BEST kit, and then put in, normally, the DEU
15 drug safe.

16 Q When you say "the DEU drug safe," and "DEU
17 headquarters," is that a secured facility?

18 A Yes, sir.

19 Q And the DEU safe, is that something that just
20 anyone can walk in and put stuff in and out of, or take
21 it out, or how does that work?

22 A Once you put it in, only the deputy commander can
23 usually open it, period. They are the ones with the
24 keys. They are the ones allowed to open it.

25 Q Did there come a point during the course of this

FREDDY CURRY - DIRECT EXAMINATION

1 investigation where you actually had to have the deputy
2 commander remove the drugs from the safe for you?

3 A Yes, sir.

4 Q What was the reason for it?

5 A To take it to the lab. Once you take it to the
6 lab, then it stays at the lab until they finish their
7 work on it.

8 THE COURT: Solicitor, could you identify -- is
9 there State's exhibit marker on that bag?

10 MR. CARAKER: Yes, sir, State's 1, Your Honor.

11 THE COURT: Show him and make sure we're talking
12 about State's 1.

13 A Yes, sir..

14 Q And our last exchange, that is about State's
15 Exhibit 1; is that correct?

16 A Yes, sir.

17 Q When you arrested the defendant, did you search
18 him incident to arrest?

19 A Yes, sir.

20 Q Did you find anything else relevant to his intent
21 to distribute on his person?

22 A The cash in his pocket was seized. The
23 dominations, I don't have offhand, but it was just
24 typical, you know, 500-some dollars cash that we seized
25 off of him, pants pocket.

FREDDY CURRY - DIRECT EXAMINATION

1 MR. CARAKER: Court's indulgence.

2 THE COURT: Yes.

3 (A brief pause in the proceedings.)

4 Q When you pulled the defendant over on Highway
5 707, is that the Horry County section of 707?

6 A Yes, sir.

7 Q Just so we can establish jurisdiction.

8 A Yes, sir.

9 Q There is a lot of talk, so I'll clear this up a
10 little bit. Do you have body cam footage or dash cam
11 footage of this incident?

12 A No, sir. We're in plain clothes, normally
13 T-shirts and we put on a vest to show our badge or
14 credentials. Working undercover, a lot of times there
15 is no uniform markings on us or our cars until we pull
16 out our badges and credentials.

17 Q It is hard to work undercover with body cams on
18 your chest?

19 A Yes, sir.

20 Q And are your cars equipped with audio/video
21 camera?

22 A No, sir.

23 Q Like a normal patrol car?

24 A No, sir. It looks like a plain Jane vehicle.

25 Q Until the lights come on?

FREDDY CURRY - CROSS-EXAMINATION

1 A There is some motion, hidden lights inside, yes.

2 THE COURT: Solicitor and Mr. Fox, if you could,
3 come up for a second.

4 (Whereupon, a bench conference was had.)

5 CROSS-EXAMINATION

6 BY MR. FOX:

7 Q On the topic of body cams and dash cams and so
8 forth, you testified that you have spent a good part of
9 your career working with and instructing confidential
10 informants, correct?

11 A Yes, sir.

12 Q And standard operational procedure these days is
13 to send those folks out with small cameras to record
14 sales from people?

15 A Yes, sir.

16 Q So the technology exists, doesn't it?

17 A Yes, sir.

18 Q What about the deputy, you had -- was it Deputy
19 Cooper?

20 A Yes, sir.

21 Q Who actually made the stop, because he was in a
22 marked vehicle?

23 A Yes, sir.

24 Q Do you know if his vehicle was outfitted with a
25 dash cam?

FREDDY CURRY - CROSS-EXAMINATION

1 A At that time, I don't think he had a camera in
2 his car. We were questioning if he even had the body
3 cam at that time. As soon as he made the stop, walked
4 him back to the car, I took Mr. Hardy and walked back
5 to mine and kept Mr. Cooper there up front.

6 Q Understood. In this particular instance, for
7 whatever reason, there is not any footage of the
8 encounter with Mr. Hardy, with the stop or any
9 conversations you had?

10 A No, sir.

11 Q You testified that you read Mr. Hardy his Miranda
12 warnings?

13 A Yes, sir.

14 Q And that is from a card and practice. Is it not
15 often standard, or at least common procedure, to have a
16 sheet with those warnings printed out for the defendant
17 to read along with?

18 A No, sir, not in this environment. If I was
19 sitting down in an interview room, you know, everything
20 is nice and security, et cetera, then we can sit there
21 and pull out paperwork and lay it out on the table.
22 When we are on the street, we pull out a card and read
23 it.

24 Q So it exists, and what it is is basically one
25 sheet of paper and it has something like Horry County

FREDDY CURRY - CROSS-EXAMINATION

1 Police Department or Surfside Beach Police Department
2 or Drug Enforcement Unit, whatever the agency is, and
3 it lists the Miranda rights?

4 A Yes, sir.

5 Q There is a place for the person being questioned
6 to acknowledge that that particular right has been read
7 to them, that they understand it?

8 A Yes, sir.

9 Q And at the bottom there is a place for them to
10 sign saying I either agree or don't degree to talk, but
11 I have been advised of my rights?

12 A There is those forms out there.

13 Q And you drive around in a Chevy Tahoe?

14 A Yes, sir.

15 Q You have room for a portfolio to hold papers?

16 A Not when I'm not standing beside the highway, no,
17 sir.

18 Q Okay. But you got him in the truck to interview
19 him?

20 A It is not practical, but.

21 Q This isn't practical (indicates)?

22 A Not beside the highway, no, sir.

23 Q Anyway, regardless, you did have him stopped, and
24 during that encounter, you informed him that there are
25 outstanding arrest warrants?

FREDDY CURRY - CROSS-EXAMINATION

1 A Yes, sir.

2 Q But at the time, initially, you were hoping to
3 have his cooperation; isn't that correct?

4 A Yes, sir.

5 Q In other words -- and that is pretty standard
6 here; is it not, that here is a person that you have
7 warrants for and believe is involved in illegal
8 activity, and maybe they have information that would be
9 helpful in other investigations; is that a fair
10 characterization?

11 A Yes.

12 Q And in this case that is what you hoped that Mr.
13 Hardy would do for you, correct?

14 A Yes, sir.

15 Q And he chose not to do that in this instance?

16 A He gave some names, but it was not the right
17 names that we were looking for, and we explained that
18 to him.

19 Q Nothing of value to you?

20 A Well, yes, just not the ones we were talking to
21 him about that we knew or had information about.

22 Q So he did attempt to cooperate?

23 A No. Like I said, he was trying to talk very
24 nonchalant about other people, not about the people
25 that we knew, that I had knowledge of.

FREDDY CURRY - CROSS-EXAMINATION

1 Q Maybe he didn't -- is it possible that he didn't
2 have knowledge of these people? He can't say what he
3 doesn't know, can he?

4 A (No verbal response.)

5 Q Regardless, that conversation stopped, it went
6 nowhere. You felt it was fruitful to pursue, so you
7 said, gee, that's enough of that, I guess. He stepped
8 out of the vehicle, and you saw him drop what turned
9 out to be --

10 A No, I saw him take it out of his shoe.

11 Q Drop, took it out of his shoe, but he removed it
12 and put it on the ground. You saw it, and you could
13 see this directly from where you are sitting?

14 A Yes, sir.

15 Q Now, let's talk about how drugs are bought and
16 sold. You've testified that your focus during your
17 career -- 18 years in drug enforcement -- has been
18 primarily on people that are more on the retail rather
19 than on the consumer end; is that fair to say?

20 A For the most part.

21 Q The sellers. You are not as interested in the
22 recreational users as with the people supplying that;
23 is that fair to say?

24 A Yes, sir.

25 Q Okay. So that is what your training and

FREDDY CURRY - CROSS-EXAMINATION

1 experience is oriented towards, I'm on the lookout for
2 the seller?

3 A Yes, sir.

4 Q Would it be fair to say -- and you've encountered
5 yourself thousands, probably, of drug users during the
6 course of your career?

7 A Yes, sir.

8 Q And there would be many thousands more in this
9 area, for whatever reason, that you have not
10 encountered? It is a problem, there is thousands of
11 people in the Pee Dee area, Myrtle Beach area, that
12 have drug problems, or at least use illegal drugs?

13 A Yes, sir.

14 Q Okay. Now, would it also be fair to say they are
15 not all users in the same way?

16 A Every drug and every type of user is different,
17 and it is done different.

18 Q Exactly. So there is not like a rule book for
19 using drugs, because it is illegal. It is not like an
20 instruction manual, correct?

21 A Yes, sir.

22 Q Even with a particular kind of drug. With
23 marijuana, some people like to put it in a cigarette
24 and smoke it, some people like to hollow out cigars and
25 make a blunt, some people put them in a bong, in a

FREDDY CURRY - CROSS-EXAMINATION

1 pipe, water pipe, so just like marijuana, there is many
2 ways to consume that?

3 A Yes, sir.

4 Q Some people like to buy it in baggies, maybe a
5 half an ounce, and keep a stash around, and some people
6 like to buy a blunt or a joint at a time?

7 A In marijuana?

8 Q Yeah.

9 A In marijuana, yes. Marijuana is used more as a
10 recreational drug than cocaine.

11 Q Cocaine, in fact, is not consumed by the same
12 exact way, by every single user, is it?

13 A No, sir.

14 Q And it is not sold the same way by every single
15 person? In other words, there is not a manual or list
16 of regulations that the State of South Carolina set
17 that says you must package your cocaine this way and
18 sold in these amounts in this packaging in this way,
19 because it is illegal, so there are no standards,
20 right?

21 A Correct.

22 Q And, certainly -- if I understand, each of these
23 little baggies are a bump, or are they a little more?

24 A It is more or less -- all four are not the exact
25 same.

FREDDY CURRY - CROSS-EXAMINATION

1 Q Right. But without knowing what each weighs, if
2 you saw these for the first time, what is your
3 impression? You would see this bag and say, Bump?

4 A Selling bumps.

5 Q A quarter to a half a gram, isn't that what you
6 testified to?

7 A Yes.

8 Q So the idea being that this is something to be
9 bought and consumed, basically, immediately, or at
10 least soon, correct?

11 A Yes, sir.

12 Q But what if you -- you mentioned Suck Bang Blow,
13 everyone here is familiar with bike week, we all have
14 endured that at different times, and Suck Bang Blow, is
15 this the main one, the original?

16 A The one down in Murrell's Inlet.

17 Q So the Murrell's Inlet Suck Bang Blow, lots of
18 people all through the week and through each day?

19 A Yes, sir.

20 Q And what if a person was going to use cocaine,
21 makes a decision, hey, I'm going to buy cocaine, but
22 this guy I trust, I know this guy, I'm going to buy
23 from him, I like his product, I like his price, but I
24 don't want to keep running back and forth raising
25 suspicion by showing up at his stand three, four hours

FREDDY CURRY - CROSS-EXAMINATION

1 or however often I want to do it, I'll just buy --
2 typically, what would one of these baggies cost?

3 A Fifty dollars.

4 Q So if I have a couple -- it's bike week, I'm here
5 to have fun, I have my money to take care of my fun,
6 for alcohol and food and drugs, if that is my
7 proclivity, what if I want to buy three or four bumps
8 at once? Nothing prevents that, right?

9 A The only problem you have right there is, say,
10 for instance, you have four bumps there, a little over
11 a gram, gram and a half, two grams, whatever. Well,
12 when you are taking it down like that, a gram, you can
13 get for about 80 to a hundred dollars. If you are out
14 here selling bumps as a way to make your money, you can
15 break that down to quarters and halves, I mean, it goes
16 a lot further. Those four, that is \$200. If you buy a
17 gram, gram and a half, it is a hundred bucks. You save
18 a hundred dollars off that bit if you just go buy a
19 gram. Saying you are going to go out and buy four
20 bumps for \$200 isn't really, would you say, common.
21 And then to take those, if you were a user, and try to
22 keep them for personal use, you sure wouldn't keep them
23 in a bigger bag and stick it in your shoe, you would
24 put it in something small and convenient to hide and
25 not in a plastic bag and stick it in your shoe with the

FREDDY CURRY - CROSS-EXAMINATION

1 other three.

2 Q Let me ask you this. In your experience as a law
3 enforcement officer, and specifically a DEU agent, and
4 just in your general life, do you know any people that
5 don't necessarily go get the best bargain whether it
6 is, you know, a dinner special at one of the Calabash
7 seafood places where it costs twice as much, people are
8 willing to do that, or pay wholesale for something they
9 could get cheaper, I mean that's human nature, some
10 people just don't really care about that; is that not
11 fair?

12 A Yes, sir.

13 Q And on top of that, if a person weren't
14 particularly knowledgeable about drugs and how what
15 they cost and that they had an option to buy this whole
16 thing in a package for half the price, I mean, if you
17 don't know, you just don't know; fair enough?

18 A If you are talking about other individuals --

19 Q The other question -- wouldn't it be fair to say,
20 in your experience as a law enforcement officer, that
21 one of the things -- aside from training and
22 experience -- that makes your job easier at times would
23 be the lack of commonsense of the people you are
24 pursuing; isn't that fair to say? They do stupid
25 things.

FREDDY CURRY - CROSS-EXAMINATION

1 A Most of the people we investigate are not the
2 person on the corner. These people are actually
3 involved in distributions, trafficking, et cetera.
4 This is what they do. There is not people that we
5 investigate -- this is not some silly person standing
6 on the corner, this is someone that knows what they are
7 doing and doing it for a living on the side, or we
8 wouldn't be investigating them.

9 Q Are you ever wrong?

10 A I'm sure I made mistakes during my career.

11 Q What you are left with regarding your conclusion
12 is these four little baggies, maybe a gram, gram and a
13 half total, right?

14 A Yes, sir.

15 Q Could one person fairly easily consume that
16 amount during a course of a day or two? No cocaine is
17 healthy, but could you safely consume that amount over
18 a course of a day or two?

