

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARVIN LUTHER MYERS, JR.

APPELLANT

APPELLATE CASE NO 2017-001044

RECORD ON APPEAL

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SC Court of Appeals

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2	State of South Carolina	)	Court of General Sessions
		)	2016-GS-22-00461
3	County of Georgetown	)	2016-GS-22-00462
			2016-GS-22-00463
4			2016-GS-22-00464
			2016-GS-22-00465
5			2016-GS-22-00467
	State of South Carolina	)	2016-GS-22-00468
6		)	
	vs.	)	
7		)	Transcript of Record
	Marvin Luther Myers, Jr.	)	

April 17, 2017
Georgetown, South Carolina

ORIGINAL

12 | BEFORE:

13 Honorable Michael G. Nettles, Judge.

APPEARANCES:

16 Ricky Todd, Esq.
Attorney for the State

18 C. Rauch Wise, Esq.
Attorney for the Defendant

Teresa J. F. Bautz, RPR
Official Court Reporter

I N D E X

WITNESS

DIRECT CROSS REDIRECT RECROSS

Donald Tempalsky

Mr. Todd	50	--	--	--

Mr. Wise	--	54	--	--

E X H I B I T S

NO.	DESCRIPTION	ID	EV

No exhibits submitted.

Exhibits retained by Clerk of Court.

1 (The hearing commenced at approximately
2 10:27 a.m.)

3 THE COURT: Thank you, madam clerk. Madam clerk,
4 are they under oath?

5 THE CLERK: They are not under oath.

6 THE COURT: I'm going to ask if each of you can
7 stand and raise your right hand as the clerk
8 administers the oath.

9 (WHEREUPON, all jurors were duly sworn.)

10 THE COURT: Ladies and gentlemen of the jury pool,
11 pay very close attention to the questions and answer
12 them truthfully. Is there any member of the jury panel
13 that is not 18 years of age? If so, please stand. No
14 response.

15 Is there any member of the jury panel who is not a
16 citizen of the United States of America? If so, please
17 stand. No response.

18 Is there any member of the jury panel who is not a
19 qualified elector or licensed driver or an
20 identification card holder is who eligible to register
21 to vote? If so, please stand.

22 A JUROR: A licensed driver?

23 THE COURT: Well, do you have an identification
24 card holder, are you an identification card holder?

25 A JUROR: I got an ID.

1 THE COURT: You got an ID?

2 A JUROR: Um-hum.

3 THE COURT: All right. Are you eligible to
4 register to vote?

5 A JUROR: Yes.

6 THE COURT: Then you fall in that category, very
7 good. All right. Is there any member of the jury
8 panel who is not a resident of Georgetown County? If
9 so, please stand. No response.

10 Is there any member of the jury panel who is a
11 commissioned law enforcement officer? If so, please
12 stand. No response.

13 Is there any member of the jury panel who is an
14 employee that works within the walls of this
15 courthouse? If so, please stand.

16 Any member of the jury panel who is a prison
17 guard? If so, please stand. No response.

18 Is there any member of the jury panel has less
19 than a sixth grade education or its equivalent? If so,
20 please stand. No response.

21 Is there any member of the jury panel who is
22 unable to read, write, speak or understand the English
23 language? If so, please stand. Yes, sir, if you can
24 come forward, and counsel, feel free to come forward.

25 JUROR #117: Melvin Moultrie.

1 THE COURT: Tell us what your situation is.

2 (Discussion off the record.)

3 THE COURT: Have you ever been gainfully employed?

4 JUROR #117: Yes, sir.

5 THE COURT: All right. And what did you do?

6 JUROR #117: Worked in hardware plumbing.

7 THE COURT: Okay. And do you pay your own bills?

8 JUROR #117: No, sir. Right now, I ain't working
9 right at the moment.

10 THE COURT: Okay. When you do have money, do you
11 know how to pay your bills?

12 JUROR #117: Yes, sir.

13 THE COURT: If you go to the grocery store and you
14 buy \$15 worth of groceries and you give them money, can
15 you tell whether or not they give you the right change?

16 JUROR #117: Yeah.

17 THE COURT: Well, that's good. You qualify to
18 serve. Thank you. What number are you?

19 JUROR #117: 117.

20 THE COURT: 117. You can have a seat.

21 Is there any member of the jury panel who has been
22 convicted in a state or federal court for a crime
23 punishable by imprisonment for more than one year and
24 whose rights have not been restored by pardon or
25 amnesty? If so, please stand.

1 A good example, if you've ever been arrested and
2 ever entered a plea here in this courthouse or the
3 older courthouse downtown, there's a good chance we
4 need to talk with you about that.

5 Has anybody here ever been on probation? If
6 you've ever been arrested and you're not real sure what
7 the penalty was for what you were charged with, come
8 forward and we'll talk about it. All right. Yes, sir.

9 JUROR #117: I have been on probation before.

10 THE COURT: What were you on probation for?

11 JUROR #117: Shoplifting.

12 THE COURT: Have you ever been arrested for
13 burglary?

14 JUROR #117: Never.

15 THE COURT: Burglary third, five years, suspended
16 to three years probation?

17 JUROR #117: Something like that.

18 THE COURT: Something like that. You're
19 disqualified. So you're free to leave at this time.
20 You can give me your badge. Thank you for being
21 forthright with us.

22 JUROR #117: Thank you, sir.

23 THE COURT: Is there any member of the jury panel
24 who would have difficulty serving as a juror because of
25 physical or mental infirmities? If so, please stand.

1 You can come up here and we'll talk about it.

2 Very good.

3 JUROR #131: Okay, yes, sir.

4 THE COURT: Very good. Number 131.

5 (Discussion off the record.)

6 THE COURT: If you could serve, I would like you
7 to stay with us. Yes, ma'am.

8 JUROR #12: I have cervical spine fusion, so I'm
9 not able to sit or stand for extended periods of time.

10 THE COURT: Okay. She's number 12,
11 Ms. Brockington is excused. She's excused.

12 Ladies and gentlemen of the jury pool, each of you
13 are qualified. I'm going to ask you some questions
14 that deal with category exemptions. If you fall within
15 this category, you can elect not to serve if you choose
16 to do so. The first deals with age.

17 Is there any person who is more than 65 years of
18 age who would like not to serve? If so, please stand.
19 No response.

20 Is there any member of the jury panel who has
21 already served as a juror in this court within the past
22 three years? If so, please stand. No response.

23 A JUROR: I have.

24 THE COURT: Okay. What -- do you recall which
25 term of court it was?

1 A JUROR: This one woman was suing a chiropractor.

2 THE COURT: Okay. I believe I presided over that,
3 wasn't that long ago; was it?

4 A JUROR: No, sir, it wasn't.

5 THE COURT: Well, we are in a very unusual
6 situation. There are a number of reasons why we have
7 such a thin crowd here today. Is there any way you
8 would consider serving this week? We need the jurors
9 to serve. And since you've done it before, you have
10 that experience and you would be an excellent juror.
11 Would you be willing to stay with us?

12 A JUROR: Yes, sir, I would.

13 THE COURT: Very good. Do you see the way I did
14 that, very good. Thank you, sir. Any member of the
15 jury panel has served as a juror on the grand jury
16 within the past five years? If so, please stand. No
17 response.

18 Is there any member of the jury panel who has a
19 child under the age of seven for whom you have legal
20 custody and duty of care and you do not work outside
21 the home? If so, please stand. No response.

22 Is there any member of the jury panel who is the
23 primary care giver of a person who is 65 years of age
24 or older or a person who is severely disabled that
25 can't take care of themselves, and you do not work

1 outside of the home? If so, please stand. No
2 response.

3 Any full-time students or teachers who would like
4 to be transferred to a different term of court? Yes,
5 sir. Where do you --

6 JUROR #56: I'm a student at Horry-Georgetown.

7 THE COURT: Okay. And you have class everyday?

8 JUROR #56: I have classes Tuesdays and Thursdays,
9 all day.

10 THE COURT: Okay.

11 JUROR #56: The term ends in like three weeks, so
12 I would be happy to...

13 THE COURT: When are you not in school?

14 JUROR #56: Monday, Wednesday and Friday.

15 THE COURT: After this semester, when will you be
16 out and available?

17 JUROR #56: About the end of this month.

18 THE COURT: Okay. We'll transfer him to the next
19 term of court. Good luck to you. Are you making all
20 A's?

21 JUROR #56: So far.

22 THE COURT: Good, good. What's your name and
23 number again?

24 JUROR #56: Peter Giordano, juror 56.

25 THE COURT: 56, Giordano. Very good, thank you.

1 Any member of the jury panel who would like to transfer
2 to a different term of court because this term poses a
3 particular hardship for you? Yes, ma'am, if you could
4 come forward.

5 JUROR #73: Thank you.

6 THE COURT: Yes, ma'am, your name and number?

7 JUROR #73: Number is 73, Yolanda Holmes.

8 (Discussion off the record.)

9 THE COURT: She is staying with us. Might counsel
10 approach the bench.

11 (WHEREUPON, a bench conference was held off the
12 record in the presence of the jury but out of the
13 hearing of the jury.)

14 THE COURT: All right. Ladies and gentlemen of
15 the jury pool, we are going to make preparation to ask
16 another series of questions concerning the first case
17 that's going to be tried. Each of you are qualified.

18 But the next series of questions are going to deal
19 with the facts and the people involved in this next
20 case, and the questions will be aimed at determining
21 whether or not you can be fair and impartial with
22 regard to this particular case. I anticipate it --
23 let's see, it is a quarter to 11 -- I anticipate by
24 about 11:30 we will have selected the first jury. And
25 there will be a jury of 14 drawn from this jury pool

1 right here.

2 And then once we select that 14, we're going to
3 excuse you for the day and ask that those 14 report
4 back in the morning. The balance of you will be
5 required to call back to the clerk's office and follow
6 the instructions with regard to when you're to report
7 back.

8 So for everyone, we're going to ask that you take
9 about a ten-minute break, and then the bailiff -- we're
10 going to ask that you reconvene in here -- and the
11 bailiff is going to take you up to the courtroom on the
12 third floor, and we will begin the questions concerning
13 the first case.

14 We'll select 14 jurors. We will swear those
15 jurors in, and then everyone is going to be excused for
16 the balance of the day. And just those 14 will report
17 back at 9:30 in the morning. So everybody take a brief
18 recess, refresh yourselves, report back in here
19 momentarily.

20 (WHEREUPON, a brief recess was taken at 10:45
21 a.m.)

22 THE COURT: Please be seated. I failed to
23 introduce myself earlier. I'm Michael Nettles, I'm the
24 resident judge for the Twelfth Judicial Circuit which
25 encompasses Florence and Marion County. Thank you for

1 being here. And, once again, I'm going to ask you a
2 number of questions, and remind you that you're still
3 under oath, that deal with the facts and the situation
4 that is involved in this first case.

5 And I'll recognize the State. You may call your
6 first case.

7 MR. TODD: Thank you, Your Honor. The State calls
8 State of South Carolina versus Martin Luther Myers, Jr.
9 It's regarding Indictment Nos. 2016-GS-22-00461, 462,
10 463, 464, 465, 467 and 468. And, Your Honor, do you
11 want me to read off the charges listed, or do you want
12 to do that?

13 THE COURT: That's not necessary, thank you very
14 much. Ladies and gentlemen of the jury pool, we're
15 about to try the case of State of South Carolina versus
16 Marvin Luther Myers, Jr., Indictment Nos.
17 2016-GS-22-00461 through 2016-GS-22-00465, and
18 2016-GS-22-00467 and 00468. I hold in my hand a number
19 of indictments that have been levied against Marvin
20 Luther Myers.

21 Marvin Luther Myers who is seated to my right, as
22 he sits at the Defense table he's presumed to be just
23 as innocent as me or you. That's the frame of
24 reference we start from. The State is going to be
25 required to prove him guilty beyond a reasonable doubt.

1 I have in my hand a number of indictments, all of which
2 arise out of offense that allegedly occurred on
3 December 11th, 2015.

4 The area that these allegations arise out of is
5 ■■■ Park Street in Maryville, which is in the Bayview
6 area of Georgetown County. He has been indicted for
7 trafficking cocaine, trafficking cocaine base,
8 possession of heroin with intent to distribute in close
9 proximity of a school, possession with intent to
10 distribute marijuana in close proximity to a school,
11 and possession of marijuana with intent to distribute
12 and possession with intent to distribute heroin,
13 possession of cocaine with intent to distribute in
14 close proximity of a school.

15 All of these allegations arise out of events that
16 allegedly took place on December 11th, 2015. I'm going
17 to ask you a number of questions that is to determine
18 whether or not given the facts of that case, the people
19 that are involved in it, whether or not you can be fair
20 and impartial. I remind you that you are under oath to
21 give truthful answers.

22 I'm going to ask Defense counsel if you could
23 stand, identify yourself and your client. And ask your
24 client if he could stand and turn around and face the
25 jury panel.

1 MR. WISE: My name is Rauch Wise, I'm an attorney
2 from Greenwood, South Carolina. This is Marvin Myers,
3 he's a resident of Georgetown.

4 THE COURT: Thank you, Mr. Wise. Is anyone
5 related by blood or marriage, do you have a close
6 business or personal relationship with him? If so,
7 please stand. Very good.

8 All right. I'll ask counsel for the State to
9 stand and identify yourself if you could.

10 MR. TODD: Thank you, Your Honor. My name is
11 Ricky Todd, prosecutor for the State. I work for the
12 fifteenth circuit solicitor who is Jimmy Richardson.
13 And in our office is also Alicia Richardson who is the
14 deputy solicitor.

15 THE COURT: All right. Has anyone ever been
16 represented by Mr. Todd or Mr. Wise, do you have a
17 close social, personal or business relationship with
18 either of these lawyers? If so, please stand. No
19 response.

20 Pay very close attention as I go over potential
21 witnesses who may testify in this case. Agent Donald
22 Tempalsky, Fifteenth Circuit Drug Enforcement Unit;
23 agent Bryant McCabe, drug enforcement unit; agent Barry
24 Powers, drug enforcement unit; John Prevatt or Prevatt,
25 drug enforcement unit; Blair Cribb, Georgetown Police

1 Department; Jonell Sparkman, Georgetown Police
2 Department; Officer Shelly Brantley, Officer Ryan Call,
3 Inspector Benjamin Marlow, Deputy Ashley Brown, Lynne
4 D. Black, SLED; Jackie M. Davis, SLED; Doris
5 Yarborough, SLED; Catherine Wilson Blitz, Danielle
6 Gibson, Sandra Madison, Maggie Montero, Joshua Bliss;
7 Crystal Leday, L-E-D-A-Y, Leday; Scott Roach, Danielle
8 Gibson, David Williams, Earnest Madison, Lashonda
9 Myers; Brian Funnye, F-U-N-N-Y-E; Scott Roach, Sandra
10 Madison, Najelle Madison, Darnell Washington, David
11 Williams.

12 Is there anyone who is related by blood or
13 marriage or have a close social, business or personal
14 relationship with any of these potential witnesses? If
15 so, please stand. If y'all would come forward, I'll be
16 glad to hear you.

17 (Discussion off the record.)

18 THE COURT: Yes, ma'am. Your name?

19 JUROR #165: I'm Diane Turnley, I'm juror 165.

20 THE COURT: 165. Yes, ma'am.

21 JUROR #165: The house you're talking about is
22 behind my house.

23 THE COURT: Okay.

24 JUROR #165: I work with Officer Prevatt's wife.

25 THE COURT: All right.

1 JUROR #165: And I know one of the witness' mom.

2 THE COURT: Well, if called upon to serve on this
3 jury, could you set aside the fact that you live in
4 close proximity to this place and that you know some of
5 children of the witnesses who were going to testify,
6 could you set that aside and listen to the evidence
7 presented in this case or the lack of evidence, listen
8 to the law as I charge it to you and give both the
9 State and the Defendant a very impartial trial?

10 JUROR #165: Absolutely.

11 THE COURT: Okay. Did you witness any of the
12 events which gave rise to this allegation?

13 JUROR #165: I just saw the police cars arrived.

14 THE COURT: Okay.

15 JUROR #165: And it's -- I'm like behind a privacy
16 fence, so I did not see what was going on.

17 THE COURT: And if called upon to serve on this
18 jury, do you think you could be fair to the State and
19 fair to the Defendant?

20 JUROR #165: Yes.

21 THE COURT: By virtue of the fact that you were
22 there and saw an arrest being made that you said you --

23 JUROR #165: No, sir.

24 THE COURT: Do you know anything about the case?

25 JUROR #165: Just, you know, scuttlebutt in the

1 neighborhood that they were selling drugs.

2 THE COURT: Okay. All right. Well, do you give
3 any weight or credence to the fact that people say that
4 somebody in that area was selling drugs?

5 JUROR #165: Honestly, I don't know that it's not
6 true, and I don't know that it was true.

7 THE COURT: Okay. And you say that you could set
8 aside the knowledge and your familiarity with this
9 particular area and give the State and the Defendant a
10 fair and impartial trial?

11 JUROR #165: I feel like I can. I just -- I feel
12 like I needed to say that I did know these by
13 association.

14 THE COURT: All right. Well, you know, in polite
15 conversation we always qualify what we say. Like we
16 can't with these matters, we have to deal with
17 absolutes. My question to you is, could you be fair
18 and impartial?

19 JUROR #165: I honestly don't know.

20 THE COURT: Okay, all right. Well, then, I'm
21 going to excuse you for the purposes of this trial.
22 I'm going to ask that you stay with us, we have some
23 other cases that are being resolved. You'll be excused
24 for the purpose of this trial only, 165 for purposes of
25 this trial only.

1 JUROR #165: Okay, thank you.

2 JUROR #131: 131, Henry Price.

3 THE COURT: Henry Price.

4 JUROR #131: Blair Cribb, I was a police officer
5 in Georgetown for three years, and Blair Cribb was my
6 colonel -- I mean, my corporal. And, you know, I
7 worked with him in investigations. And I didn't work
8 with the sheriff's department, but I'm sure I knew some
9 of those too, so.

10 THE COURT: All right. Well, thank you.

11 JUROR #131: I'm just a trier of the facts, it
12 won't -- you know, I'm not bias or whatever.

13 THE COURT: So you're saying that you could be
14 fair and impartial?

15 JUROR #131: Absolutely.

16 THE COURT: Well, now, you say you know all these
17 people. Does that mean that you have a good opinion of
18 them or a bad opinion of them, or --

19 JUROR #131: I have a good opinion of them.

20 THE COURT: Okay. Well, if the fact that you know
21 these people and you decide they are trustworthy
22 people, would you give greater weight to what they have
23 to say by virtue of the fact that you know them?

24 JUROR #131: I mean --

25 THE COURT: Greater weight to what they have to

1 say by virtue of the fact that you know them?

2 JUROR #131: Well, I'm not supposed to, I guess I
3 have to try the facts. I mean, I just wouldn't -- I'd
4 have to -- I was a police officer, so that's what I
5 would do here, the facts. That's all I want to know
6 about.

7 THE COURT: All right. Well, now --

8 JUROR #131: And the Defendant, I mean, I never
9 have arrested him or anything, but I don't never forget
10 a face, and he looks familiar.

11 THE COURT: So you think you might have arrested
12 him?

13 JUROR #131: I'm not sure. To be honest with you,
14 I arrested a lot of people, but I just know he looks
15 familiar.

16 THE COURT: Okay. Given all of that and the fact
17 that he's familiar, that you arrested him in the past,
18 I'm going to excuse you for the purpose of this trial
19 only. But you stay with us.

20 JUROR #131: You want me to stay with you?

21 THE COURT: Yes. I'm going to excuse him for the
22 purpose of this trial. Just go back and have a seat,
23 you're not going to be on this trial.

24 JUROR #131: Oh, this one, okay, yes.

25 THE COURT: But we'll have you come back on

1 another jury selection later on in the week.

2 JUROR #131: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 JUROR #116: Brian Mosley. Officer Shelly
5 Brantley, I have a prior relationship.

6 THE COURT: Now, your name is Brian Mosley?

7 JUROR #116: Brian Mosley.

8 THE COURT: The one particular one that you have a
9 social relationship with?

10 JUROR #116: Officer Shelly Brantley.

11 THE COURT: Okay. And tell me the nature of your
12 relationship, how often do you see him, has he ever
13 been at your house, you ever been to his house?

14 JUROR #116: Yes, sir. Prior he knows my wife, my
15 wife and I know him outside of -- prior to what I do
16 now, I was a certified armed security guard for SC
17 Security Management. He provided a lot of that
18 training. He provided all of the training for --

19 THE COURT: Okay. Well, since you know him and
20 trust him, based on your relationship do you think if
21 he were to testify, you would give him greater weight
22 of what he has to say?

23 JUROR #116: Yes, sir, I'm afraid I would.

24 THE COURT: I'm going to excuse you for the
25 purpose of this trial only. This is Mr. Brian Mosley,

1 116, this trial only.

2 JUROR #116: Call tomorrow.

3 THE COURT: You need to stay with us, we will give
4 you instructions on what to do for the balance of the
5 week. We're just going to be a moment here selecting
6 this jury. Thank you very much.

7 JUROR #116: Yes, sir.

8 THE COURT: Has any member of the jury panel ever
9 been represented by either of these lawyers? I think
10 I've asked that question previously, but I want to ask
11 it again. Do they have an ongoing case with you, or
12 have they ever represented you in the past? No
13 response.

14 Has anyone ever been related or have a close
15 social or personal relationship with any of these
16 witnesses, once again? Very good.

17 Has any member of the jury panel formed or
18 expressed an opinion about any issue or matter involved
19 in this case? If so, please stand. No response.

20 Is any member of the jury panel aware of any bias
21 or prejudice towards either the State or the Defendant
22 in this case? If so, please stand. No response.

23 Any member of the jury panel that was a member of
24 the grand jury which issued the indictment in this
25 case? If so, please stand. No response.

1 Is any member of the jury panel a former law
2 enforcement officer or have a family member who is a
3 law enforcement officer or a former law enforcement
4 officer? If so, please stand. Yes, sir. We dealt
5 with you. Yes, sir, we've dealt with you. If y'all
6 could come forward. Yes, ma'am.

7 JUROR #154: Well, my daughter-in-law's father was
8 a retired state trooper.

9 THE COURT: Okay.

10 JUROR #154: I don't know that would consider me
11 or not.

12 THE COURT: Well, that's why I'm here to ask you
13 if called upon to serve, that seemed like sort of a
14 tenuous relationship.

15 JUROR #154: Yes, sir.

16 THE COURT: But if called upon to serve on this
17 jury, could you set aside the fact that someone that's
18 related to you is related to a law enforcement officer,
19 listen to the evidence in this case or the lack of
20 evidence, listen to the law as I charge it to you, and
21 give the State and the Defendant a fair and impartial
22 trial?

23 JUROR #154: I don't see why not. I mean --

24 THE COURT: Okay.

25 JUROR #154: -- just my daughter-in-law's father.

1 THE COURT: Okay. Is that a yes, you could be
2 fair and impartial?

3 JUROR #154: Yes, I think so.

4 THE COURT: Okay. You know, in polite
5 conversation we qualify what we say, but these are
6 matters where we have to deal in absolutes. My
7 question to you is, could you be fair and impartial?

8 JUROR #154: I think so. I will try to be.

9 THE COURT: All right.

10 JUROR #154: This is my first time so I'm nervous
11 so.

12 THE COURT: Okay. Well, my question to you is,
13 could you set aside the fact that you know this police
14 officer and be fair and impartial? That's a yes or a
15 no.

16 JUROR #154: Yes, sir. I think so.

17 THE COURT: Okay.

18 JUROR #154: I think it shouldn't affect me none.

19 THE COURT: Okay, very good. You're qualified to
20 serve. Your number?

21 JUROR #154: Oh, 154.

22 THE COURT: 154, thank you.

23 JUROR #154: I just wanted to make sure wasn't
24 nothing...

25 THE COURT: She'll stay with us. Say your name.

1 JUROR #21: Catherine Causey.

2 THE COURT: Catherine Cause, 21, number 21.

3 JUROR #21: My husband works here as a deputy, and
4 my son is a highway patrolman.

5 THE COURT: Okay. Are you related or do you know
6 any of these law enforcement officers who'll testify
7 today, if called upon to serve on this jury, could you
8 set aside the fact that you're related to law
9 enforcement people and that you know some of these
10 witnesses and be fair and impartial, would that affect
11 your ability to be fair and impartial?

12 JUROR #21: Yeah, I could be impartial.

13 THE COURT: Okay. Well, now, if you know a number
14 of these law enforcement officers are going to be
15 testifying, all right, if they were to testify, the
16 fact that you know them, would you give greater weight
17 or lesser weight to what they have to say by virtue of
18 the fact that you know them?

19 JUROR #21: Say that again.

20 THE COURT: Well, you know a lot of these people.
21 Based on your experience with them, your dealings with
22 them, if they were to testify, would you give them
23 greater weight or maybe even lesser weight to what they
24 have to say --

25 JUROR #21: Probably greater.

1 THE COURT: Probably greater. Well, I'll excuse
2 you for the purpose of this trial only, but I'm going
3 to ask that you stay with us.

4 JUROR #21: Okay.

5 THE COURT: Thank you very much. She's excused
6 for the purposes of this trial only. Name and number.

7 JUROR #67: Thomas Haynes.

8 THE COURT: Say that again.

9 JUROR #67: Thomas Haynes, 67.

10 THE COURT: Thomas Haynes, 67.

11 JUROR #67: I have a cousin that works at the
12 Department of Corrections as a correction officer.

13 THE COURT: This doesn't have anything to do with
14 the correction officers. If called upon to serve on
15 this jury, could you listen to the evidence or lack of
16 evidence, listen to the law as I charge it to you, and
17 be fair and impartial to both the State and the
18 Defendant?

19 JUROR #67: Yes.

20 THE COURT: Is that a yes?

21 JUROR #67: Yes.

22 THE COURT: All right, sir. Thank you.

23 Yolanda Holmes, 73.

24 JUROR #73: Good morning, judge. My daughter was
25 a former correction officer with --

1 THE COURT: Yolanda Holmes, 73. Yolanda Holmes,
2 73.

3 JUROR #73: Sorry. My daughter is a correction
4 officer. She left about two years ago, her name is
5 Michele Holmes, because of the rights that she was
6 inside of the jail, the prisoners --

7 THE COURT: This doesn't have anything to do with
8 the prison situation.

9 JUROR #73: Okay.

10 THE COURT: And none of those correctional
11 officers will be testifying. If called upon to serve
12 on this jury, could you set aside the fact that your
13 daughter was a law enforcement or correctional officer,
14 listen to the evidence or lack of evidence, listen to
15 the law as I charge it to you and do what's right and
16 fair?

17 JUROR #73: Okay.

18 THE COURT: You could?

19 JUROR #73: My hearing is really kind of bad. I
20 didn't hear anything you said.

21 THE COURT: Okay.

22 JUROR #73: I do have a problem hearing.

23 THE COURT: If called upon to serve on this jury,
24 could you listen to the evidence presented in this case
25 or the lack of evidence, listen to the law as I charge

1 it to you and render a verdict that would be fair to
2 both the State of South Carolina and the Defendant?

3 JUROR #73: Yes.

4 THE COURT: You're qualified to serve. Thank you.
5 Yes, ma'am.

6 JUROR #109: Michelle McDonald, 109.

7 THE COURT: Michelle McDonald, 109.

8 JUROR #109: My great uncle is a police captain.

9 THE COURT: Okay. And he's obviously not working
10 now?

11 JUROR #109: No. He retired a long time ago.

12 THE COURT: Okay. Well, any of his people will be
13 testifying in this case?

14 JUROR #109: Nu-uh.

15 THE COURT: If called upon to serve on this jury,
16 could you set aside the fact that you're related to
17 somebody that was involved in law enforcement and
18 listen to the evidence presented in this case or the
19 lack of evidence, listen to the law as I charge it to
20 you and give both the State and the Defendant a fair
21 and impartial trial?

22 JUROR #109: Absolutely.

23 THE COURT: You're qualified to serve. Thank you.
24 Ladies and gentlemen of the jury pool, I told you a
25 little bit about what the allegations were, you know

1 what the charges are. I told you where it took place.
2 Having been armed with that basic information, has
3 anyone heard, seen or read anything about this case?
4 If so, please stand. All right.

5 Ladies and gentlemen of the jury pool, there are a
6 number of organizations out there whose primary purpose
7 is the promotion of law enforcement. Examples of that
8 would be Mothers Against Drunk Driving, MADD; Students
9 Against Drunk Driving, SADD; CAVC, Citizens Against
10 Violent Crime. Just about every sheriff's department
11 throughout the state has some sort of organization.
12 The highway patrol does as well.

13 Is there anybody who is a member of any of these
14 associations, have you contributed to them? If so,
15 please stand. No response.

16 Is there any member of the jury -- yes, sir. You
17 can come forward.

18 JUROR #155: Excuse me, judge.

19 THE COURT: Your name?

20 JUROR #155: Jerry Springs, 155. Did you say
21 sheriff's associations?

22 THE COURT: Yes.

23 JUROR #155: Yes, I give them money. Patrolman's
24 association.

25 THE COURT: All right.

1 JUROR #155: Just a little bit.

2 THE COURT: Just a little bit, all right. If
3 called upon to serve on this jury, could you set aside
4 the fact that you donate money to law enforcement,
5 listen to the evidence in this case or lack of evidence
6 and listen to the law as I charge it to you and give
7 both the State and the Defendant a fair and impartial
8 trial?

9 JUROR #155: Yes, sir, I can.

10 THE COURT: All right, sir. Thank you. Does any
11 member of the jury panel know of any reason whatsoever
12 why you could not serve as a juror on this case with
13 particular emphasis being placed on your ability to be
14 fair and impartial to both the State and the Defendant?
15 If so, please stand. No response.

16 Any additional questions from the State?

17 MR. TODD: None from the State, Your Honor.

18 THE COURT: Any from the Defendant?

19 MR. WISE: None from the Defense, Your Honor.

20 THE COURT: All right. Strikes are five and five.
21 Ladies and gentlemen, as your name is called we're
22 going to ask that you come forward, stand in front of
23 the court reporter here, turn around and face the clock
24 in the back of the courtroom. Ask that you bring your
25 personal belongings with you.

1 THE CLERK: Juror number two, Patricia Alford.

2 What says the State?

3 MR. TODD: Please accept this juror.

4 THE CLERK: What says Defense?

5 MR. WISE: Excuse the juror from this trial.

6 THE CLERK: Please return to your seat, thank you.

7 Juror number 73, Yolanda Holmes. What says the State?

8 MR. TODD: Please accept this juror.

9 THE COURT: What says Defense?

10 MR. WISE: Swear the juror.

11 THE CLERK: Please have a seat in the jury box.

12 Do you bring your belongings?

13 JUROR #73: Oh, no.

14 THE CLERK: You need your belongings.

15 THE COURT: Once again, as your name is called,

16 bring your personal belongings with you.

17 THE CLERK: Juror number 93, Mitzi Lanier. What

18 say the State?

19 MR. TODD: Please accept this juror.

20 THE COURT: What says the Defense?

21 MR. WISE: Swear the juror.

22 THE CLERK: Please have a seat in the jury box.

23 Juror number 46, Sylvia Flynn. What says the State?

24 MR. TODD: Please accept this juror.

25 THE COURT: What says Defense?

1 MR. WISE: Swear the juror.

2 THE COURT: Please have a seat in the jury box.

3 Juror number 136, Ramona Reed. What says the State?

4 MR. TODD: Please accept this juror.

5 THE CLERK: What says the Defense?

6 MR. WISE: Please swear the juror.

7 THE COURT: Please have a seat in the jury box.

8 Juror number 135, Katie Ray. What says the State?

9 MR. TODD: Please accept this juror.

10 THE COURT: What says Defense?

11 MR. WISE: Swear the juror.

12 THE CLERK: Please have a seat in the jury box.

13 Juror number 105, Kathy May. What says the State?

14 MR. TODD: Please accept this juror.

15 THE COURT: What says Defense?

16 MR. WISE: Swear the juror.

17 THE CLERK: Please have a seat in the jury box.

18 Juror number 28, Patricia Cribb. What says the State?

19 MR. TODD: Please accept this juror.

20 THE CLERK: What says Defense?

21 MR. WISE: Excuse the juror from this trial.

22 THE COURT: Please return to your seat. Juror

23 number 153, Susan Smith. What says the State?

24 MR. TODD: Please accept this juror.

25 THE CLERK: What says Defense?

1 MR. WISE: Please swear the juror.

2 THE CLERK: Please have a seat in the jury box.

3 Juror number 90, Mark King. What says the State?

4 MR. TODD: Please accept this juror.

5 THE CLERK: What says Defense?

6 MR. WISE: Excuse the juror from this trial.

7 THE CLERK: Please return to your seat. Juror

8 number 121, Mark Neill. What says the State?

9 MR. TODD: Please excuse this juror.

10 THE COURT: Please return to your seat. Juror

11 number 143, Vivian Segelken.

12 JUROR #143: That's good.

13 THE CLERK: What says the State?

14 MR. TODD: Please accept this juror.

15 THE COURT: What says Defense?

16 MR. WISE: Swear the juror.

17 THE CLERK: Please have a seat in the jury box.

18 Juror number 67, Thomas Haynes. What says the State?

19 MR. TODD: Please accept this juror.

20 THE CLERK: What says the Defense?

21 MR. WISE: What was the number again?

22 THE CLERK: 67.

23 MR. WISE: Swear the juror.

24 THE CLERK: Please have a seat in the jury box.

25 Juror number 137, Paul Rhoades. What says the State?

1 MR. TODD: Please accept this juror.

2 THE COURT: What says Defense?

3 MR. WISE: Swear the juror.

4 THE CLERK: Please have a seat in the jury box.

5 Juror number 70, Natasha Higgins. What says the State?

6 MR. TODD: Please accept this juror.

7 THE CLERK: What says Defense?

8 MR. WISE: Swear the juror.

9 THE COURT: Please have a seat in the jury box.

10 Juror number 81, Hunter Johnson. What says the State?

11 MR. TODD: Please accept this juror.

12 THE CLERK: What says Defense?

13 MR. WISE: Swear the juror.

14 THE CLERK: Please have a seat in the jury box.

15 Juror number 162, Tiffani Tisdale.

16 THE COURT: Strikes are one and two on each
17 alternate.

18 MR. TODD: Please accept this juror.

19 THE CLERK: What says the Defense?

20 MR. WISE: Excuse the juror from this trial.

21 THE CLERK: Please return to your seat. Juror
22 number 72, Ernest Holmes. What says the State?

23 MR. TODD: Please accept this juror.

24 THE CLERK: What says Defense?

25 MR. WISE: Swear the juror.

1 THE CLERK: Please have a seat in the jury box.
2 Juror number 109, Michelle McDonald. What says the
3 State?

4 MR. TODD: Please accept this juror.

5 THE CLERK: What says the Defense?

6 MR. WISE: Swear the juror.

7 THE CLERK: Please have a seat in the jury box.

8 THE COURT: Ladies and gentlemen that remain in
9 the jury pool, we're going to excuse you for today.
10 And we're going to ask that you call back after
11 6 o'clock today and follow the instructions on the
12 answering machine. Madam clerk, do they have the
13 information necessary to do that?

14 THE CLERK: Yes, sir.

15 THE COURT: All right.

16 THE CLERK: They have a call back card.

17 THE COURT: All right, very good. Y'all, it's
18 very important that you call back after 6 o'clock today
19 and follow the instructions. Your jury service has not
20 been concluded. Follow the instructions on the
21 answering machine. The ones that remain in the jury
22 pool are excused for this evening.

23 (WHEREUPON, the remainder of the jury pool exited
24 the courtroom at 11:54 a.m.)

25 THE COURT: Ms. Kathy May?

1 JUROR #105: Yes.

2 THE COURT: I'm going to select you to serve as
3 the forelady of this jury. And I'm going to ask that
4 you exchange chairs with this young lady right beside
5 you. Ms. May, throughout the trial of this case I'm
6 going to ask that you have a seat in that chair each
7 time.

8 The two alternates, Mr. Holmes and Ms. McDonald,
9 I'm going to ask that y'all remain in these two chairs
10 the entire time. The rest of you are general
11 admission. Probably logistically as you come back in
12 the courtroom, probably be best for y'all three to be
13 last so people won't have to walk over you.

14 And people, particularly Baptists, have a tendency
15 to want to sit in the same chair every time. Well, I'm
16 going to ask that you not do that. As you're coming
17 into the jury room, just go all the way to the end so
18 people don't have to crawl over the top of you.

19 I'm going to ask that each of you stand and raise
20 your right hand as the clerk approaches.

21 MR. WISE: Excuse me, can we approach a minute.

22 THE COURT: Yes.

23 (WHEREUPON, a bench conference was held off the
24 record in the presence of the jury but out of the
25 hearing of the jury.)

1 THE COURT: Before we do that, any objection with
2 regard to the jury selection process from the State?

3 MR. TODD: None from the State, Your Honor.

4 THE COURT: Any from Defense?

5 MR. WISE: None from Defense.

6 THE COURT: Very good. Raise your right hand as
7 the clerk administers the oath.

8 (WHEREUPON, all jurors were duly sworn.)

9 THE CLERK: Thank you, please be seated.

10 THE COURT: Madam forelady and ladies and
11 gentlemen of the jury, I'm going to ask that -- and I'm
12 going to ask and order that you not discuss this case
13 with anyone, we're going to release you for the day.
14 And I promise you when you go back that your
15 significant other, your wife, husband or significant
16 other, your coworker, is going to say, tell me what's
17 going on in court.

18 And I'm going to order that you not respond to it,
19 because it might be that they know something about this
20 particular case. Or it might be that they have an
21 opinion about this particular type litigation. You
22 need to base your decision on what transpires here in
23 this courtroom, not anything else. So do not discuss
24 the case amongst yourselves or with anyone else.

25 I'm going to ask that you be back at 9:30 in the

1 morning. Madam Forelady, I'm going to ask that you
2 assure there be no discussion amongst yourselves.
3 Y'all don't know anything about the case other than
4 what the allegations are and where the allegations
5 arose from.

6 But do not discuss the case. And there will be
7 times throughout the trial where you're in the jury
8 room where we're taking care of legal matters outside
9 of your presence. And madam forelady, I'm going to ask
10 that you enforce the rule there is to be no discussion
11 about the case, no discussion about the personalities.
12 Don't talk about what the witnesses said. You can talk
13 about anything in the world you want to talk about.
14 You can talk about Carolina Clemson football, and you
15 can talk about whatever you want to talk about, but
16 don't talk about the case.

17 There will come a time where you're called upon to
18 do that, and that's after you've heard all of the
19 evidence, I've charged you the law and tell you to
20 begin deliberations. But until that time it's
21 inappropriate for you to do so.

22 Ladies and gentlemen of the jury, if anyone were
23 to try to contact you about this case, I don't
24 anticipate they would, but that would be inappropriate
25 and would be illegal. If someone were to try to talk

1 to you about it, I'm going to ask you to identify them
2 as best you can, report it to me, and I will deal with
3 them accordingly. But I don't anticipate that will be
4 the case.

5 Ladies and gentlemen of the jury, there's not
6 anything that you can't look up on the Google nowadays,
7 as they say. You can do legal research on the Google.
8 You can do -- look up personalities, you can look up
9 people, you can look up events. And I'm ordering and
10 demanding that you not do that. Do not do any
11 independent research about this case.

12 Once again, you're going to hear straight from the
13 horse's mouth all of the evidence that's going to be
14 presented in this case right here in this courtroom.
15 Did not do any independent investigation. I've given
16 you the address where these allegations arose out of.
17 Do not go by there and do any independent investigation
18 about the scene, avoid that.

19 If they are -- I don't anticipate there will be
20 any news coverage with regard to this case, but if
21 there were we would ask that you divert your attention.
22 Because, once again, you'll receive all of the
23 information necessary here in this courtroom.

24 I'm going to ask that you be back at 9:30, 9:30
25 sharp in the morning. Once again, do not discuss the

1 case in any way, shape or form. Anything from the
2 State before we release the jury?

3 MR. TODD: Nothing from the State, Your Honor.

4 THE COURT: Anything from Defense?

5 MR. WISE: Nothing from Defense.

6 THE COURT: Madam forelady and ladies and
7 gentlemen of the jury, we're going to stay and we have
8 some legal matters that we need to tend to. And
9 there's no sense in you being occupied all day. We're
10 going to let you go about your business today, do
11 whatever business you have or personal matters that you
12 have. And we'll be ready to start at 9:30 in the
13 morning. Going to ask that you be here at 9:30, 9:30
14 sharp.

15 I know that this is getting close to beach time
16 and the traffic sometimes can be difficult. So account
17 for that, be here and be here on time. Thank you very
18 much. Everyone remain seated as the jury exits the
19 courtroom.

20 (WHEREUPON, the jury exited the courtroom at
21 12:00 p.m.)

22 THE COURT: I understand that there are some
23 motions that need to be made. How long do you
24 anticipate these motions lasting?

25 MR. WISE: Well, I was getting to that. Before we

1 picked the jury, Mr. Todd and I were talking about
2 marking some exhibits. I don't know about the Court,
3 but my breakfast is long gone. I was going to suggest
4 let Ricky and I sit here and mark these exhibits, we'll
5 take 30 minutes at the most.

6 And then, let's just do the motions about 1:30 or
7 so, and I would imagine it will take an hour, an hour
8 and a half. Outside maybe two, but I can't imagine
9 really going past that.

10 THE COURT: Okay. And do we have any pleas that
11 we can do right now?

12 MS. RICHARDSON: Yes, Your Honor. We have one
13 guilty plea. And Mr. Edgeworth had two cases on the
14 docket, had to leave for a family emergency.

15 THE COURT: Okay.

16 MS. RICHARDSON: So we'll just have the one.

17 THE COURT: So we'll just have one. And we're
18 going to have time throughout the week to fit those in,
19 and we will indeed do that. We're going to stand at
20 ease. We're going to try to power through these
21 matters starting at 1 o'clock. So if y'all can be back
22 at 1 o'clock. Well, y'all try to mark those exhibits,
23 and let's try to start back at 1 o'clock.

24 MR. TODD: Okay.

25 MR. HAZZARD: Your Honor, may I and Assistant

1 Solicitor Powell approach?

2 THE COURT: Yes.

3 (Discussion off the record.)

4 THE BONDSMAN: Freedom Bail Bonds, I'm the owner.

5 THE COURT: All right. You understand that the
6 terms of bond generally provide that once the case
7 begins and the jury is sworn, that you're released from
8 your responsibility. However, you can stay on that
9 bond throughout the trial of this case if you would
10 like to do so. Are you willing to remain on the bond?

11 THE BONDSMAN: Yes, Your Honor.

12 THE COURT: Okay, all right. I will indeed allow
13 that and allow him to remain out on bond. But you
14 understand, Mr. Myers, that if you do not show up, the
15 trial is going to go on without you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And if you leave, there will be a
18 bench warrant that's issued, we'll ultimately end up
19 finding you. You'll be -- if you're found guilty of
20 this, you will be sentenced to that offense. And
21 you'll be sentenced -- first of all, you'll be
22 sentenced outside of your presence, it will be sealed.
23 They'd pick you up and bring you back. In addition to
24 that you'll be more than likely charged with failure to
25 appear, which is a separate criminal offense. Do you

1 understand all of that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. And you'll be here?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Very good.

6 THE DEFENDANT: Thank you.

7 (WHEREUPON, a brief recess was taken at 12:06
8 p.m.)

9 THE COURT: Well, I think he was supposed to be
10 here at one; wasn't he?

11 MR. WISE: He thought it was 1:30. Because you
12 said one, I said 1:30. I said 1:30, then you said one.
13 I don't know if he heard you say one. But like I said,
14 he's pulling up right now. Just got off the phone with
15 him.

16 THE COURT: All right.

17 MR. WISE: Let me discuss one we could do without
18 him, without him here. The State's indicted Mr. Myers
19 on several of what I call duplicate indictments, and
20 this is the one that I mentioned to His Honor before
21 the jury was sworn.

22 I take the position that a proximity charge and a
23 substantive charge are the same charge. And that's
24 the -- the substantive charge is the lesser included in
25 proximity. But you have to prove the possession with

1 intent to distribute, and then you also have to prove
2 the additional element of proximity to a playground or
3 a school. And there's no way, I don't think, a jury
4 legally can convict somebody of both those charges.
5 And I think the State should be required to elect which
6 one of those charges they are going forward on.

7 THE COURT: Might counsel approach the bench for a
8 moment.

9 (Discussion off the record.)

10 MR. WISE: As I say, we take the position that a
11 possession with intent case is subsumed into a
12 proximity case because the State has to prove the
13 possession with intent with an additional element. And
14 any time you have an additional element, that is the
15 classic definition of a lesser included. So the
16 possession with intent is always going to be a lesser
17 included of proximity.

18 THE COURT: Well, the proximity is actually less
19 time than the other; isn't it?

20 MR. WISE: Well, the elements is the key, not the
21 amount -- it can be, I agree.

22 THE COURT: Well, why? Okay.

23 MR. WISE: And the proximity is also a strike
24 where sometimes a possession with intent isn't. So
25 it's -- you know, you give up a little bit both ways.

1 THE COURT: Let's hear what the State has to say
2 about that argument.

3 MR. TODD: Your Honor, the fact that there are
4 different elements makes it a separate crime. The
5 State's position is that there are a series of separate
6 crimes of proximity, that the statute is completely
7 different. It has certain elements of the drug which
8 we have to produce, but also there's a proximity charge
9 with the additional element which makes it another
10 crime altogether. And it is not a lesser included,
11 Your Honor. So we believe that all of them should
12 stand as they are.

13 THE COURT: There is some merit to what the
14 Defendant has to say. However, there is no law that
15 would establish it as a lesser included offense. Is
16 that correct for both sides?

17 MR. WISE: That's correct, unless you look at the
18 cases that talk about lesser included. But this issue
19 with the proximity and the possession with intent has
20 never been squarely addressed by the Court.

21 THE COURT: Okay. Well, you're protected on the
22 record.

23 MR. TODD: Thank you, Your Honor.

24 MR. WISE: The other motion, I made two
25 previously, Your Honor, was basically a motion to find

1 out what the deal is. I've had some general
2 conversations with Mr. Todd before we got ready to try
3 this case one other time and it got continued, but I'd
4 just like -- and I understand the only witness -- well,
5 more than one, but they've got Joshua Bliss, who is the
6 codefendant who is testifying, and I think Nicole Bliss
7 would be testifying.

8 And then, I don't know about Crystal Leday, if she
9 was going to testify. But I would like for the State
10 to put on the record any deal or offer they've made to
11 those individuals.

12 THE COURT: Well, they are certainly required to
13 give that information. Have you not given that to the
14 Defense?

15 MR. TODD: Your Honor, we've made them no deals.
16 The only thing that they can do is benefit from their
17 own -- in our proffer agreement with Mr. Bliss, it said
18 that there is no deal, he is charged as it is. Pretty
19 much the extent of --

20 THE COURT: Have you given him a copy of the
21 agreement?

22 MR. TODD: Yes. Should have.

23 MR. WISE: I don't think I did. I think you
24 mentioned it, but I don't think I've seen it.

25 MR. TODD: I gave it to you last time we had

1 court. But I can get you another copy.

2 MR. WISE: Okay, all right. I knew they had
3 spoken, he had represented the deal was, but okay.

4 THE COURT: Okay. Well, I'm going to order that
5 you provide him the written terms of the agreement
6 between of all the cooperating witnesses.

7 MR. TODD: Yes, sir. Mr. Bliss is the only one
8 who we've made any offers or agreements or anything
9 with as far as a proffer. And I will turn that over,
10 again, Your Honor, just to make sure he's got it.

11 THE COURT: Very good.

12 MR. WISE: Second, we have and this literally
13 arose yesterday, there's a witness -- there was a
14 witness in this case named Scott Roach. At one time
15 the State was going to use him. I heard by rumor
16 yesterday the State wasn't.

17 He is, to say the least, has been difficult. He
18 has been represented by counsel, so I have not
19 interviewed him. I get a rumor yesterday that he may
20 now want to help us. I cannot sit here and represent
21 to the Court that I have an affidavit from him or
22 anything like that that says that, just that there's
23 some reason to believe it.

24 The State has -- and we discussed this during
25 lunch -- the State is trying to get him up here this

1 afternoon. As I understand the situation today, he
2 does not have a lawyer, he has entered a plea but not
3 been sentenced. If he invokes his fifth, I think in
4 view of the fact he hasn't been sentenced, he could
5 probably do that without consequence. I have no clue
6 if Mr. Roach comes up here and the Court makes inquiry
7 of him, if he's going to say, no, I'm going to testify
8 for the State, if he's going to say, I'm going to
9 invoke the fifth, or if he's going to say, I'm going to
10 testify for Mr. Myers and, you know, waive any rights I
11 have. But I think we need to address that issue.

12 THE COURT: All right. Well, let's just suppose
13 that he does testify and he exercises his right to the
14 Fifth Amendment. Wouldn't I be in the position to
15 grant him use immunity for what he says in order that
16 he testify?

17 MR. WISE: I would love to say yes because it
18 really makes it real easy. But I think under the,
19 gosh, case involving the road construction people, and
20 it begins with a W, and I can't remember it right now,
21 the South Carolina Supreme Court, the only rule, the
22 only immunity that you have in this state is full
23 immunity, absolute immunity. I can get that --

24 THE COURT: I'll be happy to look that the case,
25 but --

1 MR. WISE: I can get that proffer real quick, I do
2 believe.

3 THE COURT: Probably what we need to do, probably
4 the most best use of our time would be in the event he
5 comes and he exercises the fifth, we'll address that.
6 It would be a good idea for you to get that case, share
7 it with the State. We'll have an educated discussion
8 about it at that time. There's no sense in us arguing
9 about it until such time as it comes up.

10 MR. WISE: Right. Like I said, that kind of came
11 up relatively late.

12 THE COURT: Right.

13 MR. WISE: All right. The other issue, Your
14 Honor, is that we don't think the search warrant in
15 this case complied with the statute and that we have
16 reason to believe that no copy of the search warrant
17 was left at the residence of Mr. Roach. And we -- I
18 did file a written motion on this, it's tweaked a
19 little bit from the last one I filed.

20 But it's got two parts to it. The second one
21 first. The statute requires that a copy of the warrant
22 be left there. The State has the video of the search,
23 at least the first 15 or 20 minutes of the search, and
24 there's no search warrant shown in that video nor any
25 indication that a search warrant was left with

1 Mr. Roach who in the video at the end of the video was
2 handcuffed and sitting on the sofa in his living room.

3 So we have no indication. The affidavit on the
4 search warrant itself also does not reflect it was left
5 there. Just simply says, this is an inventory of what
6 was taken.

7 THE COURT: What does the State have to say about
8 that?

9 MR. TODD: Your Honor, my understanding in talking
10 with the agents, it has been left at the residence and
11 was left at the residence. Agent John Tempalsky that
12 is here from the drug enforcement unit, he can testify
13 as to what was left.

14 THE COURT: Let's call him forward, and we'll
15 establish that as a matter of record.

16 MR. TODD: Yes, sir. The State calls Agent Donald
17 Tempalsky.

18 THE COURT: Yes, sir. If you could, please come
19 forward, and I'm going to ask you to place your left
20 hand on the Bible, raise your right hand as the clerk
21 administers the oath.

22 DONALD TEMPALSKY, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you. Please be seated and state
25 your name for the record, and spell it, please.

1 THE WITNESS: Agent Donald Tempalsky,
2 T-E-M-P-A-L-S-K-Y.

3 THE COURT: Have a seat. Move up real close to
4 that microphone, speak loudly, clearly and slowly.

5 THE WITNESS: Yes, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. TODD:

8 Q Agent Tempalsky, who do you work for?

9 A For the Fifteenth Circuit Drug Enforcement Unit,
10 actually the solicitor's office is my co-employer.

11 Q And how long have you worked for the solicitor's
12 office?

13 A Going on four years.

14 Q And on the date of this search warrant, tell us a
15 little bit about how you got involved with this case,
16 let's begin there.

17 A We received information that Scott Roach was
18 selling marijuana out of his house in the city of
19 Georgetown and made some controlled purchases from him
20 at the house.

21 Q And who did you get this information from?

22 A Josh Bliss and his common law wife, Nicole.

23 Q Okay.

24 A Or wife, Nicole. I'm not sure what they were at
25 the time.

DONALD TEMPALSKY-DIRECT BY MR. TODD

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1 Q But they are the ones that provided you with the
2 information to begin with; is that correct?

3 A That's correct.

4 Q Okay. And through the course of business, did you
5 have them do controlled buys?

6 A Yes.

7 Q Okay. And from their controlled buys, were these
8 audio and video recorded?

9 A They were.

10 Q And did you review those videos once they were
11 completed?

12 A We did.

13 Q Okay. Now, once you reviewed those videos and had
14 done controlled buys, did you seek a warrant for
15 Mr. Roach's arrest?

16 A Yes.

17 Q Okay. Along with his arrest, did you seek a
18 search warrant for his residence and the vehicles on
19 the property?

20 A Yes. That's what I was just looking at.

21 Q Okay. Do you recall the day, or can you look
22 through your notes for the day that you sought these
23 search warrants for Mr. Roach's arrest and his -- and
24 the search of the house.

25 A Well, I have the search warrant on December 4th,

1 2015. It's quite a voluminous file here. But I
2 believe the arrest warrants were obtained either that
3 same day or very close to it. It appears that the
4 arrest warrants were obtained on the 10th,
5 December 10th.

6 Q Okay. What day did you arrest and search the
7 residence of Mr. Roach?

8 A On the 11th, December 11th, 2015. Then there are
9 numerous warrants for Mr. Roach, so with varying dates
10 that they were obtained, so I would have to be specific
11 about which exact warrant.

12 Q But you arrested him on the 11th; is that...

13 A That is correct.

14 Q Okay. And you searched his house on the 11th; is
15 that correct?

16 A That is correct.

17 Q Okay. Now, when you went to the house, were there
18 other agencies involved with the search and arrest
19 of...

20 A The Georgetown City Police Department and the
21 agents that are assigned to the drug enforcement unit
22 in the Georgetown office.

23 Q Okay. Now, you physically sought out the search
24 warrant and arrest warrant; is that correct?

25 A That's correct.

DONALD TEMPALSKY-DIRECT BY MR. TODD

1 Q Did you carry it up to the house?

2 A I did.

3 Q Did you leave a copy of the search warrant at the
4 house?

5 A Yes.

6 Q Did you show Mr. Roach a copy of his warrant, or
7 did you discuss it with him?

8 A I did discuss it with him.

9 Q Okay. But you left a copy at his residence?

10 A I would like to see if I can find the return. But
11 it was either left in his house or I discussed it with
12 him about putting it in his property at the jail. But
13 that discussion was made at the house with Mr. Roach.

14 Q But Mr. Roach definitely was made aware of the
15 warrant, you showed it to him?

16 A Oh, absolutely.

17 Q Okay. Now, is that common practice when you go to
18 the owner's residence, show them a copy of their
19 warrant for the search?

20 A I do. If the target of the investigation and the
21 main person of the search warrant is there, I will
22 discuss it with them and I will often times give them
23 the option of having it brought with them to the jail
24 and put in their property or left at the house. Some
25 people don't like it left behind. They want it in

1 their property.

2 Q Okay. Would you just look through your return and
3 just confirm where you left it.

4 MR. TODD: Court's indulgence, Your Honor.

5 THE WITNESS: Yes. It was left with Mr. Roach at
6 Georgetown County Detention Center.

7 Q Okay.

8 MR. TODD: That's all the questions I have at this
9 time, Your Honor.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. WISE:

13 Q You've got a copy of the search warrant with you?

14 A I do, sir.

15 Q Okay.

16 A We're talking about the search warrant for the
17 house; right?

18 Q Right, not the phones.

19 A Yes, sir.

20 Q Go to -- you got the return there with you?

21 A Yes, sir.

22 Q And the return was signed December 21st?

23 A Yes, sir.

24 Q Some ten days after the search?

25 A Yes, sir.

DONALD TEMPALSKY-CROSS BY MR. WISE

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1 Q All right. And did you personally go to Mr. Roach
2 in the jail and leave it there with him?

3 A Leave what?

4 Q The search warrant.

5 A The search warrant, yes.

6 Q So you -- and that was done about when?

7 A Well, the day the warrant was executed.

8 Q All right. After he had been taken to the
9 detention center?

10 A That's correct.

11 Q So that would have been two hours later, three
12 hours later, four hours, or do you remember?

13 A I have no idea, to be honest with you.

14 Q All right. And you carry -- on a search warrant
15 you carry one copy of the warrant?

16 A I have a -- I have my own copy of the original.

17 Q Right.

18 A But I always bring with me to the execution the
19 copy to be left at the scene or to give it to the...

20 Q And in this case your copy -- the original you
21 carried back to the office and is in your file today?

22 A The original was given back to the judge.

23 Q To the magistrate?

24 A Yes, sir.

25 Q Okay. And then the copy was given to Mr. Roach

1 over at the jail?

2 A Yes, sir.

3 Q All right. And that's where you remember giving
4 it to him?

5 A Yes.

6 Q Okay. Not at the residence?

7 A Like I said, I recall having a discussion with
8 Mr. Roach about the search warrant. And it might have
9 been his option to have it brought to the jail. I seem
10 to recall that. But regardless, that is where the copy
11 of the search warrant went, it went to the jail and was
12 given to him at the jail. And they put it in his
13 property.

14 MR. WISE: Excuse me one second. I thought I had
15 a copy.

16 Q But your recollection is it was not left at the
17 residence but at the jail?

18 A Yes, sir.

19 Q Okay.

20 A And that's what my return reflects as well.

21 Q All right. Thank you.

22 A Yes, sir.

23 MR. WISE: Hold on one second. Excuse me.

24 (Discussion off the record.)

25 MR. WISE: Thank you, that's all.

1 THE COURT: Do you have any more evidence with
2 regard to this particular issue?

3 MR. TODD: Your Honor, I can call another DEU
4 agent that was there, if you'd like that.

5 THE COURT: Well, sure. You know, do whatever you
6 want to do. I'm not going to tell you how to do that.
7 But we've heard the testimony of this individual. It's
8 your preference.

9 MR. TODD: Your Honor, that's -- no more questions
10 for this witness.

11 THE COURT: And no more witnesses?

12 MR. TODD: No, sir.

13 THE COURT: All right. How about Defense,
14 Mr. Wise?

15 MR. WISE: No, Your Honor. I would rest on the
16 record that's been established that the warrant,
17 contrary to the statute -- the statute's pretty clear
18 that says when any person is served with a search
19 warrant, such person shall be furnished with a copy of
20 the warrant along with the affidavit.

21 I don't think it means get a copy of it several
22 hours later over at the jail. I don't think that's a
23 reasonable interpretation of it. The search warrant
24 has to be, you know, served and left with him at his
25 residence. And they didn't do it.

1 THE COURT: Well, do you have any case law that
2 says it has to be done that way?

3 MR. WISE: Well, there's some case law that says
4 they have to serve the warrant. And there are some
5 cases in which they admit they didn't serve the warrant
6 at all. But on that little narrow issue of whether
7 they can serve them at the jail, I don't have any.

8 I can only tell you that the plain meaning of the
9 statute, I think, implies that it has to be left at the
10 residence. And if you excuse me one second, let me --
11 for some reason I can't get on the internet, but --

12 THE COURT: I think that's actually less effectual
13 to leave it at the house because he's in jail.

14 MR. WISE: Except -- I understand what you're
15 saying, it's not a case for less effectual. He is
16 entitled -- when that search begins, he's entitled to
17 be given the warrant that they are using to search his
18 residence with. And that's what he's entitled to, and
19 that wasn't done.

20 THE COURT: All right. Well, anything further?

21 MR. WISE: Just one second. Let me check one
22 little section, here. Let me get to the next section,
23 and I'll let you know. Give me about two minutes. My
24 big computer, some reason not getting online. And I
25 finally learned to do this on the cell phone which is

1 probably a bad thing to learn.

2 THE COURT: All right.

3 MR. WISE: I can't get down to 150. I can just
4 tell you what got quoted in the brief -- in the motion,
5 I think it's a correct statement of what it is.

6 THE COURT: All right. Anything further?

7 MR. WISE: Nothing further.

8 THE COURT: All right. Based on the testimony
9 that's been before me, I think the purpose of the
10 statute has been fulfilled in that it's necessary that
11 the Defendant be informed of the terms of the search
12 warrant. And based on the testimony of the officer
13 here today, he not only showed me the arrest warrant,
14 he discussed it with me.

15 And in addition to that, based on I've heard
16 testimony of the officer it was given to him at the
17 jail too. So I think that given the facts and
18 circumstances of this case, the statute was properly
19 followed. However, you are protected on the record for
20 appellate purposes.

21 MR. WISE: Okay.

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

23 (Witness excused.)

24 MR. WISE: And then we've got to deal with the
25 issue of Mr. Roach.

1 THE COURT: Okay.

2 MR. TODD: Your Honor, we're having Mr. Roach
3 transported so we can ask him.

4 THE COURT: This is the witness that may take the
5 fifth?

6 MR. WISE: This is the witness that might take the
7 fifth, might not take the fifth, might testify for the
8 State, may testify for the Defendant. We simply don't
9 know at this point.

10 THE COURT: All right. And he's going to be
11 here -- is that the only thing we have left?

12 MR. WISE: That's the only thing we have left.

13 THE COURT: Okay. And how long do you anticipate
14 it will take before he gets here?

15 MR. WISE: I would say any minute now.

16 MR. TODD: Yeah, as soon as I found out that
17 Mr. Wise had any questions --

18 MR. WISE: They requested he be brought about
19 one -- by 1 o'clock, ten till, something like that.

20 MR. TODD: So we can call him, see when his ETA
21 is.

22 THE COURT: All right, let's do that. We'll sit
23 right here and wait on him.

24 (Discussion off the record.)

25 MR. HAZZARD: I'm the public defender for

1 Georgetown County. Mr. Roach was represented by
2 appointed counsel, Margaret Ann Kneece.

3 During the general sessions nonjury term, which
4 was about two weeks ago, a motion was made, a dual
5 motion was made. Mr. Roach made the motion to have her
6 relieved, Ms. Kneece made the motion to be relieved.
7 That was heard by our Judge Stephen John who's our
8 chief admin for general sessions. He granted
9 Ms. Kneece's motion to be relieved.

10 I have appointed alternate counsel for Mr. Roach.
11 That, of course, requires that an order be done,
12 signed, clocked, things of that nature. Ralph Wilson,
13 Sr. is the individual who will be Mr. Roach's counsel.
14 But to my knowledge, I don't believe Mr. Wilson has
15 received that order at this time.

16 So I bring it to the Court's attention that
17 obviously Mr. Roach has the right to counsel. And I do
18 not know if the Court wishes to place him under oath or
19 have him asked any questions without that counsel
20 present at this time.

21 THE COURT: All right. Based on your presentation
22 and the fact that you're an officer of the Court, I'll
23 take you at your word that that's what has transpired.
24 And before he takes the stand, his lawyer is going to
25 have to be here. Before either one of them talk to

1 him, y'all are going to have to have his lawyer here.
2 But that's not stopping the trial, we're going forward.
3 Very good. So let's proceed forward, we might or might
4 not need Mr. Roach.

5 MR. HAZZARD: Okay. I will call Mr. Wilson right
6 now.

7 THE COURT: All right.

8 MR. TODD: Thank you, Your Honor.

9 MR. WISE: I was thinking perhaps we could address
10 this either late tomorrow -- what about late tomorrow
11 morning before we break for lunch; is that all right?
12 He would be a relevant factor.

13 THE COURT: Well, I don't think there's really a
14 whole lot -- there's not a whole lot to address until
15 he talks with his lawyer. And in the event you would
16 like to call him, you're going to have to go through
17 his lawyer to do it. In the event you desire to call
18 him, you got to go through his lawyer.

19 We're moving forward on this case and we're going
20 to proceed forward, proceed forward. And it might be
21 incumbent upon you to get in touch with Wilson and
22 issue a subpoena.

23 MR. WISE: I was going to do that, get in touch
24 with Mr. Ralph. And my suggestion would be that if
25 Ralph Wilson can be here at 12:30 or so tomorrow, then

1 we could address it then.

2 THE COURT: Okay.

3 MR. WISE: Not, obviously --

4 THE COURT: Well, I'm not really in a position to
5 compel him to be anywhere. What you need to do,
6 perhaps, is issue a subpoena for Mr. Roach and forward
7 a copy of it to Mr. Wilson.

8 MR. WISE: Okay.

9 THE COURT: And you can deal with him however you
10 see fit.

11 MR. WISE: All right. I'll call him this
12 afternoon, and we'll figure out something.

13 THE COURT: Right. Very good.

14 MR. WISE: Okay.

15 THE COURT: Yes, sir.

16 MR. TODD: We have nothing, no additional motions,
17 Your Honor.

18 THE COURT: All right. Anything from Defense?

19 MR. WISE: I'm thinking that covers everything
20 that I can think of.

21 THE COURT: All right, very good. We'll proceed
22 forward at 9:30. Mr. Myers, you were late today.

23 THE DEFENDANT: I'm sorry, sir. I got caught up
24 in traffic. I'm sorry, sir.

25 THE COURT: Okay. Well, you need to be mindful of

1 the traffic or don't leave the courthouse.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And we're starting at 9:30 in the
4 morning. You need to be here at quarter to nine.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. And we're proceeding
7 forward right at the stroke of 9:30, you need to be
8 here.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. We're standing at ease
11 until 9:30, 9:30 sharp. We'll stand at ease until 9:30
12 in the morning.

13 (The hearing concluded at approximately 1:48 p.m.)

14 (End of Transcript of Record)

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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of General Sessions for
13 Georgetown County, South Carolina, on the 15th day of
14 August, 2017.

15

16 I FURTHER CERTIFY that I am neither of
17 kin, counsel nor interest to any party hereto.

18

19

20

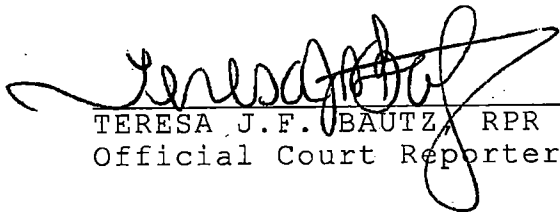
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TERESA J.F. BAUTZ, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2016-GS-22-462, 463, 467, 468

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	April 18-19, 2017
	)	
Marvin Luther Myers, Jr.,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable Michael G. Nettles
Georgetown County Courthouse
Georgetown, South Carolina

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

Richard D. Todd, Jr., Esquire
Attorney for Plaintiff

C. Rauch Wise, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

State v. Myers

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1 (On the record, April 18, 2017. The following takes
2 place outside the presence of the jury.)

3 THE COURT: Anything from the State before we proceed?

4 MR. TODD: Your Honor, just a few quick housekeeping
5 things, Defense counsel and I sat down yesterday, and we have
6 pre-marked Exhibits 1 through 165. We've both agreed these
7 are all going to come into evidence so we don't have to go
8 through the procedure of --

9 THE COURT: Very good. Is that correct?

10 MR. WISE: That's correct, Your Honor.

11 THE COURT: All right.

12 MR. TODD: I'll go ahead and place these up.

13 MR. WISE: Save the trouble of somebody saying this
14 accurately reflects, etcetera, etcetera.

15 THE COURT: Very good.

16 MR. TODD: And Your Honor, we would also request that the
17 witnesses be sequestered.

18 THE COURT: All right. What is the Defense's position on
19 that?

20 MR. WISE: Excuse me one moment. We discussed it earlier
21 and really hadn't --

22 (Defendant and Mr. Wise confer.)

23 MR. WISE: Your Honor, we're not really sure it's
24 necessary in this case, but whatever the Court orders we'll
25 obviously comply with.

State v. Myers

2

1 THE COURT: All right. I think under the circumstances
2 it'd probably be best to do that, and I'm going to order that
3 all of the witnesses be sequestered, and I'm going to ask that
4 the State discuss it with each one of the witnesses and ensure
5 that they are not only not present but that they not discuss
6 their testimony with one another and that rule applies for the
7 State and the Defense.

8 MR. WISE: I've got two witnesses in the courtroom right
9 now I need to discuss that with, too.

10 THE COURT: Okay.

11 MR. WISE: Okay.

12 THE COURT: Well, if they're here they heard it.

13 MR. WISE: Right.

14 THE COURT: And, and we need to send them out.

15 MR. WISE: All right.

16 MR. TODD: I will briefly discuss it with our officers in
17 the back. Agent Tempalsky is the lead investigator on this
18 case, Your Honor. We just request that he be allowed to stay.

19 THE COURT: He will certainly be allowed to stay.

20 MR. WISE: We keep you.

21 MR. TODD: Your Honor, other than that I believe that's
22 all the matters the State has.

23 THE COURT: All right.

24 MR. WISE: Excuse me. Yeah.

25 MR. TODD: That's all.

Opening Instructions by Court

3

1 MR. WISE: One thing, too, Your Honor, after I got home
2 last night I realized that I neglected to raise one issue in
3 my motion to suppress, but it's probably best addressed at the
4 time it comes up because it involves one piece of evidence
5 that was taken out of the car that he was driving and --

6 THE COURT: Well, let's go ahead and get started.

7 MR. WISE: Yeah.

8 THE COURT: And then at the appropriate time we'll deal
9 with that.

10 MR. WISE: It's, it's --

11 THE COURT: All right. Very good. We'll deal with that
12 at the appropriate time.

13 MR. WISE: Okay.

14 THE COURT: We're ready for the jury.

15 MR. WISE: Let me just talk to the witnesses real quick.

16 THE COURT: All right.

17 MR. WISE: Explain to them.

18 MR. TODD: I'll do the same thing just to make sure they
19 don't talk about the case.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: Good morning. Madam Forelady, ladies and
23 gentlemen of the jury, we're about to begin the trial of the
24 State of South Carolina versus Marvin Luther Myers. It's been
25 made clear to you from the Clerk and from what you've heard so

Opening Instructions by Court

4

1 far that you're participating in criminal court and I'm -- I
2 want to emphasize that because many of you have probably
3 served on a jury before and in civil court where the -- a good
4 example of that would be a car accident, medical malpractice,
5 contract dispute where essentially what you're litigating
6 about is money, and obviously this is criminal court where
7 they have accused Mr. Myers of violating the criminal codes of
8 the State of South Carolina, and I point that out because if
9 you were to stand at the back of this courtroom and look at
10 this proceeding, it would be very difficult unless you heard
11 the subject matter to determine which court you're in because
12 in both courts you have a jury sitting there and being, being
13 assigned with the chore of being the triers of fact. You
14 would have a judge presiding over both proceedings, and you
15 would have litigants on both sides, but the similarities
16 really stop there because in criminal court a person's
17 liberties are at stake, and there are certain constitutional
18 safeguards that come into play that guard all of us and
19 protect all of us as United States citizens, the first of
20 which is and when a person is accused of a crime, as Mr. Myers
21 is sitting over there at the Defense table, he's presumed to
22 be just as innocent as me or you or the police officer, the
23 Solicitor for that matter. That's the presumption we start
24 with. It's like a protective cloak that guards all of us as
25 American citizens and it follows Mr. Myers throughout the

Opening Instructions by Court

5

1 trial and on into the deliberation room. That's the
2 presumption you start with. The second constitutional
3 safeguard is that the State has the burden of proof. You
4 know, there are some practical reasons for that because when
5 someone is accused of violating the criminal codes of the
6 State of South Carolina, the law enforcement -- law
7 enforcement has the ability to gather the evidence to produce
8 to a jury. They're the ones that are there. They're in a
9 position to gather the evidence and they're required to do
10 that. In a criminal case the Defendant need not testify. He
11 need not present any evidence, and the reason for that is that
12 all of us in our everyday lives have had an occasion where
13 we've been accused of something. It's absolutely impossible
14 to prove your innocence. In the United States of America if
15 you're accused of a crime you aren't required to do that.
16 There are some third world countries where you can be accused
17 of a crime, hauled before a court and given the responsibility
18 of having to prove your innocence. That's not the case in the
19 United States of America. The State has to prove each and
20 every element of the crime.