19 A According to what he does, yes.

20 Q As you said yourself, it most certainly has been
21 cut, it usually is?

22 A Most is, yes.

23 Q Now, Mr. Hardy, I know he didn't give you the
24 information you were looking for, but he did cooperate
25 and stepped out of the vehicle, stepped out of his

FREDDY CURRY - CROSS-EXAMINATION

1 vehicle at the request of Deputy Cooper, and he did
2 step back and agreed to talk to you?

3 A Yes, sir.

4 Q And after you Mirandized him and let him know he
5 didn't have to talk to you, he still at least attempted
6 to? And I understand you didn't -- weren't seeing eye
7 to eye, but he didn't shut down and say I won't talk to
8 you?

9 A There was never any type of hatefulness or
10 talking rough at each other. We've known each other
11 for many years. There is no reason to be disrespectful
12 to one another. We sat there and talked as two men as
13 always, talked as friends, but the idea is he got
14 himself in trouble.

15 Q And Mr. Hardy testified that he had a job at that
16 time, he was working at R.H. Moore, because that is
17 where you waited for him, correct?

18 A Yes, sir.

19 Q And you testified that during bike week he was
20 washing bikes at a tent there?

21 A Yes, sir.

22 MR. FOX: That is all I have.

23 THE COURT: Redirect?

24 MR. CARAKER: May we approach?

25 THE COURT: Yes, sir.

JURY OUT - COURT AND ATTORNEYS

1 (Whereupon, a bench conference was had.)

2 THE COURT: Ma'am forelady, ladies and gentlemen,
3 we need to discuss something out of your presence. If
4 you will go to your jury room, and I'll call you back
5 in. Thank you very much.

6 (The jury exits at 4:14 p.m., and the
7 following is heard out of the presence of the jury.)

8 THE COURT: All right. Mr. Caraker, I'll hear
9 from you.

10 MR. CARAKER: Thank you, Your Honor. With regard
11 to defense counsel's cross-examination of Agent Curry
12 regarding the conversation that he had in the Tahoe
13 and the fact that he had hoped to gain some
14 cooperation from the defendant, I believe Mr. Fox
15 opened the door to asking -- my asking Agent Curry
16 about the information that he was in possession of at
17 that time in how he came about it. You know, Mr. Fox
18 said that he didn't know anything, he didn't know
19 anything. Well, Agent Curry has information that he
20 did know something, and how he came about that
21 information is relevant, certainly to intent. I mean,
22 that -- I know, Your Honor, that kind of circles back
23 around to the prior distributions, but that is, in
24 fact, what they were talking about in that car. I
25 believe that Agent Curry testified to that in the

JURY OUT - COURT AND ATTORNEYS

1 suppression hearing. He certainly alluded to it if he
2 didn't come right out and say it. Agent Curry knows
3 who the targets are, and he has information on how Mr.
4 Hardy knew those targets, and he hoped to have his
5 cooperation. You could tell that Agent Curry was a
6 little hesitant because he wasn't sure what ground to
7 walk on there in answering Mr. Fox' questions, but I
8 believe Mr. Fox opened the door to the prior activity
9 by that -- pursuing that line of questioning.

10 THE COURT: Mr. Fox.

11 MR. FOX: I don't think that is correct at all.
12 My intent would be -- certainly wasn't my intent. The
13 jury already heard that the man has arrest warrants.
14 Agent Curry -- and I don't blame him -- has walked
15 right up to that line implying in all sorts of ways
16 that we would be looking at Mr. Hardy because we don't
17 look at low-level people and we wouldn't be looking at
18 him -- he nudged and winked his way around, and I
19 don't blame him, and I tried to be careful, but the
20 jury obviously knows if -- there are arrest warrants,
21 number one, so that is a certain conclusion they could
22 make upon talking about the basis of the arrest
23 warrant. They know Mr. Curry is a DEU agent. I
24 assume -- I don't know what other conclusion they
25 would come to even aside from any question I asked

JURY OUT - COURT AND ATTORNEYS

1 even before I stood up. I don't know what other
2 conclusion they could have come to about what he was
3 asking him about, because that is all he does.

4 I mean, he wasn't asked about shoplifting at
5 Walmart or insurance fraud, I mean they know that, and
6 that is before I ever stood up. So I don't think the
7 door was opened. And I agree, we're walking a fine
8 line with that. In fact, close enough I would have
9 objected, but to the fact that my objection was only
10 going to highlight even further some of the things
11 that the officer was saying in terms of, well, we only
12 look at these kinds of people and wouldn't -- you
13 know, that sort of thing. To object would have raised
14 it, but that was out before I stood up. So I don't
15 think anything I said or asked went any further beyond
16 what was already out there.

17 Last thing I would say is I didn't open the door.
18 I don't think the witness can open the door for me.

19 THE COURT: I understand that.

20 MR. FOX: Thank you.

21 THE COURT: It is an extremely close question. I
22 don't know for certain that the defense opened the
23 door. I don't think I'm going to allow the State to
24 ask further questions, because if I start that, then I
25 don't know how to then stop it before it goes beyond

JURY OUT - COURT AND ATTORNEYS

1 the point where we are trying Mr. Hardy on those other
2 cases and not on this particular matter.

3 Mr. Fox, you came awfully close to the agent
4 saying I was wanting to know about his other drug
5 activity and the other fellows he's doing drugs with
6 or selling drugs with. I might have sustained an
7 objection, but, you know, I don't believe I would have
8 declared a mistrial based on the questions you asked,
9 but I won't allow the State to ask those questions
10 now. We need to concentrate on the facts of this
11 matter.

12 Now, you need to be careful in your closing
13 argument, the crafting of your closing argument and
14 the statements you make to the jury about the facts of
15 this case. I'm sure the State will be closely
16 listening to that, and if they believe you've opened a
17 door, I'm sure they will make a motion to reopen the
18 case at that point in time to introduce other
19 evidence. So you came awfully close to allowing the
20 State to get into that, and I think it is proper that
21 the Court caution you in your closing argument. I'm
22 not telling you how to do it, but you need to be
23 careful what you say, otherwise, I might very well be
24 listening to the State to reopen the case to allow
25 other evidence in, all right?

JURY OUT - COURT AND ATTORNEYS

1 MR. FOX: I understand. And I'm not disagreeing,
2 but just for clarification because --

3 THE COURT: I won't tell you how to craft your
4 argument, but I'm letting you know that I'll be
5 listening carefully to what you are saying, because
6 I'm sure the State is going to be carefully listening
7 to what you are saying.

8 MR. FOX: I'm not sure what that area would be?

9 THE COURT: I can't tell you how to make your
10 closing argument, and I'm not telling you how to make
11 it, I'm just telling you, you need -- you are walking
12 a fine line in asking your questions, and if you want
13 to continue to do so, that is fine, understanding that
14 there is a certain potential that exists that -- that,
15 you know -- I'm telling you I could reopen the case
16 based upon something said in a closing argument. I
17 don't want that to be unclear to anyone. The Court
18 can reopen a case at any point in time prior to the
19 jury returning with a verdict. They can be out there
20 deliberating and the court can decide, based on prior
21 supreme court decisions, the jury is deliberating, the
22 Court can reopen the case to allow the introduction of
23 other evidence, so I'm just telling you just because
24 of the stage of the trial, does not mean that the case
25 cannot be reopened. That is more my point than

FREDDY CURRY - REDIRECT EXAMINATION - JURY IN
1 anything else. I think some counsel are surprised
2 that the Court might have the ability to do so, but
3 it's clear that that can be done, and I just don't
4 want that to be a question. That's more the point,
5 that I could reopen it at any point in time. I'm not
6 telling you what to say, precluding you from saying
7 anything. You say whatever you want to say in your
8 closing argument. I'm just letting you know that that
9 does exist, all right? That's all I'm saying.

10 MR. CARAKER: Thank you, Your Honor.

11 THE COURT: Ask the jury to come back in.

12 (The jury enters at 4:24 p.m., and the
13 following is heard in the presence of the jury.)

14 THE COURT: Solicitor, you may continue.

15 MR. CARAKER: May it please the Court.

16 THE COURT: Yes, sir.

17 REDIRECT-EXAMINATION

18 BY MR. CARAKER:

19 Q Agent Curry, there has been some talk about the
20 Miranda rights that you read the defendant; do you
21 remember talking about that a little bit?

22 A Yes, sir.

23 Q Just so we can clear some things up for the jury,
24 will you give them a general idea what the Miranda
25 warnings are?

FREDDY CURRY - REDIRECT EXAMINATION - JURY IN

1 A Yes, sir. You have the right to remain silent.

2 If you give up that right, anything you say can be used
3 against you in a court of law. You have the right to
4 an attorney. If you can't hire an attorney, one will
5 be appointed to represent you for any questioning if
6 you wish one. If you desire to make a statement or
7 answer any questions, you have the right to stop at any
8 time. Do you understand what I just said to you?

9 MR. CARAKER: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 Q (MR. CARAKER) Did you read that off of the card
12 there?

13 A Yes, sir.

14 Q You carry that with your ID all the time?

15 A Yes, sir.

16 Q Is that the card you read the defendant his
17 Miranda warnings from?

18 A Yes, sir. I have to look back with my glasses to
19 read it perfectly again, but, yes, sir.

20 Q And Mr. Fox was talking to you about a Miranda
21 form earlier?

22 A Yes, sir.

23 Q Are you required to have a paper form for the
24 defendant to follow with; is that a requirement by law?

25 A No, sir. Only thing that is done, we use it a

FREDDY CURRY - REDIRECT EXAMINATION - JURY IN

1 lot of times when we're in an interview room sitting
2 down at a desk. We can sit and talk. We'll make sure
3 we read them out and have them check each one, sign
4 here. Out on the street, especially when you are by
5 the side of the highway and you are wanting to make
6 sure he knows his rights, you read it to them from the
7 card verbatim.

8 Q And when the defendant was transported to the
9 jail, you already had three warrants, correct?

10 A Yes.

11 Q Did you obtain a warrant for this particular
12 matter on the defendant?

13 A Yes.

14 Q Did you charge him with possession with intent to
15 distribute cocaine?

16 A Yes, sir, I did.

17 Q And there is several elements to that, several
18 things going into that formulation?

19 A Yes, sir.

20 Q Is one of those things the weight of the drugs?

21 A You have everything from the weight, to the
22 packaging, to the way it is being -- what you say --
23 concealed, even. When you are putting it in a larger
24 bag and only have four left, there is no reason to have
25 that big bag to stick it in your shoe and carry it,

FREDDY CURRY - RECROSS-EXAMINATION

1 unless you have intent, not only to conceal it, but you
2 have had it in that bag for a little while and you are
3 just down to four bumps left.

4 Q What is the statutory inference weight for
5 possession with intent to distribute?

6 A I would have to go back -- if you are talking up
7 to an ounce of marijuana or --

8 Q I'm talking about cocaine.

9 A Anything past a gram. -- If you have something and
10 you broke it down to four, five quarters, you broke it
11 down to sell it. That's not someone using it, that is
12 someone selling it. You can sell it as a bump where
13 someone can use it quick and go.

14 Q Did all of those factors come into play when you
15 were assessing the probable cause for this particular
16 warrant in this case?

17 A Yes, sir.

18 MR. CARAKER: No further questions.

19 THE COURT: Cross-examination on redirect?

20 RECROSS-EXAMINATION

21 BY MR. FOX:

22 Q Since the Solicitor asks you a legal question
23 about the inference weight for cocaine, you are aware
24 through your experience, aren't you, that that is not a
25 mandatory inference?

FREDDY CURRY - RECROSS-EXAMINATION

1 A It is really not mandatory when you're doing
2 stuff -- you get to a certain weight.

3 Q And, I'm sorry, but in other words, anything over
4 a gram does not mean that it is legally, per se,
5 possession with intent to distribute just by weight? I
6 understand there is other factors, but in terms of
7 weight, a jury is not bound to make a conclusion based
8 simply on the weight; isn't that correct?

9 A No, sir, not simply on that, on weight, no. It's
10 just basically packaging and how it is being carried.

11 Q Thank you very much.

12 THE COURT: You may step down. Next witness.

13 MR. MARTIN: State calls Dean Bishop to the
14 stand.

15 THE COURT: Please come around here and meet the
16 clerk representation up here, please.

17 (DEAN BISHOP, having been duly sworn,
18 testified as follows:)

19 THE WITNESS: My name is Dean Bishop,
20 B-I-S-H-O-P.

21 DIRECT-EXAMINATION

22 BY MR. MARTIN:

23 Q Can you see me behind the podium? I know I'm a
24 little short.

25 A You are fine.

DEAN BISHOP - DIRECT EXAMINATION

- 1 Q What is your occupation or profession?
- 2 A Narcotics agent by profession.
- 3 Q How long have you been in that field?
- 4 A 18 years.
- 5 Q And who is your current employer?
- 6 A The 15th Circuit Solicitor's Office.
- 7 Q How long have you been employed?
- 8 A With the Solicitor's Office, since 2008..
- 9 Q How many years, total, have you been in law
- 10 enforcement?
- 11 A 24, going on 25.
- 12 Q What are your current duties at the moment?
- 13 A Assigned to the 15th Circuit Drug Enforcement
- 14 Unit as deputy commander.
- 15 Q During your past years in law enforcement that
- 16 you previously mentioned, what type of training did you
- 17 have specifically that would qualify you for your
- 18 position?
- 19 A Well, originally I went to the South Carolina
- 20 basic Law Enforcement Academy. I spent eight years on
- 21 road and promoted through the ranks to detective and
- 22 then to narcotics. While in narcotics, I received
- 23 several hours of training, different types of training,
- 24 from videography to narcotics detection and
- 25 intervention.

DEAN BISHOP - DIRECT EXAMINATION

1 MR. MARTIN: May I approach?

2 THE COURT: Yes, sir.

3 Q (MR. MARTIN) I'm handing you what's been
4 identified and marked as State's 1; can you identify
5 this?

6 A This is the Horry County BEST kit that we use for
7 submitting our samples to the drug lab.

8 Q How were you able to identify that? What is the
9 process that is used?

10 A Well, on the face of it, on this side it has
11 agency, Drug Enforcement Unit, or DEU for short, and
12 Agent Freddy Curry sealed this particular envelope on
13 October 3rd. That is just our standard operating
14 procedures.

15 Q Where would you have received that from? Where
16 would Agent Curry -- the drug itself, where did you
17 receive it from when --

18 A Agent Curry, on this particular occasion, when he
19 collected this substance, he submitted it into a drug
20 drop box, which I maintain in our office.

21 Q Is that a secured, safe type --

22 A It is a drop box. It's not necessarily a safe,
23 but it is a location inside a secured building, and I
24 have the key to that box.

25 Q Did you at any point get it out of that box?

DEAN BISHOP - CROSS-EXAMINATION

1 A Not until Agent Curry asked me to retrieve it for
2 him so he could finish processing and submitting it to
3 the lab.

4 Q So what did you do with it when you had it?

5 A When I had it, it just stayed right in the box.

6 Q Was the item sealed when it -- when you saw it,
7 had it been tampered with in any way?

8 A It was not in this BEST kit when he dropped it to
9 me. He did the BEST kit after it was submitted to the
10 box, and when I retrieved it to him and gave it back to
11 him, that is when he sealed it.

12 Q To the best of your knowledge, had the drugs been
13 substantially altered in any way?

14 A No, sir.

15 Q And did you tamper with the drugs at all?

16 A I did not.

17 MR. MARTIN: No further questions at this time.

18 THE COURT: Cross-examination?

19 CROSS-EXAMINATION

20 BY MR. FOX:

21 Q It was not in the BEST kit when you received it?

22 A No, sir, it was not.

23 Q It was in the condition that it could be -- what
24 did you actually receive?

25 A I would have to see the chain of custody form.

DEAN BISHOP - CROSS-EXAMINATION

1 MR. FOX: I have that, hold on.

2 (Defendant's Exhibit 1 marked.)

3 Q (MR. FOX) I'll approach with Defendant's 1. Can
4 you tell me if you recognize that?

5 A Looks like a standard custody form for the drug
6 lab submissions.

7 Q Looking at that, does it refresh your memory in
8 terms of what you --

9 A Yes, a little bit.

10 Q Any question we have -- excuse me. We know it
11 didn't come in this great big baggy when you got it?

12 A That's correct.

13 Q Do you recall was it in these four baggies
14 separate in another container -- how was it presented
15 to you when it was put in that drop box?

16 A What happens -- and I receive numerous, numerous
17 submissions from any given day or given week. As it
18 appears here, Agent Curry actually received or
19 retrieved this substance and submitted it into this
20 BEST packet on October 3rd. That is also when he
21 dropped it to me, into the drop. So this would tell me
22 that this was already in the BEST packet when he
23 submitted it to me. What he did after that is he
24 brought me this chain of custody, I signed it was in
25 the box, and I pulled it out and gave it to him to

DEAN BISHOP - CROSS-EXAMINATION

1 transport to county police for testing.

2 Q I misunderstood. So it was in a sealed baggy
3 when you received it?

4 A Yes. Yes.

5 Q I misunderstood.

6 A According that chain.

7 Q Okay. How Officer Curry came into possession,
8 you have no knowledge of that?

9 A I was not there.

10 Q You were not a part of that investigation?

11 A No, I was not. Unfortunately, I ride a desk
12 these days.

13 Q I understand. Thank you.

14 THE COURT: Any redirect?

15 MR. MARTIN: No, Your Honor.

16 THE COURT: You may step down. Do you wish the
17 witness to be excused?

18 MR. MARTIN: Yes, Your Honor.

19 THE COURT: Any objection?

20 MR. FOX: No, sir.

21 THE COURT: You are free to go back to your
22 regular duties. Your next witness, please, Solicitor.

23 MR. MARTIN: State calls Donna Bell.

24 THE COURT: Come up here and be placed under
25 oath.

DONNA BELL - DIRECT EXAMINATION

1 (DONNA BELL, having been duly sworn, testified
2 as follows:)

3 THE WITNESS: I'm Donna Bell, B-E-L-L.

4 DIRECT-EXAMINATION

5 BY MR. MARTIN:

6 Q Hi, Ms. Bell. What is your occupation or
7 profession?

8 A I'm an administrative assistant at Horry County
9 Police Department in the Evidence Division.

10 Q How long have you been doing that?

11 A I've been in Evidence for eight years.

12 Q How long have you been employed with the county?

13 A I've been employed with Horry County Police
14 Department for 11.

15 Q What are your duties?

16 A I retrieve evidence out of lockers and drop boxes
17 that officers and detectives turn in.

18 MR. MARTIN: May I approach?

19 THE COURT: Absolutely.

20 Q (MR. MARTIN) I'll show what is marked for
21 identification purposes as State's 1. Can you
22 identify that? Do you recognize that?

23 A Yes, sir.

24 Q How are you able to do so?

25 A By this label here. It has a DEU case number on

DONNA BELL - DIRECT EXAMINATION

1 it, and by the description and the control number on
2 the BEST kit.

3 Q And this particular package that you are holding
4 that was marked for identification purposes, who did
5 you receive it from?

6 A I received it out of the drop box, a secure drop
7 box, and it was by Freddy Curry, DEU.

8 Q When you received it out of the drop box from
9 Agent Curry, when would that have been?

10 A When? I received it on 11/8/16.

11 Q Where would that have been?

12 A In the -- we have what we call a drop box in our
13 office, and he drops it through a shoot, and that is
14 where I received it out.

15 Q And when you got that, what do you do with it?
16 What did you do with that once you got it?

17 A I -- we always check to see if it matches this,
18 you know, the form, and then we check the BEST kit to
19 see if it is sealed, if the seal on it is glued, hadn't
20 been tampered, then I key it in and transfer it to our
21 -- to Courtney, our chemist.

22 Q Was the seal blue? Was it sealed? Had it been
23 tampered with?

24 A No, sir.

25 Q Is that a standard set of procedures that you

DONNA BELL - DIRECT EXAMINATION

1 always follow?

2 A Yes, sir.

3 Q Did you, yourself, when that was in your care,
4 custody and control, did you change or substantially
5 alter it in any way?

6 A No, sir.

7 Q And just to clarify, it was not changed or
8 substantially altered in any way?

9 A No, sir.

10 Q And that was your only involvement with this, is
11 what you just testified to?

12 A Yes, sir.

13 MR. MARTIN: No further questions.

14 THE COURT: Cross-examination?

15 MR. FOX: None, Your Honor.

16 THE COURT: You may step down. Make sure you
17 give the exhibit back to the court reporter. Do you
18 wish for this witness to be excused?

19 MR. MARTIN: Yes, Your Honor.

20 THE COURT: Any objection?

21 MR. FOX: No, sir.

22 THE COURT: You're released.

23 MR. CARAKER: Your Honor, the next witness is
24 Courtney Johnson, the Horry County chemist, which will
25 be our last for our case in chief, You Honor.

COURTNEY JOHNSON - DIRECT EXAMINATION

1 THE COURT: All right. Very good. Please come
2 around, ma'am.

3 (COURTNEY JOHNSON, having been duly sworn,
4 testified as follows:)

5 THE WITNESS: My name is Courtney Johnson,
6 J-O-H-N-S-O-N, C-O-U-R-T-N-E-Y.

7 DIRECT-EXAMINATION

8 BY MR. CARAKER:

9 Q Good afternoon.

10 A Good afternoon.

11 Q With whom are you employed?

12 A Horry County Police Department.

13 Q And what do you do there?

14 A My primary job responsibility is to analyze and
15 identify controlled substances submitted to me, so I'm
16 a forensic chemist assigned to the drug lab.

17 Q How long have you been doing that?

18 A Four years.

19 Q Would you tell us about your educational
20 background?

21 A Sure. I received my bachelor's in forensic
22 science from Southern Wesleyan University, as well as
23 my bachelor's in chemistry and my bachelor's in biology
24 from Southern Wesleyan University. Upon being hired on
25 by the Horry County Police Department, I completed my

COURTNEY JOHNSON - DIRECT EXAMINATION

1 training at the South Carolina Law Enforcement Division
2 in the analysis of controlled substances. I've also
3 attended the Drug Enforcement Administration Forensic
4 Chemist Training Seminar, as well as the Agilent gas
5 chromatograph mass spectrometer, maintenance and
6 troubleshooting. We also participate in a yearly
7 proficiency testing with Collaborative Testing
8 Services.

9 Q Have you ever been qualified in court as an
10 expert in the field of forensic drug analysis?

11 A Yes, sir.

12 Q Is that state and federal court?

13 A Yes, sir.

14 Q In testing your drug evidence, do you use any
15 specialized equipment or material to do that?

16 A Yes, sir.

17 Q Did you receive training to do that?

18 A Yes, sir.

19 Q Could you tell us about that a little bit?

20 A I attended the Agilent gas chromatograph mass
21 spectrometer, maintenance and troubleshoot. Also,
22 while I was at SLED we went over extensively how you
23 utilize that instrument.

24 MR. CARAKER: Your Honor, we move Ms. Johnson to
25 be admitted as an expert in forensic drug analysis.

1 THE COURT: Mr. Fox, do you wish to voir dire or
2 challenge qualifications?

3 MR. FOX: Just a few basic questions, Your Honor.

4 PROFFER EXAMINATION

5 BY MR. FOX:

6 Q The SLED training, how many hours did that
7 involve?

8 A 16 weeks.

9 Q 16 weeks. And the same thing with the DEU
10 seminar?

11 A A week long.

12 Q And the various training regarding equipment that
13 you use to do what you do?

14 A I think that was a week long as well. I'm not a
15 hundred percent sure on that.

16 Q How many times have you been qualified as an
17 expert in South Carolina state courts?

18 A Three times.

19 Q Anywhere else?

20 A Twice federally, I think.

21 MR. FOX: Nothing further and no challenges to
22 her qualifications.

23 THE COURT: The Court qualifies her to give her
24 opinion in the field of forensic drug analysis. You
25 may proceed.

COURTNEY JOHNSON - DIRECT EXAMINATION (CONT.)

1 MR. CARAKER: Thank you, Your Honor.

2 DIRECT EXAMINATION (CONT.)

3 BY MR. CARAKER:

4 Q Were you employed as a forensic drug analyst on
5 June 9, 2017?

6 A Yes, sir.

7 Q Did you test material as it related to this case?

8 A Yes, sir.

9 Q How did the material come to you?

10 A In a BEST packet via Donna Bell, hand-to-hand, in
11 the Evidence Control room.

12 MR. CARAKER: May I approach?

13 THE COURT: Yes, sir.

14 Q (MR. CARAKER) I'll show what is marked as
15 State's 1 for identification; do you recognize that,
16 Ms. Johnson?

17 A May I refer to my notes?

18 Q Please.

19 A (Witness examines document.) Yes, sir, I do.

20 Q What is that item?

21 A The outer bag is a K-pack, but inside is a BEST
22 packet.

23 Q And is this the substance that you tested in this
24 matter?

25 A Yes, sir.

COURTNEY JOHNSON - DIRECT EXAMINATION (CONT.)

1 Q Did you render a report?

2 A Yes, sir, I did.

3 Q And before we talk about that, what condition was
4 it in when you got it? Did it appear that it was
5 tampered with in any way?

6 A No, sir. I always check all seals thoroughly.

7 Q Would you have tested it if there was evidence of
8 it being tampered with?

9 A No, sir. I would have returned it to evidence.

10 Q Is that a standard set of procedures?

11 A Yes, sir, unfortunately.

12 Q Where was it stored between the time you actually
13 tested it and the time you got it?

14 A It was stored inside the drug analysis lab. We
15 have an evidence locker that has a digital lock that I
16 know the code, and it stays there until I begin the
17 analysis.

18 Q And no doubt in your mind that that is the drugs
19 that Freddy Curry turned in and worked its way through
20 the chain of custody to you?

21 A Yes, sir. I have three different ways to
22 identify it. I have a control number that is printed
23 from the factory on the top of the bag, and what I have
24 in my notes is 223427, that is the same that is on the
25 bag. I also put a lab number as well as my initials

COURTNEY JOHNSON - DIRECT EXAMINATION (CONT.)

1 and a date I sealed this outer bag, and that is all
2 consistent with what I have, as well as Lab No. 2 in
3 Freddy Curry's writing on the front. And then here I
4 also put the date I began analysis with seal intact, so
5 I know that I checked all the seals and made a note
6 that this is the day I began analysis.

7 MR. CARAKER: We move State's 1 in for
8 identification and into evidence.

9 THE COURT: Any objection?

10 MR. FOX: No, Your Honor.

11 THE COURT: State's 1 is in evidence without
12 objection.

13 (State's Exhibit 1 admitted.)

14 Q (MR. CARAKER) What test did you perform on that
15 material?

16 A I did a presumptive chemical spot test, which is
17 a cobalt thiocyanate stannous chloride. I then took a
18 weight and took a sample, did an extraction, and put it
19 on the gas chromatograph mass spectrometer for results.

20 Q And what is the purpose of that presumptive test?

21 A The presumptive test doesn't really have any
22 bearing on my final reports, just gives me an idea
23 which direction to go with an extraction. There is
24 different extractions for different drugs, so depending
25 what the presumptive test gives you, it gives you a

COURTNEY JOHNSON - DIRECT EXAMINATION (CONT.)

1 better idea of the best extraction to use for that drug
2 at that time.

3 Q Did you render a report in this matter?

4 A Yes, sir.

5 Q Do you have a copy of that report with you?

6 A Yes, sir, I do.

7 Q What did your testing reveal as a result of
8 the -- what did you reveal and what did you report?

9 A For Item 1.1, I had a heat sealed pouch
10 containing four plastic corner bags containing powder
11 substance. My results were cocaine, Schedule 2 found
12 with a combined weight of 1.5 grams, or 23.1 grains.