21 A third constitutional safeguard is that the State has to
22 meet the highest burden of proof known to our judicial system.
23 It's called proof beyond a reasonable doubt. Imagine with me
24 if you will the scales of justice where the lady is
25 blindfolded from all bias and all prejudice. As the trial

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1 starts, the scales are even, and in a civil case we're talking
2 about a car accident and the Plaintiffs are claiming that they
3 were injured in the accident, the only thing they would have
4 to do is tilt the scales ever so slightly in their favor, more
5 likely than not, and they would prevail, and the reason for
6 that is because the stakes in that case is just about money,
7 but in criminal court we're talking about a person's
8 constitutional right, their liberties, and the State has to
9 meet the highest burden of proof known to our judicial system,
10 and I envision that as locking up the scales, proof beyond a
11 reasonable doubt.

12 I want to tell you a little bit about how the trial is
13 going to proceed. The State, Mr. Todd is going to have an
14 opportunity to stand up before you, tell you a little bit
15 about the case, maybe talk to you a little about the law and
16 what he intends to prove. The Defendant is not required to do
17 so. However, they are given an opportunity to give an opening
18 statement. I anticipate they probably will. They will have
19 an opportunity to give their perspective of the case and any
20 defenses that they might have.

21 After that, the State will begin the presentation of
22 evidence. They will call witnesses to the witness stand.
23 They will approach the Bible, put their hand on the Bible,
24 swear to tell the truth and the State will ask them questions.
25 The Defense attorney will have an opportunity to ask them

Opening Instructions by Court

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1 cross examination questions, then the State would have an
2 opportunity to redirect. That's the way the order of how it's
3 going to proceed. The State is required to open up in full in
4 the presentation of all of their evidence, and then the
5 Defendant, although they're not required to, be given the
6 opportunity to present evidence, but they're not required to
7 under the law and, and that's completely within their
8 parameters to make that decision. After that then the lawyers
9 will have an opportunity to give what's known as closing
10 arguments. They're very similar in form to opening
11 statements, however they're different because at that point in
12 time you'll have heard all of the evidence and these very fine
13 lawyers would be able to point to the evidence that supports
14 their relative theory of the case. You and I are just
15 starting to learn about this case. However, these lawyers
16 have been working with this case and know a lot about it. So
17 pay very close attention to their closing arguments because it
18 will aid you immensely in your deliberation process.

19 Ladies and gentlemen of the jury, we have very distinct
20 roles in this case. You are the triers of fact. In every
21 case that's tried in the courts in the United States there's
22 always a dispute of facts. In a very rare occasion people can
23 -- there is not really a dispute about the facts but maybe a
24 difference in the inference to be drawn from the facts, but in
25 all instances you're called upon to listen to the evidence and

Opening Instructions by Court

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1 determine what the truth is. My job is different than that.
2 I determine what evidence you get to hear. I preside over the
3 trial, and at the conclusion of the case I will charge you the
4 law. You are the sole and exclusive judges of the facts. So
5 pay very close attention as the witnesses testify and as, as
6 the -- as the evidence is presented.

7 There will be occasions where lawyers stand up and say,
8 "I have an objection. I want to take up a matter of law with
9 the Court," and they're calling upon me to fulfill my role as
10 the arbiter of the law to determine what evidence you get to
11 hear. Those conversations will take place outside of your
12 presence because what they're talking about quite often is not
13 admissible. So that's the reason why those conversations will
14 take place outside of your presence. However, at the
15 conclusion of the case, after the rendering of a verdict, if
16 you have a question about a particular point of law and if I
17 can remember what it was, I'll be happy to share it with you
18 at that time. It'd be inappropriate to do that until the
19 rendering of a verdict.

20 Ladies and gentlemen of the jury, in your role as the
21 triers of fact, it's -- you're going to necessarily have to be
22 called upon to determine the credibility of witnesses, and
23 when a witness takes the witness stand, number one, the law
24 says that you need your good common -- use your good common
25 sense. We all in our everyday lives when we're talking with

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1 people and dealing with people we have just from common sense
2 have developed an ability to determine whether someone is
3 telling the truth, and the law doesn't say that you leave your
4 good common sense at home. You listen to what they have to
5 say. Ask yourself when a witness testifies what opportunity
6 they had to observe the things to which they're testifying to.
7 Ask yourself whether or not what they say is corroborated by
8 other evidence or contradicted by evidence. You can believe
9 one witness over many or many against one. You can believe
10 all of what a witness says, none of what a witness says or a
11 portion thereof. It's completely left up to you and your
12 collective wisdom to make those decisions. Ladies and
13 gentlemen of the jury, you are participating in a time-tested
14 system. This is an important case. It's important to the
15 State of South Carolina. It's an important case to the
16 Defendant. It's an important case to you because you're going
17 to be called upon to determine whether or not the State has
18 been able to prove Mr. Myers guilty of a crime beyond a
19 reasonable doubt. It's an awesome responsibility and you need
20 to pay very close attention. In civilian life there's not a
21 more important or more -- a greater responsibility as an
22 American citizen than to serve on a criminal jury. You need
23 to pay very close attention and proceed forward with a very
24 serious mind. Given the nature of the case, the length of the
25 case, I'm going to order that you not take notes. So it's

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1 going to be incumbent upon you to pay very close attention to
2 the witnesses as they testify.

3 Mr. Todd, you're recognized.

4 MR. TODD: Thank you, Your Honor.

5 Good morning. As the Judge said, this is a very
6 important case to both the State and the Defendant. The
7 burden is on us to prove all the crimes charged on the
8 Defendant, that he is, in fact, guilty, and we will do that
9 before the closing of this case, convince you beyond a
10 reasonable doubt.

11 A little bit about the case. So it's kind of a neat
12 situation dealing with these types of cases. This is a drug
13 case. We have agents from our 15th Circuit Drug Enforcement
14 Unit that were involved with this case, and how these work,
15 this case is a search warrant case and an arrest warrant case.
16 What that means is that the agents had a search warrant for a
17 residence, [REDACTED] Park Street in Georgetown. It's over in
18 Maryville in the Bayview area. So you go over the bridges of
19 Maryville, you take a left down Park Street, interesting it's
20 a park, on Park Street and there's a residence there. It was
21 owned by Mr. Scotty Roach. Mr. Roach is also a Co-Defendant
22 in this case. He has pled guilty to his charges. Defense
23 counsel will probably talk to you about that later on.

24 What had happened, a little precursor to this case, what
25 makes it kind of interesting is the DEU, which we call them

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1 the drug enforcement unit, had utilized two CIs to go in and
2 purchase drugs from Mr. Scotty Roach. From those purchases
3 they requested a search warrant and an arrest warrant for Mr.
4 Roach's arrest and a search warrant of his residence and the
5 vehicles on, on the premises.

6 So December 11th, early hours in the morning, because
7 that's how they like to work, they like to get up early and go
8 and get their job done because it takes a long time to do a
9 thorough search warrant. You don't go in and just look around
10 and say, "Well, there's nothing here." You have a search
11 warrant, you search thoroughly.

12 They get in early morning. They go through the door.
13 They meet everybody in there. They place Mr. Roach under
14 arrest because they have an arrest warrant for him and they
15 begin searching. Now, the first thing they do is they go in
16 and make sure everything is secure. They're wearing all kinds
17 of gear because when you go into a house where you're known to
18 have drugs in the house there's probability of violence or
19 something else going on. So they look. They're in tactical
20 gear. They've got on helmets. They've got on vests. They're
21 carrying guns. They're taking extra people with them. It's
22 for their safety. They go in and they're as professional as
23 can be. They meet with everybody there. They get everybody
24 secure, make sure everyone is safe, both officers and
25 everybody inside the residence.

Opening by State

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1 On this day there was a bunch of people in that house.
2 There was Mr. Joshua Bliss, who is a Co-Defendant, and his
3 wife in the residence. They were staying in one room. There
4 was a Crystal LeDay and her son, a minor, he was in the
5 residence. They were very careful with the son. He was
6 supposed to go to school that day. They did work around and
7 get him to where he needed to go. It was before school
8 started, but it was pretty close to the time you're supposed
9 to be there. It was Mr. Roach. He was in his back bedroom,
10 and Mr. Myers was there. When they get them all confined they
11 place them in cuffs. That's what they do for everyone's
12 safety, for their own safety. They began searching the house.
13 As they're searching the house, and I don't know if you all
14 know how marijuana smells, but it's a pretty prominent smell.
15 They could smell marijuana in the house, and as they began
16 looking through the house they saw other signs of other drugs
17 that were being cut, manufactured, used in the house.

18 They did a thorough investigation, thorough search. It
19 took them hours to search this house. In the bedroom where
20 Mr. Myers was sleeping, and that's where we're going to focus
21 on today, the crimes he has been charged with, he is charged
22 with trafficking in cocaine, trafficking in crack cocaine, two
23 separate drugs, two separate charges. They were in the room
24 he was in. He was the only person in that room when they came
25 in. A lot of his belongings were in that room, and he spent

1 the night there. In that room they found those two large
2 quantities of drugs. They also found a large quantity of
3 marijuana, which the amount in weight would qualify as
4 possession with intent to distribute, that means you have
5 enough not just for your own use but that you would intend to
6 sell it, and also through investigation there was a key to a
7 vehicle outside, an Infiniti, that was in a pants pocket
8 believed to be in Mr. Myers, but belonged to Mr. Myers. The
9 vehicle was a rental vehicle, and they searched that vehicle
10 because they had reason to do it, and in a jacket they found
11 heroin. The heroin was more than the amount for single use.
12 So he was also charged with possession with intent to
13 distribute, and we'll go over the weights very thoroughly at
14 the end of this case.

15 So that's four charges, all very serious charges, but all
16 very important. With those there's four different charges
17 that stem from that because there's a park nearby. The
18 legislature has said that, "If you are selling drugs or have a
19 quantity or we believe you are selling drugs there's a new
20 charge." These charges are the intent to distribute with
21 close proximity of a park. Interesting thing is we're on Park
22 Street. The park is just 150 yards, 200 yards away from this
23 residence.

24 Those are the charges we have today. They're very
25 important. There's going to be quite a few people that come

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1 in and testify. They're going to tell their version of the
2 story as, as what they saw. Now, there was four agents that
3 went into the house. They all went different directions.
4 Why? Because, again, searches take a while. Two go into one
5 room, two go into another room, they clear those rooms, they
6 search another room, they talk with people in the house to try
7 to figure out what's going on, try to figure out whose is
8 what, and then as they get everything together, there was
9 other officers outside. One of the things that they do is
10 when they go and do a search warrant the DEU agents don't have
11 marked cars. They're, they're kind of the, the secret agents
12 of our, our society. They, they are going around in unmarked
13 cars. They wear pretty much plain clothing because their job
14 is to look inconspicuous, and they work with some pretty shady
15 people. They -- that's just the nature of the game. Not
16 everybody can walk into a house and buy drugs. Not everybody
17 knows where to go to buy drugs or to buy the type of drugs
18 that they want. So these people aren't the greatest people in
19 the world. They have problems. They've been arrested for
20 drugs. That's just the, the nature of the business.

21 So you're going to hear the stories about what the agents
22 did in that house, and from this we're going to put all of the
23 evidence that we have. We're going to present everything we
24 can to you. We're going to show you everything we can.
25 You're going to hear testimony from all, all these officers

Opening by State

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1 about what they did and where they were in the house.
2 There's going to be several witnesses that come up and testify
3 and talk about what they were doing, and ultimately we're
4 going to have some people from SLED come up and talk to you as
5 well. Now, what happens is we don't test our drugs down here.
6 We have experts that test drugs. They're part of the South
7 Carolina Law Enforcement Division. So we send them off to
8 Columbia and they test them and they weigh them. We weigh our
9 stuff here, but they've got packaging on it and stuff like
10 that. They actually weigh it there, and that is where our
11 charges stem from. So it's a really -- it's a neat case.
12 It's a very quick case. This isn't going to take a lot of
13 time, but please don't make that seem like it's not important.
14 Sometimes things are very straightforward. Sometimes there's
15 just not a whole lot there. This wasn't, you know, a decade
16 of things that happened. There weren't 250 law enforcement
17 involved. There weren't, you know, 25 people that are
18 interviewed. This was an occurrence on one day dealing with
19 just the stuff in Mr. Myers' bedroom where he had, he had
20 control over, and at the end we'll go over the law dealing
21 with trafficking and the law dealing with possession with
22 intent to distribute, and I'll try to break it down as best I
23 can, and the judge will tell you the law, but there's a bunch
24 of ors and we'll go through that, you either possessed it, he
25 had dominion and control over it, he helped to move it. It's

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1 a conspiracy type of case, not saying he was the only person
2 involved, but I'm saying he was involved, and at the end of
3 this I'm going to have you hold him accountable for what he
4 did. Thank you.

5 THE COURT: Mr. Wise, you're recognized.

6 MR. WISE: Madam Forelady and ladies and gentlemen of the
7 jury, kind of as the Judge said, there was a friend of mine
8 that was a Judge who used to tell a jury this, that the sole
9 purpose of a trial in a criminal court is to determine whether
10 or not the State can prove the case, and that's it. That's
11 the sole purpose. You know, I kind of like to analogize that
12 to an instant replay in football, even though this isn't
13 football season. We often see the replay in football and the
14 announcers say, "The question is is there irrefutable evidence
15 to make the call on the field wrong," and you look at the
16 videos and you look at them and you say, "Well, that's close.
17 I don't know," but then you keep saying in your mind, "Is
18 there irrefutable evidence to prove it wrong," and you say,
19 "Well, I may have made a different call, but it's not
20 irrefutable," but that's what this trial is about, the call on
21 the field is not guilty. The burden on the State is to
22 convince you there's irrefutable evidence that the call on the
23 field is wrong, and with that in mind, there's some things you
24 need to remember about this case or about the law on this
25 case, and it's this, it is not illegal to be in the same house

Opening by Defense

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1 with drugs. It is not illegal to be in the same room with
2 drugs. What is illegal is to own those drugs and know they're
3 there and have the intention and the ability to possess those
4 drugs. That's what is illegal. Being close to drugs is not
5 illegal, and I think that's an important thing to remember in
6 this case because I think when you look at all the evidence in
7 this case at the end of the day what you're going to find is
8 this, Marvin Myers was there that morning. There's no
9 question about it. You'll see him on the video. You'll also
10 find that he came there very early in the morning, somewhere
11 around 2:30, 3:00 o'clock. This raid occurred at 7:30. He'd
12 been there like four hours. You'll find that he had not been
13 there for days. You'll find that his primary residence where
14 he spent most of his time was at a relative's house on North
15 Adair [spelled phonetically] Street here in, in Georgetown.
16 So that's where he primarily lived. All right.

17 You'll find that the house was owned by Scott Roach. I
18 think you're going to find that Joshua Bliss and his wife,
19 Nicole, had been living there for several months, been there
20 on a regular basis. You're even going to find ironically that
21 the basis for the search warrant was a drug sale that Scott
22 Roach made. Well, you're going to find, and this is awfully
23 ironical, that the informant on that person, on that sale who
24 actually made that purchase was Joshua Bliss, who lived there.
25 So Joshua Bliss went to working with the police and bought

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1 from his roommate and that led to this search. I think you'll
2 find that Marvin Myers was basically just there that day,
3 that, yes, he had some belongings there because he had stayed
4 there on occasions in the past, but that was not his
5 residence, that is not any of his drugs, and I think when you
6 listen -- look at all the evidence you'll find that there's
7 not irrefutable evidence that the call on the field is wrong,
8 and the call on the field is not guilty. Thank you.

9 THE COURT: Thank you, Mr. Wise.

10 Mr. Todd, you're recognized. You may call your first
11 witness.

12 MR. TODD: Thank you, Your Honor. The State calls Agent
13 Donald Tempalsky.

14 THE COURT: Yes, sir. If you could come forward, we're
15 going to ask if you could, you can place your paperwork down,
16 place your left hand on the Bible and raise your right hand as
17 the clerk administers the oath.

18 Whereupon, Donald Tempalsky was called to the stand, duly
19 sworn by the clerk and testified as follows:

20 THE CLERK: Thank you. Please be seated. State your
21 full name for the record and spell it, please.

22 MR. TEMPALSKY: Sure. Deputy Commander Donald Tempalsky.

23 T --

24 THE COURT: Pull up real -- go ahead.

25 MR. TEMPALSKY: T-E-M-P-A-L-S-K-Y.

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1 THE COURT: Pull up real close to that microphone, speak
2 loudly, clearly and slowly in order that we can hear
3 everything that you have to say.

4 MR. TEMPALSKY: Yes, Your Honor.

5 MR. TODD: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. TODD:

8 Q Agent Tempalsky, tell us a little bit about yourself.

9 Where are you from?

10 A I'm originally from New Jersey. I was a police officer
11 there for 27 years. I graduated the New Jersey Police
12 Academy, worked my way up in a, a metropolitan police
13 department to my final position was detective lieutenant in
14 charge of a narcotics bureau, was a supervisor in a gang unit
15 and a patrol supervisor, patrol lieutenant, graduated from the
16 Attorney General's Drug Unit Commander School in the State of
17 New Jersey, graduated from the Drug Enforcement Administration
18 Drug Investigator School in New Jersey as well before I
19 relocated to South Carolina.

20 Q And when you came to South Carolina when did you start
21 working for the drug enforcement unit?

22 A About four years ago. I started all over again, went
23 back to the police academy here in South Carolina, went with
24 all the young guys and stayed there at the police academy,
25 started out with the Sheriff's Department here in Georgetown

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1 County, worked my way over to the Georgetown City Police
2 Department and then eventually obtained a job as the deputy
3 commander of the drug enforcement unit here. I went back to
4 the Attorney General's Drug Enforcement Commander School here
5 in South Carolina as well and have taken ongoing training in
6 drug enforcement while I've been here in South Carolina.

7 Q And as far as your employment, you work for the
8 Solicitor's Office; is that correct?

9 A I do.

10 Q Okay. And are you the only agent with the office in
11 Georgetown works with the Solicitor's Office?

12 A That's correct. The rest of the agents are either from
13 -- we're a, we're a combined multi-agency task force where the
14 Solicitor's Office provides command staff and working agents,
15 and the departments all work together and pool their resources
16 and add agents to, to work there, and in our case it's from
17 the Georgetown County Sheriff's Department, Georgetown City
18 Police Department. At times it could be SLED or Andrews all
19 pitch in, kind of work together.

20 Q So primarily all you do are drug cases now; is that
21 correct?

22 A That's correct.

23 Q Now, let's go right into the case at hand. Now, the raid
24 began on December 11th, but tell us a little bit about how the
25 raid came into being, just briefly.

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1 A Well, we had had information that drugs were being
2 distributed at [REDACTED] Park Street. It was an ongoing issue over
3 a long period of time, and we obtained current information
4 late in the year of 2015 that Mr. Roach was again selling
5 drugs out of that residence, and we arranged to make a
6 controlled purchase of marijuana, a controlled purchase being
7 where an individual or individuals under our control are sent
8 to a location with money provided by the State and they
9 purchase drugs. We have a -- some tight controls over on how
10 this is conducted. Those persons have to be vetted by the
11 Solicitor's Office first, meaning that certain things might
12 disqualify them where the Solicitor's Office doesn't feel
13 comfortable with them working along with us. Their
14 information is then confirmed that they give us to the best of
15 our abilities. We'll bring them to a location where they're
16 -- we check to make sure that they don't have any drugs on
17 them. They don't have any money. We provide them with money.
18 We provide them with audio and video recording devices and
19 then they go to the location where they meet with a person or
20 persons to purchase the drugs. They're followed there.
21 They're followed back. When they come back to us, they turn
22 over what they have purchased. They are again checked to
23 make sure that they don't have any money, they don't have any
24 drugs. They give a written statement and a verbal statement
25 on video. We then check those videos or those audio

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1 recordings to make sure that they're consistent with what they
2 told us, that we can feel comfortable that what they said
3 happened really happened. As a result of that, and if the
4 drugs they purchased test to be truly the drugs that we
5 believe they are, we will go to the appropriate magistrate to
6 obtain arrest warrants and/or search warrants if that's
7 appropriate.

8 Q And from those controlled buys you did get an arrest,
9 arrest warrant for Mr. Roach; is that correct?

10 A That's correct.

11 Q And you did get a search warrant for his residence and,
12 and whatever else on the property?

13 A We did. We, we obtained or I obtained a, a search
14 warrant for the address of [REDACTED] Park Street in the City of
15 Georgetown and that encompassed the outbuildings and the
16 vehicles on the property.

17 Q And so on December 11 in the early morning that's when
18 you executed the search warrant?

19 A That is correct.

20 Q Okay. Tell us about, tell us about that.

21 A Well, we, we have a rather small office. So we'll
22 utilize law enforcement personnel from whatever jurisdiction
23 we're going to execute our search warrant so that we have
24 enough people to do the job we need to do. In this case the
25 City of Georgetown assisted us with patrol officers, and we

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1 devised a plan to enter Mr. Roach's house to secure everyone
2 at the house and to then begin a search. We utilized marked
3 vehicles when we do a search warrant. We knock and announce
4 at the front door and we utilize a marked patrol vehicle to be
5 out front to put its blue lights on and its siren because no
6 one -- it's our belief that that way people inside the home
7 will know that it's truly law enforcement. In this case we
8 did that. We used a marked City of Georgetown Police car. We
9 gear up in, in tactical items to conduct these raids. They
10 can be dangerous. A lot of people that are involved in the
11 drug business feel they have a lot to protect, not only from
12 law enforcement, from other drug dealers. So there's very
13 often there are weapons involved. There's large amounts of
14 money involved. There's large amounts of drugs which convert
15 to large amounts of money. So it could be very dangerous. So
16 as agents we wear extremely heavy vests when we do the raid.
17 We wear helmets. We may have kneepads or elbow pads, shoulder
18 pads on, heavy gloves so that you don't hurt your hands, bring
19 a lot of equipment, items that may help us get into locked
20 doors or locked compartments. We did that on this particular
21 occasion. We met with the Georgetown City Police Officers
22 that were going to accompany us on the raid to go inside the
23 house, officers that were going to be around the perimeter of
24 the house to make sure that neighbors were safe, make sure
25 nobody escaped from the house or nobody entered into the

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1 property while we were doing what we had to do, devised a
2 tactical plan to knock, let the, the occupants know we were
3 there, give them the opportunity to open the door and come to
4 the door, and then I had a plan to force the door open if that
5 didn't take place.

6 Q So you had your whole team there and, and your support
7 from the city and you went to the door.

8 A Yes, sir.

9 Q Tell us what happened once you, once you breached the
10 door I guess would be the best way to put it, once you go
11 through their front door.

12 A We'll have one officer who's -- we call him the door
13 knocker. That's, that's his main job, and he knocks on the
14 door, makes sure that he loudly shouts that the people, to the
15 people inside to open the door. That's our, that's our
16 desire, that somebody's going to come to the door, open the
17 door, say come on in and we can get on with our business and
18 everybody'll be safe. That door knocker will also check the
19 door handle to make sure that it's unlocked so that if they
20 don't come to the door we can open the door without having to
21 try to force it open anyway. This particular occasion, Agent
22 Ben Marlow, he's a senior agent, been a, been a police officer
23 for a very long time, that was his job. He knocked loudly at
24 the door. He checked the door handle and it was locked,
25 shouted loudly several times. We could hear movement inside

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1 the house. It was no doubt that there were people up and
2 awake and moving in the house. No one came to the door. No
3 one responded to our -- to Agent Marlow's shouts. At that
4 time I used a, a device that's called a ram. It's a --
5 nothing more than a heavy large tube with a handle on it, and
6 when you swing it into a door it will usually force the door
7 open. We did that. I forced the door open, and then my job
8 is or whoever is tasked with that assignment their job is to
9 get out of the way, and that's what I did. Then other agents
10 had assignments to go into the house. One of our agents had a
11 very large shield, bulletproof shield. He went in, and other
12 agents went in and they fanned out in a -- tried to cover like
13 flowing water, tried to cover the entire interior of the home
14 so that -- the quicker we could get in, the quicker they know
15 that we're the police, the quicker things can calm down and we
16 could stop whatever unhappy things might occur and that's,
17 that's what our agents did, they got in, identified
18 themselves, secured everyone inside. We bring people. We'll
19 try to separate people that may have issues with each other.
20 We usually separate the homeowner or the main person from the
21 home. They're the ones that are going to be read the search
22 warrant, given certain information and we'll -- males and
23 females or maybe children with their families, we'll bring
24 them to an area where we could -- we'll check a couch or check
25 chairs to make sure there's no weapons or nothing that could

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1 hurt them or hurt us. Then we'll start putting people in an
2 area where we can control everyone, keep an eye on them and
3 then we have other procedures that go on and on from there.

4 Q So would you say your first thing that you do is make
5 sure everyone is safe and accounted for?

6 A That is correct, and once everyone is secured, brought to
7 a certain location, we'll do what's called a back clear
8 meaning we'll send agents back in and we'll start at the back
9 and we'll search a little bit better going forward, meaning
10 searching under beds. We have found people under piles of
11 clothes. We've found people in bathrooms we didn't know were
12 bathrooms or inside, believe it or not, inside of a couch.
13 We've found people in a lot of different locations that you
14 may not see at first. So once we have things slowed down a
15 little bit we'll do a back clear and check and make sure
16 there's nobody else inside the home.

17 Q And approximately how many people were inside the home as
18 far as like the residence, not necessarily your agents, but of
19 the residents of the home, the people that were staying there
20 that night?

21 A I think there were six. I think five adults and one
22 child.

23 Q And how much time did it take you to secure them and make
24 sure everyone was accounted for?

25 A Maybe 10 or 15 minutes to get everybody secured and to

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1 get the house back cleared. We consider the back clearing to
2 still be a tactical event and still be something that we have
3 to be extremely cautious for. We keep all our -- we keep our
4 ballistic shield there. We keep our ballistic helmet,
5 ballistic armor on because, in essence, those people if
6 they're still hiding they could be even more dangerous than
7 the, than the initial entry. So that probably took about 15
8 minutes.

9 Q Now, this case was a little bit different than previous
10 cases because of your helmet; is that correct?

11 A Yes. We, we started a pilot program. I guess as, as you
12 all know in South Carolina patrol officers or officers in
13 marked uniforms are breaking out body cameras. This was 2015.
14 It was just kind of starting, and our administer --
15 administrators thought that it might be something that maybe
16 we could try to do. So we started a pilot program to start
17 trying out helmet cameras. We wear a ballistic helmet, and on
18 the side of the helmet is a little rail and there's a small
19 camera that attaches, and the thought behind that was to at
20 least while we were in that tactical mode where we're entering
21 and where we might have some violent encounter occur that
22 maybe we could use -- utilize a camera to at least record what
23 occurred if, unfortunately, something bad occurred or maybe
24 that people would see the camera. It's not do anything or
25 commit any acts of violence. So that -- this was the initial

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1 stages of trying out these helmet cameras.

2 Q So and you said you keep it on while you're in tactical
3 phase? Does that mean you take it off?

4 A It's attached to the, to the, to the helmet. We don't --
5 once, once our tactical mission, once everybody is secure and
6 we -- essentially we say that the scene is safe then we, we
7 gear down. We take our big heavy vests off. We put the
8 shields away. We pick up our entry tools. We take our elbow
9 pads off. We take our helmets off. We kind of settle in
10 because we know we're going to -- in some cases we could be
11 there for four or five hours searching some -- I'm sure every
12 one of you has lost something in your house and you know how
13 long it takes to search. Well, we're not always familiar with
14 where we are, and it can take hours upon hours upon hours,
15 especially when someone's intentionally hidden something from
16 you. You have to be very cautious.

17 Q Now, did you download the recordings from your helmet?

18 A I did.

19 Q Would you take a look at what State's, marked as 166,
20 please? Do you recognize that?

21 A It's -- appears to be the video from -- it's marked as
22 the correct case number for the -- my video, my helmet camera
23 video from this search warrant execution on the 11th of
24 December 2015.

25 Q And have you watched the video that's on that, that?

1 A I have.

2 Q Okay. And is it a fair and accurate depiction of what
3 happened during that initial part of the raid?

4 A It is.

5 Q Okay.

6 MR. TODD: Your Honor, I'd move to place this into
7 evidence and to publish to the jury.

8 THE COURT: Any objection from Defense?

9 MR. WISE: No objection. We've seen it.

10 THE COURT: All right. It's, it's into evidence, and
11 that's denominated as State's Exhibit?

12 MR. TODD: 166, Your Honor.

13 THE COURT: 166 is into evidence.

14 (State's Exhibit Number 166 [Video - Raid] admitted into
15 evidence and appropriately marked.)

16 MR. TODD: Your Honor, permission to publish this to the
17 jury.

18 THE COURT: You may.

19 MR. WISE: The only objection I have I think it should be
20 visually shown without the sound, sound doesn't --

21 THE COURT: Might counsel approach the bench for one
22 moment?

23 (Whereupon, a bench conference is held in the presence
24 but out of the hearing of the jury.)

25 THE COURT: It's a very annoying sound; isn't it?

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1 MR. TODD: The Court's indulgence, Your Honor. Let me
2 get this thing.

3 (Whereupon, State's Exhibit Number 166 played in open
4 court.)

5 BY MR. TODD:

6 Q Agent Tempalsky, when the video ended why did it end at
7 that time?

8 A Well, I took my helmet off, and the camera is attached to
9 my helmet. I just shut it down and took my helmet and my
10 heavy gear and stored it in Agent Marlow's truck.

11 Q And what was in your hands as you were walking out?

12 A Some type of a sword and a large machete that were kind
13 of stuck in the trim over the front door, I would imagine to
14 repel anyone coming in the front door.

15 Q Okay. Now, once you took off your gear what'd you do at
16 that point?

17 A I returned inside, and then we have multiple tasks to do.
18 We, we need to identify or get the identities of everyone in
19 the home. An agent is usually assigned to do that. They'll
20 try to confirm everyone's identity, write it all down, take a
21 picture of everyone that's inside the home. In a house like
22 that, like that where it's like separate living areas it was
23 three bedrooms in the home. We had a team or at least two
24 agents in each room to do searching, and then one agent,
25 usually the one maybe that did some of the IDs would start

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1 taking statements. We have to show the search warrant to the
2 target or the homeowner, take pictures of any evidence, take
3 overall pictures of the home, quite a few tasks.

4 Q And where did you go?

5 A I went to the back bedroom. We had the, the agents that
6 entered Mr. Roach's room were there. The first two rooms were
7 covered by the time I went back inside. So I went to the back
8 bedroom, Mr. Myers' bedroom where Agent Marlow was conducting
9 his search.

10 Q Okay. And tell us about what you did during that search
11 of what you believed Mr. -- the room where Mr. Myers was
12 staying.

13 A I took some -- I took photographs inside the room and
14 helped Agent Marlow and -- or with Agent Marlow searched the
15 room.

16 Q So you went in and, and were part of the active search?

17 A I was. Like I think I mentioned before, we don't have
18 really a large unit here in Georgetown. So we try to -- we
19 all pitch in and do a couple of different jobs and you become
20 less of a supervisor and more of a hands-on person when you
21 have a small team and that's -- so that was one of my many
22 tasks that day was to search and take pictures, too.

23 Q Now, when you breached the residence, what did -- what
24 was -- what did it smell like?

25 A There, there was a strong over -- almost over-powering

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1 odor of raw marijuana especially as you got to the back
2 portion of the home, and you could smell burnt marijuana, too.

3 Q Now, you found a large quantity of marijuana in the
4 house; is that correct?

5 A We did.

6 Q And where was it found?

7 A The -- most of the marijuana was in the laundry room
8 outside Mr. Myers' bedroom. That was in excess of 300 grams.
9 It was several big bags, and then there was a, a fairly over
10 50 grams in Mr. Roach's room and over 50 in Mr. Myers' room.

11 Q So there was a large quantity of marijuana in the house?

12 A There was.

13 Q And a large quantity in common areas of the house?

14 A That's correct.

15 Q Okay. And there was clear that when you walked in the
16 door there was smell of marijuana?

17 A Yes.

18 Q Okay. Now, let's, let's walk through the search, and I
19 have some pictures I'd like you to, to look at and talk about
20 them.

21 MR. TODD: Your Honor, if possible I'd like to take Agent
22 Tempalsky down --

23 THE COURT: You may.

24 MR. TODD: -- to explain some of the pictures to the
25 jury.

1 BY MR. TODD:

2 Q Sit you right here. If you can go through these
3 pictures, please. We'll start here. Take a look at State's
4 Exhibit Number One and tell us about where that is.

5 A That, I believe, is Mr. Roach's room. I think my arms
6 have gotten a little bit shorter these days. So I might have
7 to put these things on. Yes. I believe this is Mr. Roach's
8 room and it's State's Exhibit One.

9 Q Okay. And show that to the jury. And what, what is
10 this? What is that exactly?

11 A It's a roll of money in a Crown Royal bag.

12 Q State's Exhibit Number Two, please.

13 A These are assorted receipts, some marijuana, some cigars
14 that are -- were found in Mr. Myers' room.

15 Q And if you would show those to the jury.

16 A And that's State's Exhibit Two.

17 Q State's Exhibit Number Three, please, tell us what that
18 -- where was that found?

19 A Mr. Myers' room and this is almost the same photograph as
20 I just showed. It is various receipts with various dates.
21 In, in blown-up pictures I know that there are multiple
22 different dates on these receipts and they were found in Mr.
23 Myers' room spanning several month period.

24 Q So you wouldn't believe those would be from just his
25 pocket that, that day is what -- is that what you're --

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1 A No. There, there was -- if I could expound upon that,
2 there's -- there was levels of, of life in Mr. Myers' room
3 where it wasn't a bag put down, a small bag put down for
4 overnight. There were things that were there from months and
5 months previous.

6 MR. WISE: Your Honor, I'm going to object to his
7 conclusions as to how long anything had been in a room at any
8 one time. I don't think he's been qualified.

9 THE COURT: I'll sustain the objection.

10 Q Let's go on to State's Number Four.

11 A This is to the -- as you entered Mr. Myers' room to the
12 left there's a TV stand, a TV, and there was a -- there's a
13 package here from a, from a head covering from a, a -- like a
14 doo rag and then there's a cup that it turned out later on to
15 be hash inside, dried hash and United States currency and
16 that's State's Exhibit Four.

17 Q I'll walk it down so everybody can see it.

18 JUROR: Who is that in uniform?

19 Q What does that look like?

20 A Well, this is a cup, and if this blue -- yes. It's a
21 plastic --

22 JUROR: Looks like a cup.

23 A -- looks like a small plastic drink cup like sometimes
24 they give out for free.

25 JUROR: Oh, and that's where the hash was?

1 THE COURT: Well, one -- the jury is required to sit,
2 listen and observe. The jury cannot ask questions. So listen
3 and pay attention.

4 Q If you would please explain what State's Exhibit Five is
5 and publish to the jury.

6 A That's a wider view of that area that we just -- I just
7 talked about with the -- with a cup and this, this doo rag
8 package. This was a -- this is Mr. Myers' bedroom.

9 Q If you could explain what Number Nine is.

10 A All right. This, this is an outside view going into Mr.
11 Myers' room. Then this is State's Exhibit Nine, and this kind
12 of shows as you go into the room the bed is on the left. The,
13 the door is -- I'm sorry. The bed is on the right. The door
14 is to the left side of the room and then there is windows
15 along the right side and then the -- kind of the front corner
16 there was a large screen TV that was on.