13 Q Does your report differentiate between the
14 cocaine and any cut that may be used?

15 A No, sir. We're not required to do quantitative
16 analysis, just qualitative analysis.

17 Q Was that the extent of your involvement in this
18 case?

19 A Yes, sir.

20 Q You were not on scene when it was seized?

21 A No, sir.

22 Q Didn't investigate it?

23 A No, sir. I just do the science.

24 MR. CARAKER: Answer any questions that Mr. Fox
25 has.

COURTNEY JOHNSON - REDIRECT EXAMINATION

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. FOX:

4 Q Ms. Johnson, what you weighed, 1.5 grams, you
5 have is the total substance in those four?

6 A Yes, sir. It is a combined weight of all four.

7 Q Within that you detected cocaine?

8 A Yes, sir.

9 Q And you testified you are not -- it is not a
10 requirement to test for anything else; in other words,
11 you don't know if that particular sample was cut with
12 anything else?

13 A No, sir.

14 Q So the weight that you have on your report is for
15 the entirety of the substance?

16 A Yes.

17 Q How much of that is actually cocaine is beyond
18 what you do; fair to say?

19 A Yes, sir.

20 MR. FOX: Thank you. Nothing further.

21 THE COURT: Any redirect?

22 REDIRECT-EXAMINATION

23 BY MR. CARAKER:

24 Q Ms. Johnson, does it matter if it is cut or not?

25 A No, sir. South Carolina law -- which I'm not

MOTIONS - JURY OUT

1 going to quote it -- but any combination or mixture
2 thereof, we report out as the total weight of the drug.

3 MR. CARAKER: Thank you, ma'am.

4 THE COURT: Anything on that question?

5 MR. FOX: No, Your Honor.

6 THE COURT: Do you wish the witness to be
7 excused?

8 MR. CARAKER: Yes, sir, Your Honor.

9 THE COURT: Any objection?

10 MR. FOX: No, sir.

11 THE COURT: You are released from your subpoena.
12 You may go back to your regular duties. Give those to
13 the court reporter.

14 All right, Solicitor, further witnesses on behalf
15 of the State?

16 MR. CARAKER: No, sir, Your Honor.. State rests.

17 THE COURT: At this point in time, Mr. Fox, are
18 there matters of law?

19 MR. FOX: There are, Your Honor.

20 THE COURT: Very good. Ladies and gentlemen, if
21 you go to your jury room for a few minutes, there is a
22 matter of law I have to discuss with the attorneys
23 outside of your presence. Thank you very much.

24 (The jury exits at 4:50 p.m., and the
25 following is heard out of the presence of the jury.)

MOTIONS - JURY OUT

1 THE COURT: Yes, sir, Mr. Fox.

2 MR. FOX: At this time we move for a directed
3 verdict under the charge for possession with intent to
4 distribute cocaine. The State did not meet its burden
5 of proof beyond a reasonable doubt with respect to
6 each element of the offense charged. I move for a
7 directed verdict on that basis, Your Honor.

8 THE COURT: All right. Brief reply from the
9 State?

10 MR. CARAKER: Yes, sir, Your Honor. We certainly
11 presented substantial circumstantial evidence of his
12 intent to distribute the cocaine in his possession on
13 that day, as well as the threshold element of the
14 possession when Agent Curry saw him remove it from his
15 shoe and throw it down. We believe a directed verdict
16 is not in order at this time.

17 THE COURT: Regarding a motion for a directed
18 verdict, the Court is looking at or concerned with the
19 existence or non-existence of evidence. Defendant
20 would be entitled to a motion for a directed verdict
21 when the State fails to produce evidence of the
22 offense charged. Here, there clearly has been
23 sufficient testimony regarding the elements of
24 possession with intent to distribute, that being not
25 only the possession, which can either be actual or

MOTIONS - JURY OUT

1 constructive, as well as the inferences that can be
2 had from the testimony presented as to the intent to
3 distribute. I find there has been more than
4 sufficient evidence that has been presented. I'm
5 viewing all of the evidence that has been presented,
6 obviously, in the light most favorable to the State,
7 that being the party opposing the motion. I do find
8 that case should be submitted to the jury in this
9 particular matter. Obviously, in talking about
10 circumstantial evidence, a case can be submitted to
11 the jury when the evidence is circumstantial if there
12 is any substantial evidence, which reasonably tends to
13 prove the guilt of the accused, or which the guilt can
14 be fairly or logically deduced, and here that exists.
15 Though it is not necessary at this point in time, the
16 Court is of the opinion that the evidence that has
17 been presented does point to the guilt of the
18 defendant beyond a reasonable doubt of the crime
19 charged. Obviously that is for the jury to decide,
20 but that goes to the strength of the evidence
21 presented by the State, which I so find exists. So
22 the motion for a directed verdict is denied.

23 Further motions on behalf of the defense?

24 MR. FOX: None, Your Honor.

25 THE COURT: Very good. Regarding the defendant's

EUGENE HARDY - EXAMINATION BY THE COURT

1 right to testify, in testifying in this particular
2 matter, is your client prepared to have the Court ask
3 him those questions, or do you want to take a short
4 break?

5 MR. FOX: I believe he's prepared to answer.

6 THE COURT: Mr. Hardy, if you would stand up.

7 (EUGENE HARDY, having been duly sworn,
8 testified as follows:)

9 EXAMINATION

10 BY THE COURT:

11 Q I'm going to explain certain of your
12 Constitutional rights. If at any point in time you
13 don't understand what we're talking about, you have a
14 question, some question of doubt, you need to indicate
15 that to me. Raise your hand, tell your attorney, but I
16 have got to know that you have a question; you
17 understand that?

18 A Yes, sir.

19 Q All right, sir. We have reached the stage of the
20 trial that you can present your defense. You have the
21 right to claim protection given to you by the Fifth
22 Amendment of the Constitution of the United States of
23 America. That amendment states, in part, that no
24 person can be compelled in a criminal case to be a
25 witness against themselves; that means nobody can make

EUGENE HARDY - EXAMINATION BY THE COURT

1 you testify. You can testify if you want to, but that
2 is your choice. No one can make you do that. Do you
3 understand that?

4 A Yes, sir.

5 Q Now, regarding the fact if you decide to testify,
6 you would be subject to the same rules as the other
7 witnesses. You would be asked questions by your
8 attorney, cross-examined by the State as to any matters
9 that the Court would deem proper and relevant to these
10 proceedings. In that regard, Solicitor, are there any
11 prior convictions that Mr. Hardy has that you would
12 intend to -- regarding the 609, Rule 609?

13 MR. CARAKER: I'm showing -- albeit old -- '84,
14 larceny; '92, financial transaction card fraud. Also,
15 he does have prior distribution convictions,
16 trafficking convictions, but they are from '97, Your
17 Honor. He does have, I believe, a -- Court's
18 indulgence.

19 (A brief pause in the proceedings.)

20 MR. CARAKER: 2014 possession, as well on his
21 record possession of cocaine base.

22 THE COURT: So what is it that the State would
23 intend to examine him on, then?

24 MR. CARAKER: Under the rule for dishonesty, he
25 has that larceny in '84.

EUGENE HARDY - EXAMINATION BY THE COURT

1 THE COURT: All right, sir.

2 MR. CARAKER: And the fraud -- transaction card
3 fraud charge in '92. We believe those are probative
4 of truthfulness, as they do involve -- the larceny is
5 a theft, and the fraud involves dishonesty, along with
6 the 2014 possession of cocaine base. It is within the
7 10-year time limit and carries up to three years.

8 THE COURT: Very good. Do you disagree with
9 that, Mr. Fox, as to those three matters?

10 MR. FOX: No, Your Honor.

11 THE COURT: Very good.

12 Q So, Mr. Hardy, regarding those three offenses,
13 you understand that the State would be allowed to ask
14 you if you have been convicted of those crimes; you
15 understand that?

16 A Yes, sir.

17 Q And if you agree, then the State can't go any
18 further as far as what was involved, what took place or
19 anything like that. If you denied it, then the State
20 would be able to come forward with evidence to prove
21 that you were convicted of those crimes; do you
22 understand that?

23 A Yes, sir.

24 Q All right, sir.

25 MR. FOX: I'm sorry to jump in.

EUGENE HARDY - EXAMINATION BY THE COURT

1 THE COURT: That's all right.

2 MR. FOX: To clarify my own position, I thought
3 you were asking if I agreed that he had those
4 convictions, and I do.

5 THE COURT: I'm sorry. I was asking if you
6 objected to --

7 MR. FOX: I do to the larceny and FDC card fraud.
8 I realize they are not in the 10-year limit, but I
9 urge the Court that because they are 25 and 33 years
10 old, they are far too remote and far too prejudicial,
11 so we object to those two. I believe the possession
12 of cocaine from just three years ago clearly satisfies
13 the rule, but we object to the larceny from '84 and
14 FDC fraud of '92 being too remote.

15 THE COURT: Understanding the remoteness of time,
16 that is certainly a factor, but I would allow the
17 State to ask about that. Obviously, that is a point
18 that can be raised to the jury to establish that they
19 were many, many years ago, but I do find that it is
20 relevant in this particular matter and proper under
21 the rule.

22 MR. FOX: Yes, sir.

23 Q So, Mr. Hardy, if you decide to testify, that has
24 to be your decision. Obviously, you can talk to your
25 attorney, receive his advice, but it is your decision;

EUGENE HARDY - EXAMINATION BY THE COURT

1 you understand that.

2 A Yes, sir.

3 Q And it has to be made with the knowledge of the
4 rights we've talked about here today, and what we've
5 talked about. If you decide not to testify, I would
6 instruct the jury when I'm giving them my charge on the
7 law that they can't consider that, whatsoever. They
8 can't talk about it. They can't use it in making their
9 decision. It is not a part and parcel of this case if
10 you decide not to testify; do you understand that?

11 A Yes, sir.

12 Q All right, sir. Do you understand everything
13 we've talked about?

14 A Yes, sir.

15 Q Do you want to ask your attorney any questions
16 before I ask you what you want to do? If you have any
17 questions, ask it.

18 A No, sir.

19 Q Very good. Do you wish to testify in this
20 matter?

21 A No, sir.

22 Q Very good. Thank you. You can have a seat.

23 THE COURT: Mr. Fox, besides then Mr. Hardy, is
24 there any other witnesses that the defense would
25 intend to present in this matter?

THE COURT AND ATTORNEYS

1 MR. FOX: No, Your Honor. The defense rests.

2 THE COURT: Very good. At this point in time
3 then, the defense rests. Do you want to renew your
4 motion for a directed verdict?

5 MR. FOX: Yes, sir.

6 THE COURT: All right, sir. I'm not going to go
7 over the standards again regarding the directed
8 verdict and what the Court uses, but I find there is
9 more than sufficient evidence presented on the
10 elements of possession with intent to distribute
11 cocaine to submit the matter to the jury in this
12 matter and, therefore, the motion for directed verdict
13 is denied.

14 What my intention is -- and it is basically right
15 at 5 o'clock. I don't want to break up the closing
16 arguments and the charge on the law, so it is my
17 intention to stop for today, come back tomorrow
18 morning. We'll have the jury come back at 9 o'clock.
19 I would like us to be ready to go at 9:15. Have the
20 clerk's office -- you will have something for them in
21 the morning, so they'll have some time to enjoy that
22 in the jury room, but I would like us to be able to
23 plan on getting started at 9:15 in the morning, all
24 right, and then we'll go into the closing arguments,
25 charge on the law, and then we'll submit the case to

THE COURT AND ATTORNEYS

1 the jury for their deliberations and unanimous
2 decision in this particular matter.

3 Anything else at this point in time?

4 MR. CARAKER: Nothing from the State.

5 MR. FOX: Only question -- I don't believe I have
6 any request to charge, other than to inquire whether
7 Your Honor in your standard circumstantial evidence
8 charge incorporates the more recent State v. Logan?

9 THE COURT: I can tell you exactly what it is if
10 you give me a second. I will tell them that the law
11 makes no distinction between the weight or value to be
12 given either direct or circumstantial evidence and a
13 greater degree of certainty is not required one over
14 the other, but -- obviously, however -- however to the
15 extent that the State relies on circumstantial
16 evidence, all of the circumstances must be consistent
17 with each other, and when taken together, point
18 conclusively to the guilt of the accused beyond a
19 reasonable doubt.

20 Now, regarding this matter, if the circumstances
21 merely portray the defendant's behavior as suspicious,
22 the proof has failed. The State has the burden of
23 proving the defendant guilty beyond a reasonable
24 doubt, that burden rests upon the State regardless of
25 whether the State relies on direct evidence,

THE COURT AND ATTORNEYS

1 circumstantial evidence or some combination of the
2 two. So that is my intent to charge.

3 MR. FOX: Yes, sir. I understand, thank you.

4 THE COURT: Now, regarding in offense the intent
5 to distribute cocaine, the verdict form is drawn in
6 that fashion. Is there any request from the State or
7 the defense?

8 MR. CARAKER: None from the State.

9 THE COURT: Defense?

10 MR. FOX: We would request simple possession of
11 cocaine as a lesser included. The jury could
12 certainly conclude there is a permissible inference
13 based on the weight, but the jury could certainly
14 conclude that this was personal use rather than for
15 later sale.

16 THE COURT: What is the State's position on that?

17 MR. CARAKER: No objection.

18 THE COURT: So the verdict form that I have drawn
19 basically has the caption of the case, it has, one,
20 possession with intent to distribute cocaine, we the
21 jury by unanimous consent find the defendant -- and
22 you have two choices, guilty or not guilty. At the
23 bottom, it says, If you find the defendant not guilty
24 on that charge, please proceed to Page 2. If you find
25 the defendant guilty, obviously you knock on the door

JURY IN - THE COURT TO THE JURY

1 and let the bailiff know. On Page 2, possession of
2 cocaine. When charged with possession of cocaine, we
3 the jury by unanimous consent find the defendant --
4 two choices, guilty and not guilty. So that is how
5 the verdict form would go to the jury, all right? Any
6 problem with that from the State?

7 MR. CARAKER: No, sir.

8 THE COURT: Defense?

9 MR. FOX: No, Your Honor.

10 THE COURT: Very good. All right. So what we'll
11 do is we'll call the jury in now. I'll tell them that
12 I'll stop for today, have them come back at 9 o'clock,
13 and then we can get started around 9:15, okay. So ask
14 the jury come in, please.

15 (The jury enters at 5:06 p.m., and the
16 following is heard in the presence of the jury.)

17 THE COURT: Mr. Fox, the presentation or anything
18 further from the defense in this matter?

19 MR. FOX: No, Your Honor. Defense rests.

20 THE COURT: Very good. Ladies and gentlemen, we
21 have concluded the evidentiary portion of this trial.
22 That, obviously, does not end this case. What we
23 remains are the closing arguments of the attorneys,
24 charge on the law from the Court, and then submission
25 of the case to you for your deliberations and your

JURY IN - THE COURT TO THE JURY

1 unanimous decision in this matter. If we proceed on
2 tonight, it is your case until you render a unanimous
3 verdict, meaning we would be here until you reached
4 that verdict. So I won't keep you. We'll send you
5 home. In doing so, I'll remind you that you must
6 decide this case solely and completely on the facts
7 and evidence you have heard in this courtroom and from
8 no other source. You are not researchers. You are
9 not investigators. You may not look up anything, talk
10 to anyone about this case. If you see a fellow juror,
11 you can wave at them if you see them at dinner or
12 whatever, but you can't talk to them until I give it
13 to you and all of you are together.

14 Obviously, no one else can talk to you about this
15 matter, husband, wife, girlfriend, boyfriend, person
16 down the street. You know, if they happen to know you
17 are on a jury that is fine, but you can't talk to them
18 about it. They would intentionally or unintentionally
19 give you their opinion. They can't have one in this
20 case. So with that, I'll have you be back in the jury
21 assembly room tomorrow at 9:00. The clerk's office
22 will have something for you in the jury room. They
23 will bring you upstairs. My intention is to get
24 started around 9:15. So I'll give you some amount of
25 time to enjoy what the clerk's office has for you, and

JURY IN - THE COURT TO THE JURY

1 then we'll get started with the closing arguments,
2 charge on the law and the submission of the case for
3 your deliberations and unanimous decision. With that,
4 you are now excused. Thank you very much.

5 (Whereupon, the jury exits at 5:09 p.m., and the
6 following is had out of the presence of the jury.)

7 THE COURT: All right. Mr. Hardy, will you stand
8 up for a second? Mr. Fox, did you have an opportunity
9 to have someone communicate with the bonding company?

10 MR. FOX: I was unable because we started back,
11 but Mr. Hardy's family did. Priscilla Spivey is the
12 bonding company, and they indicated they were able to
13 speak with her and she was aware of the situation and
14 willing to remain on the bond, is the information I
15 was relayed.

16 THE COURT: Very good. Mr. Hardy, remember, we
17 talked about this earlier about the trial in your
18 absence, obviously we already started the trial and
19 we're resuming tomorrow morning. I want you here
20 tomorrow morning with your attorney by 9:15; you
21 understand that?

22 MS. HARDY: Yes, sir.

23 THE COURT: If you fail to do so, a bench warrant
24 will be issued for your arrest. They'll pick you up
25 and take you to J. Reuben Long, the trial will

JURY IN - THE COURT TO THE JURY

1 continue in your absence.

2 MS. HARDY: Yes, sir.

3 THE COURT: Whatever the result is, if it is a
4 conviction then, again -- and you are not present, the
5 sentence will be sealed, it will be opened, read to
6 you when you are picked up and brought back before the
7 Court; you understand that?

8 MS. HARDY: Yes, sir.

9 THE COURT: Very good. With that, I'll see
10 everyone back tomorrow morning. Again, I'm having the
11 jury at 9 o'clock. I would appreciate it if you all
12 would be here at 9:00 if there is any matter to talk
13 to me about before we get started. Thank you very
14 much.

15 (Whereupon, the proceedings for SEPTEMBER 13,
16 2017 concluded. The following was had on SEPTEMBER
17 14, 2017 out of the presence of the jury.)

18 THE COURT: State ready?

19 MR. CARAKER: Yes, Your Honor.

20 THE COURT: Defense?

21 MR. FOX: Yes, Your Honor.

22 THE COURT: If you could ask the jury to come in.

23 (The jury enters at 9:23 a.m., and the
24 following is heard in the presence of the jury.)

25 THE COURT: All right. Ladies and gentlemen, I

CLOSING ARGUMENT - MR. CARAKER

1 told you at the end of business yesterday that we had
2 received all of the evidence in this case, and that is
3 where we are at this time. The next thing that will
4 happen are the closing arguments by the counsel. As
5 with the opening statements, the closing arguments are
6 not evidence. We have already received the evidence
7 in this matter, but they are important. They are each
8 side's summation of what they believe the evidence has
9 shown to you during the course of this trial.

10 Remember everything -- and of course you are the
11 judges of the facts in this particular matter and
12 whether or not the State has proven the defendant
13 guilty beyond a reasonable doubt. When we get done
14 with the closing arguments, I'll give you the law that
15 you will apply to the facts and evidence in this
16 matter that has been presented, all right.

17 Solicitor.

18 MR. CARAKER: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. CARAKER: Good morning, ladies and gentlemen.
21 Let me ask you a question real quick. Who walks
22 around with over \$500 in their pocket and four bags of
23 cocaine? Surely by now you have asked yourselves the
24 same question. On October 3, 2016, the defendant, did
25 so you have to ask yourself why. Because he intended

CLOSING ARGUMENT - MR. CARAKER

1 to sell it. In order to make our case, we have to
2 show you a couple of things. Number one, the
3 possession aspect of it, that he possessed cocaine on
4 that date. We have to show it was in South Carolina,
5 in Horry County. We have to show you -- remember what
6 I told you, we have to show the intent by
7 circumstantial evidence. We can't look inside his
8 brain. We have to show you some intended
9 circumstances that will point to his intent to sell
10 those drugs, and we have to do that beyond a
11 reasonable doubt.

12 The judge will tell you that beyond a reasonable
13 doubt is that level of proof that leaves you firmly
14 convinced of the defendant's guilt. We did this by
15 showing you two different kinds of evidence. One is
16 direct evidence, and that is exactly what it sounds
17 like. Agent Curry testified that he saw the defendant
18 bend down and reach in his shoe and throw down that
19 bag, that larger bag with four smaller bags of
20 cocaine. That's direct evidence; he saw him do that.

21 Circumstantial evidence is a little different,
22 and the judge will tell you there is no legal
23 distinction between the two. You can give each equal
24 weight. Circumstantial evidence is that evidence that
25 you have to make a chain of inferences from. If you

CLOSING ARGUMENT - MR. CARAKER

1 know X, and you know Z, somewhere in the middle is Y,
2 so they must all be true. An example of that would be
3 if you have children or grandchildren, you are there
4 by yourself and they want a cookie or something before
5 dinner. No, it will ruin your dinner, right? That is
6 what our parents told us. Someone calls you, you go
7 and get the doorbell and you leave them in the den,
8 when you come back, they have cookie crumbs on their
9 face. Did you eat that cookie? No, ma'am. No, sir.
10 When you go in the kitchen and the chair is pulled
11 over to the counter and the cookie jar is slid out to
12 the edge and there is crumbs up to the edge. You
13 didn't see them eat the cookie, but you know they did
14 it. That is circumstantial evidence. The chair, the
15 crumbs, the cookie jar, that is circumstantial
16 evidence of the fact that he ate or she ate that
17 cookie. So those are the two different kinds of
18 evidence.

19 So what do we know in this case? The judge will
20 tell you that you are only supposed to consider
21 evidence that you heard and saw from the witness
22 stand. So let's talk about that for a minute. What
23 did you hear from the witness stand? You heard an
24 18-year veteran of narcotic investigations tell you
25 that he had three arrest warrants for this defendant.

CLOSING ARGUMENT - MR. CARAKER

1 He knew who he was. He was waiting outside of his
2 work one day, pulled him over and arrested him. When
3 he did so, he saw the defendant bend down, reach in
4 his shoe and throw out a bag. Because of his training
5 and experience, he says, well, I know that's dope, it
6 has to be dope of some description. It was in a
7 larger bag. So it was a larger bag that contained
8 four smaller bags of cocaine. So they get to talking,
9 gives him his Miranda rights. We talked about that
10 yesterday. We set the stage for that, that the
11 defendant was clear headed, he understood his Miranda
12 rights and understood he could invoke his right to
13 counsel and invoke his right to remain silent.

14 He spoke to Agent Curry, and they talked about
15 the fact that he set up a tent at a biker bar and
16 washing motorcycles during the previous bike week, and
17 that the cocaine that he had was what he had left over
18 from that week. Again, a larger bag containing four
19 smaller bags. Why would you walk around like that if
20 you were a user? You wouldn't, is the answer.

21 Now, to show possession with intent, we are
22 required to do that two different ways. The
23 legislature recognizes and has provided us with a
24 statutory inference. Anything over one gram is
25 considered to be possession with intent, because the

CLOSING ARGUMENT - MR. CARAKER

1 legislature understood when they did that, as
2 narcotics detectives understand, that drugs are sold
3 by weight. They are typically sold by very small
4 weights. So some people make the argument, oh, it is
5 only a gram. Oh, it is only a half a gram. What they
6 don't understand or will not tell you is that is
7 multiple doses. Just like it was here, this gram and
8 a half was in four bags. So we could stop right
9 there. That is enough for you to find him guilty all
10 alone, all by itself, but we provided a little bit
11 more for you. We provided testimony from the witness
12 stand where Agent Curry says in his training and
13 experience, users don't walk around with their drugs
14 packaged that way. If they are going to hold a gram
15 and a half at a time, it is cheaper for them to buy it
16 by the gram and a half. He's selling bumps for \$50 a
17 piece, that's \$200 worth of drugs that he had in his
18 possession that day, retail, when he could buy that
19 same gram, gram and a half for a hundred. That is how
20 those guys make their money. They stretch it out,
21 they cut it, bag it up and that is how they make the
22 money. It is a Walmart principle. It is like going
23 to Walmart and buying a loaf of bread a slice at a
24 time and paying a quarter a piece and you end up
25 paying \$6 for a loaf of bread, when you can buy the

CLOSING ARGUMENT - MR. CARAKER

1 whole thing for \$2.50. It is the same principle,
2 works the same way.

3 Because that is the case, the courts have also
4 told us even if you have under that statutory
5 inference of a gram, you can still find the defendant
6 guilty of possession with intent to distribute based
7 on the packaging, based on the other circumstances.
8 Did they have money, packaging, anything else like
9 that that you can find them guilty one of two ways.
10 We've given you both.

11 If you don't -- if you are not quite there with
12 that, remember the defendant's own statement, That is
13 what I had left over from bike week. I set up a tent,
14 wash bikes at some biker bar, and that is what I had
15 left over. Four bags inside a larger bag stuck in his
16 shoe. Think to yourself, is that a user, or is that a
17 dealer? Is that for personal use, or financial gain?
18 Is he using it or taking a shortcut to try to make
19 some money?

20 There is going to be some talk about reasonable
21 doubt and what that means, firmly convinced. We
22 provided you direct evidence that he possessed the
23 cocaine. We told you where it was. Traffic stop is
24 on Highway 707 down there in Burgess. We've given you
25 the circumstantial evidence that you need to connect

CLOSING ARGUMENT - MR. FOX

1 the dots as to his intent. The judge will tell you in
2 his charge to you that all of the circumstances, the
3 intended circumstances, have to point to the
4 defendant's guilt. We can't just raise a mere
5 suspicion, well, we think this so we're going to
6 charge him with it. No. We have to say, No, it is
7 definitely intent for all of those reasons that we
8 just talked about. Because we have done so, we have
9 removed that cloak of innocence that he comes into
10 this courtroom with. We have removed that cloak. We
11 have dragged him out of the shadows of the drug gang
12 and brought him into the light and stood him before
13 you all here today. Because of that, I submit to you,
14 ladies and gentlemen, you must be firmly convinced at
15 this point of his guilt, not only of possession of
16 cocaine, but of his intent to distribute that cocaine
17 he had in his possession. So I ask you at the close
18 of the case, when you retire to your jury room, truly
19 and well deliberate these facts and come back and find
20 for the State, not only on the possession, but on the
21 possession with intent to distribute. Thank you for
22 your attention.

23 THE COURT: Mr. Fox.

24 MR. FOX: Thank you, Your Honor. May it please
25 the Court. Good morning, ladies and gentlemen. Thank

CLOSING ARGUMENT - MR. FOX

1 you for your time and attention yesterday and today.
2 I'm sure you got a jury summons and did a little
3 dance, but it is extremely important. I have heard it
4 said, There is three great duties that citizens in a
5 democracy like ours have: One is serving your country
6 in time of war, another is voting and another is jury
7 duty. Even in very advanced first world societies
8 they don't all do it like this. Some places there is
9 a panel of judges that decide. Not everybody does it
10 this way. I happen to think it is the best system,
11 and I appreciate your effort.

12 This may surprise you and I don't often say this
13 in court, but that man is guilty. There is no
14 question that he was in possession of the drugs that
15 you have in court, the four baggies, gram and a half
16 of cocaine. I'm not going to insult your intelligence
17 by suggesting that he didn't do it, that Mr. Curry
18 didn't see what he saw on the side of the road, but
19 the Solicitor said it is all about whether or not
20 there is an intent on the part of Mr. Hardy to later
21 sell or distribute, is the word we use, to sell or
22 distribute that cocaine.