17 Q And the TV was on that morning?

18 A It was.

19 Q And was this photograph taken before you entered the room
20 to search?

21 A Before I searched. Yes.

22 Q If you would take a look at State's Exhibit Number Ten.
23 Explain that to the jury.

24 A This is two partially burned marijuana cigarettes that
25 were in an ashtray by the side of Mr. Myers' bed in that room,

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1 and that's, sorry, State's Exhibit Ten.

2 Q If you would take a look at State's Exhibit Number 20.

3 A Okay. This -- it shows some dry cleaning still in the
4 bag. It starts to show boxes of shoes. There were quite a
5 few boxes of men's sneakers, expensive sneakers that were all
6 lined up at one end of the room, and in the bottom portion
7 here is a paper bag like a -- kind of a nice paper bag that
8 had plastic handles, you know, that, that you can carry out
9 that, that, that carries heavy things. Inside that bag was a
10 school achievement certificate for Zeon Myers and then a Wal-
11 Mart bag, this, which is the gray bag, inside that Wal-Mart
12 bag were two plastic bags. One of them had I think about 19.6
13 grams in the package weight of crack cocaine, and the other
14 bag had around 57 grams package weight of powdered cocaine.
15 When I say package weight, we're, we're not, we're not a lab.
16 So we don't have scales that are capable of taking drugs out
17 of whatever package they're contained in, put them in a
18 sterile environment and weigh them. Whatever package they're
19 in we weigh them. We weigh them with scales that are not
20 zeroed. We're getting, getting an approximate weight. We're
21 not -- we, we rely on the lab to give us exact weights and the
22 subsequent indictments are based on the exact weights. We're
23 just getting an approximate weight.

24 MR. WISE: Excuse me. What was the number of the one
25 where he made reference to the Wal-Mart bag?

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1 MR. TODD: Twenty.

2 MR. WISE: Excuse me?

3 MR. TODD: Twenty.

4 MR. WISE: Twenty, okay.

5 BY MR. TODD:

6 Q If you would take a look at State's Exhibit Number 21.

7 A It's a little bit more of a close up. It kind of shows
8 the, the inside now looking down into that bag. It shows Zeon
9 Myers' name printed on this certificate and you could see as
10 it's folded there this bag was -- this Wal-Mart bag was on top
11 of it. So there's clothing in the bottom of the bag. There's
12 a paper or school certificate and then there's the Wal-Mart
13 bag on top. The Wal-Mart bag was bunched up so you couldn't
14 see the contents inside but inside more plastic and the crack
15 and the powder cocaine.

16 JUROR: So that's --

17 THE COURT: We, once again, you know, there -- in some
18 states in some forums they allow jurors to ask questions, make
19 comments, but in South Carolina it's not allowed. What you're
20 required to do is sit, listen, pay attention, no comments, no
21 questions from the jury.

22 Q If you would, please take a look at State's Exhibit
23 Number 22, explain that to the jury.

24 A This is just a close up of the gray Wal-Mart bag showing
25 the other -- showing the cocaine and the crack inside. It's

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1 kind of the third in a or fourth in a series. It's just a
2 close up to show what's inside that bag and that's Number 22.

3 Q If you would, please, take a look at State's Exhibit Number
4 23, explain where you found that and what that, what it is.

5 A The one on the left you'll see they're both school
6 certificates for Zeon Myers. The one on the left is the one
7 that was in the Wal-Mart bag. It's -- you could see it's got
8 a lighter color and it's for the year -- for the 2013, '14
9 session and then the one on the right is again for Zeon Myers
10 and that's for the '14, '15 book challenge session. The
11 second certificate was found in, in the room as well, not in
12 that bag, in another location in the room.

13 Q If you would take a look at State's Exhibit Number 24.
14 Explain what that is, where it was found and --

15 A Yes. These are two printed papers for the deaths of
16 relatives of Mr. Myers for a Jamal Myers from 1999 and from
17 Marvin Myers from 2001, and these were found in various
18 locations in Mr. Myers -- in that bedroom where Mr. Myers was
19 found and that's 24, Exhibit 24.

20 Q If you would take a look at State's Exhibit Number 25,
21 please.

22 A This is a -- this is that TV stand in that or stand in that
23 room and there was an envelope that is partially protruding
24 out from under that stand that's in Mr. Myers -- in the
25 bedroom where Mr. Myers was found.

1 Q State's 30, please.

2 A It's that -- it's envelope. It's hard to read in this
3 picture, but pulled that envelope out and it's addressed to
4 Mr. Marvin Myers and that's the envelope that's under that TV
5 stand in the room Mr. Marvin Myers was found.

6 Q If you would take a look at State's 28.

7 A That's that -- yes. That's the, the same photograph or
8 the same item being photographed from close up, and now it's
9 -- you can read that it says it's to Marvin Myers, [REDACTED] North
10 Alex Alford Drive in Georgetown, South Carolina, and it's from
11 the Georgetown County Magistrate Court.

12 Q If you would take a look at State's 38.

13 A This, this is a picture of Mr. Myers, and what I couldn't
14 explain before, this is the head covering, the, the doo rag.
15 The black package contained these type of items that he's
16 wearing on his head, and I'm in the background.

17 Q If you will take a look at State's 40.

18 A This is a close up of Mr. Marvin Myers' driver's license
19 taken out of his wallet which was taken out of these pants
20 that were found on the bed or found in that room in the
21 bedroom that he was in.

22 Q State's 41, please.

23 A This is another picture of the wallet on top of a pair of
24 jeans. That's the same wallet that this driver's license was
25 taken out of and that's, again, inside that room, Mr. Myers'

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1 room that he was found in on the morning of December 11th,
2 2015.

3 Q State's 42, please.

4 A Yes. These are those -- the last photograph. These are
5 the pants that we had found the wallet in and that contained
6 Mr. Myers' ID, and this is a large amount of U.S. currency, I
7 think came out to somewhere in the vicinity of \$4,600 cash.

8 Q State's 43, please.

9 A This is another pocket, and I think what we're, we're
10 seeing here is the rental car keys, same unique pants that we
11 had found money and other items and the wallet with his ID in,
12 Mr. Myers' ID, and you can see the rental car key ring for an
13 Infiniti, a luxury Infiniti SUV that was rented and parked in
14 the driveway at [REDACTED] Park Street.

15 Q Could you explain State's 44, please?

16 A I think this is the -- this, this appears to be some
17 portion of the marijuana we found in that room. You can see
18 the same bed sheets. That's a plastic bag coming out of a --
19 I think this was a sack of some sort, and there was marijuana
20 inside that in a plastic bag in Mr. Myers' room.

21 Q State's 45, please.

22 A There was a -- this is another plastic bag, a Piggy
23 Wiggly bag. Inside that was a sealed zip-lock container. We
24 find -- zip-lock package. We find that marijuana that gets
25 shipped it's very common for marijuana to be shipped either

1 through the mail, parcel post, UPS. Very often it'll be
2 shipped in one gallon --

3 MR. WISE: Your Honor, I'm going to object to, to that
4 testimony.

5 THE COURT: Sustained.

6 MR. WISE: I don't think he's been qualified as that.

7 THE COURT: Sustained.

8 Q Just explain.

9 A It's a, it's a one-gallon plastic bag containing
10 marijuana that's been cut open and it's hidden inside of a
11 Piggly Wiggly bag that's then hidden inside of a laundry
12 basket that had laundry in it, and this is in the room Mr.
13 Marvin Myers was found in that morning.

14 Q State's 46, could you explain that?

15 A This is another close up of that Wal-Mart bag we talked
16 about before, the gray Wal-Mart that has -- this is the crack
17 and the powder cocaine that you can just see it a little more
18 clearly.

19 Q State's 47, could you explain that, please?

20 A This is a -- we, we use a field test kit. It's a
21 presumptive kit that helps us in -- to determine what type of
22 drugs we've seized, and this, this kit is showing blue meaning
23 it's tested positive for either crack or powder cocaine, and
24 it's on a chair in the room by the two packages that we took
25 out of a Wal-Mart bag in Mr. Myers' bedroom showing a

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1 presumptive test of positive for cocaine in those packages.

2 THE COURT: All right. Let's take a break here and allow
3 the jury to refresh themselves. Once again, do not discuss
4 the case. It appears as if this jury panel is a particularly
5 expressive jury panel, but I'm going to ask, and once again,
6 I'm going to ask that you all not discuss the case. Don't
7 comment on anything, don't talk about anything. Talk about
8 the weather. Talk about whatever you want to talk about, but
9 do not talk about the case. Do not make any commentary
10 whatsoever. Everyone remain seated as the jury exits the
11 courtroom.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Might counsel approach the bench for one
15 moment?

16 (Whereupon, a bench conference is held.)

17 THE COURT: All right. All right. We'll stand at ease
18 for about five minutes.

19 OFF THE RECORD

20 (On the record. The following takes place outside the
21 presence of the jury.)

22 MR. TODD: Your Honor, before the jury comes in, Mr.
23 Ralph Wilson has come and talked with his client, Mr. Roach.
24 We had that issue come up yesterday.

25 THE COURT: Right.

1 MR. TODD: And it's my understanding he's going to plead
2 the Fifth. If, if you want Mr. --

3 MR. WISE: That's correct..

4 MR. TODD: If you want Mr. Wilson to come in and put --
5 place it on the record, we can do that, however, however you
6 want to handle that.

7 THE COURT: Is Mr. Wilson here?

8 MR. WISE: Yes.

9 MR. TODD: He just stepped back again with his, his
10 client.

11 THE COURT: Okay.

12 MR. WISE: He was --

13 THE COURT: All right. What is the State's position with
14 regard to his taking the Fifth?

15 MR. TODD: Your Honor, we're not going to use him. He
16 has pled guilty, and I mean, we won't -- if he's going to
17 plead the Fifth, I mean, it doesn't affect his guilty plea as
18 it is, and it's fine with us. We don't really have any, any
19 problem with it, him, him pleading the Fifth.

20 MR. WISE: How can, how can anybody have a problem with
21 it in a sense.

22 MR. TODD: And it's --

23 MR. WISE: That's what I understand in talking with Mr.
24 Wilson, too. He has, he has met his -- he was kind enough to
25 come down this morning and accommodate all of us and met with

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1 his client, knows some more about the facts of the case and
2 basically just his advice to his client is --

3 THE COURT: There's no motion from either side to compel
4 him to say anything?

5 MR. WISE: I don't know if any -- I would -- there's no
6 way to compel him if he's going to invoke the Fifth as I
7 understand it.

8 MR. TODD: And nothing from the State, Your Honor.

9 THE COURT: Okay. Very good.

10 MR. WISE: And I, I appreciate Mr. Wilson coming down and
11 clarifying that one way or the other.

12 THE COURT: All right. Very good.

13 MR. WISE: Okay.

14 THE COURT: All right. We're ready for the jury.

15 Well, before we do that might counsel approach the bench for a
16 moment?

17 MR. WISE: Sure.

18 MR. TODD: Yes, sir.

19 (Whereupon, a bench conference is held.)

20 THE COURT: We're ready for the jury.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: Mr. Todd.

24 MR. TODD: Thank you, Your Honor. Agent Tempalsky, if
25 you will.

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1 THE COURT: Remind you that you're still under oath.

2 MR. TEMPALSKY: Yes, Your Honor.

3 BY MR. TODD:

4 Q Agent, if you would, please take a look at State's
5 Exhibit Number 50.

6 A This is a photograph, and as I explained before, we use
7 some rudimentary scales, but this is a photograph of that what
8 I indicated was hash or dried hash that was in that green
9 plastic cup in Mr. Myers' -- the room Mr. Myers was found in.
10 It has been taken out of the cup. It's put in a heat-sealed
11 bag, and to the -- it's showing 12 grams on our scale. The
12 case number is on a piece of paper at the bottom, and on the
13 right is a presumptive test kit for marijuana base, and it is
14 coming back as a positive. It's purple, dark purple.

15 Q Where do you get the scales from?

16 A Various investigations, some of them might have been
17 purchased by departments. They're not certified scales by any
18 means.

19 Q So just your typical like kitchen scale?

20 A Yes. Ones you could buy in Wal-Mart or any, any store.
21 People use them for measuring out food when they're on diets
22 or weighing mail or various uses.

23 Q If you would, take a look at State's Exhibit Number 53.

24 A Yes. This, this again is in the bedroom that Mr. Myers
25 was in in the home on Park Street on the morning of the search

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1 warrant and it shows that what I had spoken about before,
2 large amounts of, of boxes with shoes, and this shows some
3 kind of expensive baseball hats and expensive sneakers, and,
4 and the boxes and clothes kind of stacked up in one corner of
5 the room would have been on the left. I think that's the left
6 corner of the room.

7 Q If you would, take a look at State's Exhibit Number 58
8 and explain to us what that is.

9 A This is a -- again, here's a piece of paper here that
10 shows our case number on it at the top, a little tan piece of
11 paper what indicates that it was part of Mr. Myers' evidence,
12 and it's a luggage tag, and it's from -- that the airlines put
13 on your luggage when you're -- when you fly, and there was a
14 piece of luggage outside of Mr. -- of the bedroom Mr. Myers
15 was found in. Right outside the door there was a piece of
16 luggage there in that room that we found a 300 and X amount of
17 grams of marijuana in, and this indicates a Delta flight and
18 the tag was removed from the bag and put into evidence.

19 Q Can you look closely on there? I believe there's a date
20 on that tag. Can you tell us the date on the tag?

21 A Maybe I need new readers, but I'm having a tough time
22 actually seeing it. I thought there was a larger photograph
23 of this.

24 THE COURT: The picture will speak for itself.

25 Q Yes.

1 A Yes, sir.

2 Q If you would take a look at State's Exhibit Number 59.
3 Explain to us what that is.

4 A These are other, other items we recovered during the
5 investigation. This is the rental car agreements from that
6 luxury Infiniti SUV that, that was in the driveway that the
7 keys were in Mr. Myers' pants and there's some handwritten
8 notes on here indicating that it's crossed out, and at one
9 point the rental car company was owed \$1,172.84, and then it
10 appears that there were additional days and pending is
11 \$2,216.62 handwritten notes on a little sticky for that rental
12 car, I guess the, the accumulated charges for the period that
13 they had this car.

14 Q Thank you. If you would have a seat on the witness
15 stand.

16 A (Complies with request.)

17 Q Now, you've talked about this rental car and the keys.
18 Did you all search the rental car?

19 A Yes. Agents -- I know Agent Marlow retained -- took the
20 keys out and I believe Agents Prevatte and possibly McKay went
21 outside with him to search vehicles outside.

22 MR. WISE: Can we approach one minute, Your Honor?

23 THE COURT: Yes.

24 (Whereupon, a bench conference is held in the presence
25 but out of the hearing of the jury.)

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1 BY MR. TODD:

2 Q So a key was obtained from a pocket by Agent Marlow; is
3 that correct?

4 A That's correct, the pocket of those jeans that we found
5 Mr. Myers' identification in and some other items.

6 Q And then the vehicle was opened up with that key; is that
7 correct?

8 A That's correct.

9 Q And a search was done of that vehicle?

10 A That's correct.

11 Q And what was found inside of the vehicle, generally what
12 was inside the vehicle?

13 A A jacket and some toys that were apparently Christmas
14 gifts.

15 Q Okay. And what'd you do with the toys?

16 A Everything was brought in, back into the house and the
17 toys were at Mr. Myers' request left at the house.

18 Q So, he, he said, "Please leave the toys here?"

19 A He was given the option what he wanted to do with the
20 toys.

21 Q Okay. And there was the jacket you said was in the, in
22 the vehicle?

23 A That's correct.

24 Q And the jacket, jacket was searched?

25 A The jacket was searched.

1 Q And what was found inside of the jacket?

2 A A bag with I believe 1.4 grams of what tested to be
3 heroin inside the jacket, inside a pocket in the jacket.

4 Q And did you take possession of the heroin?

5 A I did.

6 Q Okay. Now, we've discussed a lot of drugs today. Did
7 you take possession of all those drugs?

8 A Yeah. Yes.

9 Q Okay.

10 A At, at the point where the drugs were packaged and turned
11 over to the evidence crew, I gathered everything up at the
12 scene and then it was marked and packaged and then I dropped
13 it off at the Georgetown City Police Department evidence
14 locker which locked in a locker that I don't -- once I lock it
15 I don't have access to it anymore.

16 Q Okay. So tell us a little bit about what you do to make
17 sure the drugs don't get mixed up with any other case or, or
18 anything. Do you -- once you take possession of the drugs are
19 you the one that handles them ultimately?

20 A Yes. And my, my, my personal style is is that I, I put
21 items in bags either with -- to the person or to the location
22 that they're found. So if I was to search three people and
23 take items off of those three people I would have a bag for
24 each person, and I will put those items into that bag, seal
25 the bag and then when I go back to our office then I could go

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1 through those items, photograph them more clearly, mark them
2 as evidence, and we put our items in plastic bag that we can
3 heat seal and then put them into evidence. If it was a room
4 I'll take a larger bag, maybe just a large paper bag and I'll
5 put all the items in the room in a large paper bag and then
6 I'll separate it. If there's a lot of different areas in a
7 room, I may separate it with small like lunch bags, small
8 paper bags inside that bag just to keep myself so I know
9 what's found in what location, and that's another reason we
10 take the pictures because we find -- we may find a lot of
11 evidence. We might not find any or a small amount, but the
12 pictures help as we're doing the evidence to make sure that we
13 have the right items in the right locations, and it's marked
14 on the evidence sheet as where it was found.

15 Q So you did place these items into a, a heat sealed bag or
16 a best bag? Is that what, what it's called?

17 A Yes. The South Carolina Law Enforcement Division tests
18 drugs other than marijuana for us. So their standard is that
19 items to be submitted to the SLED lab -- SLED is the acronym
20 for the law enforcement -- South Carolina Law Enforcement
21 Division -- is they have a, a manila envelope, and within the
22 manila envelope is a bag that has a tamper-proof seal. When
23 you peel the cover off there's a glue, and once you push the
24 glue down you can't open it up any longer. It's a heavy stock
25 bag. Then there's various forms to fill out, and so you

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1 package your evidence, seal it up in whatever method you use,
2 and I say we use heat-seal. We put that in this SLED bag,
3 pull the, the tab and seal it down, initial the tab and then
4 that and the paperwork go into a manila envelope. We place
5 those into an evidence locker, and the evidence custodian
6 transports those items in that sealed bag to the SLED lab and
7 they do the analysis. They determine what the drug is and the
8 exact amounts of the drug.

9 Q Do you recall the number of the best bag that you, you
10 sealed?

11 A If it's okay with Your Honor I could check back to make
12 sure I have the correct number on my case report.

13 THE COURT: You may.

14 A B, bravo, 252195. That's SLED imprints that on the bags
15 themselves.

16 Q If you would, take a look at State's Exhibit Number 167
17 just for identification purposes only. Is this the bag that
18 you sealed the drugs in?

19 A It is, and it, it has my, my signature on it, and at the
20 -- the tamper proof strip at the top is my initials as well.

21 Q Thank you very much. Now, once everyone was secured --

22 MR. WISE: Excuse me. Excuse me. Was that introduced as
23 identification or just --

24 MR. TODD: It was not. It was not, just for ID.

25 MR. WISE: Okay. Good enough. Thank you.

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1 BY MR. TODD:

2 Q So once everyone was secured in the residence, all the
3 drugs were found, what happened at that point? Was everyone
4 -- is that the end of the case? Do you close everything up at
5 that point?

6 A Oh, no. Well, several, several people were transported
7 by transport units to the detention center. The search
8 warrant was served on the -- Mr. Roach in this case, Mr. Roach
9 who was the owner and -- of the home and he was given the
10 option where he wanted his copy of the search warrant to go,
11 and we try to be as accommodating as possible, and in this
12 case when we asked Mr. Myers what he wanted to do with the
13 packages, the toys that were taken out of the rental car. We
14 asked Mr. Roach how he wanted his home to be secured. He had
15 some animals in, in -- pit bulls outside, and the City Animal
16 Control Officer was called to make sure that the dogs were
17 okay. We made arrangements for, for the young man to get to
18 school. We won't leave the house until it's completely
19 searched, completely secured and everyone is either released
20 or, or taken into custody, and then we transport the -- the
21 case agent would transport the items of evidence back to our
22 office where I start packaging them, in this case where I
23 started packaging them.

24 Q Now, there was a bunch of marijuana found in the house as
25 well; is that correct?

1 A That's correct.

2 Q And where is that tested?

3 A Marijuana is the, is the one scheduled drug that is
4 allowed to be tested outside the SLED labs. So our evidence
5 custodian for the drug enforcement unit in Georgetown is the
6 Georgetown City Police Department. So they have certified
7 marijuana analysts that can test the marijuana there, and they
8 would test the marijuana in the case at Georgetown City Police
9 Department.

10 Q So you place that into a bag as well?

11 A That goes in separate heat -- again, we put all, all drug
12 evidence in heat-sealed bags and that -- when it's separate
13 heat sealed bags, not inside a best bag but in just separate
14 evidence bags on an evidence sheet.

15 Q Do you have that evidence sheet with you?

16 A Your Honor, can I refer again?

17 THE COURT: Yes.

18 A There is, there is several marijuana evidence sheets
19 here, and in this case, part of the marijuana is on the
20 evidence record for Mr. Myers, and that is the marijuana found
21 in his room, and then there's another sheet for the large
22 amount of marijuana found in the laundry room portion of the
23 home.

24 Q Now, the hashish as you called it, that was actually sent
25 to SLED; is that correct?

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1 A It was because it's my understanding, and I am not a
2 marijuana analyst, that they can only test marijuana that has
3 been removed from the plant. So when we -- when it's been
4 converted to THC or an oil or a wax or maybe a food or into
5 hash or hash oil we -- our marijuana analysts at the local
6 municipalities cannot test that. So it was -- in this case
7 the hash was packaged in the best bag as well in a separate
8 zip-lock bag, heat-sealed bag inside the best bag.

9 Q Okay. Now, once everything is secure -- one -- did you
10 find any guns in the house?

11 A Several.

12 Q And whose room were they in?

13 A Scott Roach's.

14 Q Okay. And once everyone was secure and you all left the
15 house, did you leave the house just wide open?

16 A No. No. I think on the video you could see there was a
17 piece of trim with the nails poking out. We carry a couple of
18 tools in the truck, and we managed to get that back on and the
19 door locked as best we can get it locked so it was secure.
20 Now, we always offer, "Would you like us to call someone that
21 could come and check your house, make sure it's all safe?" We
22 go back around. We make sure lights aren't turned on.
23 Heaters aren't on. Stoves aren't on. The last thing we want
24 is a fire or something like that, try to close any windows we
25 can close. We secure it the best we possibly can.

1 Q And how long on that morning would you say it took to
2 complete this entire process?

3 A Hours.

4 Q Three or four hours?

5 A That would be a fair estimate.

6 Q Thank you. That's all the questions I have right now.
7 Please answer any from Defense.

8 THE COURT: Cross examination, Mr. Wise.

9 CROSS EXAMINATION

10 BY MR. WISE:

11 Q Mr. Tempalsky?

12 A Don's fine. Yes, sir.

13 Q All right. Mr. Josh Bliss was the person who wore the
14 video camera to make a buy from Scott Roach?

15 A That is correct, sir.

16 Q All right. And he made, I believe, two buys or more or
17 do --

18 A Yes, sir.

19 Q Okay. Just two?

20 A I believe that is correct. Yes, sir.

21 Q All right. And he had been living there at Mr. Roach's
22 residence for a period of several months?

23 A I didn't know he was living there at all.

24 Q Right.

25 A And I, and I don't, don't believe he had been living

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1 there for several months.

2 Q He didn't tell you that?

3 A No. He did not.

4 Q Okay. All right. Now, he got arrested for drug charges
5 back in June of 2015, I believe it was; wasn't it?

6 A I don't have his record with me.

7 Q Let me see if I can refresh your memory.

8 A That'd be great.

9 Q Huh?

10 A That'd be great.

11 Q Actually I think that was back in -- that was -- actually
12 back in March of 2015. Does this refresh your memory?

13 A This is not our arrest, but it appears, yes, he was. I
14 don't know what the charge -- exact charge was, but it's a
15 possession charge.

16 Q Right. All right. And had you all -- had your
17 department arrested him after that March date?

18 A The DEU or --

19 Q DEU, yes.

20 A I, I don't, I don't know. At --

21 Q Basically my question is this, what prompted him to start
22 cooperating with DEU?

23 A I would imagine some of his outstanding charges.

24 Q Okay.

25 A We work in concert with -- and I have no problem

1 explaining it.

2 Q Right.

3 A We, we work with other departments.. So if, if someone is
4 charged by a -- an agency that is involved with the DEU, they
5 may cooperate with us and let that person work with the DEU in
6 order to --

7 Q Right.

8 A -- help themselves on those charges from other agencies.

9 Q Not an, not an uncommon practice?

10 A No, sir. Not at all.

11 Q All right. So basically Mr. Bliss was working to get
12 some charges dismissed?

13 A I believe that was his motivation.

14 Q Be a -- to be blunt with it?

15 A Yes, sir.

16 Q Okay. And he agreed to wire -- wear a wire to go make
17 this buy?

18 A Yes.

19 Q Okay.

20 A And the wire being video and audio.

21 Q Okay. And I assume as part of that agreement Mr. Bliss
22 had to agree not to get back involved in drugs or use drugs?

23 A That's correct.

24 Q All right. So when he was found in that house with drugs
25 in his possession that was a violation of that agreement?

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1 A That's correct.

2 Q Okay. I believe Mr. Bliss ultimately got out on bond on
3 this, this charge in December?

4 A He, he may have. I, I didn't keep track of him.

5 Q All right. Do you know that he was subsequently arrested
6 on another drug charge in June of 2016?

7 A I know he was arrested for another drug charge later. I
8 don't know the date, but --

9 Q Okay. And he was put in jail for that?

10 A I believe he was. Yes, sir.

11 Q Okay. Now, where are the pictures that you -- now, you
12 found how much marijuana in the laundry room?

13 A About 395 grams.

14 Q And that was in some bags; correct?

15 A Those large zip-lock bags.

16 Q And I believe that is shown in State's Exhibit 45 or is
17 there another one?

18 A That's the bag from Mr. Myers' room.

19 Q All right. It's in a laundry bag?

20 A That's his -- that's the laundry basket from his room.

21 Q That's, that was the room he was in that night?

22 A Yes. But that's not the laundry room.

23 Q All right. Hold on. But the laundry room was in these
24 big bags; correct?

25 A Yes. The laundry room marijuana was in three separate

1 bags with markings on them. That marijuana you just showed me
2 was that approximately 55 grams that was in the laundry basket
3 in Mr. Myers' or the room Mr. Myers' was found.

4 Q So what was -- what you'd say it was in the room Mr.
5 Myers was found in was a little over two ounces, two ounces?

6 A A little less.

7 Q A little less. Okay.

8 A It was -- about 55 grams, but once again, we -- package
9 weight.

10 Q Okay. Now, you found also you say around the house some
11 things with Marvin Myers' name on it such as State's Exhibit
12 35; is that correct?

13 A We -- I didn't find anything -- that I recall finding
14 anything with Mr. Myers' name on it around the house, but I
15 did find it in that room he was in.

16 Q Well, that's part of the house?

17 A Yes, sir.

18 Q Okay.

19 A But you said around the house.

20 Q All right.

21 A I just wanted to be specific.

22 Q All right, sir. Thirty-five is something you found;
23 correct?

24 A Yes, sir.

25 Q And that has an address for Mr. Myers of what?

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- 1 A This one says [REDACTED] North Alex Alford Drive.
- 2 Q And Exhibit 28 has an address of what?
- 3 A [REDACTED] North Alex Alford Drive.
- 4 Q All right. And you found his driver's license had that
- 5 same address?
- 6 A I believe it did.
- 7 Q And there were several other items that had that address
- 8 on it?
- 9 A That's correct.
- 10 Q In the house.
- 11 A Yes, sir.
- 12 Q Found in -- correct?
- 13 A Yes, sir.
- 14 Q All right. And you also found a deposit slip crumbled
- 15 up; correct, where he had deposited at one time \$5,000 and
- 16 another time \$1500?
- 17 A Yes, sir.
- 18 Q All right. Is that correct?
- 19 A Yes, sir.
- 20 Q And those were done in -- over the last year or so, if
- 21 you remember the dates?
- 22 A I didn't look at the date, but I'll, I'll take your word
- 23 for it.
- 24 Q All right. I can't remember either right now. All
- 25 right. Now, were you the only person with a video camera?

- 1 A No.
- 2 Q How many video cameras were there that day?
- 3 A I'm not sure, maybe three or four.
- 4 Q All right. Do you know when they turned theirs off?
- 5 A I do not.
- 6 Q All right. You turned yours off when you went outside?
- 7 A Yes. I would -- and I would have to make an assumption
- 8 that, that when their helmets were off they were off. They
- 9 could have been running still, but they would have been
- 10 outside.
- 11 Q Just sitting there, and how long will these video cameras
- 12 record?
- 13 A I don't know. I, I don't know.
- 14 Q I mean, more than 15, 20 minutes I assume?
- 15 A I would assume. Like I say, we were just in a testing
- 16 phases of using them at that time.
- 17 Q You don't remember the manufacturer telling you these
- 18 would record for two hours, three hours or whatever?
- 19 A Well, we never -- I never received anything from the
- 20 manufacturer. I think that the, the, the thought process was
- 21 is the card might hold maybe 30 minutes.
- 22 Q All right. So you found this house had drugs basically
- 23 throughout?
- 24 A Yes.
- 25 Q Okay. And you had six adults in that house?

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1 A That is correct.

2 Q Okay. Did you ever take any of the plastic bags from the
3 drugs that were taken and requested any DNA be done on those
4 bags to see who had held them?

5 A We did not.

6 Q You did not. All right. You ever checked them for any
7 fingerprints?

8 A We did not.

9 Q All right. And you can get DNA off of a plastic bag?

10 A I would assume so.

11 Q All right. Fingerprints, less probable, but can be done?

12 A I -- I'm, I'm not a crime scene analyst, but I understand
13 that it is very difficult to do.

14 Q Okay. Now, you also say that you found a jacket in the
15 car Mr. Myers was driving?

16 A Well, the car that he was in control of.

17 Q Right. Or -- I think -- you didn't see him drive it?

18 A Or he had to -- I did not.

19 Q Okay. The one that, that I think he admitted he was in
20 control of?

21 A Yes, sir.

22 Q Okay. Did you ever take the jacket and do DNA on that?

23 A No, sir.

24 Q All right. And you said you found small bag in that
25 jacket pocket?

- 1 A Yes, sir.
- 2 Q Was there any identification in that? Did you find it or
- 3 somebody else find it?
- 4 A I believe Agent Marlow.
- 5 Q Who?
- 6 A I did not initially find it, no.
- 7 Q You didn't find it initially?
- 8 A No.
- 9 Q Another agent did?
- 10 A Yes, sir.
- 11 Q All right. But you were in charge of, yeah, I guess,
- 12 collecting all the evidence ultimately?
- 13 A Yes, sir.
- 14 Q All right. And the item that was found in the pocket of
- 15 the jacket that was in the car, did you do any DNA analysis on
- 16 that bag?
- 17 A No, sir. And no DNA analysis was done on any of the
- 18 items taken from the home.
- 19 Q All right. Give me one moment. So everybody stayed
- 20 there, I guess, for a period of a couple of hours while you
- 21 all did the search?
- 22 A Yes, sir.
- 23 Q All right. So nobody was taken to the detention center
- 24 until the search was complete?
- 25 A I can't remember who was taken first or at what point,

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1 but I would say portions of the search were definitely
2 complete before anybody was taken. I think Ms. LeDay was
3 taken first before --

4 Q Crystal LeDay?

5 A Uh-huh.

6 Q Okay. And you also found a bunch of receipts and stuff
7 for that?

8 A We did.

9 Q In the room?

10 A Yes, sir.

11 Q A name, identification on any of those items?

12 A I'd have to look at them. I don't think so, no.

13 Q All right. You -- could you tell from the receipt
14 whether or not a credit card was used to purchase that item?

15 A I'd have to look at each one. I think some of them were
16 cash. I don't recall any credit card numbers.

17 Q I guess my bottom line question is, when you saw a
18 receipt in a room did you ever go back and try to find out who
19 actually made that purchase through tracing the credit card
20 back --

21 A No.

22 Q -- through the Wal-Mart or wherever?

23 A No.

24 Q Okay. Just give me a moment. And you also in Exhibit 34
25 had a bunch of business cards found in Mr. Myers' possession?

- 1 A These were the, the items out of Mr. Myers' wallet.
- 2 Q In his wallet?
- 3 A Yes, sir.
- 4 Q Okay. And one of them was a, was a credit card?
- 5 A It is. Well, it's a card, but I don't know that it's an
- 6 active card. It, it looks to be like a card that you have the
- 7 strip on it and it comes in the mail. I don't know that I see
- 8 a, a name on it. It's kind of one of those ones that you have
- 9 to activate. It's --
- 10 Q All right. You didn't check it out then?
- 11 A No. We don't always have the ability to get information
- 12 from these companies.
- 13 Q And do you -- did you look in detail of those cards that
- 14 were pictured there as to what businesses they were?
- 15 A I, I photographed what -- the, the items that were in the
- 16 wallet. I did look at them.
- 17 Q And many of them were for companies that supply clothing,
- 18 shoes and stuff?
- 19 A I don't -- I see, do see one for shoes.
- 20 Q Okay. All right. And what was -- what do you say was
- 21 found in Mr. Roach's room?
- 22 A I have my -- I have a list of the items that I put into
- 23 evidence that were found in his room if you -- I could --
- 24 Q All right.
- 25 A Two handguns, about \$1435 in U.S. currency, two phones,

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1 some pills, approximately 57 grams of marijuana, approximately
2 4.8 grams of heroin, 1.7 grams of cocaine and some various
3 small items like straws.

4 Q I think there's, I think there's the picture I was
5 looking for a moment ago, Exhibit 96 is the bags of marijuana
6 that were found in the laundry room?

7 A That is correct.

8 Q Okay. And Mr. Roach owned this house?

9 A It's my understanding that it's in a trust.

10 Q Okay.

11 A But he's the, he's the principal, in control of the home.
12 He's the, the --

13 Q Let me rephrase it then. He's the beneficiary of the
14 house whether it's technically in his name or not?

15 A That appears to be true.

16 Q Okay. Do you know how long he had been living there?

17 A I, I don't.

18 Q Okay. All right. Thank you very much.

19 A Yes, sir.

20 THE COURT: Any redirect?

21 MR. TODD: No, Your Honor.

22 THE COURT: You may step down.

23 A Yes, Your Honor.

24 THE COURT: We're going to take a break for lunch, and
25 we're going to ask that you return at 1:30, 1:30 sharp. Do

1 not discuss the case amongst yourselves or with anyone else.
2 Do not do any independent investigation, and I'll ask that you
3 be back at 1:30, 1:30 sharp.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Mr. Wise, you had requested to put something
7 on the record?

8 MR. WISE: Yes, I did, Your Honor. We had noted that I
9 was objecting to the introduction of evidence concerning what
10 was seized in the automobile, although the evidence
11 technically wasn't introduced -- out of an abundance of
12 precaution I did -- on the grounds that this automobile was
13 not described in the warrant. The automobile did not belong
14 to anybody in the house, and therefore, I think the search of
15 the automobile was, was improper without a separate and
16 independent warrant based upon probable cause.

17 THE COURT: Mr. Todd.

18 MR. TODD: Your Honor, the State's argument is in the
19 general practice this search warrant had a list of to search
20 the house and any vehicles on the premises, on the property,
21 which is a standard search warrant, and Your Honor, our
22 understanding is that routinely across, through our state law
23 that has been held to be the proper terminology to search all
24 the vehicles on the property, whether they're assigned to
25 whoever they are or, or even unassigned. There's actually a

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1 case where an unassigned vehicle was searched.