23 I'm not going to belabor circumstantial evidence,
24 but that is what you have here. Of course we can't
25 open Mr. Hardy's mind and know his intent, so you have

CLOSING ARGUMENT - MR. FOX

1 to look at the surrounding circumstances. The judge
2 at the end of the case, and at the end of my
3 discussion, will tell you what the State of South
4 Carolina determines is circumstantial evidence, what
5 that definition is. Mr. Caraker gave you a good
6 illustration. The one I've always liked is if you are
7 walking down the road, country road, and there is a
8 fence along the way and you see a turtle on top of the
9 fence post, even if you didn't him get up there, you
10 can be pretty darn sure he had some help. That is
11 circumstantial evidence.

12 However, in order to find beyond a reasonable
13 doubt when the State relies on circumstantial
14 evidence, all of the circumstances must
15 consistently -- and each element beyond a reasonable
16 doubt -- point to the guilt of the defendant. If you
17 walk outside and your car is wet in the driveway, like
18 me, you don't have a garage and your car is wet, it is
19 a sunny day, you might conclude that it rained
20 overnight. That is a plausible conclusion. But it
21 might just as well be that there was a heavy dew or
22 maybe your neighbor's sprinkler was on first thing in
23 the morning. If you are going to rely on
24 circumstantial evidence, then it must conclusively --
25 and I'll quote from State versus Logan, which is our

CLOSING ARGUMENT - MR. FOX

1 supreme court case -- all of the circumstances must be
2 consistent with each other. Taken together, they must
3 point conclusively to the guilt of the accused beyond
4 a reasonable doubt. If they merely portray the
5 defendant's behavior as suspicious, the proof has
6 failed. All right.

7 So it is not just that there is circumstantial
8 evidence. Clearly we have circumstantial evidence.
9 Clearly it raises a suspicion. There is drugs, that
10 is illegal, per se, illegal on the face. There is
11 drugs in Mr. Hardy's possession. The question is: Is
12 there any other explanation for these things? So I
13 don't doubt Fred Curry's experience in this matter;
14 however, if that is all we needed, just Mr. Curry
15 saying so, we wouldn't need a magistrate to get an
16 arrest warrant, wouldn't need a jury to decided guilty
17 or innocence. We would just say Freddy Curry is an
18 18-year veteran, we don't need anything else.
19 Obviously, we do need more. Mr. Curry makes the case,
20 presents the case and you decide whether the proof
21 indicates what he said it does.

22 You have money, and you have drugs. Why would
23 someone walk around with 500-some dollars in their
24 pocket? Well, if you are like a lot of my clients,
25 not everyone has a checking account. If you work in

CLOSING ARGUMENT - MR. FOX

1 construction, if you are familiar with R.H. Moore,
2 that is a construction company, that is where he was
3 employed at the time, that is where they waited for
4 him to pull him over and serve these arrest warrants,
5 if you work construction -- and when I worked summer
6 jobs in construction, no one gave me a check. I wind
7 up on Friday with everyone else and counted out the
8 cash. They handed me cash. That is very common.

9 No one denies that Mr. Hardy -- in fact, Mr.
10 Curry admitted on the stand that as far as he knew Mr.
11 Hardy did have a tent washing bikes during bike week
12 washing bikes. No one was not suggesting he was not
13 washing bikes. I am willing to bet that none of those
14 bikers that went through there to get their bikes
15 washed paid with a credit card or a check. That is a
16 plausible, reasonable explanation for why he may have
17 \$576. Is it the only explanation? It is not. One
18 could be that is drug money. But there is an
19 alternative, plausible and reasonable explanation --
20 that isn't just me guessing -- that came from
21 testimony you heard from the witness stand. He works
22 at R. H. Moore, that is a construction company. Yeah,
23 he had a tent and washing bikes at Suck Bang Blow.
24 They suspect something else, but that is the
25 explanation for the money. That is a reasonable and

CLOSING ARGUMENT - MR. FOX

1 plausible alternative.

2 The drugs. Agent Curry said, well, I've done
3 this a long time and that is just not how people
4 consume the drugs. I'll let you look. You can -- if
5 you wish, these are now in evidence. There is no
6 question about them being tampered or contaminated.
7 If you wish, you can open this bag and look, but I
8 think you can see there is the four baggies, each one
9 is a separate dose intended for a separate dose:
10 We're talking about a very small amount of cocaine. I
11 think if you piled all of that up, apparently about a
12 gram and a half, and I think that includes the baggy
13 weight, I'm not positive. They didn't dump it out and
14 put it back in when they tested it, but the amount
15 tested was a gram and a half, is what Agent Johnson
16 testified to. That is not a real lot of cocaine. I
17 have no doubt that this is how it is sold. But if it
18 is sold that way, that is how it was purchased. If I
19 am the person who is going to buy cocaine, I don't get
20 to tell my dealer how he will package and sell his
21 commodity. If I want more than one dose because I
22 don't want to have to keep going back, because I don't
23 want to arouse suspicion, because I either just like
24 it or have an addiction, have it or whatever, and I
25 know over whatever period of time I will want more

CLOSING ARGUMENT - MR. FOX

1 than one bump, then that is how you buy it. It is not
2 like that candy store at Broadway where they have the
3 tubs of MMs and Skillets and you take your bag and
4 fill out how much you want. You don't get to do with
5 the dealer. It is in the dealer's best interest to
6 tell it is this way. That is how a dealer makes his
7 money. Is that good for the consumer? No, but the
8 dealer dictates the market. The dealer decides this
9 is how you are going to buy my product. Is it cheaper
10 for you to buy it in a lump? Yes, it would, but I'm
11 the dealer and you don't get that choice. I decide
12 how you purchase my product and I have it packaged to
13 maximize my profit. That is how it is purchased.

14 Another point I would like to mention, Mr. Curry
15 said one of the ways he knew that this was going to be
16 for sale rather than for personal use was because
17 these four little baggies was inside a bigger baggy.
18 What don't you have today? You don't have that bigger
19 baggy. In fact, when Mr. Curry was looking, gosh, I
20 don't know if it was in a bigger baggy and I don't see
21 that big baggy now. That is not evidence you have.

22 It could have been -- it is possible, and there
23 certainly is equipment like body cam, dash cam video
24 that would allow that. They put him on with a CI to
25 go make sales, they put little tiny cameras, and

CLOSING ARGUMENT - MR. FOX

1 certainly that could have been on Agent Curry. But,
2 regardless, the baggy here, don't have it.

3 What else did they suggest as a circumstantial
4 piece of evidence of Mr. Hardy's intent to sell this?
5 This is what I have left over from Suck Bang Blow from
6 bike week. He didn't say this is what I had left over
7 from selling cocaine at Suck Bang Blow during bike
8 week. He said this is what I had left over. What is
9 another perfectly reasonable explanation for that
10 statement? It is bike week. Bike week is basically a
11 big long party, like Mardi Gras. Whenever you are a
12 participant riding your bike or a vendor, everyone
13 gets together. Most people know each other from
14 previous years or local, and a very reasonable
15 explanation is while I was there at bike week, yeah,
16 I'm washing and making money, but guess what, I'm also
17 enjoying myself. That is what I was using, bumps, to
18 get me through a day of washing bikes all day, so that
19 is what I had. He never said this is what I had left
20 over from selling. You have to make a leap to get
21 there. He just said this is what I had left over, and
22 Mr. Curry, who is trained in thinking about the drug
23 trade, just made the assumption this is what he must
24 have meant, but he never said that. Even Agent Curry
25 doesn't say that Mr. Hardy admitted to selling out of

CLOSING ARGUMENT - MR. FOX

1 this being the left over of any stash that is for
2 sale. That is a leap you have to make. That is a gap
3 of the circumstantial evidence. You have to reach a
4 conclusion that is not supported by the evidence. Is
5 it possible to reach that conclusion? It is, but it
6 does not point conclusively towards Mr. Hardy's guilt.

7 The amount, it is correct that the State of South
8 Carolina says if you are in a possession of a gram or
9 more of cocaine, that is what we call a permissible
10 inference that there is an intent to sell. It is not
11 required that you reach that conclusion. I agree with
12 the Solicitor, you need to look at all of the
13 surrounding circumstances. That is a very small
14 amount. If this is a gram and a half, then a gram, I
15 suppose, is about three of those little baggies. I
16 think if you were to take this out and put it, you
17 know, like you see in the movies on a mirror in a
18 couple of lines, I don't think that is any trouble for
19 a person who does use cocaine to consume in one
20 sitting, but certainly all by themselves. A gram is a
21 very small amount. I understand why the state sets
22 the threshold. They are trying to stamp out illegal
23 drugs, but without more, I just don't think that is
24 enough to convict a man of intent to distribute
25 cocaine.

CLOSING ARGUMENT - MR. FOX

1 I have to go back to the packaging. Again, yes,
2 there are four separate doses, so to speak. Think of
3 that -- you know, if you buy a six-pack of beer, that
4 is how it is. Some sell a single, but some don't sell
5 a single, but if you want a 12-ounce, you pretty much
6 have to buy a 6-pack or 12-pack or a case. You don't
7 get to decide, well, I only want that one, so I'm only
8 going to buy one. You have to buy it the way it is
9 available.

10 Last thing. In regard to Agent Curry, I don't
11 doubt his training and experience. You might see it
12 with lawyers -- if you present a situation to a
13 lawyer, he'll identify the legal problems with it. If
14 you have a medical issue and you go to one sort of a
15 doctor, he'll look at it from the issue of being a
16 heart doctor or an internist or head doctor or heart
17 doctor. Whatever it is, they'll look at their
18 particular focus. Mr. Curry is trained and
19 experienced to look for things and people that sell
20 drugs, and I think sometimes he misses the trees from
21 the forest.

22 My brother reminded me about my grandfather who
23 had a dog, and he kept a few chickens around. He
24 lived at the edge of the town. He had a dog whose job
25 was basically a patrol dog, including making sure that

CLOSING ARGUMENT - MR. FOX

1 foxes and things that sometimes come down from the
2 hills didn't get the chicken or any of the few animals
3 he had around. My brother walked out with him one day
4 and there was some blood and some fur, and my
5 grandfather said, dammit, that dog has gotten into a
6 fox. My brother said, well, I thought that was a good
7 thing, that is what he supposed to do, right? And my
8 grandfather said, yeah, he is. The problem is now
9 that he's tasted that, now that he got that, he'll
10 think that everything is a fox. He'll see a fox
11 everywhere and he won't be so good as a dog anymore.

12 I think that is a little bit what we have with
13 Mr. Curry. He is very good at what he does, but he
14 sees foxes everywhere now. Every little bit of little
15 cocaine, if it is not just one personal pack under a
16 gram with a person carrying no money, anything else
17 has to be a PWID. I'm glad he's around. I live in
18 this community. I don't want to be subjected to
19 people on drugs, breaking into my house or cars,
20 threatening my friends or family. I am glad DEU is
21 out there doing what they do, but just because they
22 identify and see something in their mind that says
23 PWID, doesn't make it so. That is what you all are
24 here for. Is there circumstantial evidence? There
25 is, but I think there are gaps. I think there is

JURY CHARGE

1 plausible, reasonable explanations, and I think in the
2 end this is a simple possession case, and that is it.
3 I ask you to find Mr. Hardy guilty of simple
4 possession of cocaine.

5 THE COURT: Ladies and gentlemen, it is now my
6 duty and responsibility to give you the law that you
7 will apply to the facts and evidence presented in this
8 particular matter. I told you at the very beginning I
9 will not indicate to you what I thought the facts of
10 the case were. It is your job and responsibility to
11 listen to the facts and evidence, to be the judges of
12 the facts in this case.

13 Now, on that same vein, if you came into the
14 courtroom with any preconceived ideas of what the law
15 is, what it should be, what you hoped it would be, you
16 will disregard that. You will take the law as I now
17 give it to you and apply it to the facts and evidence
18 you have heard in this particular case.

19 I'm told you one of your jobs in being judges of
20 the facts was to judge the creditability and
21 believability of the witnesses that came before you
22 and testified. I'm reminding you, you can believe one
23 witness against several, several against one, a
24 portion of what a witness says, disregard a portion,
25 disregard the entirety of the testimony of a witness,

JURY CHARGE

1 as long as you have good sound reasons for doing so.
2 You look at whether or not the witness had any kind of
3 interest, motive, bias, prejudice they gave you in
4 giving you the testimony, obviously, the opportunity
5 for knowledge, how they came about that information
6 that they gave you from the witness stand.

7 Your objective is to look and examine the
8 evidence and determine whether or not the State has
9 proved to you that the defendant is guilty of the
10 crime charged. We will be asking you to use your good
11 commonsense, good judgment, apply it to the facts and
12 evidence in this matter, and determine that basic
13 question. You don't have any friends to reward, you
14 don't have any enemies to punish. Your verdict can't
15 be the result of any kind of passion, prejudice or
16 sympathy. It has to be an examination of the facts
17 and evidence in this matter in determining whether or
18 not the State has proved the defendant guilty beyond a
19 reasonable doubt.

20 Two types of evidence in general called direct
21 and circumstantial evidence. It comes back virtually
22 to every case, and this one is no exception. Direct
23 evidence that is the testimony of a person who asserts
24 or claims to have actual knowledge of a fact. This
25 happened in my presence. This is what I saw. This it

JURY CHARGE

1 is what I heard. This is what took place when I was
2 present there.

3 Circumstantial evidence is proof of a chain of
4 facts indicating the existence of a fact. The law
5 doesn't make any distinction between the two. A
6 greater degree of certainty of one over the other is
7 not required, but to the extent that the State relies
8 on circumstantial evidence, all of the circumstances
9 have to be consistent with each other, and when taken
10 together, point conclusively to the guilt of the
11 accused beyond a reasonable doubt.