2 THE COURT: Anything?

3 MR. WISE: I will pass up to the Court, I did some
4 research on it, and there's one little case out in Texas that
5 lends some help but certainly is not controlling, and it
6 involved a car that was parked half on the street and half in
7 the yard, and they said, "You need an independent search
8 warrant for that," and I will tell you the facts of this case,
9 I don't think it came out, but, but for the purposes of the
10 Court's edification, the car Mr. Myers was driving was parked
11 on the side of the house kind of down the driveway.

12 THE COURT: All right.

13 MR. WISE: But that's, that's the closest I could come.

14 THE COURT: Well, I -- your motion was contemporaneously
15 made. We had a discussion about it up here at the bench, and
16 I asked that you put that on the record for -- so you could be
17 protected for appellate purposes, and I ruled that it is,
18 indeed, admissible, and Mr. Wise, thank God we don't live in
19 Texas.

20 MR. WISE: Excuse me?

21 THE COURT: I say thank God we don't live in Texas.

22 MR. WISE: I don't know.

23 THE COURT: All right.

24 MR. WISE: Your Honor, it's --

25 THE COURT: I -- that is -- I understand.

1 MR. WISE: It's --

2 THE COURT: I think this case is factually
3 distinguishable.

4 MR. WISE: It's a little different, I agree, and I would
5 -- candid with the Court, the extensive research I did do on
6 this it -- but my gut reaction told me I was going to be
7 right. I was wrong, and most cases, for some reason, say that
8 if you put cars in the search warrant, even if the car was
9 there 10 seconds before the search occurred, it gets searched.
10 I just have problems with it because under that theory you
11 could search an UPS truck, a postal truck, any type of
12 delivery truck that happened to be there, and I just -- a
13 little much, but anyway.

14 THE COURT: Well, you are indeed protected on the record,
15 and it might be that an appellate entity will agree with you.

16 MR. WISE: It may be, and we've got Mr. Wilson here.

17 THE COURT: Mr. Wilson, be glad to hear from you.

18 MR. WILSON: Thank you. Your Honor, I was contacted
19 yesterday about representing Mr. Scott Roach. I've not
20 received an order from the Court as of yet to represent him.
21 However --

22 THE COURT: Well, I, I will, indeed, from the bench order
23 that you are to represent him.

24 MR. WILSON: Thank you, Your Honor, and Your Honor, I did
25 speak with him in anticipation that the Court might do that.

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1 I spoke with him this morning, and my understanding was Mr.
2 Wise may wanted to call him as a witness in the trial of the
3 case, and obviously, he has pending charges, and maybe we
4 should bring him out because what I advised him to do based on
5 the fact that he has pending charges and he has a sentence,
6 he's already been -- he's already pled guilty and he's
7 awaiting sentence on other charges, I, I, I advised him that
8 it's my opinion that he should not testify in the trial of
9 this case and that he should invoke his rights under the Fifth
10 Amendment. I think he agrees with that, but I would like the
11 Court --

12 THE COURT: Is he in the holding? Let's bring him out
13 and I'll allow you to reiterate that to whatever degree it's
14 necessary.

15 (Mr. Scott Roach enters courtroom.)

16 THE COURT: Yes, sir, your full name?

17 MR. ROACH: Scott Marney Roach.

18 THE COURT: All right. Mr. Roach, your lawyer, Mr.
19 Wilson, is here and I'll be glad to hear from him.

20 MR. WILSON: Your Honor, if it please the Court, I, as I
21 said earlier, I have been -- it was my understanding that Mr.
22 Roach was being asked to testify or, or, or that it was
23 possible that he was going to be asked to testify for the
24 Defense in the trial of this case. I met with him this
25 morning. I explained to him the pitfalls for him in doing so

1 and the fact that he has pending charges which have not yet
2 been dismissed and he has a plea that he has already entered
3 into and that because of that that it's probably in his best
4 interest to take the Fifth Amendment because there are, there
5 are possibly other things out there that could come back to
6 haunt him if he gets up and testifies. He understands that,
7 and it's my understanding that he at this time would like to
8 invoke his rights under the Fifth Amendment.

9 THE COURT: Very good. And, and based on discussions
10 with Mr. Wise and Mr. Todd it still does not preclude them
11 from either side from calling him to the witness stand and he
12 can elect that if he, if he so chooses to do so.

13 MR. WILSON: Yes, sir.

14 THE COURT: Very good.

15 MR. WILSON: Thank you very much, Your Honor.

16 THE COURT: Thank you.

17 MR. WISE: I guess my question is how is it not precluded
18 if he's going to invoke the Fifth?

19 THE COURT: Say that again.

20 MR. WISE: How does is it not preclude it if his attorney
21 has represented on the record that he's going to invoke the
22 Fifth?

23 THE COURT: I think you can call a witness to the stand
24 and ask them a question and they can invoke it.

25 MR. WISE: All right. We may have -- I understand, but I

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1 just thought his attorney would suffice for that, but if it --
2 we may -- we'll have to look into that and probably do that.

3 THE COURT: All right.

4 MR. WISE: All right.

5 THE COURT: Now, it's your position that, that if he
6 invokes the Fifth you can't call him to the stand and ask him
7 the appropriate questions about the substance of this case?

8 MR. WISE: My position is if his attorney says that he's
9 going to invoke the Fifth I'm precluded -- I mean, it's, it's
10 an exercise in futility because I know what's going to happen.

11 THE COURT: All right. But the jury doesn't.

12 MR. WISE: Well, I don't think -- you can't invoke the
13 Fifth in front of the jury.

14 THE COURT: I think you can. What does the State have to
15 say about it?

16 MR. TODD: Your Honor, our case law that we've looked up
17 in trying to find everything we can, I, I believe he can be
18 called to the stand, but if he invokes the Fifth that
19 essentially stops anything that we could -- we weren't
20 intending to call him but I believe it does stop any testimony
21 he has. He's entitled to do that if he chooses to, and I
22 guess he could always change his mind, but, but it's -- if he
23 invokes the Fifth --

24 THE COURT: Obviously, if he was a Defendant in this
25 trial you can't call him, but if he's a witness you can do

1 that.

2 MR. WISE: All right.

3 MR. TODD: That's correct.

4 THE COURT: Is my understanding, but you have any law
5 that says that that can't get done?

6 MR. WISE: I can get -- let me look at it during lunch
7 because I'm pretty sure it's out there that you're, you're not
8 to invoke the Fifth in front of the jury.

9 THE COURT: Well, I think a -- like Mr. Myers could not
10 be compelled to do that.

11 MR. WISE: Right. Even for a witness, but I --

12 THE COURT: All right.

13 MR. WISE: -- let me check on that during lunch.

14 THE COURT: We'll -- we will, indeed.

15 MR. WISE: It won't take long.

16 THE COURT: All right. Very good.

17 MR. WISE: Okay.

18 THE COURT: Might counsel approach the bench before we
19 recess for lunch?

20 MR. TODD: Yes, sir.

21 (Whereupon, a bench conference is held.)

22 THE COURT: All right. We'll stand at ease till 1:30.

23 MR. TODD: Thank you, Your Honor.

24 OFF THE RECORD

25 (On the record. The following takes place outside the

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1 presence of the jury.)

2 MR. WISE: I've handed Mr. Todd a copy of this case.

3 THE COURT: Okay.

4 MR. WISE: It's South Carolina Supreme Court. We're a
5 minority opinion on the issue.

6 THE COURT: Be glad to hear from you, yes, sir.

7 MR. WISE: Yeah. Under the State versus Hughes case our
8 Supreme Court has adopted a policy of a witness does not
9 invoke the Fifth Amendment in front of the jury. If they do
10 it before the jury and their lawyer asserts they're going to
11 do it, that ends, that ends the inquiry.

12 THE COURT: Okay. Very good.

13 MR. WISE: Yeah. I mean, it's -- I thought that was the
14 law, I just --

15 THE COURT: All right. What does the State -- would you
16 like to be heard on that?

17 MR. TODD: No, Your Honor. May -- it's -- that is the
18 law as it is. We don't intend on calling him, and it seems to
19 kind of fix the issue we may have had.

20 THE COURT: Very good. All right.

21 MR. WISE: And I, I wish I could represent to the Court
22 whether it would be good or bad if he did it in front of the
23 jury in this case.

24 THE COURT: Right.

25 MR. WISE: But there's some factors that weigh against it

1 and factors that weigh for it, but --

2 THE COURT: Very good.

3 MR. WISE: -- the law is the law.

4 THE COURT: All right. And have you all given some
5 thought with regard to which additional lesser included
6 offenses or would you all rather address that at the
7 conclusion of the evening?

8 MR. WISE: I can tell you real quick. On the trafficking
9 statute, by statute possession with intent to distribute is a
10 lesser included.

11 MR. TODD: If it's contested as to the weight.

12 MR. WISE: No. It isn't.

13 MR. TODD: That's -- it's in the statute as talking about
14 contesting the weight.

15 MR. WISE: That's -- the statute is very clearly worded
16 it's a lesser included.

17 MR. TODD: If weight is contested. That's the --

18 THE COURT: If it's warranted to charge that perhaps.

19 MR. WISE: No. It's by --

20 THE COURT: All right. Well, we do --

21 MR. WISE: I got a --

22 THE COURT: -- we do need to have a discussion.

23 MR. WISE: Yeah.

24 THE COURT: We'll do that at the conclusion of the day.

25 MR. WISE: Tell you what, I have put together in another

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1 case a brief on that issue which I can print out and get to
2 you, too.

3 THE COURT: All right.

4 MR. WISE: But it's -- I think it's really isn't
5 dependent upon contesting the weight.

6 THE COURT: Well, I'm, I'm --

7 MR. WISE: It's strange --

8 THE COURT: -- inclined really to charge that regardless,
9 but --

10 MR. WISE: I will tell you this because I said it on the
11 record before, so it's not anything new. The legislature put
12 it in there. It makes no logical sense because it's an
13 additional element, not a lesser element. So it's not a
14 lesser included except the legislature has determined it to be
15 a lesser included.

16 THE COURT: All right. All right.

17 MR. WISE: I'll get it to you.

18 THE COURT: And so that -- you're just saying that the
19 only lesser included offenses that you're requesting is
20 possession with intent to distribute with regard to the
21 trafficking offense?

22 MR. WISE: With the trafficking and also lesser included
23 of possession with regard to possession with intent.

24 THE COURT: All right. What's the State's position on
25 that?

1 MR. TODD: Your Honor, I'll have the same argument under
2 that, under that theory, possession with intent to distribute
3 because of the way it was packaged. There's other things in
4 the house. We're going to argue that weight was one issue,
5 which it is, but --

6 THE COURT: Well, doesn't that necessarily mean it's a
7 question of fact for the jury to resolve?

8 MR. TODD: That's exactly what it is. I don't have the
9 same argument that I would on the trafficking.

10 THE COURT: Oh. So you're saying you don't have the same
11 argument?

12 MR. TODD: I do not have the same argument. That's
13 correct.

14 THE COURT: So with all the possession with intent to
15 distribute offenses, you're -- you concede that, that
16 possession is a lesser included offense that should be
17 charged?

18 MR. TODD: That's correct, Your Honor.

19 THE COURT: All right. I think you're, I think you're
20 absolutely right, and we'll -- it's kind of early in, in the
21 trial to be --

22 MR. WISE: Well --

23 THE COURT: -- making a determination in that regard, but
24 we'll address that again before the, before the rendering of
25 the verdict form at the conclusion of the case.

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1 All right.

2 MR. TODD: Yes, sir.

3 THE COURT: We're, we're ready for the jury.

4 MR. WISE: Hold on, hold -- let me -- I've got -- I'll
5 get it later. I'll get it before we leave here today. I've
6 got something else to give up to the Court.

7 THE COURT: All right. There's been a, a note that's
8 been submitted by the forelady of the jury. "The jury would
9 like to request speakers to use microphones or louder voices
10 so we can hear a bit clearer." So I'll make that note a part
11 of the record.

12 (Court's Exhibit Number One appropriately marked.)

13 MR. WISE: I will pass up, too, and before you think I
14 did all this work last night, I cut and pasted another brief.
15 It's an argument the Judge should not charge that a jury can
16 infer possession with intent based upon the weight, but it's
17 self explanatory in the little brief.

18 THE COURT: Okay. We're ready for the jury.

19 MR. WISE: Right.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: Madam Forelady, ladies and gentlemen of the
23 jury, thank you for being here, being here on time. I
24 received your note with a request that the speakers speak
25 louder or use microphones, and I, I think that they will

1 accommodate us in that regard.

2 FORELADY: Okay.

3 THE COURT: Mr. Todd, you're recognized.

4 MR. TODD: Thank you, Your Honor. The State calls Blair
5 Cribb.

6 THE COURT: Please come forward. I'm going to ask you if
7 you could to approach the Bible, place your left hand on the
8 Bible and raise your right hand as the clerk administers the
9 oath. You can set your paperwork down. There you go.

10 WHEREUPON, Blair Cribb is called to the stand, duly sworn
11 by the clerk and testified as follows:

12 THE CLERK: Thank you. Please be seated and state your
13 full name and spell it for the record, please.

14 MR. CRIBB: Okay.

15 THE COURT: Have a seat in the witness chair, pull up
16 real close to that microphone, speak loudly, clearly and
17 slowly in order that we can hear everything that you have to
18 say and let's start with your full name once again.

19 MR. CRIBB: Stephen, S-T-E-P-H-E-N, Blair, B-L-A-I-R,
20 Cribb, C-R-I-B-B.

21 THE COURT: Yes, sir.

22 MR. TODD: Thank you, Your Honor.

23 DIRECT EXAMINATION.

24 BY MR. TODD:

25 Q Officer Cribb, who do you work for?

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1 A Georgetown City Police Department.

2 Q And how long have you been in law enforcement?

3 A Since 1999.

4 Q And what did you do to become a law enforcement officer?

5 A Well, the first thing I went, I went to the police
6 academy and went through the police academy, graduated police
7 academy, and like I say, in 1999, and then I started as a
8 patrol officer, worked patrol division for several years,
9 transferred to a school resource officer for about two years,
10 transferred back to patrol, promoted to a corporal, and then I
11 got promoted to supervisor, and then from that position a road
12 supervisor. From that position I transferred to the drug
13 enforcement unit, worked in drug enforcement unit for
14 approximately five years at which time I transferred back to
15 patrol division. I worked for a couple of years and then
16 transferred. At this current time in 2015, I was the evidence
17 custodian for the Georgetown Police Department.

18 Q And being an evidence custodian, what is it that you did?
19 What were your duties?

20 A My job was to make sure that the evidence got brought in
21 was safe and secured and not tampered with in any way and also
22 we don't test any major drugs that come into the police
23 department. When I say major drugs I'm talking about like a
24 heroin, cocaine, crack cocaine, pills. Those type of things
25 we weren't able to test. So we would take them to SLED in

1 Columbia.

2 Q Now, so explain to us how things work as evidence
3 custodian. When people bring drugs in what do they do to get
4 them to you?

5 A Yeah. Basically what happens is because I can't be there
6 24 hours a day we have lockers that are in a -- built into a
7 wall, and it's about 10 lockers, and it's a key that goes to
8 that locker and so if you've got some evidence you walk up to
9 that locker, you open it up, you stick the evidence in and
10 then you lock the key. You lock it with the key and then you
11 stick the key into a little hole, and the only way you can
12 access that is through my evidence room, and to get in my
13 evidence room I have a little office. I unlock my office with
14 a key, and then to have to get in my evidence room I actually
15 had to use my pass card and my fingerprint. I mean, it's a
16 secured metal door. The whole room is secured with metal and
17 fence wire even across the roof so you can't actually get in
18 and tamper with it. So for me to get in my room I have to go
19 stick my finger, stick a card up there to, to open it and then
20 stick my thumb to actually access the door for me to get in.
21 Once I get in the evidence room then I can actually open every
22 one of those lockers, and I take the evidence out one at a
23 time, sit it on my desk in front of me and I process it,
24 whatever needs to be processed. Basically when I say
25 processing, it's no more than me writing a -- logging it into

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1 the room, this is evidence piece whatever with the case
2 number. I write it down in a book, give it a number and then
3 I take it from that desk to my work desk to a desk, I mean, to
4 a shelf inside the evidence room so I can always go back and
5 get it whenever I need to go back and get it. So the only
6 people who can even get into that room would be myself and the
7 assistant evidence custodian.

8 Q So there's essentially only two people allowed to go into
9 that room at any given time.

10 A Exactly.

11 Q And roughly how many law enforcement officers work with
12 the city?

13 A Roughly 30.

14 Q And at this point in time you were allowed to go into the
15 evidence room. Who was the other person that was the
16 assistant at that time?

17 A My, my captain who at the time was Keith Small, and we
18 also -- and, and I collected evidence for the city, but we
19 also collected the evidence for the drug enforcement unit. So
20 whenever they have any evidence, we take it. That way it's in
21 a secured location and it can't be tampered with and it can't
22 be bothered.

23 Q Now, when you get evidence from the drug enforcement
24 unit, does it usually come in a best bag?

25 A It does. If it's got to go -- if it has to go to SLED

1 then it's going to come in a best bag, and basically the way a
2 best bag looks is a clear bag, and it's got a -- it's sealed
3 itself. So whenever they turn it into me you pull off a tab
4 and you fold it over and you seal it and you actually initial
5 it and date it, the day, the time it was sealed. So when it
6 comes to me the evidence is already sealed in a bag, and I
7 don't even open it, and when I take it to SLED it's not opened
8 until the analysis gets it. So it's sealed, date and timed,
9 and the only thing I'm doing is writing a -- writing --
10 logging it into the room that I got it and I'm putting it on a
11 shelf.

12 Q So you don't cut open the bags or do anything of that
13 nature?

14 A Absolutely not.

15 Q If you would, please, take a look at State's Exhibit
16 Number 167, please. Do you recognize that bag?

17 A I do.

18 Q Now, can you tell me how you became involved with this
19 bag? When did that bag come into your possession?

20 A Yes. On -- and I'm going by this piece of paper, which
21 is the evidence voucher that gets turned in with the evidence
22 so basically we can keep track of what the -- this is the
23 evidence -- this is the voucher which explains to me what it
24 is, and on December the 11th, 2015, it was put into an evidence
25 locker at the Georgetown Police Department, and the outside

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1 bag is not what it looks like. It's just this one inside bag,
2 and you can see the heat-sealed -- this -- well, it's not
3 heat-sealed, but it's, it's basically like sticky glue, real
4 sticky glue because once you seal it if you pull it open then
5 you can't seal it again. It's some, it's some high-speed glue
6 that they got on top of that. So once it's sealed it's
7 sealed, and basically when it comes into me it's just this one
8 bag and this is heat-sealed. This is back -- when -- when I
9 already got it back from SLED this is what it looks like, but
10 basically on December the 11th it came into the evidence room.
11 I took it, put it on a shelf in the evidence room and I went
12 to SLED on January the 21st. Now, the reason there's a month
13 delay is is you all know SLED's -- Columbia's two and a half
14 hours, three hours away. So I don't make -- every time I get
15 one best bag I don't go or one piece of evidence. I'll wait
16 till I get about 15 or 20 pieces of evidence and then I'll go
17 to SLED. So on January the 21st I had enough evidence that
18 could justify my trip to Columbia, and I took all of it at one
19 time and then I log -- and I gave it to SLED, and then in
20 return they gave me a lab number which was L16-00999 which was
21 for this evidence, which is also here on the top of this bag
22 and I wrote it down on the evidence chain of custody form, and
23 then on May the 5th, 2015, I went back to SLED and picked it
24 back up, and when I picked it back up this is what it looked
25 like. It was heat-sealed all the way around, and I take it

1 and I put it right back on the same shelf that I'd already
2 logged it on. So it's right back in that shelf and it's
3 waiting -- it sits in that evidence room until it's needed.

4 Q So you don't do anything to that other than take
5 possession of it, keep it in your care and drive it to where
6 it needs to go to be tested.

7 A Exactly right and then pick it back up when they get done
8 testing it, pick it back up and put it right back on that
9 shelf, exactly.

10 Q Okay. Now, you said you took a bunch of stuff up there.
11 When it gets mixed up it stays in that bag heat sealed so --

12 A Oh, exactly right. Yeah. I take several different items
13 up there, but they're all in their own bag sealed up in their
14 own bag so there's no way it can get mixed up with anything
15 else because there's also a brown envelope that goes in that
16 that sealed part goes in. So there's no way that it can be
17 any type of contamination with another piece of evidence.
18 Exactly.

19 Q Okay. And do you know who that bag came from?

20 A The only way I know who this bag came from is just what
21 would be written on here and what's on the evidence voucher
22 that was turned in to me.

23 Q Okay. So they give it to you and it has a number on it
24 already?

25 A Exactly right.

Stephen Blair Cribb - Cross by Defense

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1 Q Okay. Thank you. That's all the questions I have.

2 THE COURT: Cross examination.

3 CROSS EXAMINATION

4 BY MR. WISE:

5 Q When you get the evidence into the locker, it's in --
6 what kind of bag is it in then?

7 A It's, it's, it's -- the inside bag --

8 Q Right.

9 A -- this inside bag.

10 Q Okay.

11 A Yes, sir.

12 Q It's in the sealed bag?

13 A Yes, sir. It is.

14 Q Okay. And you don't weigh it, test it or touch it?

15 A No, sir. None of that. No, sir. I do not.

16 Q All right. Thank you.

17 A All right.

18 MR. TODD: Your Honor, that's all the questions we have
19 for this witness.

20 THE COURT: You may step down. You're excused, free to
21 leave.

22 A Thank you, sir.

23 MR. TODD: Thank you, Your Honor. Jackie Davis, please.

24 THE COURT: Yes, ma'am, please come forward. I'm going
25 to ask you if you could to approach the Bible over here. You

1 can set your paperwork down there, place your left hand on the
2 Bible and raise your right hand as the clerk administers the
3 oath.

4 MS. DAVIS: Right hand, sorry.

5 THE COURT: The other, the other right hand. There you
6 go.

7 Whereupon, Jackie Davis was called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: Thank you. Please be seated. State your
10 full name and spell it for the record, please.

11 THE COURT: Pull up real close to that microphone, speak
12 loudly, clearly and slowly --

13 MS. DAVIS: All right.

14 THE COURT: -- in order that we can hear everything that
15 you have to say and let's start with your full name, please,
16 ma'am.

17 MS. DAVIS: My name is Jackie Davis, J-A-C-K-I-E, D-A-V-
18 I-S.

19 DIRECT EXAMINATION

20 BY MR. TODD:

21 Q Ms. Davis, who do you work for?

22 A I work for SLED.

23 Q And tell us about what you do at SLED.

24 A I am a forensic technician. I log in, package and
25 transfer the evidence that the law enforcement bring to us to

Jackie Davis - Direct by State

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1 be evaluated.

2 Q And when you take in evidence it's brought to you from
3 other agencies?

4 A Correct.

5 Q What agencies bring you, bring you things into SLED?

6 A The county sheriffs' offices, just law enforcement.

7 Q So across the entire state somebody brings you something?

8 A Correct.

9 Q So your duties are to bring in lots of stuff and keep
10 track of it?

11 A Correct.

12 Q And how do you -- how do you all keep track of, of these
13 items that come in?

14 A We have a unique lab number. As soon as we log it in
15 it's all computerized. We give it a unique lab number and
16 then we put it in a secured evidence room until the analyst
17 asks for it.

18 Q Okay. Now, when the agents or officers come in do you
19 get their names from them and what the -- what it is that they
20 brought to you?

21 A Correct.

22 Q Okay. If you would please take a look at State's Exhibit
23 Number 167. Would you please take a look at this?

24 A Uh-huh.

25 Q Do you recognize this bag?

- 1 A I do.
- 2 Q And tell us about this bag. Why do you recognize it?
- 3 What's different about it?
- 4 A From the unique lab number and it matches what I have on
- 5 my chain of custody.
- 6 Q Okay. And who brought you that bag?
- 7 A It would be Blair Cribb with the Georgetown PD.
- 8 Q Okay. And when he brought you that bag did it have its
- 9 own number on it beforehand?
- 10 A Its own number? Yes, sir.
- 11 Q And what was the number that was on it before?
- 12 A It was a best kit number, and I actually do not know
- 13 where to find that on here. I do not see the lab number, I
- 14 mean, the best kit number on that because we go by that unique
- 15 lab number right there.
- 16 Q So once it comes in though you guys keep it, you have its
- 17 own number that you've given it.
- 18 A Correct.
- 19 Q And that's how it goes into your system?
- 20 A It does not change its number.
- 21 Q Okay.
- 22 A Right.
- 23 Q So you keep your new number on it?
- 24 A Correct.
- 25 Q Now, when you get drugs from -- routinely when you get

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1 drugs from other agencies --

2 A Uh-huh.

3 Q -- is it brought in this best bag?

4 A It is.

5 Q And what are -- what requirements do you have that this
6 best bag be in -- like the condition of the best bag, how does
7 it have to be?

8 A It has to be sealed and signed by the officer who's
9 bringing it in.

10 Q If it is not sealed will you take it?

11 A No.

12 Q If it is broken in any way will you take it?

13 A No.

14 Q Are these bags easy to open once they're sealed?

15 A No. They are not.

16 Q What do they look like after you open them up once
17 they're sealed?

18 A I can honestly say I don't know. I've never seen one
19 opened.

20 Q Well, there we go, and that's because you don't take it;
21 is that correct?

22 A No. I do not.

23 Q Now, in your duties you have this, this bag and you put
24 it with its unique lab number.

25 A Uh-huh.

1 Q What was the lab number you all assigned to it?

2 A L1600999.

3 Q Okay. And, and you put it into a storage facility at
4 your place?

5 A Correct.

6 Q And did you cut open the bag at all?

7 A No.

8 Q Did you do any of the drug testing on this case at all?

9 A I did not.

10 Q Did you -- did it go out to any other agencies or did it
11 stay in your -- at SLED until it was tested?

12 A It stayed within SLED.

13 Q Okay. And do you know who it went to next?

14 A Yes. It went to the drug evidence intake on 1-21 at 8:57
15 in the morning and then Doris Yarbrough who also works for us
16 took it at 2-18, on 2-18 at 9:58 and gave it to the analyst,
17 Lynn Black, at 10:01.

18 Q And how do you know all this stuff happened?

19 A Because it is in a chain of custody.

20 Q And you guys keep a very strict chain of custody?

21 A Very strict chain of custody.

22 Q Thank you. That's all the questions I have right now.

23 THE COURT: Cross examination.

24 CROSS EXAMINATION

25 BY MR. WISE:

Jackie Davis - Cross by Defense

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1 Q But when you get the -- when you get the items or
2 initially you don't put down the each individual best bag
3 number?

4 A Yes, sir. It's scanned in. When we scan it, that pops
5 up on the information, but we don't see that. It comes
6 through a unique lab number to us.

7 Q All right. I guess my question is how do we know you got
8 what best bag number you got that was left there.

9 A Because it was given this file number. He --

10 Q Right. That was done manually?

11 A Correct.

12 Q Okay. All right. Thank you.

13 THE COURT: Any redirect?

14 MR. TODD: No, Your Honor.

15 THE COURT: You may, you may step down. You're free to
16 leave. Thank you, ma'am.

17 A Thank you.

18 THE COURT: You may call your next witness.

19 MR. TODD: Thank you, Your Honor. The State calls Doris
20 Yarbrough.

21 THE COURT: Yes, ma'am. Please come forward. I'm going
22 to ask you if you could to approach the witness stand and you
23 see the Bible over here, I'm going to ask that you lay your
24 paperwork down, place your left hand on the Bible and raise
25 your right hand as the clerk administers the oath.

1 Whereupon, Doris Yarbrough was called to the stand, duly
2 sworn by the clerk and testified as follows:

3 THE CLERK: Thank you. Please be seated. State your
4 full name for the record and spell it, please.

5 THE COURT: Have a seat in the witness chair, pull up
6 real close to that microphone and speak loudly, clearly and
7 slowly in order that we can hear everything that you have to
8 say and you may state your name and spell the last.

9 MS. YARBROUGH: My name is Doris Yarbrough, Y-A-R-B-R-O-
10 U-G-H.

11 THE COURT: Mr. Todd.

12 DIRECT EXAMINATION

13

14 BY MR. TODD:

15 Q Ms. Yarbrough, who do you work for?

16 A I work for the South Carolina Law Enforcement Division
17 commonly known as SLED.

18 Q And how long have you worked there?

19 A Almost nine years.

20 Q Almost nine years.

21 A Yes, sir.

22 Q And tell us about your duties in December. What,
23 primarily what'd you do specifically with this case? What,
24 what were your duties involving this case?

25 A I'm a forensic technician in the evidence control

Doris Yarbrough - Direct by State

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1 department, which means we receive evidence from throughout
2 the State of South Carolina that needs a forensic analysis.

3 Q And when you get the drugs and other items in, they're
4 kept track of pretty, pretty closely; is that correct?

5 A Yes, sir. Once everything is logged in it receives a
6 unique bar code that we refer to as a lab number. That lab
7 number is -- each item number is placed on the evidence and
8 it's stored in our secure evidence room until it's requested
9 for analysis.

10 Q And once you get these items, do you take them to the
11 analyst?

12 A No, sir. The analyst will send an e-mail to us and
13 request to pick up certain evidence. Then we'll return the e-
14 mail saying that it's ready for pickup.

15 Q And what does that mean? It's in a special place?

16 A Oh, yes, sir. It's in a secure evidence room that has
17 limited access except for the technicians and our captain and
18 the majors.

19 Q Okay. So there's a lot of evidence that comes into this,
20 this building.

21 A Yes, sir. There is.

22 Q And you guys assign it a number.

23 A It's computer assigned.

24 Q Computer assigned.

25 A Yes, sir.

1 Q Okay. Now, how do you keep track of, of who belongs to
2 what?

3 A That bar code label that's put on each piece of evidence
4 it's tracked through the computer. Once it's, once it's
5 logged in it's scanned to the storage area that it's going to,
6 depending on what it is. When it's requested it's pulled from
7 that storage area. We have a list. Then it's -- the person
8 who's going to transfer it, say if I was going to transfer it
9 I'd have to scan it to my ID tag and then I would have to scan
10 the evidence and then the person receiving it I'd have to scan
11 them and then transfer it to them and they would have to put a
12 password in to take it.

13 Q So you scan them, too? So there's a lot of scanning
14 going on?

15 A It certainly is.

16 Q Okay. So there's, there's no way someone is just walking
17 in and grabbing this evidence, testing it and putting it back
18 on the shelf?

19 A No, sir. It's not.

20 Q Okay. Now, if you would, please take a look at this
21 item. This is State's 167. Take a look at this and see if
22 you recognize this.

23 A I would only recognize it by the yellow barcode label.
24 That's a unique item label that goes on each piece of
25 evidence.

Doris Yarbrough - Direct by State

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1 Q And do you recall having this item in your possession at
2 any given time?

3 A Only by the chain of custody, sir.

4 Q Okay. Well, tell us about what you did.

5 A It was received on 1-21 of 2016, placed in storage, and
6 on 2-18 of 2016 I pulled it out of storage and transferred it
7 to the analyst that requested it.

8 Q Okay. And that was your only duty with this, this
9 evidence right here?

10 A That's my only duty with this. Yes, sir.

11 Q Okay. Thank you very much.

12 THE COURT: Cross examination.

13 MR. WISE: No questions.

14 THE COURT: All right. You're free to leave. Thank you,
15 ma'am.

16 A Thank you, sir.

17 MR. TODD: Lynn Black.

18 THE COURT: Yes, ma'am. Please come forward. I'm going
19 to ask you if you could to approach the front of the
20 courtroom, see to your right the Bible on the, on the bench
21 there. I'm going to ask that you lay your paperwork down,
22 place your left hand on the Bible, raise your right hand as
23 the clerk administers the oath.

24 Whereupon Lynn D. Black is called to the stand, duly
25 sworn by the clerk and testified as follows:

Lynn D. Black - Direct by State

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1 THE CLERK: Thank you. Please be seated and state your
2 full name for the record and spell it, please.

3 THE COURT: Have a seat in the witness chair, pull up
4 real close to that microphone, speak loudly, clearly and
5 slowly in order that we can hear everything that you have to
6 say and start with your full name and spell the last.

7 MS. BLACK: Okay. It's Lynn D. Black, B-L-A-C-K.

8 THE COURT: That's an easy one, Black.

9 MS. BLACK: That's right.

10 THE COURT: All right. Very good.

11 DIRECT EXAMINATION

12 BY MR. TODD:

13 Q Ms. Black, tell us a little bit about what you do.

14 A I'm a drug analyst. I work in the drug analysis
15 department in the forensic services laboratory at the South
16 Carolina Law Enforcement Division.

17 Q What does it take to become a drug analyst?

18 A Well, you got to have a little bit of schooling, and I
19 have a bachelor of science degree in chemistry from Kentucky
20 Wesleyan College. I also have a certificate of medical
21 technology from the University of Louisville and a master of
22 science degree in forensic science from Marshall University.
23 Also prior to my job at SLED I worked as a drug analyst at the
24 Georgia Bureau of Investigation in Atlanta, Georgia, for about
25 eight years.

Lynn D. Black - Direct by State

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1 Q Now, have you ever testified as an expert before in front
2 of a jury?

3 A Yes. I have.

4 Q How many times have you testified?

5 A Approximately 129 times.

6 Q Okay. And how long have you been testifying roughly as
7 far as how long have you been an expert in years?

8 A In South Carolina about eight and a half years. In
9 Georgia about eight.

10 MR. TODD: Your Honor, at this time we'd move to have her
11 qualified as an expert in --

12 THE COURT: Any query with regard to her qualifications?

13 MR. WISE: None from Defense.

14 THE COURT: All right.

15 MR. TODD: Thank you.

16 THE COURT: Madam Forelady, ladies and gentlemen of the
17 jury, typically when a witness testifies, a lay witness,
18 they're only allowed to testify as to things they saw, heard
19 and felt. However, there's an exception to that for witnesses
20 we call expert witnesses. Because of their education or
21 experience in some field, if I qualify them as an expert,
22 they're not only allowed to testify as to what they heard, saw
23 and felt, they're allowed to render their opinions in their
24 field of study. Just by virtue of the fact that someone is an
25 expert does not mean that you have to agree or accept what

1 they have to say. You evaluate it and give it the weight you
2 think it deserves and give it the evaluation you would any
3 other testimony. Mr. Todd.

4 MR. TODD: Thank you, Your Honor.

5 BY MR. TODD:

6 Q Ms. Black, I'm going to ask you a few questions just
7 about the case at hand. We're here on the State versus Marvin
8 Myers, and you were given drugs at some point in time. If you
9 would, please take a look at State's Exhibit 167.

10 A Okay.

11 Q Do you recognize this item?

12 A I do.

13 Q Can you tell us a little bit about what, what this is?

14 A This is a -- what we call at our lab a K-pack. This
15 outer bag is a bag that I actually placed this evidence in
16 after I -- excuse me -- analyzed it. Inside -- well, let me
17 back up. Outside here is a yellow sticker, and this is the
18 unique crime lab case number that was affixed to this or,
19 excuse me, was generated when this piece of evidence came into
20 the lab, and this is a sticker that I put on there after I
21 analyze this case so that it could be tracked. The inside bag
22 you can see it's got blue around it and a white bar code over
23 here. That's the best kit evidence bag. That's what the
24 evidence was submitted in initially. That's what the officer
25 brought in with the evidence in it, and it contained the

Lynn D. Black - Direct by State

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1 evidence which are all these bags in the back, and my initials
2 are on the inside bag. It's the unique crime lab case number
3 is written in purple and then my initials and the date that I
4 actually opened it.

5 Q So you were the one that actually opened this bag for the
6 first time?

7 A Correct.

8 Q Now, had this bag been opened before, would you have
9 tested these drugs?

10 A At the time, this was 2016, I believe at this time we
11 would have not accepted the -- if it had been tampered with or
12 had been opened, we would have sent it back to have it re --
13 have them do something else with it. Now we will take it in
14 and just note that it was not sealed.

15 Q So you guys were very careful at that time as to what you
16 got in and that it was not tampered with before you had an
17 opportunity to test it?

18 A Correct.

19 Q Okay. Now, with the testing, how many different types of
20 drugs were in that bag?

21 A In this bag there were, I believe, four, four different
22 types of drugs. Yes.

23 Q And did you test all four different types of drugs?

24 A I did.

25 Q Can you tell us a little bit about what you do to test

Lynn D. Black - Direct by State

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1 the different drugs, and we'll just one by one.

2 A So you want me to just go into like the first one, the
3 second one?

4 Q Yes. Please.

5 A Okay. The first one was what I described as rock
6 substance, and it turns out to be -- it actually was plant
7 material, and I analyzed it by -- I looked at it under -- with
8 a microscope. I did a color or chemical test, and then I also
9 did an instrumental test. In this case was gas chromatography
10 mass spectrometry, which we shorten to GCMS for obvious
11 reasons. So this was -- this turned out to be marijuana in a
12 form commonly known as hashish, and at the time that I got it
13 it was a very hard rock substance. It's kind of broken down.
14 It's a little more powdery right now, but it looked like a
15 piece of rock, you know, a brown piece of rock. So the
16 testing I did confirmed that it was marijuana, but we call it
17 hashish, and that's how it's reported. The second item was a
18 powder substance or it was kind of a compressed powder
19 substance, and I believe that's this -- it's a big piece of
20 white chunk -- chunky stuff. That turned out to be cocaine,
21 and again I did, I did not do a microscopic test on this, but
22 I did a color test also known as the chemical test and also
23 did that GCMS instrumental test again to show that that was
24 cocaine. The third one, it's kind of back here. It's kind
25 of a tan color. It's kind of -- looks like a piece of a

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1 cookie kind of, and that turned out to be cocaine base, which
2 is also known as crack, and again, I did a chemical or a color
3 test, and I did that GCMS instrumental test as well, and the
4 fourth one was another powder substance, and it's a small bag,
5 probably can't even see it. It's way up here, and that turned
6 out to be heroin, and I, again, I did a color test and the
7 instrumental test, the GCMS, and also I did weigh all of these
8 as well. I have, I have net weights, which all of these are
9 in packages, you know, either a zip-lock bag or like a
10 sandwich bag, and so the weights that I recorded are the
11 weights of just that substance. I took it out of that bag and
12 weighed just the substance. So I have net weights of each of
13 those items.

14 Q Can you tell us the net weights of each of the items?

15 A Certainly. For -- on my report, item 1.1, the marijuana
16 in a form commonly known as hashish weighed 11.38 grams. The
17 second item, my 1.2 on my report, which was cocaine, weighed
18 56.40 grams, and the third one, which is my item 1.3, which
19 was the cocaine base, also known as crack, weighed 17.45
20 grams, and the fourth item, which is my 1.4, was heroin,
21 weighed 1.02 grams.

22 Q Now, you test a lot of drugs throughout the year; is that
23 correct?

24 A Yes.

25 Q And you've done it for a few years.

1 A Correct.

2 Q When you get drugs in in their, their distribution form
3 or in their wax slips if -- you get a lot of times, roughly
4 what's the weight of, of a dosage of these drugs?

5 A For each of these, well, the hashish is usually, you
6 know, a large amount because they don't, they don't normally
7 or I haven't see it this way, you know, have it in different
8 small packages. It's usually a large amount or just enough
9 for one, you know, maybe smoking one thing, and that, that
10 one's hard to say because I don't see that that often, the
11 hashish. So I really can't tell you about that one, but the,
12 the cocaine and the crack they're, they're usually in amounts
13 of just under a gram, and then the heroin is usually in, in
14 dosage units of, you know, around .02 grams or so or even
15 smaller. I mean, it's a very small amount. You might liken
16 it to a pinch, you know, like a pinch of salt or something you
17 might, you know, throw in something you're eating, but it's a
18 very, very small amount, you know, that you need for heroin.

19 Q So these are larger dosage than your common routine
20 testing that you do?

21 A Correct. Yeah. These are not just single dosage units
22 for sure.

23 Q And when you do these tests do you generate a report?

24 A Yes. I do.

25 MR. TODD: The Court's indulgence.

Lynn D. Black - Direct by State

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1 MR. WISE: The only objection I have, Your Honor, the
2 fact it's cumulative for her testimony and unnecessary.

3 THE COURT: All right. Might, might I see that?

4 MR. TODD: Yes, Your Honor.

5 THE COURT: That is, that is, indeed, cumulative and, and
6 hearsay. She can testify as to the substance of it.

7 MR. TODD: Thank you, Your Honor.

8 BY MR. TODD:

9 Q Now, with the cocaine and the cocaine base, what's the
10 difference in the two?

11 A The cocaine is a form of cocaine that's called the
12 cocaine hydrochloride. It's the kind that they use to either
13 snort or inject. They'll put it with some water or some other
14 wetting thing and inject that or, or snort it, like you've
15 seen people with, you know, the credit cards or something and
16 the -- and little straws or whatever. The crack, the cocaine
17 base that's the smokable form. That's -- it's a hard rocklike
18 substance, and they'll put it in, you know, a, a glass pipe or
19 something and they -- you could smoke it. You can't smoke
20 cocaine, but you can smoke crack.

21 Q So they're, they're -- they sound the same but they're
22 different items on the molecular level; is that the -- like
23 there's something added to one that's not in the other?

24 A Correct. Correct. Yes.

25 Q So they would -- they're essentially two different drugs?

1 A Essentially, yeah. They're just -- they're like cousins
2 of each other. Uh-huh.

3 Q Okay.

4 MR. TODD: Your Honor, at this time I'd like to place
5 item Number One -- I've said it a thousand times, 167 into
6 evidence.

7 MR. WISE: Subject, Your Honor, to our objection in
8 earlier matters.

9 THE COURT: And your objection is noted for the record
10 and it's into evidence and it's denominated as State's
11 Exhibit?

12 MR. TODD: 167.

13 THE COURT: 167 is into evidence.

14 MR. TODD: Yes, sir.

15 (State's Exhibit Number 167 [Best Bag] entered into
16 evidence and appropriately marked.)

17 BY MR. TODD:

18 Q Ms. Black, thank you so much. Please answer any
19 questions Mr. Wise may have.

20 THE COURT: Mr. Wise.

21 CROSS EXAMINATION

22 BY MR. WISE:

23 Q Ms. Black, you're not aware of how much a heroin addict
24 would use in a two or three-day period; are you?

25 A No. I'm not.

Lynn D. Black - Cross by Defense

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1 Q Okay. So you're not here to say that a heroin addict
2 wouldn't use a gram in two or three days?

3 A No, sir. I have no knowledge of that, no.

4 Q You don't know how much somebody who uses crack would use
5 in two or three days?

6 A No, sir. I do not.

7 Q So you're not here to say that some people, four or five
8 grams would not be used in two, three, four, five days by a
9 crack addict?

10 A I really don't know. No, sir.

11 Q And you're not here to say how much cocaine a person
12 would use in two or three days or a week?

13 A No, sir. I do.

14 Q And so, again, you couldn't say that -- whether the 56.04
15 grams is something somebody would use in a matter of days or
16 not?

17 A No, sir. I, I have no knowledge.

18 Q And the same --

19 A Correct.

20 Q -- the same with the hashish. Correct?

21 A Correct.

22 Q All right. So you're not here to say whether or not
23 these are personal use or non-personal use?

24 A All I can say is from my experience, you know, I've seen,
25 you know, single dosage units.

- 1 Q Right.
- 2 A But I don't know how often drug addicts take any of this.
- 3 Q Use a single dose?
- 4 A Correct.
- 5 Q All right. So you're not in a position to say whether
- 6 these are personal use or not?
- 7 A Correct.
- 8 Q Okay. Now, and the test you performed it's called a mass
- 9 spec test?
- 10 A Gas chromatography mass spectrometry.
- 11 Q You say them better than I do. All right. And in those
- 12 it's pretty sensitive machine?
- 13 A Correct.
- 14 Q All right. That's affected by temperature and what about
- 15 humidity? Humidity affect it?
- 16 A It, it possibly can, but it's the -- where the reactions
- 17 take place is in an oven --
- 18 Q Uh-huh.
- 19 A -- that's sealed up, and so, you know, humidity from the
- 20 outside is not really going to affect it.
- 21 Q All right. But, but the temperature could over a period
- 22 of time?
- 23 A Correct. I mean, the, the instrument runs with a
- 24 temperature program. So it's, it's programmed to do certain
- 25 temperatures at certain times. So if, yeah, if something was

Lynn D. Black - Cross by Defense

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1 amiss, yes, it could cause some problems.

2 Q Right. And when you test this machine you get a series
3 of spikes to identify the various products?

4 A In a, in a manner, yes, speaking, yes.

5 Q Right. And then the computer takes that series of spikes
6 and matches it most closely to something that's in your
7 computer library as to what the substance is.

8 A It does that, but we -- I also run known drug standards
9 with it, and I visually compare what I get as the unknown
10 sample to that of the known drug standard that I personally
11 run with it.

12 Q Right. And when you say run a known drug standard, what
13 exactly is that?

14 A Like I ran a cocaine standard, and I ran a heroin
15 standard and a marijuana standard.

16 Q Using the actual cocaine?

17 A Correct.

18 Q And actual marijuana?

19 A Well, they're actually standards that come from a
20 company. So it's not -- I don't actually make up the standard
21 with the powder or the leafy material, but it's, it's made up
22 from a company that's certified.

23 Q Something that's purchased?

24 A Correct.

25 Q On the open market?

1 A Correct.

2 Q Okay. All right. Thank you.

3 THE COURT: Any redirect?

4 MR. TODD: No, Your Honor.

5 THE COURT: You may step down and you're free to leave.

6 A All right. Thank you.

7 THE COURT: Thank you.

8 MR. TODD: Detective Marlow.

9 THE COURT: If you could place your left hand on the
10 Bible, raise your right hand as the clerk administers the
11 oath.

12 Whereupon Benjamin Montgomery Marlow is called to the
13 stand, duly sworn by the clerk and testifies as follows:

14 THE CLERK: Please be seated. State your full name and
15 spell it for the record, please.

16 THE COURT: Pull up real close to that microphone, speak
17 loudly, clearly and slowly in order that we can hear
18 everything that you have to say and you can start with the
19 full name.

20 MR. MARLOW: Yes, sir. My name is Benjamin Montgomery
21 Marlow, Benjamin is common spelling, Montgomery is M-O-N-T-G-
22 O-M-E-R-Y, Marlow without an E, M-A-R-L-O-W.

23 DIRECT EXAMINATION

24 BY MR. TODD:

25 Q Agent Marlow, who do you work for right now?

Benjamin Marlow - Direct by State

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1 A Georgetown County Sheriff's Office.

2 Q And how long have you officially worked for the
3 Georgetown County Sheriff's Office?

4 A Approximately five years.

5 Q And at any time were you stationed with the drug
6 enforcement unit?

7 A Yes, sir.

8 Q Okay. Now, you've been in law enforcement for a while;
9 is that correct?

10 A Twenty-five years next month.

11 Q When did you first get in law enforcement?

12 A I graduated from USC in Columbia. I was a reserve police
13 officer during my last two years there. When I graduated in
14 1992 I started working there. I worked there for two years,
15 went down and worked about 18 years in Charleston.

16 Q And then you moved up here to Georgetown?

17 A I'm originally from Georgetown County.

18 Q Okay. And you've worked for the Sheriff's Office -- what
19 do you do right now for the Sheriff's Office?

20 A I'm the -- I'm no longer in the drug enforcement unit. I
21 worked in the drug enforcement unit probably three years.
22 They brought me out of the drug enforcement unit to be the
23 inspector at the Sheriff's Office, which my capacity now -- my
24 title is inspector at the Sheriff's Office. I'm no longer an
25 agent. In my job duties now I handle the policies and

Benjamin Marlow - Direct by State

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1 procedures at the Sheriff's Office, hiring and internal
2 affairs investigations.

3 Q Now, while you were with the drug enforcement unit, were
4 you involved with the case at hand on December 2015?

5 A Yes. I was.

6 Q Okay. Tell us about -- tell us about your involvement in
7 this case.

8 A I'm, I'm sorry. I was coughing when you --

9 Q Tell us about your involvement in this case.

10 A I was one, one of the agents involved with -- under the
11 command of Deputy Tempalsky, Deputy Commander Tempalsky.

12 Q So you were there at the, the arrest of Mr. Roach and the
13 search of his house?

14 A Correct.

15 Q Okay. Tell us about what you did. What did you do to
16 prepare to go there, what -- did you put on gear, do you --
17 just tell us about that day.

18 A Yes, sir. All right. All right. We, we, we meet and
19 have a briefing. Everybody puts on equipment, dons equipment,
20 not dons equipment but dons it is in puts it on, tact vest,
21 helmets, some agents wear gloves depending on what their
22 responsibilities are. People have different types of
23 equipment that they have to carry depending on what their
24 responsibilities are. Every situation is a little bit
25 different depending on what type of entry is going to have to

Benjamin Marlow - Direct by State

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1 be made to the -- to a location whether it's a residence or a
2 commercial building or depending on what type of security the
3 location might have, cameras, doors. It, it just varies from
4 place to place. All that's assessed prior to, prior to a
5 search warrant being executed. Usually the case agent is the
6 one who is responsible for making those assessments and having
7 a briefing meeting with everybody, kind of what they -- what
8 we call an operational plan so that everybody's on the same
9 page, everybody's aware of what's going on so you're -- any,
10 anything that can be known you're aware of.

11 Q And who was the lead on that day?

12 A Deputy Commander Tempalsky. He was the case agent on the
13 case.

14 Q Okay.

15 A If he, if he were not and somebody else prepared it, such
16 as myself, the ops plan would have to be approved by the
17 deputy commander.

18 Q Now, you drove on that day; is that correct?

19 A I drove one of the vehicles, yes, sir..

20 Q Okay. You drove the vehicle that Agent Tempalsky was in?

21 A Correct.

22 Q Okay. Going to the residence, describe from going from
23 Highway 17 going down the -- I guess you turned off of that
24 road. Where did, where did you all go in to Mr. Roach's
25 house, Bayview, Park Road, what, do you recall?

Benjamin Marlow - Direct by State

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1 A I don't know the street names. I apologize. I'm not
2 from the City of Georgetown. We turned off of Highway 17
3 taking a left, went up to the first street that's the left,
4 made a left, went to the stop sign, which I guess at that
5 point probably becomes the community of Bayview, we turned in
6 there, went down to -- there's a city park there that
7 encompasses, I think it's from one street to the next if
8 you're going west to east going towards the water. We made a
9 left on the street that borders the east side of the park,
10 drove that way down parallel with the park, made a right, and
11 the house in question is on the right. Once you make a right
12 it's like the second house on the right.

13 Q So roughly how far away from the residence was the park?

14 A Probably the distance of three times this room length.
15 It's just in a -- it's an estimate. I don't know feet-wise or
16 anything but there is a fenced-in yard. I think it's a yard
17 adjacent to it. So it's not -- when you say two houses it's
18 not two real, real small houses. It's like a lot and then two
19 houses.

20 Q So it's within a hundred yards?

21 A Oh, yeah.

22 Q Okay. Okay. Now, you went past this park. You came up
23 to the house.

24 A Right.

25 Q Tell us what you -- what your duties were on that day as

Benjamin Marlow - Direct by State

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1 far as going into the residence.

2 A My, my duties -- I'm never the first in the door. I'm
3 one of the smallest guys. I'm, I'm not that SWAT guy that
4 likes being the first guy in the door. Deputy Commander
5 Tempalsky was on SWAT units and stuff in his prior life, I
6 guess, as a commander over another drug unit, and never been
7 to -- I've never enjoyed that, being the first guy, my duties
8 more so knocking on the door. Your duties vary from time to
9 time, but and, and those change at a moment's notice depending
10 on somebody tripping going up the steps or somebody having to
11 engage a dog or somebody else out of the residence or
12 something like that, but typically, my duties would be to come
13 up to the door, knock on the door, make sure that we announce
14 and those types of things. Deputy Commander -- I was kind of
15 the oldest guy with experience and the oldest guy in the unit
16 under Deputy Commander Tempalsky. Deputy Commander Tempalsky
17 kind of relied on me to help him with making sure that things
18 got checked off that needed to be checked off as far as what
19 we were doing, calling out on the radio, making sure that we
20 knocked, make sure that we announced, making sure that a car
21 was pulling in the yard with the siren on, a marked car, that
22 dispatch knew where we were because when, when you're making
23 an entry you can't actually say, "Hey, we're making entry
24 right this second." So you do that 30 seconds out or a short
25 distance from the residence so that you're not trying to talk

1 on the radio as you're pulling into the driveway or getting
2 out of the car and all of a sudden unexpectedly engaging
3 someone. I don't know if I answered your question or not.
4 Q Now, when you went -- you, you did. So going into the
5 house you said you knocked?
6 A Yes.
7 Q Or you knocked on the door?
8 A Yeah.
9 Q And then said you got out of the way?
10 A Right.
11 Q Once the house was opened up --
12 A Correct.
13 Q -- where did you go?
14 A I went straight into the, straight into the residence, as
15 an entry -- every situation is different, but best case
16 scenario is as entry is being made when you engage somebody
17 you're responsible for them. You can't pass by somebody,
18 leave a suspect or an unknown person standing in -- standing
19 somewhere and run past them to go check something else even if
20 you think that you might need to go to this bedroom or that
21 bedroom or, or somewhere else. So as you're going in you want
22 people to detach and deal with people and threats, what we
23 could call threats. A threat might be a poodle, a threat
24 might be an eight-year-old child or a threat might be a 300
25 pound man, it's considered a threat that you deal with, you

Benjamin Marlow - Direct by State

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1 engage, you assess, you know, is this is a big deal or is it
2 not, but you don't pass by it. So there -- entering that
3 residence there were other people in front of me. There are
4 doors to the left. People are being engaged, and at the same
5 time you have to keep moving. You have to keep -- you have to
6 fan out and gain control over the entire place that you're in
7 so that someone at another part of the residence can't destroy
8 evidence, so that they can't access a weapon and engage you or
9 barricade themselves or something like that. Going to the --
10 I went in the residence. I was able to go in, go straight
11 back as people are fanning off engaging people, eventually
12 made it to the back behind Bryan McKay, and I ended up in Mr.
13 Myers' bedroom on the left in the back of the residence.

14 Q Was Mr. Myers in the bedroom when you went into the
15 bedroom?

16 A Yes. He was in the bed.

17 Q Okay. And did you escort him out and seat him, seat him
18 somewhere? What, what'd you do with --

19 A Right.

20 Q -- Mr. Myers when you met with him in the bedroom?

21 A We went in. We got him to get out of the bed, and we
22 brought him back into the living room.

23 Q Okay. And everything went pretty much with, without any
24 problems; is that correct?

25 A Nobody got hurt. Everything went awesome.

Benjamin Marlow - Direct by State

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- 1 Q Okay.
- 2 A And there was -- yeah.
- 3 Q There was a bunch of people in the house?
- 4 A Yeah. There was a little kid in the house, which I've
- 5 got children as most people do, and the -- that was one of my
- 6 concerns in keeping the -- keeping it cool, you know, like
- 7 kids are terrified, you know, they see the cops on TV. That's
- 8 the only time they see cops. You know, some kids only see
- 9 cops on TV, but you know.
- 10 Q So once everybody was -- in the house was secured, at
- 11 that point did you take off your gear?
- 12 A Yeah. Probably 15 minutes in, 10 minutes in. Yeah. We,
- 13 we, we take turns taking equipment out. After, after we make
- 14 entry and secure location you start taking equipment out,
- 15 bringing equipment in. You have equipment such as like a hit
- 16 kit, a raid kit or something. It's got paperwork in it, paper
- 17 bags and gloves and stuff that you can't carry in logistically
- 18 with you to start with because it's, number one, you might not
- 19 need it, number two, it's a liability to try and take it with
- 20 you when you don't need it. So you take entry tools and stuff
- 21 like that in. You have your equipment. Some of the people
- 22 wear -- you know, we have tactical vests, then we have these
- 23 helmets. They're all heavy and hot. A person like Don wears
- 24 a -- like a steel plate -- like a SWAT thing, you know, like
- 25 -- it's a heavier, heavier gauge type stuff than say what I

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1 would wear. It's got steel shock plates in it and stuff like
2 that, and I have difficulty lifting it. Based on his size and
3 how heavy this thing is I could never wear it just because it
4 was too big and too heavy. So you take those things out. You
5 bring the other equipment back inside. You take turns doing
6 that. Everybody has to be secured first. You have to have
7 control over the residence. You back clear. Usually before
8 any equipment starts going -- before you get complacent you
9 usually back clear, start going back looking for people hiding
10 in bathrooms or behind shower curtains or under beds or in
11 voids in dressers or people can hide in a lot of different
12 places. So you back clear. Then you, then you know you're
13 secure. Then you say, "Okay. Well, start doing this. Start
14 doing that," usually in pairs because once you have everybody
15 together or relatively together you can watch everybody, make
16 sure that people can't access a weapon or something that
17 you're unaware of. Most people aren't a threat. I'm not here
18 to say everybody's the boogie man, but most people are not a
19 threat, but you don't know who is. So you have to secure
20 furniture and stuff like that. You just can't say, "Sit down
21 right there," because you're in somebody else's environment
22 and you don't know what's right there, and if I, if I may, an
23 example of this is one of the things I noticed in this house
24 where there was like a sword and a machete or some type of
25 large edged weapons positioned over the doorway at the house.

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1 So those, hey, we should take these out of this environment
2 at, at least for the time-being.

3 Q So now once you got everybody secured, which bedroom did
4 you search?

5 A I searched Mr. Myers' bedroom, the back left bedroom what
6 I would call the master bedroom of the house, but it's, it's
7 -- Scotty Roach is the homeowner at the residence. His
8 bedroom is probably a little bit bigger. I wasn't involved in
9 searching that, but it's at the front of the house and
10 probably has the better view based on the windows. Mr. Myers'
11 bedroom is the only bedroom in the house that has a private
12 bathroom. So I may refer to that as the master bedroom, but
13 I, I, you know, the homeowner would probably see different,
14 but I was involved in searching that room. I'm sorry.

15 Q And who else searched with you?

16 A Agent Tempalsky, but that was -- you got to get everybody
17 secured. You got to explain what's going on. You got to deal
18 with the things that have to be dealt with, like are there any
19 dogs in the house or anything that we can put outside. This
20 situation there was a little boy there. He needed to be in
21 school, and even if he wasn't at school, he certainly didn't
22 need to sit at the house while all this stuff was going on,
23 you're traumatized anyway. So you're trying to make
24 arrangements for things like that. It takes time. Somebody,
25 in this case it would be the case agent, Deputy Tempalsky, had

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1 to speak to Scotty Roach, the homeowner, spoke to him in his
2 bedroom and explained what was going on, and, you know, we
3 have a search warrant, and so then once Deputy -- once those
4 things were done is when we -- things slow down. Then you
5 start taking out evidence bags and deciding this person
6 searching here. These are the job assignments. You go into
7 things with what job assignments are, usually with the ops
8 plan, best case scenario what the ops plan would lay out.
9 Sometimes that changes as far as who's keeping track of what
10 or who's searching because somebody might take statements.

11 Q Did you take any statements?

12 A I did not take any statements.

13 Q So once you got into the bedroom that Mr. Myers was in and
14 you had all your gear off, what did you find in this bedroom?

15 A A lot of different things, a lot of things that are
16 relative to the trial, contraband-wise it was cocaine, crack,
17 weed. I don't know what the -- there was something else on
18 the dresser, something I don't know what it was finally
19 identified as, wasn't my case, and I don't want to say I
20 didn't care, but it wasn't that -- that part of it wasn't that
21 big a deal to me. It was the crack and the cocaine that were
22 there were the much bigger of the things. So those things
23 were all discovered and as well as other things that are
24 important to an investigation to establish residency and to
25 establish ownership and observations that are made.

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1 Q Did you find any of Mr. Myers' clothing there?

2 A Yes.

3 Q Did you find his pants?

4 A His pants were there.

5 Q And what was in his pants?

6 A There was money in his pants. There was pocket -- what,
7 what we would call pocket litter. There's pocket litter in
8 cars and there's pocket litter in pockets and stuff that ties
9 to you. Each and every -- right now I have stuff in my pocket
10 that is pocket litter. It's stuff that belongs to me. It
11 might be a receipt from the gas station or it might be, you
12 know, the receipt from Santee Cooper or SCE&G or something,
13 various things like that, large quantity of money. There
14 were, there were numerous -- Mr. Myers lived there. His
15 clothes were there. His dry cleaning was there. You know,
16 all kinds of stuff that belonged to him were there. There was
17 like a kid's certificate of achievement thing there.

18 Q Where was that found?

19 A The certificate of achievement?

20 Q Yes.

21 A There were two. One of them I don't know where it was
22 found other than just in the mix. One of them was found in
23 the bag which I assume you all have already discussed that had
24 the cocaine and crack in it. It was like a gray bag. I know
25 there are pictures of it. I get tasked with searching most of

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1 the time. I'm usually not one of the guys that has to take
2 the statements because I'm a better searcher. I'm methodical.
3 I don't, excuse me, I don't, I don't mind sticking my hand in
4 a toilet. I don't mind looking in a dirty diaper. You know,
5 mind, I don't enjoy it, but I do it. I thought that the, the
6 bag that had the crack and the cocaine in it when I found it
7 it was like in a brown paper bag and the -- there was the
8 certificate for the child in it crumpled in the bag and then
9 there was the gray bag that was kind of balled up. We've all
10 seen diapers. There -- you know, had to change your kid at
11 the mall or in the parking lot or something somewhere and
12 ended up putting a dirty diaper wrapped up in a -- like in a,
13 in a, in a bag like that. So I found that, and my first
14 instinct was, "This is a dirty diaper, this is going to suck,"
15 and it was kind of -- I'm sorry for saying that, "this isn't
16 going to be pleasant," and it was kind of hard. So I was
17 like, "Well, it's old. It's going to be dry. It's not going
18 to be that bad." So then as I started going into it I was
19 like, you know, "Hey, Don," and Don was probably, you know, I
20 could have reached out and touched him. The room wasn't very
21 big and Don is very big. So he doesn't get very far away from
22 you when you're in the same room. "Don, you know, look at
23 this," and he took pictures and all that kind of stuff.
24 Q So now you found those drugs in the bedroom. What did
25 you find, and you said there was litter, pocket litter in Mr.

1 Myers' pants. What all did you find in his pants? Did you
2 find a set of keys?

3 A Yes. The keys to the car that was outside.

4 Q And did you search the vehicle outside?

5 A Yes. I did. I participated in the search of the
6 vehicle, also. If I, if I can --

7 Q How did you get to that point?

8 A -- elaborate on the room. There was -- there were dirty
9 clothes in the room. There were clean clothes in the room.
10 There was, like I said, the dry cleaning in the room. There
11 was paperwork in the room that belonged to Mr. Myers. Some of
12 the paperwork was old. Some of it was new. Some of it was
13 very new in relation to the date when we were there. There
14 was boxes and boxes and boxes of shoes, like new clothing.
15 There were like the paper bag that had the -- the brown paper
16 bag that I described wasn't like a sack from Bi-Lo. It was a
17 -- like a paper bag that you would get from a clothing store
18 that has the little handles on it. There were lots of bags
19 like that in the room. I believe there's some pictures of the
20 stuff stacked against the wall that has a doorway on it with
21 receipts in them, and many of the shoes and clothes and stuff
22 were bought at different dates and times. Many of the shoes
23 hadn't been worn. They may be stacked and like ball caps and
24 stuff that were neatly stacked, maybe collector's ball caps or
25 something like that. It was Mr. Myers' stuff. Clean -- all

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1 -- I don't know how much clothes and stuff that he owns. If
2 it was my stuff it would have been all of my clothing and
3 shoes and that kind of thing. You know, I own total probably
4 five pairs of shoes, including the ones I have on, and there
5 were 40 pairs of shoes in boxes and stuff in the room. So you
6 -- I'm just not trying to belittle the fact that it wasn't a
7 pair of pants. It was all, all the clothes.

8 Q There's lots of items. But as far as the, the pair of
9 pants you believe that's what he had on --

10 A Right.

11 Q -- relatively soon?

12 A Right. Prior to getting into the bed. Right. I mean,
13 your keys and your money and that kind of stuff and I think
14 the belt was even still in the, in the loops of it.

15 Q And did he have pants on when you went in the room?

16 A He wasn't naked. I don't remember what he had on. I
17 don't remember if they were shorts or boxers or like jammy
18 bottoms or something. He wasn't naked. You --

19 Q But they were placed where you believe they would just
20 take them --

21 A Yeah. They were like at the foot of the bed like just
22 like if you came in and put your pants on the end of the bed
23 and laid down.

24 Q Now, you said you participated in the search of the
25 vehicle. Did you use the key out of the pocket to open the

1 car?

2 A Yes. It was -- the vehicle was locked.

3 Q And you unlocked the car with that set of keys?

4 A Yes.

5 Q And what did you find in the car? What was -- what kind

6 of items were in the car?

7 A They were a couple of different items in the car as far
8 as like a couple of pieces of clothing. There were kids' toys

9 in the car. I remember there was some kind of remote control

10 vehicle car type thing in the car. I don't remember exactly

11 what it was, but there were sunglasses in the front seat like

12 nice sunglasses, stuff that you would not want to lose. I

13 don't want to say Porsche sunglasses because I don't know that

14 they were Porsche sunglasses, but like bigger sunglasses with

15 like gold, gold color. I doubt they were gold, like real

16 gold, but gold-colored frames. I remember those were in the

17 front, and I remember there was also a box associated with

18 them like a cardboard box, and then a -- like a box you would

19 keep them in. They weren't dime-store sunglasses. They were

20 nice sunglasses.

21 Q Now --

22 A And, and the jacket, you know, I'm sure that's part of
23 the question. There was a jacket. I'm sorry.

24 Q With the jacket and, and the items in the, in the

25 vehicle, did you -- what did you do with all the -- these

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1 items, the toys and everything that was in the car?

2 A The -- well, there's all this stuff in the car. We're
3 searching the car. We're going through all this stuff
4 obviously thinking that we're going to find some type of
5 contraband or something and looking to who is this stuff
6 connected to, who does it belong to, even though Mr. Myers
7 had, you know, said, "I've got the car outside," but I believe
8 he said, "My girlfriend had rented it," but he had the keys
9 and it was secured and probable cause for the search was in
10 the warrant and plus extended to the vehicle because all the
11 drugs. The -- Agent McKay found a jacket in the car. There
12 was a green, I want to call it olive drab, but it wasn't quite
13 olive drab in color jacket, and as he's looking through the
14 jacket, we check pockets and all that kind of stuff, and like
15 the bedroom, we search the bedroom, you go through all the
16 shoes and every pocket of every pair of pants and shirt and
17 because people will hide stuff in their closets and in the
18 dressers and in the bottoms of shoes and put paper in on top
19 of them. So going through all this stuff, Agent McKay is
20 going through it. He finds a bag of what we thought at the
21 moment was heroin, the little plastic bag, little tie in the
22 inside zippered pocket of the -- kind of like my coat pocket
23 here, but it was a zippered pocket in that, in that -- the --
24 it was a tan powder. Typically tan powder in a smaller amount
25 is heroin, not always, but it usually is. Based on my 25

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1 years of experience, you know, if it's, you know, if it's
2 white it's cocaine. If it's tan it's usually heroin. It was
3 packaged and appeared to be heroin. So assumed it was heroin,
4 told him put it back, leave it in, leave it in the pocket,
5 leave it in the pocket of the jacket, because we're outside at
6 this point, like leave it in the pocket and kind of watch
7 this. I have experience, and I love teaching new guys, newer
8 guys, younger guys, you know, how to conduct investigations
9 and how to do things. Nobody's ever gonna' say if I say, "Is
10 this bag of heroin that I got out of this jacket is it yours?"
11 "No." "Is the jacket yours?" "Well, no, not now," but
12 gathered up some of the stuff out of the car, jacket in right
13 hand, and like the toy thing that was in the back. I can't
14 remember if it was a car or what exactly it was, but it was
15 some kind of vehicle type remote control. Anyway, went back
16 inside. Up on the porch, I don't know if you saw a picture of
17 the house or not, went up on the porch. The doorway is
18 standing open. Sergeant Blair Cribb, uniform guy that was in
19 here earlier, he might have been in here about the evidence
20 since he works for the City, the -- he's standing like right
21 in the doorway. Agent Tempalsky and his opts plan, you always
22 try and have a uniformed person of the jurisdiction that
23 you're in present. That way if anybody walks up they can
24 explain, "Hey, this is what's going on." So he's standing
25 there. Mr. Myers is in the living room as well sitting right

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1 close to the door. I start inquiring the toys and the stuff
2 in the car, "All of it belongs to me. The car's rented by my
3 girlfriend, all of this belonged to me. I don't want it
4 towed." "What do you want done with it?" "Well, I want it
5 left here. It's mine." "The toys are yours?" "Yeah. They
6 belong to my kid." "Is this jacket yours?" "Yes. The jacket
7 is mine." Then at that point I'm like I unzip it, kind of
8 being a smarty-pants or a smartass, I pull it out and I said,
9 "So I guess the heroin is yours, too?" And he didn't, you
10 know, obviously at that point he didn't say anything else, and
11 I turned it over to Agent Tempalsky and he handled the
12 evidence process of it, but my point of doing that, other than
13 to be a little smart, was to demonstrate to Agent McKay and
14 other people there how to, you know, how to determine who
15 something belongs to, anyway.

16 Q Now, you established who the jacket belonged to and you
17 believed who the room belonged to. Ultimately how long did
18 you stay and search the residence, a couple of hours?

19 A Probably a couple of hours. We were there for a while.
20 Agent Tempalsky tends to get in a hurry. I tend to be the
21 slow roller of the group who says, who says, "We're not -- we
22 have to search." We've found things on search warrants before
23 where it was the very last place we looked where, where you
24 had all but given up and said, "I don't think there's anything
25 else here," and then you look in that one last spot in the

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1 back of the toilet tank or the -- wherever behind a picture
2 that's on the wall and there's a hole in the -- you got to
3 search. You have to search every square inch of everything.
4 Nobody's going to hide something where they think you're going
5 to find it under your mattresses, old school.

6 Q Now, once you've done all that, and you guys secured up
7 the residence before you leave; is that correct?

8 A Correct.

9 Q Now, you didn't -- you handed all the drugs that you had
10 or everything over to Agent Tempalsky; is that correct?

11 A Correct. The case agent ultimately ends up responsible
12 for bagging and making sure that everything is, you know,
13 categorized, who it is, where it was, those -- that type of
14 information. Like the things that were found in the other
15 rooms I have no idea exactly what was found, where they were
16 found. I know it's in the report, but I haven't -- I didn't
17 read that part of the report because I wasn't there.

18 Q So you have your task and everybody else has theirs?

19 A I had my task. Everybody else has theirs, so, and I did
20 search the -- before we left I insisted that we look in the --
21 there was like a shed out back that we searched that. So I
22 did search that as well. There were like some pit bulls out
23 back and they had to be, you know, contained, kept away and
24 that kind of thing and it was quick. One of these pit bulls
25 had access to the shed and was able to like get up on

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1 everything in there, and so there was -- it was dusty
2 throughout this thing, you know, in the shed because the dog
3 running in and out it's dried. You could -- part of being
4 able to search and being a good searcher, why Agent Tempalsky
5 liked to have me involved in the searches, was because you can
6 look at a lot of things and tell how long ago they were moved
7 or if there was a handprint on it or if there's dust on it, if
8 it's been moved. I mean, if somebody is accessing something
9 regularly there's not going to be dust on it, or if there is
10 dust on it is the dust natural, is there fairy -- what, what,
11 what we call fairy dust, is there fairy dust on something.
12 Sometimes somebody'll try and conceal something and it'll have
13 fairy dust on it intentionally dusted, the dust is uneven or
14 the dust doesn't match dust somewhere else. The shed, every
15 -- there were just dogs running wild and no fairy dust.
16 Nobody would have wanted to go out there to hide anything.