12 If the circumstances merely portray the
13 Defendant's behavior as suspicious, the proof has
14 failed. The State has a burden of proving the
15 defendant guilty beyond a reasonable doubt. This
16 burden rests with the State regardless of whether the
17 State relies on direct evidence or circumstantial
18 evidence or some combination of the two. We qualified
19 one witness to give their opinion in this particular
20 case, and sometimes they are called expert witnesses.
21 Normally, we don't allow people to give their opinion.
22 They have to tell you what they saw or took place. By
23 reason of their experience, training, knowledge in a
24 particular area, sometimes we allow certain witnesses
25 to give their opinions. I did so qualify one witness

JURY CHARGE

1 to give her opinion, but that doesn't give that
2 witness any special status. You judge all of the
3 witnesses the same. Judge their believability,
4 creditability the same as you would any other witness
5 that would testify in a matter.

6 In this particular case, the Defendant did not
7 testify. I instruct you and emphasize this fact to
8 you, that that is not a matter for your consideration
9 in this case. It may not affect your decision in any
10 way. It may not be considered by you in any way,
11 certainly not talking about it nor mentioning it in
12 decided this case. This defendant -- any defendant --
13 has a Constitutional right to remain silent. The
14 assertion of this right cannot be used against them,
15 can't be considered in your deliberations mentally or
16 obviously spoken. You may not draw any conclusion
17 from this. The burden of proof, as I told you from
18 the beginning, is on the State of South Carolina to
19 prove the defendant guilty beyond a reasonable doubt.
20 The Defendant has nothing to prove to you. The
21 Defendant has nothing to show to you.

22 A statement of the Defendant, I allowed it to be
23 part of the evidence of this case. Now, while I
24 determined it was admissible, it could be part of this
25 case, you, the jury, make the ultimate decision of

JURY CHARGE

1 basically two things: Did the Defendant make the
2 statement, and was the statement made by the Defendant
3 voluntarily and of his own freewill? That means the
4 statement was not caused by pressure, force, fear,
5 threats, coercion, intimidation, hope or promise of
6 leniency or reward of any kind. You take into
7 consideration all of the facts and circumstances
8 surrounding the statement. You can consider the age
9 of a person, education or lack thereof, mental
10 ability, place and length of the detention, anything
11 you believe to be important. Also, the advice of or
12 lack thereof of the Defendant's Constitutional rights,
13 sometimes called Miranda warnings including, but not
14 limited to, the right to remain silent, any statement
15 that you make can and may be used against you in a
16 court of law. You have the right to have a lawyer
17 present during the questioning. If you cannot afford
18 one, one will be appointed to represent you, and you
19 can stop making a statement at any time.

20 The State has the burden, as with everything
21 else, of proving beyond a reasonable doubt that the
22 statement was voluntary, was the free and voluntary
23 statement of the Defendant. If you find that, then
24 you can give it whatever consideration you want.
25 Obviously, if you find it is not a free and voluntary

JURY CHARGE

1 statement of the defendant, you can't consider it at
2 all.

3 I told you at the very beginning regarding the
4 indictment that the charge the State brought against
5 the defendant, that the defendant pled not guilty.
6 That puts the burden of proof on the State of the
7 South Carolina to prove that the Defendant is guilty
8 beyond a reasonable doubt. At that point in time, the
9 Defendant was presumed innocent. Starting the trial,
10 the Defendant is presumed innocent. The Defendant is
11 presumed innocent now. The Defendant is presumed
12 innocent unless and until you believe from the facts
13 and evidence presented to you by the State, that the
14 State has proven the guilt of the Defendant beyond a
15 reasonable doubt. This is an important rule of law in
16 any criminal trial, no matter what the charge may be.
17 The Defendant is always presumed innocent of the crime
18 for which the indictment was issued unless guilt has
19 been proven to you by evidence satisfying you of that
20 guilt beyond a reasonable doubt.

21 We liken this presumption of innocence to a robe
22 of righteousness. It is placed on the shoulders of
23 the Defendant, and it stays on the shoulders of the
24 Defendant unless and until the State rips that robe of
25 righteousness from the shoulders of the Defendant by

JURY CHARGE

1 proof that convinces you beyond a reasonable doubt of
2 the guilt of the Defendant of the crime or crimes
3 charged.

4 What is reasonable doubt? It is the kind of
5 doubt that would cause an ordinary, reasonable person
6 to hesitate to act. Proof beyond a reasonable doubt
7 is proof that leaves you firmly convinced of the
8 Defendant's guilt. Now, there are very few things we
9 can know with absolute certainty, and the law doesn't
10 requires South Carolina to give you that kind of
11 proof, but what is required is based upon the facts
12 and evidence presented in this matter, and your
13 consideration of that evidence, you are firmly
14 convinced that the Defendant is guilty of the crime
15 charged, you must find the Defendant guilty. On the
16 other hand, if you are not firmly convinced that the
17 Defendant is guilty of the crime charged, you must
18 give the Defendant the benefit of the doubt and find
19 him not guilty.

20 Intent. In order to establish criminal
21 liability, criminal intent is required. Criminal
22 intent must be proven, again, by the State beyond a
23 reasonable doubt, as well as everything else.
24 Criminal intent is a matter that has to be determined
25 by you, the jury, from all the circumstances

JURY CHARGE

1 surrounding the situation. There is no mathematical
2 formula we can give you, medical science can't give
3 you a way to look at someone's brain and determine
4 their intent. You have to look at the surrounding
5 circumstances and determine the intent. It can be
6 inferred from the circumstances then and there as it
7 exists. It is not necessary to establish intent by
8 direct and positive evidence, but it can be
9 established by taking into consideration the acts of
10 the parties and all of the facts and circumstances of
11 the case.

12 Criminal intent is a mental state of conscious
13 wrongdoing. It is up to you to determine what the
14 Defendant intended to do based on the circumstances
15 shown to have then and there existed. The Defendant,
16 having been charged with the crime of possession with
17 intent to distribute cocaine, the State must prove
18 beyond a reasonable doubt that the Defendant possessed
19 cocaine with the intent to distribute. So to prove
20 possession, the State has to prove beyond a reasonable
21 doubt that the Defendant had both the power and the
22 intent to control the disposition or use of the
23 cocaine, and that possession can be actual or
24 constructive. "Actual" means he was in actual
25 physical custody of the cocaine. "Constructive

JURY CHARGE

1 possession" means the Defendant had dominion and
2 control or right to exercise that control.

3 Now, mere presence at the scene where drugs are
4 found is not enough. The actual knowledge of cocaine
5 is strong evidence of the defendant's intent to
6 control its disposition or use, but the State has to
7 prove all of this to you, convince you beyond a
8 reasonable doubt. The State also has to prove to you
9 beyond a reasonable doubt that the Defendant, besides
10 possessing the cocaine, intended to distribute the
11 cocaine. "Distribute" means to deliver other than by
12 administering like a drug that you would through a
13 medical laboratory. Intent may be shown by acts and
14 conduct of the Defendant and other circumstances from
15 which you could infer that intent. You could consider
16 all of the circumstances surrounding the possession.
17 You may consider the amount that has been possessed,
18 the manner in which it was allegedly possessed, the
19 place where it was allegedly possessed and any other
20 factors that you deem important. You must find that
21 the Defendant did not intend to have the cocaine
22 solely for his own use. Possession of more than 10
23 grams of cocaine creates an inference that the
24 Defendant possessed the cocaine with the intent to
25 distribute.

JURY CHARGE

1 Now, that inference that the law gives to the
2 State does not relieve the State from proving to you
3 beyond a reasonable doubt that the Defendant had the
4 intent to distribute. It is an evidentiary fact, this
5 inference, to be taken into consideration with all of
6 the other facts along with the evidence in this case
7 to be given whatever consideration you deem proper.
8 If you find that the State has failed to prove to you
9 beyond a reasonable doubt that the Defendant is guilty
10 of the crime charged, that is possession with intent
11 to distribute cocaine, including the offense of
12 possession with intent to distribute cocaine is the
13 lesser offense or lesser crime of simple possession,
14 you would then consider that crime. The State has to
15 then prove to you beyond a reasonable doubt that the
16 Defendant is guilty of possession of cocaine.

17 Obviously, possession does not require an intent
18 to distribute as with possession with intent. So,
19 again, to go over that. The State has to prove that
20 the Defendant possessed the cocaine knowingly.
21 "Knowingly" means with knowledge. Consciously, not
22 accidentally. "Intentionally" means willfully
23 intending the result which actually occurs, and,
24 again, it can be shown by all of the acts and
25 circumstances surrounding the matter.

JURY CHARGE

1 If you have a reasonable doubt as to whether the
2 Defendant is guilty of a greater or lesser offense, it
3 is your duty to resolve that doubt in favor of the
4 Defendant and find him guilty of the lesser offense if
5 that is your view of the evidence and it has been
6 proven to you beyond a reasonable doubt.

7 That is the law. That is the law that you are
8 going to apply to the facts and evidence that has been
9 presented to you in this particular case.

10 The Court prepared a verdict form to aid you in
11 writing out your verdict. The verdict is
12 straightforward. Caption of the case: State of South
13 Carolina versus Eugene Hardy. Possession with intent
14 for distribute cocaine. On the charge of possession
15 with intent to distribute cocaine, we the jury by
16 unanimous consent find the Defendant -- there's two
17 choices. I put one before the other. Don't assign
18 anything to that, I have to put one before the other,
19 guilty or not guilty. There is a place for the
20 foreperson's signature. There is a note at the
21 bottom: If you find the Defendant not guilty of
22 possession with intent to distribute cocaine, you have
23 to go on and consider the lesser included, possession
24 of cocaine. If you found him guilty of possession
25 with the intent to distribute cocaine, that is the end

JURY CHARGE

1 of the matter, you knock on the door and let the
2 bailiff know you reached a verdict.

3 If the verdict on possession with intent to
4 distribute cocaine is not guilty, then you consider
5 possession of cocaine. Again, on the charge of
6 possession of cocaine, we the jury, by unanimous
7 consent find the Defendant's -- two choices, guilty or
8 not guilty. There's a place for the foreperson to
9 sign and put today's date, knock on the door and let
10 the bailiff know you reached a verdict.

11 Now, I've said "unanimous" a number of times. It
12 means exactly what you think it means. Whatever
13 verdict you arrive at regarding the charges must be
14 unanimous. That means everybody agrees, twelve-zero.
15 Not eleven-one, ten-two or any combination thereof.
16 So, madam forelady, check the appropriate box, sign
17 your name and today's date. You are telling the Court
18 that every single member of the jury agrees that that
19 is their verdict. So when the verdict is announced by
20 the clerk, when you are back in the courtroom and
21 there is a request for the Court that the jury affirm
22 the verdict by raising their right hand, every single
23 member of the jury can raise their hand and say, yes,
24 that is my verdict.

25 What I'm going to have you do, madam forelady, is

JURY DELIBERATES

1 take the -- including yourself, the 12 members of the
2 jury. I'll have the two alternates stay with us.
3 Other members of the jury accompany the forelady to
4 the jury room. Do not -- do not begin your
5 deliberations until the bailiff hands to you the
6 verdict forms and the exhibits. At that point in
7 time, you may begin your deliberations.

8 So, madam forelady, and other members of jury, if
9 you accompany the bailiff to the jury room. The two
10 alternates stay with us.

11 (The jury exits at 10:09 a.m., and the
12 following is heard out of the presence of the jury.)

13 THE COURT: As to the alternates in this
14 particular matter, is there any reason from the State
15 that the Court should not now excuse the alternates?

16 MR. CARAKER: No, sir, Your Honor.

17 THE COURT: Defense?

18 MR. FOX: None, Your Honor.

19 THE COURT: Again, I want to thank you for your
20 service in this case. I can't tell you how many
21 times -- didn't happen in this case -- but it is often
22 that we, for one reason or another, have to substitute
23 an alternate for the 12 members of jury. Someone gets
24 sick or issues come up. It happens, unfortunately,
25 frequently, but that is why you were here. It didn't

JURY DELIBERATES

1 happen in this case, but we needed alternates to
2 substitute. I want to thank you for your service.
3 We're not going to call you back for jury service.
4 You have earned the exemption for three years from
5 coming back to circuit court. City judge, federal
6 judge, magistrate, you have to see them, just don't
7 have to see us for the next three years. With that,
8 thank you for your service. I appreciate it.

9 Exceptions, additions from the State?

10 MR. CARAKER: No, Your Honor.

11 THE COURT: From the defense?

12 MR. FOX: None, Your Honor.

13 THE COURT: Thank you, gentlemen. I want to
14 thank you for the way both -- all of you tried this
15 case. You did everything that the Court would expect
16 of you from the State and the defense to represent the
17 respective interests of your -- for the State and the
18 defense, and I commend all of you for that. Thank you
19 very much.

20 Please get with the court reporter regarding all
21 of the exhibits and that we're sure we have the proper
22 ones. At this point in time, Mr. Hardy is in the
23 custody and control of the Horry County Sheriff's
24 Office. The jury retired for a verdict. Thank you
25 very much.

VERDICT

1 (Time is 10:11 a.m., and court is at ease while
2 the jury deliberates.)

3 THE COURT: The jury reached a verdict in this
4 matter. Is the State ready to proceed?

5 MR. CARAKER: Yes, sir, Your Honor.

6 THE COURT: Defense?

7 MR. FOX: Yes, Your Honor.

8 THE COURT: Very good. Have the jury come in.

9 (The jury enters at 11:47 a.m., and the
10 following is heard in the presence of the jury.)

11 THE COURT: Madam forelady, has the jury reached
12 a verdict in this matter?

13 FOREPERSON: Yes.

14 THE COURT: Could you hand the verdict to the
15 clerk's representative, please, ma'am.

16 You may publish the verdict.

17 THE CLERK: Indictment 2017-GS-26-00310, State of
18 South Carolina, County of Horry, versus Eugene Hardy.
19 Possession with intent to distribute cocaine. On the
20 charge of charge possession with intent to distribute
21 cocaine, we the jury, by unanimous consent, find the
22 defendant guilty. Signed by foreperson, Michelle
23 Dixon. Dated September 14, 2017.