17 Q So you didn't find anything in the shed?

18 A There was nothing in the shed, but you asked what all I
19 searched, and I did search there as well.

20 Q Okay. Excellent. Thank you very much. Please answer
21 any questions Mr. Wise may have.

22 THE COURT: Just one moment, Mr. Wise.

23 Madam Forelady, ladies and gentlemen of the jury, we're
24 going to take a brief recess, allow you to refresh yourselves.
25 Once again, do not discuss the case. Everyone remain seated

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1 as the jury exits the courtroom.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: Anything from the State before we recess for
5 a moment?

6 MR. TODD: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. WISE: No.

9 THE COURT: We'll stand at ease for about five minutes.
10 I'll ask that you --

11 A I'll stay right here if you want me to.

12 THE COURT: You stay right here, and don't discuss it
13 with -- yeah, you can go to the restroom. Don't discuss
14 anything with anybody.

15 A All right then. I'll stay right here.

16 THE COURT: Very good.

17 OFF THE RECORD

18 (On the record. The following takes place outside the
19 presence of the jury.)

20 THE COURT: Anything from the State before we proceed?

21 MR. TODD: Nothing, Your Honor.

22 THE COURT: Anything from Defense?

23 MR. WISE: Nothing from Defense.

24 THE COURT: We're ready for the jury.

25 (Whereupon, the following takes place in the presence of the

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1 jury.)

2 THE COURT: Mr. Wise, you're recognized. Cross
3 examination.

4 CROSS EXAMINATION

5 BY MR. WISE:

6 Q Officer Marlow, did you have a helmet cam when you went
7 in that day?

8 A Yes.

9 Q All right. And how do you turn those on and off?

10 A You slide it.

11 Q Excuse me?

12 A You slide it. You slide it one way or the other.

13 Q Okay. Just a little switch?

14 A Yeah. Like the --

15 Q Sliding switch?

16 A Yeah. I don't know if they have one somewhere. I mean,
17 it's -- looks like a tube. They were new at the time and --

18 Q Right. And, and you had one on when you went in?

19 A Right.

20 Q And -- excuse me?

21 A Everybody, everybody probably would have had one on or
22 tried to have one on.

23 Q All right. And when did you -- do you recall when you
24 turned yours off?

25 A Probably when we take the equipment off. We start

1 returning -- the helmets are the worst thing, the bulky part
2 of the --

3 Q Right.

4 A -- you know, the heat. It was hot in the house that day,
5 and even if it wasn't hot, we try and take some of that heavy
6 equipment off that's not going to be needed during the search.

7 Q And these helmet cameras record audio and video?

8 A I don't know if they still have them or not. I haven't
9 been in the DEU for almost a year now.

10 Q That's not my question. There's audio and video --

11 A They're supposed to.

12 Q -- in connection with it?

13 A Yes. They're supposed to.

14 Q All right. Because I think we've seen a video where
15 there was -- the officer -- the other officer was wearing --

16 A Right.

17 Q -- where you heard the, heard the sound, too?

18 A Right. Right.

19 Q All right. So it has, it has an audio component to it?

20 A It has that capacity.

21 Q So -- go ahead.

22 A I was just gonna' say, I came out of the DEU not long
23 after they started trying to use those. I don't know if
24 Deputy Commander Tempalsky was able to elaborate on that or
25 not, but they had just started trying to get that equipment in

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1 operation and, and using them and --

2 Q All right. And how long do they record?

3 A I don't know. I would say 10 minutes to 20. I don't
4 know. I think they had an SD card in them.

5 Q Uh-huh.

6 A Mine hardly ever worked because you couldn't see it and
7 you didn't know if it was on or not because of the slide on
8 it. I know there's a video from this.

9 Q Did you go back and review your video of this incident?

10 A Mine wouldn't have worked.

11 Q Excuse me?

12 A Mine hardly ever worked.

13 Q That's not my question.

14 A We had just got -- I don't have -- I didn't have a video
15 for mine.

16 Q You had a camera though on yours?

17 A Right.

18 Q That you turned on?

19 A I tried to.

20 Q All right. You saying it didn't turn on?

21 A It, it -- I don't know if it turned on or not. It did
22 not record.

23 Q Okay

24 A You had to, I mean, I'm not being evasive.

25 Q I understand.

1 A And I don't want to think that there's a missing video or
2 something like that.

3 Q Hey, it's electronic equipment.

4 A The --

5 Q Sir?

6 A It's electronic equipment.

7 A It's electronic equipment, and I'm 48 years old, and I --
8 the - my child does a lot of my electronics now. The SD
9 cards, one of the things that we were discovering when I was
10 coming out of the unit was that the SD cards if they weren't
11 somehow formatted they wouldn't record whether the thing was
12 on or not so.

13 Q All right. So you --

14 A It was a --

15 Q -- when you made this initial raid, you leave a bunch of
16 stuff in the, the cars outside?

17 A Some stuff like a raid kit --

18 Q Some stuff that you're going to use later?

19 A -- stuff you're going to use later. Right.

20 Q Right. Among those things that you're going to use later
21 would it be a hand-held video camera?

22 A No.

23 Q You didn't bring one of those?

24 A No, sir.

25 Q You've been doing this how many years?

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- 1 A Twenty-five.
- 2 Q Twenty-five.
- 3 A Not just narcotic stuff but been in --
- 4 Q Excuse me?
- 5 A Not just narcotic stuff but I have been in law
- 6 enforcement for almost 25 years.
- 7 Q Participating in various types of raids and arrests and
- 8 so forth?
- 9 A Correct.
- 10 Q All right. And you know, you know that people sometimes
- 11 spontaneously say things when they're arrested or, or a raid
- 12 that -- that's helpful later?
- 13 A Correct.
- 14 Q And it's important to get that recorded down?
- 15 A It's convenient if it is. Yes, sir.
- 16 Q And well, and you know that if you bring recording
- 17 equipment you can catch all that?
- 18 A That would make sense.
- 19 Q All right. And did you bring the recording equipment on
- 20 this?
- 21 A I see you're going towards -- nobody was walking around
- 22 with a video camera videotaping things. Everybody had an
- 23 assignment and --
- 24 Q All right. All right. When people were interviewing
- 25 Defendants in the house, was anybody with a handheld recorder

1 recording those?

2 A Not to my knowledge. I wasn't -- I didn't participate in
3 that at all.

4 Q You didn't participate in what at all?

5 A In the interviewing of the people in the -- I'm assuming
6 when you're talking about somebody taking statements from
7 them, I didn't participate in that. I spoke to --

8 Q Interviewing them, just passing the time of day even.

9 A Right.

10 Q You didn't participate in that?

11 A I spoke to Mr. Myers.

12 Q Right.

13 A I spoke to people. I don't know exactly what your
14 question is and don't want to come across as evasive to the
15 question. I didn't have a video camera that day, and I, I
16 didn't carry one around and speak to everybody every time like
17 cut it on like your phone or something.

18 Q Nor did you have a tape recorder or cassette, any sort of
19 recording device?

20 A No.

21 Q Now, show you State's Exhibit 10, and were those sent off
22 for analysis or do you know?

23 A I don't know.

24 Q Did you seize them or do you know?

25 A I'm sorry?

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1 Q Did you seize those or do you know?

2 A I believe Deputy Commander Tempalsky is the one that
3 probably would have seized them if they were seized. The --
4 these --

5 Q So, let me, let me explain. What we're looking at are
6 two basically butts of cigars or something?

7 A We -- well, cigars are typically round. These are -- if
8 you, if you're telling me these weren't tested, I don't want
9 to --

10 Q I don't know. Talking about --

11 A -- say that they were marijuana and have you get mad at
12 me or something. These were in an ashtray beside the bed.
13 They appear to be roaches, the short piece left from a
14 marijuana cigarette, but now everybody smokes cigars and they
15 call them blunts, and this is what would be left from those
16 and that is consistent with the, with the environment that we
17 came into. The room was smokey. Mr. Myers' room was smokey.
18 It was closed. He was laying in bed. I'm not sure what all I
19 can say.

20 Q You, you can't say if marijuana was in those things in
21 other words?

22 A If -- not if they weren't tested I can't say for sure.

23 Q Right. And then you certainly don't know if DNA was done
24 on those to see who actually did smoke them even if we don't
25 know what's in it?

1 A I didn't do DNA. I don't think anybody did DNA. These
2 were no more than two feet from -- two feet from Mr. Myers.
3 He's laying in the bed when we come in the room. The room
4 smells like marijuana smoke, there what appears to be
5 marijuana roaches in the ashtray beside the bed.

6 Q And those were lit and smoked when?

7 A I guess that morning.

8 Q You can't.

9 A I, I wasn't there when he was smoking them.

10 Q I understand. You don't know if it was that morning or
11 the day before?

12 A It was smokey in the room as though somebody had just
13 smoked in the room marijuana because I remember opening the
14 place up. I wanted to --

15 Q Well, go ahead. Excuse me. I didn't mean to interrupt
16 you.

17 A I wanted to open the -- there's a picture somewhere that
18 shows the bedroom how there's like these two big windows there
19 in the bedroom. Well, the blinds were closed and there's a --
20 some kind of cloth spread or something laying on the bed that
21 we had to get down from over the windows because I like things
22 lit up to where that I can see and air it out. Like cigarette
23 smoke, marijuana smoke bothers me, so if we can get it open
24 and out. Nobody had smoked 10 hours before. Somebody had
25 just smoked in that room, smelled like marijuana. Mr. Myers

Benjamin Marlow - Cross by Defense

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1 was the only one in there. I don't know that these were
2 tested or not.

3 Q Those weren't even burning; were they?

4 A Though -- they were in the ashtray. Right.

5 Q They were not burning; were they?

6 A They could have been burning 30 seconds before. I don't
7 know. I wasn't in there when they were smoked. They were not
8 burning when we came in there.

9 Q They weren't hot when you came in there?

10 A I didn't touch them. I mean, I didn't, I didn't feel
11 them. We -- go ahead.

12 Q You didn't determine that. You didn't determine whether
13 they were hot.

14 A No. No.

15 Q You made no effort to determine if they were hot?

16 A I made no effort to squeeze them. At the time, two
17 marijuana butts were the least of everybody's concerns,
18 including Mr. Myers.

19 Q Mr. Marlow, Mr. Marlow, those were never tested?

20 A I don't know.

21 Q You know what they look like?

22 A I know what they look like.

23 A You have no report that says those were tested for
24 marijuana at all; do you?

25 A I wasn't the case agent. Agent Tempalsky was. He could

1 tell you for sure. I could maybe take all the paperwork, go
2 through it and check and see. He --

3 Q Mr. Marlow, you're the one that's telling this jury those
4 are marijuana blunts and you have no report that says that.

5 A No, sir. I told --

6 Q Is that correct?

7 A I told you and the jury that I believed that they
8 probably were based on the smell and their appearance, but --

9 Q You have no testing to back that up.

10 A But I have, I have no test to show that those are
11 marijuana. I believe that they tested the big bags of
12 marijuana that they found.

13 Q Now, did you take these pictures or somebody else?

14 A Deputy Commander Tempalsky probably took them. I haven't
15 seen the pictures yet that you have in your hands.

16 Q All right. I show you Exhibit 21, and that shows a
17 plastic bag next to basically a paper bag?

18 A Correct.

19 Q All right. And the paper bag is the one that has Zeon
20 Myers' card or certificate in it?

21 A Correct.

22 Q All right. And the plastic bag is the one that has the
23 drugs, alleged drugs in it?

24 A Correct.

25 Q All right.

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- 1 A This is --
- 2 Q And inside the plastic bag is a grayish looking bag?
- 3 A You have the paper bag that I described earlier.
- 4 Q Right.
- 5 A The paper bag with the handles on it, and you have this
- 6 Wal-Mart looking gray plastic bag that was wrapped up real
- 7 tight around these two items which felt like a dirty diaper.
- 8 Q Right.
- 9 A And being inquisitive I dug into it and it wasn't a dirty
- 10 diaper.
- 11 Q It was what?
- 12 A It was not a dirty diaper.
- 13 Q All right. But the picture there has -- does not show
- 14 the plastic bag inside the paper bag.
- 15 A It shows the two together.
- 16 Q Correct. Next to each other.
- 17 A Right.
- 18 Q Okay.
- 19 A This is when I picked it up, opened it up, I'm opening it
- 20 up and I see it, and I'm like, "Hey, Deputy Commander
- 21 Tempalsky," I call him Don. I'm like, "Hey, Don, look, you
- 22 know, here's a bunch of drugs right here," and he took a
- 23 picture of all the stuff together.
- 24 Q All right. So you didn't ask him to take a picture of
- 25 the bag before you took anything out of it?

- 1 A Of what I thought was the dirty diaper I did not.
- 2 Q All right. Now, now, did you read the search warrant to
- 3 Mr. Roach?
- 4 A No. I did not.
- 5 Q All right. Do you know who did?
- 6 A I wasn't there. I assume the case agent is usually
- 7 responsible for it. So I don't know.
- 8 Q All right. You said you weren't there.
- 9 A Right.
- 10 Q We're talking about at the house.
- 11 A I was at the house. I wasn't in the room when Agent
- 12 Tempalsky was talking to Scotty Roach.
- 13 Q Okay. All right.
- 14 A I was back at that back room, the -- what I would call
- 15 the master bedroom. It had its own bathroom.
- 16 Q Do you recall the picture when you said that Mr. Myers'
- 17 laundry was in the room?
- 18 A I'm sorry?
- 19 Q You've testified his laundry was in the room.
- 20 A Like piles of clothes, piles of clothes, laundry, dry
- 21 cleaning.
- 22 Q Dry cleaning?
- 23 A Right.
- 24 Q You say the dry cleaning was in the room.
- 25 A Right.

Benjamin Marlow - Cross by Defense

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1 Q Correct?

2 A Yes.

3 Q Did you save the ticket on that dry cleaning bag?

4 A I didn't. I don't know if Agent Tempalsky did and I
5 don't know why you would but I don't know. It may have been
6 -- maybe there's a picture of it.

7 Q Do you know if there's a picture?

8 A I don't know. I mean, I'll go through them real quick.

9 Q I mean, I don't know if you can go through them real
10 quick to that. That's the thing about it.

11 A Well, I mean, no, I'll try. Well, I mean --

12 Q But you, you testified --

13 A It sounds like it's important. I'd be more than glad to
14 go through them.

15 Q It is because you testified Mr. Myers' dry cleaning was
16 in that bag.

17 A Right. I saw dry cleaning in the room that belonged to
18 Mr. Myers.

19 Q Correct. And I want to see a picture of the dry
20 cleaning.

21 A Okay. Well, I'll look and see if there is one. This is
22 some dry cleaning that was in the room.

23 Q All right.

24 A I'll see if there's any, see if there's any more. You
25 used the term laundry?

- 1 Q Dry cleaning more specifically.
- 2 A Okay. All right. Because there is a laundry basket --
- 3 Q Laundry.
- 4 A -- there but it's not --
- 5 Q Yeah.
- 6 A -- it doesn't have the dry cleaning pictures in it, but
- 7 that's the dirty clothes that were --
- 8 Q Laundry too vague of a term.
- 9 A Right. Right. I'm following you. That's probably the
- 10 best thing I see.
- 11 Q All right. Have you got another picture that's even --
- 12 that's that good?
- 13 A No. Let me see that one. Yeah. This is in the bedroom.
- 14 This is close to the bathroom door.
- 15 Q Uh-huh.
- 16 A And the other door there is blocked off with shoes and
- 17 other personal items.
- 18 Q Right. Now --
- 19 A So there looks like one, two, three, three, maybe four
- 20 hangers there. That's picture 20.
- 21 Q Right. That is somebody's laundry or somebody's dry
- 22 cleaning?
- 23 A That's Mr. Myers' dry cleaning.
- 24 Q Okay. All right. Did you get the label off of it and
- 25 bring to this courtroom to establish that?

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1 A I saw the label.

2 Q Did you get the label off of it, bring into this
3 courtroom and establish that?

4 A In the event that you don't believe me, no. I did not.

5 Q Did you -- well, better yet, did you have someone come
6 over and say, "Take a close-up of this so we can read the
7 name," like you did on many of these things?

8 A No.

9 Q So you took no effort to preserve -- I mean, was that
10 left in the house or do you know?

11 A We didn't take any of his clothing except for I think Mr.
12 -- Agent Tempalsky took his jacket that had the heroin in it.
13 The dry cleaning didn't have any, have any drugs in it. I'm
14 sure if so Agent Tempalsky, who is very thorough, would have
15 taken that.

16 Q That label though can't be read in that picture?

17 A You'd probably have to -- I, I doubt it. I mean, I
18 really doubt whatever you do to it it could. I mean, if you
19 can't take my word -- there was nothing that could be
20 identified that belonged in that room to anyone other than Mr.
21 Myers. If it had somebody else's name on it I'd have said,
22 "Agent Tempalsky, this belongs to John Doe."

23 Q Who do those receipts belong to that were in there, Wal-
24 Mart, stuff like that?

25 A I don't know.

1 Q You don't know. They could belong to anybody?

2 A Okay.

3 Q You didn't -- correct?

4 A Sure.

5 Q All right.

6 A I mean, you know, I understand what you're saying, but it
7 was Mr. Myers was asleep in the room. It was his room. All
8 his belongings are there. He's closed off in his room laying
9 in bed watching TV smoking cigarettes or whatever he was
10 smoking. Whatever those little things are he was smoking
11 them.

12 Q Now, you seize his phone?

13 A Excuse me?

14 Q Did you seize Mr. Myers' phone?

15 A I did not.

16 Q You know who did?

17 A Agent Tempalsky may have.

18 Q Tempalsky may have? I think you all seized several
19 phone, cell phones from there?

20 A Phones are frequently seized. I do not know exactly.

21 It's the case -- again, not being evasive and wanting to
22 explain so it doesn't sound like I am being evasive, the case
23 agent, who is in this case Agent Tempalsky, is the one who
24 would make the decision as to, "We're seizing this phone or
25 we're seizing this or we're seizing that or ceasing the

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1 receipt off of the dry cleaning," or something. So he --

2 Q And seizing phones are done to show connection among
3 people?

4 A I don't know if phones were seized. I would hope that
5 these questions were asked to Agent Tempalsky when he was on
6 the stand and he could have told you spot on everything. He's
7 the man with the answers.

8 Q Now, you had, you had shoes in boxes in there?

9 A Yes, sir.

10 Q And these were new shoes?

11 A Some of them were in boxes. I think when I was flipping
12 through the pictures right then some of them showed how they
13 were like, excuse me, how they were -- some were displayed on
14 top of the boxes. Many were in the boxes. I mean, they were
15 nice shoes.

16 Q That were new shoes, too?

17 A Some of them were new. Some had been worn once or twice.
18 You know, some people take very good, very good care of their
19 tennis shoes. I have a teenager that wipes his shoes off
20 every evening to drive me crazy I think, and he's proud of his
21 shoes. These were all nice shoes. Mr. Myers, well-dressed,
22 they, they didn't belong to anybody else that was at the house
23 at the time. How about that?

24 Q They didn't belong to any -- to the two women or the two
25 men?

- 1 A The two women and the two men.
- 2 Q Right.
- 3 A They weren't women's shoes, and, and --
- 4 Q Do you know what, do you know what size shoes those were?
- 5 A I don't remember what size shoes they were. They were --
- 6 Q Did you check?
- 7 A They were consistent. It wasn't like shoes that were
- 8 being stored for some reason.
- 9 Q All right. Did you take pictures of those boxes that
- 10 show the size of the shoes?
- 11 A There are pictures of the boxes, but again, I can look
- 12 through real quick and see if there's one of the ends that
- 13 show the sizes of them.
- 14 Q Do you know what the size of those shoes are in relation
- 15 to the size shoe that Mr. Myers wears?
- 16 A They wouldn't have fit Agent Tempalsky. I, I don't know.
- 17 I'm not trying to be evasive or a smartass.
- 18 Q I understand. I understand. As a practical matter, all
- 19 right, you don't know what size shoe --
- 20 A I don't know what size shoe he wears, and I don't know
- 21 what size shoes they were that he had stacked in his bedroom.
- 22 Q The boxes. And so the only reason you assume those shoes
- 23 are his is they were in that room?
- 24 A No. He said they were his shoes. He said that they came
- 25 from his sister's store which I don't know where it is or

Benjamin Marlow - Cross by Defense

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1 anything about it, but there were receipts --

2 A All right.

3 Q Unless he is related to somebody that owns, you know,
4 multiple different shoe stores like a Rack Room and a
5 Footlocker and a -- they didn't all come from the same place.

6 Q Correct. So unless or he's in the shoe business, but you
7 don't know if those shoes fit him is the point; correct?

8 A No. I do not.

9 Q All right. Now, were you among the last to leave?

10 A Towards the end, yes, sir.

11 Q All right. And, and were you --

12 A Because I --

13 Q And did you, did you help secure up the house?

14 A More than likely.

15 Q All right. And I believe the only person not taken into
16 custody that day was Nicole Bliss.

17 A I do not know. I, I, I don't recall who was taken.
18 People were transported. I wasn't in charge of the transport,
19 charges that were on him or her or anybody at the house. I do
20 remember towards the end when we were winding up, it doesn't
21 seem like any of the prisoners were still in the house and but
22 we were out back dealing with the pit bulls that were out
23 back. There was a fenced in yard in the back and there were
24 pit bulls and that had access to that shed that I was talking
25 about and you just can't leave and leave somebody's dogs and

1 you wouldn't want those dogs in the house tearing stuff up. I
2 don't know. The answer to your question is I don't know who
3 actually took the ride to jail and who didn't and what their
4 charges were.

5 Q So you don't know if, if Nicole Bliss was left there at
6 the house?

7 A I do not know. I, I, I, I don't recall. I may have been
8 there and she was left there but I just don't recall.

9 Q Did you, did you help secure the front door?

10 A I don't recall.

11 Q You don't recall.

12 A I -- no, sir.

13 Q Excuse me one moment.

14 A Yes, sir.

15 Q All right. Thank you very much.

16 A Yes, sir.

17 MR. TODD: No more questions for this witness, Your
18 Honor.

19 THE COURT: All right. You may step down.

20 A Thank you, Your Honor. Thank you, ladies and gentlemen.

21 MR. TODD: Agent John Prevatte. The Court's indulgence,
22 Your Honor. I think he stepped to the restroom. Your Honor,
23 we're going to call Agent Bryan McKay.

24 THE COURT: Yes, sir. Agent, if you'd please come
25 forward. I'm going to ask if you could to approach the Bible

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1 on the edge of the witness stand there, place your left hand
2 on the Bible, raise your right hand as the clerk administers
3 the oath. You may set your paperwork down. There you go.

4 Whereupon, Bryan McKay was called to the stand, duly
5 sworn by the clerk and testified as follows:

6 THE CLERK: Thank you. Please be seated. State your
7 full name and spell it for the record, please.

8 MR. MCKAY: Bryan McKay, B-R-Y-A-N, M-C-K-A-Y.

9 THE COURT: Have a seat in the witness chair. Pull up
10 real close to that microphone, speak loudly, clearly and
11 slowly in order that we can hear everything that you have to
12 say. Yes, sir. Mr. Todd.

13 MR. TODD: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. TODD:

16 Q Agent McKay, who do you work for?

17 A Georgetown County Sheriff's Office.

18 Q And are you part of the drug enforcement unit?

19 A I've been assigned to the 15th Circuit Drug Enforcement
20 Unit for the last three years.

21 Q And how long have you been in law enforcement?

22 A Sixteen years.

23 Q Okay. And have all those years been here in Georgetown?

24 A They have.

25 Q And did you go through -- what kind of training do you do

1 to become a law-enforcement officer?

2 A I went through the South Carolina Criminal Justice
3 Academy and got certified and then I been continuing education
4 through other investigative courses, narcotics investigation
5 courses.

6 Q So primarily your focus and your only focus is working
7 with the drug enforcement unit?

8 A At this time, yes.

9 Q Okay. Now, regarding this case, December 11, 2015, were
10 you involved with this, with this case at all?

11 A I was involved in this case.

12 Q What were your duties on that day?

13 A That day I was part of the search warrant team. We
14 conducted a search warrant at the residence, and at that time
15 I did some paperwork on and did a little, a little bit of
16 searching.

17 Q So you did a little bit of everything?

18 A A little bit of everything. Yes, sir.

19 Q Okay. You didn't search the, the, the room that Mr.
20 Myers was in; did you?

21 A No, sir. I cleared it when we first made entry and then
22 we secured everybody into the den area and I had other
23 assignments.

24 Q Did you search the room that Mr. Roach was in?

25 A No. I did not. I was in there doing -- conducting

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- 1 paperwork.
- 2 Q So you were just in the center part of the house?
- 3 A Yes.
- 4 Q Okay. Did you search anything at all in this residence?
- 5 A No.
- 6 Q Did you search anything outside?
- 7 A Searched the vehicle.
- 8 Q Tell us about the vehicle.
- 9 A There was an Infiniti SUV dark in color. Myself, Agent
- 10 Prevatte and Agent Marlow were outside at the vehicle. I
- 11 found a green coat, and inside the green coat inside the
- 12 pocket was a clear plastic baggie with tan powder.
- 13 Q Now, when you were searching the vehicle, did you
- 14 primarily search the entire vehicle start from front to back?
- 15 How do you, how do you do a search of a vehicle?
- 16 A Well, well, I was, at that point, I was searching the
- 17 backseat area of the vehicle. I think Agent Prevatte was in
- 18 the, the rear of the vehicle and Agent Marlow was -- searched
- 19 the front, front area of the vehicle.
- 20 Q Okay. And where did you find the jacket?
- 21 A It was on the backseat.
- 22 Q Okay. What else was on the backseat or do you recall
- 23 what else was in the backseat?
- 24 A I don't recall.
- 25 Q Were there a lot of items in the, in the car or just a

1 few?

2 A There were toys and other paperwork in the, in the, in
3 the vehicle.

4 Q Okay. Did you know who the vehicle belonged to?

5 A I did not know who it belonged to.

6 Q Okay. Where did -- how did you get in the vehicle? Did
7 you have to break the door open?

8 A I think Agent Marlow had the keys to the, to the vehicle.

9 Q Okay. Now, once you found the, the -- what you believed
10 was heroin in the jacket what'd you do?

11 A I gave the jacket to Agent Marlow and he took it inside
12 and said -- did his -- said if -- whose jacket it belonged to.
13 The Defendant claimed it was his jacket.

14 Q Now, at the residence there was a bunch of people there;
15 is that correct?

16 A Correct.

17 Q Now, as far as people that were in the residence when you
18 arrived, did you know all those people before going to the
19 residence?

20 A No. I didn't know.

21 Q Did you know any of those people before going to that
22 residence?

23 A The only person that we knew that lived at that residence
24 was, was a Co-Defendant in the case.

25 Q Who was that?

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- 1 A Scotty Roach.
- 2 Q Scotty Roach. How about Kathryn -- Nicole Kathryn Bliss;
- 3 did you know her?
- 4 A Yes.
- 5 Q Okay. How did you know her?
- 6 A She's a CI.
- 7 Q Okay. How did she become a CI --
- 8 A She --
- 9 Q -- as far as did she have charges pending?
- 10 A That's how most CIs, two types of CIs come up, people who
- 11 want to work for, for money and people who are working off
- 12 charges.
- 13 Q How about Joshua Bliss, did you know him?
- 14 A He was also a confidential informant.
- 15 Q Okay. Now, with the two of them, did you know them to be
- 16 addicts?
- 17 A Yes.
- 18 Q Do you know them still to be addicts?
- 19 A Yes.
- 20 Q Okay. How about Crystal LeDay, did you know anything
- 21 about her?
- 22 A Did not know her.
- 23 Q Okay. Mr. Roach, what did you know about Mr. Roach?
- 24 A That, that we had bought marijuana from him, from that
- 25 residence.

1 Q Did you know him to be an addict?

2 A Yes.

3 Q Okay. So, of the majority of the people that are in the
4 residence, you knew of them to be addicts from this incident?

5 A Yes.

6 Q Okay. Did you talk to Mr. Myers at all?

7 A I don't think so.

8 Q Okay. You didn't ask him any questions? You were just
9 there doing paperwork?

10 A Doing paperwork. Yes, sir

11 Q Okay. Did you talk to Mr. Roach?

12 A Yes. I was in the room --

13 Q Okay.

14 A -- with Mr. Roach and Agent Prevatte.

15 Q Okay. Did you talk to him about the drugs in the house?

16 A I asked him questions. He was mirandized and asked
17 questions about the, the drugs that was in his room.

18 Q Okay. And did you interview Joshua Bliss at all?

19 A Yes.

20 Q Okay. And did you ask him questions about drugs in the
21 house as well?

22 A Yes. Mirandized -- he was also mirandized and he gave a
23 statement, written and oral statement that the drugs in his
24 room --

25 MR. WISE: Objection, Your Honor. The statement would be

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1 hearsay.

2 THE COURT: Sustained.

3 Q I don't want to know about what they said.

4 A Oh, yes.

5 Q I just want to know if you talked to them.

6 A Yes.

7 Q Okay. And you -- did you talk to Ms. LeDay at all?

8 A No. I did not.

9 Q Okay. And did you talk to her son at all, the 11 year
10 old?

11 A Yes. I did actually talk to the son.

12 Q Okay. And did you get -- help get him somewhere else
13 other than the house?

14 A Yes. I helped to -- called his uncle to come pick him
15 up.

16 Q Okay. Now, how long were you at the residence?

17 A Several hours.

18 Q Okay. And your primary job was to just make sure
19 everybody was safe and secure in the central area; is that
20 correct?

21 A Yes.

22 Q Okay. That's all the questions I have.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION

25 BY MR. WISE:

- 1 Q You got the jacket out of the car --
- 2 A Yes, sir.
- 3 Q -- outside and what else did you get out of the car
- 4 outside?
- 5 A That's -- I handed it over to the Agent Marlow.
- 6 Q Right. What else did you get out of the car other than
- 7 the jacket?
- 8 A I didn't take anything else out of the car.
- 9 Q Nothing else?
- 10 A No, sir.
- 11 Q Just the jacket?
- 12 A Yes, sir.
- 13 Q And you walked in with the jacket?
- 14 A No, sir. Agent -- I handed it to Agent Marlow.
- 15 Q Right there at, at the car?
- 16 A Yes, sir.
- 17 Q Okay. And Agent Marlow then walked into the house with
- 18 just the jacket?
- 19 A Yes, sir.
- 20 Q Is that correct?
- 21 A Yes, sir. I believe so.
- 22 Q Okay. Did you follow him in the house or you stay
- 23 outside?
- 24 A I think I was on the porch area at that
- 25 time.

Bryan McKay - Cross by Defense

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- 1 Q Now, were you among the last to leave?
- 2 A We all left together I believe.
- 3 Q Okay. Well, let me back up. Did you help secure the
- 4 front door?
- 5 A I don't recall.
- 6 Q Okay. Do you know if -- do you know if Nicole Bliss was
- 7 there when you left?
- 8 A I believe she was already released.
- 9 Q Already released and she had left the scene?
- 10 A Yes, sir. I believe so.
- 11 Q Okay. Excuse me?
- 12 A I believe so. Yes, sir
- 13 Q And you recognized her as being an undercover agent?
- 14 A She was a confidential informant. Yes, sir.
- 15 Q Right. A confidential informant, a little different, I
- 16 agree. You recognized her as being a confidential informant?
- 17 A Yes, sir.
- 18 Q All right. And how many times she been arrested since
- 19 this incident?
- 20 A I have no idea.
- 21 Q Okay. You don't know if it's been two or three or four
- 22 times?
- 23 A No, sir. I could not say.
- 24 Q All right. All right. Thank you.
- 25 THE COURT: Redirect?

1 MR. TODD: A couple of quick questions.

2 REDIRECT EXAMINATION

3 BY MR. TODD:

4 Q Ms. Bliss was not arrested; is that correct?

5 A She was not. She was released.

6 Q And why was she not arrested on that day?

7 A She was released because Mr. Joshua Bliss, her husband at
8 the time, claimed all the narcotics, she didn't know about the
9 narcotics in the room.

10 Q So Mr. Bliss took responsibility for all the drugs in the
11 room?

12 A He took the responsibility all drugs found in his room or
13 their room.

14 Q Okay. And the two of them were in a room on their own;
15 is that correct?

16 A The Blisses were in a room on their own. Yes.

17 Q Okay. And as of right now Ms., Ms. Bliss is not a CI for
18 the DEU; is that correct?

19 A No. She is not a CI at this time.

20 Q And that would be because she's an addict?

21 A That's correct.

22 Q Thank you. That's all the questions I have.

23 THE COURT: You may step down.

24 A Thank you.

25 THE COURT: Please come forward, sir. I'm going to ask if

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1 you could to place down your paperwork right over here and
2 place your left hand on the Bible and raise your right hand as
3 the clerk administers the oath.

4 Whereupon, John Prevatte is called to the stand, duly
5 sworn by the clerk and testified as follows:

6 THE CLERK: Thank you. Please be seated. State your
7 full name and spell it for the record, please.

8 THE COURT: Have a seat in that witness chair, pull up
9 real close to that microphone, speak loudly, clearly and
10 slowly in order that we can hear everything that you have to
11 say, and let's start with your full name.

12 MR. PREVATTE: Yes, sir. My name is Agent John Prevatte,
13 J-O-H-N, P-R-E-V-A-T-T-E.

14 DIRECT EXAMINATION

15 BY MR. TODD:

16 Q Agent Prevatte, long have you been in law enforcement?

17 A For about seven and a half years.

18 Q Okay. And who do you primarily work for as far as your
19 -- who, who writes your paycheck?

20 A I work for the City of Georgetown.

21 Q Okay. How long have you worked for the City?

22 A About three and a half years.

23 Q Okay. And with your duties at the City are you assigned
24 to the drug enforcement unit?

25 A Yes, sir. I am.

1 Q How long have you been assigned to the drug enforcement
2 unit?

3 A Up till this point about a year and a half.

4 Q Okay. Now, on December 11, 2015, were you involved with
5 the, with the case at hand?

6 A Yes, sir. I was.

7 Q Okay. What were your duties that day?

8 A That day I was assigned to the drug enforcement unit
9 basically just assisting with the execution of the search
10 warrant.

11 Q Okay. And tell us what you did with the execution. Walk
12 us through from the time you arrived at the house until pretty
13 much what you, what you found.

14 A My duties at the search warrant, myself and Agent Powers
15 we were the first two through the door. We were assigned
16 primarily just to basically go in and go to Mr. Roach's
17 bedroom to basically contain everything in the bedroom and
18 hold that.

19 Q Was Mr. Roach in the bedroom when you got there?

20 A Yes, sir. He was.

21 Q Did you talk to Mr. Roach?

22 A Yes, sir.

23 Q Did you let him know you were there to arrest him and
24 there to search his house?

25 A Yes, sir.

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- 1 Q Okay. Was he compliant?
- 2 A Yes, sir.
- 3 Q Okay. Now, once you talked to Mr. Roach, you secured
- 4 him, you placed him in handcuffs I'm sure; is that correct?
- 5 A Yes, sir.
- 6 Q Okay. And did you keep him separate from the rest of the
- 7 people?
- 8 A Yes, sir. I stayed in the bedroom with him.
- 9 Q Okay. Did you search Mr. Roach's bedroom?
- 10 A Yes, sir.
- 11 Q What did you find in Mr. Roach's bedroom?
- 12 A Inside his bedroom we found two handguns, approximately
- 13 \$1400 in currency, several pills, combined total weight of
- 14 marijuana 57.4 grams, approximately 4.8 grams of tan powder
- 15 substance, approximately 1.7 grams of a white powder substance
- 16 and multiple just pieces of drug paraphernalia like straws,
- 17 spoons, pipes, that kind of thing.
- 18 Q The white powdery substance, did you believe that to be
- 19 cocaine?
- 20 A Yes, sir.
- 21 Q Okay. Was it later tested that you know of?
- 22 A Yes, sir. It was field -- should have been field tested
- 23 at our office.
- 24 Q Okay. Now, you said that you found paraphernalia. Is --
- 25 are those things used to use drugs? Are they tools for using

1 drugs?