24 Ladies and gentlemen of the jury, if this is your
25 verdict so signify by raising your right hand.

JURY POLLED

1 THE COURT: Thank you. All the jurors having
2 affirmed their verdict, does the State wish the jury
3 polled?

4 MR. CARAKER: No, sir, Your Honor.

5 THE COURT: Does the defense wish the jury
6 polled.

7 MR. FOX: Yes, Your Honor.

8 THE COURT: By the juror number, madam clerk, if
9 you would, poll the jurors.

10 THE CLERK: Please stand when I call your number.
11 I'll ask you two questions. After you answer them,
12 please be seated.

13 No. 93, is this your verdict?

14 JUROR: Yes, it is.

15 THE CLERK: Is this still your verdict?

16 JUROR: Yes, it is.

17 THE CLERK: No. 69, is this your verdict?

18 JUROR: Yes, it is.

19 THE CLERK: is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: No. 185, is this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR: Yes.

25 THE CLERK: No. 280, is this your verdict?

JURY POLLED

1 JUROR: Yes.
2 THE CLERK: Is this still your verdict?
3 JUROR: Yes..
4 THE CLERK: No. 129, is this your verdict?
5 JUROR: Yes..
6 THE CLERK: Is this still your verdict?
7 JUROR: Yes.
8 THE CLERK: No. 249, is this your verdict?
9 JUROR: Yes.
10 THE CLERK: Is this still your verdict?
11 JUROR: Yes.
12 THE CLERK: No. 246, is this your verdict?
13 JUROR: Yes..
14 THE CLERK: Is this still your verdict?
15 JUROR: Yes..
16 THE CLERK: No. 150, is this your verdict?
17 JUROR: Yes..
18 THE CLERK: Is this still your verdict?
19 JUROR: Yes..
20 THE CLERK: No. 213, is this your verdict?
21 JUROR: Yes..
22 THE CLERK: Is this still your verdict?
23 JUROR: Yes..
24 THE CLERK: No. 350, is this your verdict?
25 JUROR: Yes, ma'am.

JURY POLLED

1 THE CLERK: Is this still your verdict?

2 JUROR: Yes, ma'am.

3 THE CLERK: No. 263, is this your verdict?

4 JUROR: Yes, ma'am.

5 THE CLERK: Is this still your verdict?

6 JUROR: Yes, ma'am.

7 THE COURT: All right. The jury having affirmed
8 their verdict after being polled, is there; anything
9 as to the jury itself from the State?

10 MR. CARAKER: No, sir.

11 THE COURT: From the jury itself from the
12 defense?

13 MR. FOX: No, Your Honor.

14 THE COURT: Very good. Madam forelady, ladies
15 and gentlemen of the jury, I want to thank you for
16 your service. You did everything that the Court as
17 you to do, that is well and truly deliberate, listen
18 to all the facts and evidence and render a true and
19 just verdict in this case. You've earned an exemption
20 from coming back to circuit court jury duty for three
21 years. If your local city or magistrate or federal
22 judge sends you a subpoena, you have to see them, you
23 just don't have to see us for the next three years. I
24 want to thank you for your service. There were --
25 even though we got started later in the week, there

SENTENCING

1 were a number of cases on the roster that could have
2 gone to trial, and we resolved a good number of them
3 in addition to this trial and your participation, so I
4 want to thank you for that. With that, you are now
5 excused. Thank you very much.

6 (The jury exits at 11:52 a.m., and the
7 following is heard out of the presence of the jury.)

8 THE COURT: Motions from the defense?

9 MR. FOX: At this time we renew all previous
10 motions for a directed verdict. I believe the jurors'
11 verdict is against the substantial weight of the
12 evidence, so we renew all of our motions at this time.

13 THE COURT: Very good. Regarding the motions of
14 the defense, I do find that there is more than
15 sufficient evidence when the Court denied the motions
16 for a directed verdict for the matter to go to the
17 jury. The motion that is made now is for a new trial.
18 I do find that there is, again, more than sufficient
19 evidence to sustain the jury's verdict in this matter,
20 and I respectfully decline to grant your motion for a
21 new trial. Thank you very much.

22 State ready to proceed with sentencing?

23 MR. CARAKER: Yes, sir, Your Honor. If I may
24 approach with the sentencing sheet?

25 THE COURT: Yes, sir. Solicitor, I'll hear from

SENTENCING

1 you on any arguments you would like to make to the
2 Court.

3 MR. CARAKER: Thank you, Your Honor. With
4 regards to sentencing, Your Honor, as far as his
5 record starting -- as we discussed yesterday for a
6 little bit -- in '84 I have a larceny. There is a
7 couple DUSs. When you get into 1994, I have
8 possession of crack, distribution of crack times two
9 in '97, trafficking crack in '97. We have some close
10 proximities in '97 as well, and another 2014
11 possession of crack.

12 As to the sentencing recommendation, we leave
13 that to the sound discretion of the Court. As Your
14 Honor is well aware, the range is 10 to 30 years, and
15 we would just leave that at the sound discretion of
16 the Court.

17 THE COURT: Very good. Mr. Fox, I'll hear from
18 you.

19 MR. FOX: Thank you, Your Honor. Eugene is 50
20 years old. Your Honor has heard his record. The
21 majority stems back 20 plus years. He got a 10-year
22 sentence in 1997. That is the sentence, along with
23 his possession in 2014, that makes this a third
24 offense. He literally -- that was so old that he was
25 literally a couple of months of being outside of the

SENTENCING

1 window, but he was still on parole and supervision.
2 Scheduled at the end of December last -- rather of
3 2006, this happened in October, but it was old enough
4 that he literally was within a couple of months of
5 that being outside of the window.

6 Since his release from prison on that charge, in
7 the last 11 plus years, he has one simple possession.
8 Mr. Hardy has a drug issue, has continued to be a user
9 of drugs over the years. He also stays steadily
10 employed. As Your Honor has heard, that is
11 uncontroverted, that he maintains good, well paying
12 jobs at the same time, construction. He does things
13 on the side. He's employed now, and that's been his
14 history throughout, so he's more than the criminal
15 activity. There is more to the man.

16 His wife is in court here with him today. We
17 simply ask that -- again, the jury did not see things
18 the way we did. The amount is, I think, some issue,
19 fairly small amount, a gram and a half, and we simply
20 ask Your Honor to keep all of those things in mind.

21 Of course the way this is classified, it is a no
22 parolable offense, and he will do a minimum of
23 85 percent of whatever sentence Your Honor gives, and
24 we ask for that consideration, Your Honor.

25 THE COURT: Did your client spend any time in

SENTENCING

1 jail prior to?

2 MR. FOX: On this charge?

3 MR. HARDY: Like seven days.

4 MR. FOX: Some time, Your Honor.

5 THE COURT: I'll make sure that I give him credit
6 for whatever time he has served already. Thank you.

7 MR. FOX: Your Honor, may Mr. Hardy address the
8 Court?

9 THE COURT: Yes, sir.

10 MR. HARDY: Yes, sir. I just ask if you can find
11 inside your heart that I'm no flight risk or nothing
12 like that. I can come back and report in a month, or
13 whatever I can get, so I can get everything situated,
14 house and everything.

15 THE COURT: All right, sir. Thank you.

16 MR. HARDY: Appreciate it.

17 THE COURT: 2017-GS-26-310, State of South
18 Carolina, County of Horry, versus Eugene Hardy with
19 regard to possession with intent to distribute
20 cocaine, third offense. Mr. Hardy, I have taken into
21 consideration not only the facts of this case, your
22 prior record, the circumstances surrounding this
23 particular matter, and the sentence of the Court is
24 the defendant is to be committed to the State
25 Department of Corrections for a determinate term of 15

SENTENCING

1 years. The defendant is given credit for time he has
2 already served. Recommending the Addiction Treatment
3 Unit. Regarding the request to delay reporting, I do
4 not find that to be a request that the Court can grant
5 in this matter; therefore, that request is denied and
6 the defendant shall be taken into custody. Thank you
7 very much.

8 (Whereupon, the proceedings for the matter of
9 State of South Carolina vs. Eugene Hardy concluded.)

10 (Court's Exhibit 1 marked.)
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1 CERTIFICATE OF REPORTER

2 State of South Carolina)

3 County of Horry)

4
5 I, Natalie Dahl, Official Court Reporter for the
6 State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete Transcript
8 of Record of the proceedings had and evidence
9 introduced in the proceedings of the captioned case in
10 the General Sessions Court for Horry County, South
11 Carolina, on the 13th through 14th days of September,
12 2017.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15
16 December 13, 2017

17
18 

19 Natalie Dahl, RPR

20 Court Reporter
21
22
23
24
25

WITNESSES

Freddie Curry 15th Circuit Drug Enforcement Unit

D. Blue

ARREST WARRANT NUMBER

2016A2610202623

CDR: 0185 44-53-0870(b)(1)

DOA: 10/4/2016

ACTION OF GRAND JURY

TRUE BILL


 Foreperson of Grand Jury
 Date:

JAN 19 2017

VERDICT

 Foreperson of Petit Jury
 Date:

DOCKET NO. 2017-GS-26-

00310

The State of South Carolina

County of Horry

 David P. Caraker, Jr.
 16H05282

COURT OF GENERAL SESSIONS

JANUARY, 2017 TERM

THE STATE

vs.

Eugene Hardy
/ M
 Myrtle Beach, SC 29588-7515
 DOB: "
 SSN:

ATTORNEY: J. Eric For:

 Indictment for
 POSSESSION WITH INTENT TO DISTRIBUTE
 COCAINE

Jimmy A. Richardson, II, Solicitor

2017 SEP 15 PM 2:28

ORIGINAL

 REHEE H. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

2017 SEP 15 AM 11:26

 FILED
 HORRY COUNTY

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

At a Court of General Sessions, convened on JANUARY 19, 2017, the Grand Jurors of Horry County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

CDR: 0185 44-53-0370(b)(1)

That Eugene Hardy did, in Horry County, on or about October 3, 2016, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370(b)(1), S. C. Code of Laws, 1976, as amended.

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

Jimmy A. Richardson, II
 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

RENEE N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

2017 SEP 15 AM 11:26

FILED
 HORRY COUNTY

CERTIFIED COPY
 2017 SEP 15 PM 2:28
 RENEE N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
 STATE VS.
Eugene Hardy
 AKA:
 Race: B Sex: M Age: 50
 DOB: SS#
 Address:
 City, State, Zip: Murrells Beach, SC 29588-7515
 DL#: ----- SID#: -----

INDICTMENT/CASE#: 2017GS2600310 **RECEIVED**
 A/W#: 2016A2610202623
 Date of Offense: 10/3/2016
 S.C. Code §: 44-53-0370(b)(1) SEP 19 2017
 CDR Code #: 0185 SC Court of Appeals

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: PWID Cocaine, 3rd offense (10-30 yrs w/ up to \$50,000) ☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0185
☒ 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: SSC 100039
Caraker, Jr., David P. 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 15 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 (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	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 8.25
TOTAL		\$ 283.25

Rec. ATU.
----- 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 weeks/monthly
 pmts. of \$ 25.00 beginning 10-14-2032
 \$ ----- paid to Public Defender Fund
 Other: -----

☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Clerk of Court/ Deputy Clerk Renee N. Elvis
 Court Reporter: Natalie Dahl
 SCCA/217 (07/2016)

Presiding Judge -----
 Judge Code: -----
 Sentence Date: 9/14/17

FILED
 HORRY COUNTY
 2017 SEP 15 11:11:16
 CLERK OF COURT

ARREST WARRANT

2016A2610202623

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE
against

DEL16045

Eugene Hardy

Address:

Myrtle Beach, SC 29588-7515

Phone: _____ SSN: _____

Sex: M Race: _____ Height: 5 3 Weight: 172DL State: SC DL #: _____/OB: _____ Agency ORI #: SC0260900Prosecuting Agency: Horry County - D.E.U.Prosecuting Officer: Freddie Curry - DEU7Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c),LSD, and Sched. II - 2nd offenseOffense Code: 0184Code/Ordinance Sec: 44-53-0370(b)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant Eugene Hardyon 10-4-2016

Signature of Constable/Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant Freddie Curry whobeing duly sworn deposes and says that defendant Eugene Hardy
did within this county and state on or about 10/3/2016 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Horry)in the following particulars: RENEE N. ELVISDESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II - 2nd offenseHORRY COUNTY, SCI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on October 3, 2016, in the Myrtle Beach area (near the intersection of Hwy 707 and Bay Road) in the County of Horry, the
defendant was placed under arrest on warrant; when he was discovered to be in possession of four (4) separate plastic baggies, each
containing a white in color powder type substance, which field tested positive for the presence of Cocaine. The defendant has prior
Felony Drug convictions. On March 28, 1997 was sentenced to 10 years in reference to Drug Trafficking and was not released from
Parole until December 30, 2006.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address P.O. Box 1276Conway, SC 29528-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/3/2016 defendant Eugene Hardy

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry) as set forth below:DESCRIPTION OF OFFENSE: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II - 2nd offenseHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 10/4/2016

Signature of Issuing Judge (L.S.)

Aaron C. Butler

Judge Code: 5022Judge's Address J. Ruben Long Detention CenterConway, SC 29526-1071Judge's Telephone (843)365-9222Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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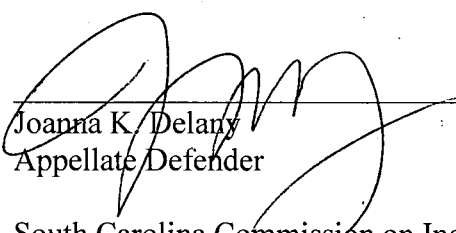
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HORRY COUNTYForm Approved by
S.C. Attorney General
April 21, 2003
SCCA 319

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CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 14th day of February, 2018.

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