2 A Yes, sir.

3 Q Okay. How well do you know Mr. Roach? Have you had
4 prior occasions to run into him?

5 A He's a little bit older than myself, but in the law
6 enforcement career I think I may have had one or two other
7 encounters with him, nothing where I ever arrested him or was
8 on scene whenever he was arrested or anything like that.

9 Q From your knowledge of working and doing these types of
10 things, did Mr. Roach appear to be an addict?

11 A Yes, sir.

12 Q Okay. But you all did have buys on -- from Mr. Roach; is
13 that correct?

14 A Yes, sir.

15 Q Okay. And what were those buys of; do you recall?

16 A I believe marijuana.

17 Q Okay. And there was a large quantity of marijuana in
18 his, in his room?

19 A Yes, sir.

20 Q Now, did you search any other part of the house?

21 A Not inside the house. I don't believe so. No, sir.

22 Q Okay. Now, inside of the house did you notice any other
23 items for packaging or using drugs throughout the house?

24 A No, sir, not that I recall. The majority of my time in
25 the house was pretty much straight in. It kind of hooks back

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1 to go into his bedroom, and once I was in that bedroom I was
2 pretty much in that bedroom unless I was walking outside to go
3 outside.

4 Q So you focus just on Mr. Roach, and then you left the
5 residence and went out to the vehicle?

6 A To the vehicle. Yes, sir.

7 Q Okay. And did you search the vehicle?

8 A Yes, sir. I assisted. Yes, sir.

9 Q Okay. Tell me about what you did to search the vehicle.

10 A It was myself, Agent McKay and Agent Marlow. Those two
11 searched the front side or the, you know, the front two thirds
12 of the vehicle. I went to the back hatch and lifted the hatch
13 and was basically searching that area there.

14 Q What'd you find in the back hatch?

15 A Just miscellaneous clothes and stuff, a few like
16 children's toys like a little racecar, RC car type thing.

17 Q Now, did you find any drugs in the back?

18 A No, sir.

19 Q Was the car pretty clean as far as paraphernalia or
20 anything like that?

21 A Yes, sir. I don't remember there being any like drug
22 paraphernalia or anything.

23 Q Okay. Now, once you completed searching the vehicle,
24 what else did you do?

25 A I believe that was it except for helping escort the

1 individuals that were going to be put in the patrol cars to be
2 transported to GCDC.

3 Q So you assisted in getting everybody out of the residence
4 and on their way?

5 A Yes, sir.

6 Q Okay. That's all the questions I have. Thank you.

7 THE COURT: Cross examination, Mr. Wise.

8 CROSS EXAMINATION

9 BY MR. WISE:

10 Q Agent Prevatte, you were part of the buy from Scott
11 Roach?

12 A Yes, sir.

13 Q All right. And you were aware that, that Joshua Bliss
14 was the informant?

15 A Yes, sir.

16 Q All right. Were you aware that Joshua Bliss lived at
17 this residence?

18 A No, sir.

19 Q All right. Had been living there a number of months?

20 A No, sir.

21 Q Okay. You just knew that he knew Scott Roach?

22 A Yes, sir.

23 Q That's basically all you learned from that?

24 A Yes, sir.

25 Q All right. Now, you went out back and all outside of the

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- 1 house and searched the SUV type car?
- 2 A Yes, sir.
- 3 Q All right. Did you see the jacket?
- 4 A Once Agent McKay had it. Yes, sir. I saw it.
- 5 Q Once it was taken out?
- 6 A Yes, sir.
- 7 Q All right. And what did he do with the jacket?
- 8 A Agent McKay gave it to Agent Marlow who went inside with
- 9 it.
- 10 Q Right outside there?
- 11 A Right outside where?
- 12 Q I mean, he -- let me back up. That was a bad question.
- 13 A I'm sorry.
- 14 Q All right. Just outside of the car McKay gave it to Marlow?
- 15 A I think it was handed through.
- 16 Q A window.
- 17 A Well, no. They were on like opposing sides of the vehicle
- 18 --
- 19 Q Uh-huh.
- 20 A -- and just handed it through the vehicle and Agent Marlow
- 21 went in, I believe.
- 22 Q All right. So somebody pulled it out one side and then
- 23 handed it through to the other side?
- 24 A Yeah. I mean, to what I remember never left the car, you
- 25 know, just, yeah.

- 1 Q All right. All right. Do you know if Agent McKay
2 searched the jacket while it was outside?
- 3 A I think he was the one, yes, sir, that said he found
4 heroin in it.
- 5 Q Excuse me?
- 6 A Yes, sir. Yes, sir. I think he was the one that said he
7 found the, the tan powder substance that looked like believed
8 to be heroin.
- 9 Q Right. Right. And then he passed it off to Marlow?
- 10 A Yes, sir.
- 11 Q All right. And Marlow carried it inside?
- 12 A Yes, sir.
- 13 Q And you left the toys in the back of the car I assume?
- 14 A Eventually everything was taken out.
- 15 Q Eventually?
- 16 A Yes, sir.
- 17 Q About how much later?
- 18 A Just a matter of moments.
- 19 Q Minutes later?
- 20 A Yes, sir
- 21 Q All right. About -- you carried the toys inside then?
- 22 A I believe Agent Marlow carried the toys inside. I don't
23 recall.
- 24 Q Excuse me?
- 25 A I believe Agent Marlow carried all the toys inside, but I

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- 1 don't recall if I was actually the person that picked up the
2 toys and stuff.
- 3 Q You don't recall?
- 4 A No, sir.
- 5 Q Not, not sure?
- 6 A No, sir.
- 7 Q Okay. And you primarily searched Scott Roach's room?
- 8 A Yes, sir.
- 9 Q And nowhere else?
- 10 A No, sir.
- 11 Q And there was other --
- 12 A Just, just other than the vehicle.
- 13 Q Excuse me?
- 14 A Nowhere other than the vehicle.
- 15 Q All right. There were two pistols found in that room?
- 16 A Yes, sir.
- 17 Q Okay. And Mr. Bliss, as part of being an informant,
18 wasn't supposed to be in possession of any drugs; was he?
- 19 A No, sir.
- 20 Q Right. And you know he got arrested later on some drug
21 charges?
- 22 A Yes, sir.
- 23 Q I believe March of the -- 2016?
- 24 A Possibly somewhere around there. I'm not sure of the
25 date.

1 Q Okay. Sometime several months after this?

2 A Yes, sir.

3 Q All right. Thank you.

4 THE COURT: Redirect?

5 MR. TODD: No more questions, Your Honor.

6 THE COURT: You may step down. You're free to leave.

7 A Thank you, Your Honor.

8 MR. TODD: Your Honor, can we take five or ten minutes?

9 THE COURT: Yes. Madam Forelady, ladies and gentlemen of
10 the jury, I'm going to ask that you retire to the jury room.

11 Do not discuss the case in any way, shape or form. Madam

12 Forelady, I'm going to ask that you enforce that rule.

13 Everyone remained seated as the jury exits the courtroom.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Anything from the State before we stand at
17 ease for a moment?

18 MR. TODD: Nothing, Your Honor.

19 THE COURT: Anything from Defense?

20 MR. WISE: Nothing.

21 THE COURT: You anticipate how many more witnesses?

22 MR. TODD: None, Your Honor. That'll be it.

23 THE COURT: Okay. All right. We'll stand at ease for
24 five minutes.

25 OFF THE RECORD

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1 (On the record. The following takes place outside the
2 presence of the jury.)

3 MR. WISE: Can we discuss one little thing? I expected
4 the State to go a little longer. I'm trying to get another
5 witness here. I have one ready to go. If I get both of them,
6 great. If not, I've got some that are going to come -- one's
7 got to come from Myrtle Beach and can't be here tomorrow
8 morning I know. I would anticipate worst case scenario I'm
9 through by 11 o'clock.

10 THE COURT: All right. Okay. At this juncture we will
11 -- I know that you have not rested on the record. I'll afford
12 you the opportunity to do that.

13 MR. TODD: Yes, sir.

14 THE COURT: But since the jury is already out I'm going
15 to allow -- I'm going to entertain motions at this time.

16 MR. WISE: All right. Your Honor, I think the only -- I
17 will concede there's evidence on one charge to go to the jury
18 and that's the possession of, of the heroin that was found in
19 the jacket that the State gave testimony on that Mr. Myers
20 said was his. The rest of it, all I can say is it's mere
21 presence. It's not his house. There's some testimony he had
22 some personal property there. There's absolutely no evidence
23 that's his residence. He doesn't get mail there. The
24 pictures show he gets mail at other locations. If you give a
25 mere presence charge, frankly, there's basically nothing, you

1 know, connecting with it. They didn't do DNA on any of the
2 drug containers to show that he touched any of them. There
3 are no fingerprints and there's no admission by him except for
4 that one heroin case.

5 THE COURT: What do you think about the circumstantial
6 evidence of the high school award or education award that
7 belonged to one of his children that was in the bag where the
8 drugs were found?

9 MR. WISE: It's there. How long had it been there?

10 THE COURT: Is that, is that a question of fact maybe
11 that the jury might need to look, take a look at?

12 MR. WISE: If it had been a -- if it had been an award
13 from the week before I think it may be sufficient, but it's an
14 old award. You're looking at things that, that aren't
15 current.

16 THE COURT: Well, the age of the award might be something
17 that is uniquely suited for a jury to resolve.

18 MR. WISE: Your Honor, as, as I have a pet peeve going on
19 about circumstantial evidence cases to be frank with you, and
20 unfortunately the Supreme Court is getting the better of me on
21 it because they have the final say so. In a -- how does one
22 analyze whether or not to direct a verdict in a circumstantial
23 evidence case? It's not that easy.

24 THE COURT: Well, it's -- well, they say substantial
25 circumstantial evidence.

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1 MR. WISE: Whatever that means, and they won't define
2 that term, but I agree with you. The old rule used to be
3 exclude every other reasonable hypothesis except that for the
4 guilt of the accused. All right.

5 THE COURT: Which is no longer the law.

6 MR. WISE: Well, I'm pushing it to get back there, but I
7 hadn't made it yet, and the reason is this, once the facts are
8 decided, once the fact, once we agree on what the facts are,
9 this Court, as well as that jury on an equally good position
10 to determine whether any other reasonable hypothesis except
11 that of the guilt has been excluded because we're dealing with
12 undisputed facts. There are no facts, in many respects there
13 are no facts for this jury to decide. It's almost like it's a
14 matter of law, leaving aside the heroin issue for a moment,
15 it's almost like a matter of law because we know what the
16 facts are. The facts are the drugs were found in that room.
17 The facts are some of his property was found in that room.
18 The facts are there's nothing to say he ever touched any of
19 it. Now, is that proof to the exclusion of every other
20 reasonable hypothesis except the guilt of the accused, I don't
21 think it is, and this Court is in the equal position to decide
22 those bare facts as the jury is.

23 THE COURT: All right. What does the State have to say
24 about that, Mr. Todd?

25 MR. TODD: Your Honor, we agree with your assessment as

1 far as we believe there was substantial circumstantial
2 evidence. While there's no fingerprints on it, one of the
3 strongest pieces of evidence we have was his son's award in
4 the bag with the drugs. Along with that, he was in the
5 residence at the time. They didn't know, the DEU didn't know
6 if he was going to be in the residence or not, but his
7 belongings were there, and from just the testimony and, and
8 some of the things that are in evidence in the pictures it
9 seems like some of those belongings had been there over a long
10 period of time, some of them not so long, some of them for a
11 very long time, almost establishing that if he wasn't living
12 there, getting his mail there, he was still spending a
13 substantial amount of time there in a house where he knew
14 there was a lot of drugs going on, drug use going on because
15 all those people were addicts. Mr. Roach was one of his close
16 friends. He had spent a lot of time with him, and he had been
17 in his residence many times in the past. This wasn't just
18 somebody that was -- he just showed up at the house, what he
19 says at two o'clock in the morning and walk in the house.
20 Nobody does that unless they're familiar with the people
21 living in the house, and, and the person that's coming to
22 stay.

23 One of the other things that are interesting in the fact
24 that with everybody being a user you don't keep your drugs
25 away from yourself. If the other people would have had the

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1 drugs, they would have used them. He had a large amount of
2 quantity -- large amount of money in his pants pockets.
3 Again, a sign of someone that is a drug dealer. Now, one of
4 the things with the trafficking charges, there doesn't have to
5 be intent to traffic. It is strictly weight. There was a
6 large amount of weight in his dominion and control, in his
7 area. He had access to control who comes in and out of the
8 house or in and out of that room because the door was closed.
9 He had access to stop people from coming in, and he had items
10 that were there. So, Your Honor, I, I would say it'd be the
11 same as if he stayed at a hotel room if that's his argument.
12 I think it's more than that but he's there. It's in his
13 presence. There's a lot of his stuff that was there.

14 THE COURT: Mr. Wise, what do you think about the whole
15 concept of constructive possession, and the -- even if it were
16 a room, there were no -- if he were just in a room, a random
17 room and the drugs were found there, and you find a similar
18 situation where there's a throw down case and there are a
19 number of people in the presence, quite often everybody is
20 standing around the dope gets charged. So the concept of
21 constructive possession is based on circumstantial evidence,
22 and I think it's a factual question for the jury to resolve.

23 MR. WISE: The concept of constructive, for constructive
24 possession or what it really means is this, it's a means of
25 proving prior actual possession. For example, I'm sitting

1 down here in Georgetown, but if my desk drawer were locked
2 and they were to search it and find drugs at my desk drawer,
3 locked desk drawer to which I only had the key, that's a
4 pretty -- that's a constructive possession case, and it's
5 pretty clear that I'm the only one that could have put it
6 there because I'm the only one that had the key and that does
7 exclude every other reasonable hypothesis except that for my
8 guilt. So constructive possession means a whole lot more than
9 being in a room with drugs. That's not illegal. That never
10 will be illegal. They have to prove that somehow or another
11 he had these drugs in his possession.

12 THE COURT: How often do you see people hide their drugs,
13 particularly if they're drug addicts, hide their drugs in
14 somebody else's room?

15 MR. WISE: Well, it's an assumption it's somebody else's
16 room and not a room in that house. I will, I will tell --

17 THE COURT: He was laying -- he was, according to the
18 testimony, he was laying in bed and admits to marijuana aroma.

19 MR. WISE: Right. Well --

20 THE COURT: And there's at least some of his belongings
21 in that room.

22 MR. WISE: There's no question about that. Just like the
23 marijuana found in the laundry room, somebody hid it in there.
24 All right. I assume Roach did. I don't know. It's his
25 house. Bliss could have hit it in there. I don't know.

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1 THE COURT: See, there -- now you're talking. That's a
2 factual question for the jury to resolve, and you can point
3 out there's a bunch of dope in there, a bunch of dope handlers
4 and a bunch of dope dealers in there, but the question is
5 going to be presented to the jury, and I think it's a
6 legitimate question of fact for them to resolve. I think that
7 there is substantial circumstantial evidence, but certainly
8 whether it's proof beyond a reasonable doubt, I bet you going
9 to explain that to the jury.

10 MR. WISE: I'm going to try.

11 THE COURT: All right.

12 MR. WISE: I may not succeed but I'm going to try.

13 THE COURT: All right. I believe you will. We'll
14 explain it to them, but we don't, we don't know what they're
15 going to do with it, but I'm sure you'll explain it in great
16 detail. You'll be given --

17 MR. WISE: And I assume we'll put on the record after he
18 rests that we've argued, that the motions were made out of the
19 presence of the jury, something like that, so.

20 THE COURT: That's correct.

21 MR. WISE: All right.

22 THE COURT: As a matter of a fact, everyone agrees that
23 we're going to do the motions for a directed verdict now and
24 allow you to rest on the record without the necessity of
25 having to -- going back through that exercise. Do you agree,

1 Mr. Todd?

2 MR. TODD: I agree, Your Honor.

3 THE COURT: All right. At this time I'm going to ask Mr.
4 Myers to stand where he is and raise your right hand as the
5 clerk administers the oath.

6 (Defendant is sworn by the clerk.)

7 THE COURT: Mr. Myers, here momentarily the State is
8 going to rest and we've reached the stage where you are in a
9 position to present your defense, and I am at this time going
10 to explain certain of your rights. If you do not understand
11 anything that I say, please let me know. If you want me to
12 explain anything in more detail I'll be happy to do so. Do
13 you understand me?

14 MR. MYERS: Yes, sir.

15 THE COURT: All right. We have now reached the stage of
16 the trial where you must -- where you may present your
17 defense. You have the right to claim the protections given to
18 you by the Fifth Amendment to the Constitution of the United
19 States. This amendment states in relevant part no person
20 shall be compelled in any criminal case to be a witness
21 against himself. This means that you cannot be required to
22 testify in this case. You have the right to testify on your
23 own behalf. However, no one can make you testify. This is a
24 personal right, and no one can weigh this right except you.
25 If you decide to testify you'll be subject to the same rules

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1 that govern other witnesses. You may be examined and cross-
2 examined on any relevant issue in this case. In addition, if
3 you have any convictions involving dishonesty or false
4 statements for crimes punishable by imprisonment for more than
5 one year, this Court determines that the probative value of
6 admitting this evidence outweighs its prejudicial effect to
7 you, the Solicitor will be able to introduce your record to
8 attack your credibility. If you decide to testify, this
9 decision on your part must be freely, voluntarily and
10 intelligently made with the knowledge of the protections given
11 to you by the Fifth Amendment and the consequences of your
12 decision to testify. If you decide not to testify I will
13 instruct the jurors that they cannot give the fact that you
14 did not testify any consideration whatsoever and there is to
15 be absolutely no prejudice to you because you did not testify.
16 It is left entirely up to you whether or not to testify. You
17 may talk to your attorney, your family members, your friends
18 or anyone else that you want to talk to, but the final
19 decision will be left entirely up to you. Do you understand
20 what I have explained to you, Mr. Myers?

21 MR. MYERS: Yes, sir.

22 THE COURT: Do you have any questions about what I have
23 explained to you.

24 MR. MYERS: No, sir.

25 THE COURT: Have you discussed these matters with your

1 lawyer?

2 MR. MYERS: Did I discuss these matters with my lawyer?

3 THE COURT: Whether or not you're going to testify.

4 MR. MYERS: We spoke to briefly.

5 THE COURT: You talk with your lawyer about whether or
6 not you were going to decide to testify in your own defense?

7 MR. WISE: Have we talked about your testifying?

8 MR. MYERS: Yes. Yes, sir.

9 THE COURT: All right. Do you wish to talk to your
10 lawyer anymore with regard to this decision?

11 MR. MYERS: Yes sir.

12 THE COURT: Okay. I will inquire in the morning as to
13 whether or not you make your -- you've made your decision to
14 testify, but you understand your Fifth Amendment rights and
15 the fact that you can't be compelled to do that. You
16 understand that?

17 MR. MYERS: Yes, sir.

18 THE COURT: And but if you want to you can. The decision
19 is left entirely up to you. Do you understand that, Mr.
20 Myers?

21 MR. MYERS: Yes, sir.

22 THE COURT: All right. Very good. We're ready for the
23 jury. Now, I'll call on you, Mr. Todd, and you can rest.

24 MR. TODD: Thank you, Your Honor.

25 (Whereupon, the following takes place in the presence of

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1 the jury.)

2 THE COURT: Mr. Todd, you're recognized.

3 MR. TODD: Thank you, Your Honor. At this time the State
4 rests. That is the State's case.

5 THE COURT: Very good. All right. Mr. Wise, you're
6 recognized.

7 MR. WISE: And we've had some discussions off the record.
8 I would be prepared to start my case now. I'd call Ms.
9 Gibson.

10 THE COURT: Very good.

11 Yes, ma'am, please come forward. I'm going to ask if you
12 could to place your left hand on the Bible and raise your
13 right hand as the clerk administers the oath.

14 Whereupon, Danielle Maggie Gibson was called to the
15 stand, duly sworn by the clerk and testified as follows:

16 THE CLERK: Thank you. Please be seated. State your
17 full name and spell it for the record, please.

18 THE COURT: Yes, ma'am. If you could have a seat in that
19 witness chair. We're going to ask that you pull up real close
20 to that microphone.

21 MS. GIBSON: Okay.

22 THE COURT: Speak loudly, clearly and slowly in order
23 that we can hear everything that you have to say and let's
24 start with your full name.

25 MS. GIBSON: Danielle Maggie Gibson.

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1 THE COURT: All right. And spell that last
2 one.

3 MS. GIBSON: Gibson?

4 THE COURT: Yes.

5 MS. GIBSON: G-I-B-S-O-N.

6 THE COURT: Very good. Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. WISE:

9 Q Ms. Gibson, where do you live?

10 A [REDACTED] Emanuel Street, Georgetown, South Carolina.

11 Q Now, you're going to bring that mike a little closer to
12 you.

13 A [REDACTED] Emanuel Street, Georgetown, South Carolina.

14 Q And how long you been living in Georgetown?

15 A Five years now.

16 Q All right. Where did you live before that?

17 A Boston, came from Boston.

18 Q Okay. And are you employed?

19 A I am.

20 Q Where are you working?

21 A I am a business owner. So I have an online business that
22 I am now converting over. It used to be a store, but now it's
23 an online business.

24 Q We'll get to the store in a minute.

25 A Okay. Yeah.

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1 Q You do anything else?

2 A I'm a student.

3 Q All right. Where are you, where are you a student?

4 A I graduated in June of last year from Horry-Georgetown
5 Technical College, and I am starting classes in the fall at
6 Chamberlain Nursing School online.

7 Q You know Marvin Myers?

8 A I do.

9 Q All right. Say again.

10 A I do.

11 Q And how long have you known him?

12 A For a little over five years.

13 Q All right. So since about the time you moved down here?

14 A I moved, yes.

15 Q Okay. Have you all been going out over that period of
16 time or is that more recent or what?

17 A I'd say within the last four and a half years.

18 Q Okay.

19 A Yeah.

20 Q You all been going out on a regular basis?

21 A Yes.

22 Q All right. Do you know where Mr. Myers lives?

23 A Yes.

24 Q And where does he live?

25 A [REDACTED] North Alex Alford Drive.

- 1 Q And whose residence is that?
- 2 A His grandmother.
- 3 Q His grandmother?
- 4 A Uh-huh.
- 5 Q Have you known him to live anywhere else since he's --
- 6 since you've been dating him?
- 7 A No.
- 8 Q All right. Do you know Scott Roach?
- 9 A I do.
- 10 Q And how did you meet Scott Roach?
- 11 A Through Marvin Myers.
- 12 Q All right. And does he know him?
- 13 A I'm sorry?
- 14 Q Does, does Marvin know Scott?
- 15 A Yes.
- 16 Q All right. Do you know what kind of relationship or
- 17 friendship they had?
- 18 A Not to the full extent. I do know that they've been
- 19 friends for a while, and I mean, he's, he -- well, from my
- 20 knowledge he was kind of mentally sick so it reminded him of
- 21 previous situations.
- 22 Q So Mr. Roach has some mental problems?
- 23 A Yes.
- 24 Q All right. Does he -- well, you wouldn't be privy to
- 25 that. Do you know if Marvin ever goes over to Mr. Roach's

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- 1 house on occasions?
- 2 A Occasionally to check on him.
- 3 Q Excuse me?
- 4 A Occasionally to check on him.
- 5 Q To check on Mr. --
- 6 A Yeah.
- 7 Q -- Mr. Roach?
- 8 A Correct.
- 9 Q All right. Did -- was there a business establishment
- 10 that you had that involved Mr. Myers?
- 11 A Flight. He was Flight. Are you referring to Flight, the
- 12 store, Flight?
- 13 Q Excuse me? Flight.
- 14 A Yeah. Sorry.
- 15 Q Okay. It's a store.
- 16 A Yes.
- 17 Q And what kind of store is it?
- 18 A It's a retail store. We sell retro Jordans and some
- 19 light clothing apparel.
- 20 Q All right. And how long did that business operate?
- 21 A As of now it's going on two years.
- 22 Q And did -- how long did you have the store?
- 23 A Prior to now?
- 24 Q Right. Well, when did the store open?
- 25 A August 2015.

- 1 Q All right. That's the physical store?
- 2 A Correct.
- 3 Q All right. When did you stop having a physical store?
- 4 A June 2016.
- 5 Q So roughly eight months?
- 6 A Yeah.
- 7 Q Okay. And what type of products were sold from there?
- 8 A We had retro Jordans. We sold apparel, team apparel,
- 9 jeans, sneakers, I said that, accessories, things of that
- 10 nature.
- 11 Q All right. And who ran the store?
- 12 A I would but I go to school. At that time I was, I was in
- 13 school full-time Monday through Thursday. So he would run the
- 14 store.
- 15 Q He being?
- 16 A He meaning Marvin Myers.
- 17 Q Marvin Myers.
- 18 A Correct.
- 19 Q All right. Was this primarily a cash business, check
- 20 business or what?
- 21 A A cash.
- 22 Q All right. Where was it located?
- 23 A 205 Merriman Road in Georgetown, South Carolina.
- 24 Q And exactly where is that?
- 25 A 205 Merriman Road?

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1 Q Right.

2 A Yeah.

3 Q I mean, where's Merriman Road in case somebody may not be
4 familiar with it like me?

5 A I think it's off of Highmarket Street.

6 Q Okay.

7 A Yeah. I'm still kind of -- sorry.

8 Q Now, do you know whether or not Mr. Myers ever kept any
9 merchandise at Scott Roach's house?

10 A I do.

11 Q And how do you know that?

12 A Because, well, when we first got the store it was having
13 some problems. It would flood and leak every time it rained.
14 So we couldn't really store our merchandise there because the
15 things were getting damaged. So we needed someplace to keep
16 them, and it was suggested that Scott Roach had some extra
17 storage so we can keep it there.

18 Q Okay. Now, you remember when Marvin was arrested on the
19 morning of December 11th?

20 A I do.

21 Q All right. Where were you staying or where are you
22 staying now?

23 A [REDACTED] Emanuel Street.

24 Q All right. And where were you staying in December of
25 2015?

- 1 A [REDACTED] Emanuel Street.
- 2 Q All right. And who lives there?
- 3 A My mom.
- 4 Q That's your mother's house?
- 5 A My mother's house. Yes.
- 6 Q Okay. If you and -- and Marvin was staying where again?
- 7 A When we would stay together?
- 8 Q No. Marvin was staying where?
- 9 A [REDACTED] North Alex Alford Drive.
- 10 Q And that's whose house again?
- 11 A That's his grandmother's house.
- 12 Q Did that create some problems with the two of you getting
- 13 together?
- 14 A Absolutely.
- 15 Q All right. Now, did you -- on the night of December the
- 16 9th do you know what you and Marvin did?
- 17 A Yes.
- 18 Q What?
- 19 A We were at the hotel.
- 20 Q All right. And I hand you this receipt and ask you if
- 21 you can identify that.
- 22 A Yes.
- 23 Q And what is that?
- 24 A That's a Baymont Inn receipt --
- 25 Q Receipt. All right.

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- 1 A -- from that night. Yeah.
- 2 MR. WISE: Like to introduce this as --
- 3 MR. TODD: I, I have never seen it.
- 4 THE COURT: Any objection from the State?
- 5 MR. TODD: No objection, Your Honor.
- 6 THE COURT: That's Defendant's Exhibit --
- 7 MR. WISE: One.
- 8 THE COURT: -- One is into evidence.
- 9 (Defendant's Exhibit Number One [Baymont Receipt]
- 10 admitted into evidence and appropriately marked.)
- 11 BY MR. WISE:
- 12 Q And what night did you -- did you all stay there?
- 13 A At the hotel?
- 14 Q Yes.
- 15 A It would have been the night before the events --
- 16 Q Right.
- 17 A -- which was --
- 18 Q What's the date on it?
- 19 A It's -- I can't remember. It was the 9th, a Wednesday
- 20 night.
- 21 Q The 9th of December?
- 22 A Correct.
- 23 Q Okay. Did you see Marvin on a regular basis?
- 24 A I did.
- 25 Q All right. When you were -- before the 9th of December,

1 if you wanted to, to find Marvin where would you go look for
2 him?

3 A His grandmother's house.

4 Q All right. Did you also see him at the place of
5 business, too?

6 A Yes.

7 Q Do you recall the last time he stayed at Scott Roach's
8 house before the night of the 10th into the 11th of December?

9 A No.

10 Q Had it been a while?

11 A That -- come again?

12 Q Did he -- that's a bad question. Let me first rephrase
13 it. All right. Before the 9th or the 10th into the 11th of
14 December --

15 A Uh-huh.

16 Q -- do you recall in the previous month or so anytime he
17 stayed at Scott Roach's house?

18 A Not to my knowledge.

19 Q All right. Did you see him -- how regular did you see
20 him?

21 A Mr. Marvin Myers?

22 Q Right.

23 A Often.

24 Q Often. Was it close to everyday?

25 A Close to everyday.

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1 Q All right. And if you wanted to call him at night I
2 assume you called his cell phone?

3 A Correct.

4 Q All right. Had you ever been over to Scott Roach's
5 house?

6 A A couple of times.

7 Q All right. So you -- had you met him?

8 A I've met him before.

9 Q Okay. Thank you. Thank you. Answer any questions Mr.
10 Todd may have.

11 THE COURT: Mr. Todd, cross examination.

12 MR. TODD: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. TODD:

15 Q Ms. Gibson, you said you moved here from Boston?

16 A Correct.

17 Q And how long had your, your mother, is that who you
18 primarily stayed with when you were down?

19 A Yes.

20 Q How long has she lived here?

21 A Maybe 20 plus years.

22 Q Okay. Did you ever live here before that?

23 A Before I went to high school here.

24 Q Okay. Did you know Mr. Myers from high school or --

25 A No.

- 1 Q Okay. So you guys just met when you moved back?
- 2 A Correct.
- 3 Q Now, how did you meet with Mr. Myers?
- 4 A We had mutual friends.
- 5 Q So just from the neighborhood got together?
- 6 A Uh-huh.
- 7 Q Okay. When did you all start dating?
- 8 A Like four and a half years ago. I mean, I, I can't
- 9 really remember at the moment. I'd say 2013.
- 10 Q Okay. So you've been together for a little while?
- 11 A Uh-huh.
- 12 Q And have you interacted with Mr. Roach very much?
- 13 A Not often, no.
- 14 Q Okay. Tell me a little bit about your business. You
- 15 said you sell apparel?
- 16 A Right. Well, we sell sneakers primarily.
- 17 Q Okay.
- 18 A And we have apparel as well as accessories, team apparel.
- 19 So it would be like --
- 20 Q Jerseys?
- 21 A -- football jerseys, things like that. Yeah.
- 22 Q Where do you get your supply from?
- 23 A It depends. Sometimes I get it from New York. Sometimes
- 24 I get it from L.A. Sometimes I get it from North Carolina.
- 25 It would depend on the vendor.

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1 Q So you don't have a regular vendor? You just have a --

2 A At that time I didn't. No.

3 Q Okay. And are you incorporated as a sole proprietor?

4 A Correct.

5 Q Sole proprietor?

6 A Yes.

7 Q Okay. And how long has Mr. Myers been involved with
8 that?

9 A From the beginning.

10 Q From the beginning.

11 A Uh-huh.

12 Q So he was one of the people that started it up with you?

13 A Right.

14 Q Okay. How much money did he put down to help you out
15 starting it up?

16 A I mean, when we started it it was like \$5000.. So it was
17 half and half.

18 Q Okay. Now, you've been in business four years, five
19 years?

20 A No. It's been two.

21 Q Two years?

22 A Correct.

23 Q And you were a store and now you're going online; is that
24 what you're saying?

25 A We're, yeah, we're trying to convert to an online store.

- 1 Q Okay. And is Mr. Myers part of that --
- 2 A Yes.
- 3 Q -- deal as well? So his income comes from that business?
- 4 A Correct.
- 5 Q Do you file your taxes?
- 6 A I do.
- 7 Q Do you file with Mr. Myers?
- 8 A I don't.
- 9 Q Do you know if he files his taxes?
- 10 A I'm not sure.
- 11 Q Do you know how much money he made last year?
- 12 A I'm not sure.
- 13 Q The year prior?
- 14 A I mean, if you count our business then --
- 15 Q Yes.
- 16 A -- I can tell you that.
- 17 Q Yes. How much money did he make from your business last
- 18 year?
- 19 A Last year we didn't make anything actually because we
- 20 didn't have a store. So we were transferring over to an
- 21 online store. So we didn't make anything last, last year.
- 22 Q And how about -- is that the first year it was open was
- 23 last year?
- 24 A No.
- 25 Q How about the year before that? How much money did you

Danielle Gibson - Cross by State

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1 make?

2 A The year before that, for the year we ended at about \$8000
3 give or take. It's not a direct figure, but --

4 Q So the total amount of money the two of you all made was
5 \$8000?

6 A Right.

7 Q Did you all pay yourselves?

8 A I mean --

9 Q Or was that \$8000 your, your revenue for the year?

10 A That was \$8000 our revenue for the four months we were
11 open for that year.

12 Q Okay. So essentially you're spending a lot of money just
13 creating the business?

14 A I mean, I guess initially, yeah.

15 Q Okay. Now, were your rental cars through the business?

16 A No. They were not.

17 Q You paid for the rental cars?

18 A I did.

19 Q And how much was your monthly cost for the rental cars?

20 A It would depend. I mean, it was only when we would do
21 inventory shopping. So I can't give you a figure.

22 Q So you would use an Infiniti SUV to purchase inventory?

23 A Excuse me?

24 Q Would you use an Infiniti SUV to purchase inventory?

25 A No. I mean, I --

1 Q So why, why would you rent an Infiniti SUV for Mr. Myers
2 to drive?

3 A I didn't rent an Infiniti SUV for him to drive. We
4 rented a car to travel to go see his mom. I mean, it wasn't
5 specifically for the purposes of business shopping if that's
6 what you're referring to.

7 Q Yes. I was asking.

8 A Oh, no. That's not the intent.

9 Q Okay so you, you would rent that vehicle to travel in?

10 A Right.

11 Q Okay.

12 A If we were traveling.

13 Q Did that come out of the company funds or that come out
14 of your own pocket?

15 A Own pocket.

16 Q Okay. Where do you work other than your store?

17 A I don't have a job other than my store. I mean, I have
18 the store and I'm a student. So those are the only two things
19 I do.

20 Q So how could you afford to rent a luxury SUV with no
21 income?

22 A The store is my income.

23 Q When you made \$8000 one year how could you afford to rent
24 a luxury SUV for roughly \$700 a month?

25 A I, I didn't rent a vehicle for a month. I don't

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1 understand your question.

2 Q Did you --

3 MR. TODD: The Court's indulgence, Your Honor.

4 BY MR. TODD:

5 Q Did you rent the Infiniti SUV that Mr. Myers was driving
6 the, the day he was arrested?

7 A Yes.

8 Q And how much was that vehicle?

9 A I can't --

10 Q How much did it cost to rent that vehicle?

11 A I don't remember to be honest.

12 Q Was it more than \$1000?

13 A I doubt that.

14 Q Was it more than \$500?

15 A Could have been.

16 Q And how long did you rent that vehicle?

17 A It was long ago. I don't remember. It might have been
18 three weeks, two weeks.

19 Q And did you rent another vehicle for yourself during that
20 time period?

21 A I can't remember. I don't think so. No. Can't rent two
22 vehicles.

23 Q You rented a car for him to drive but not for yourself?

24 A I'm sorry?

25 Q Did you rent a car for him to drive but not for yourself?

- 1 A No.
- 2 Q Do you own a vehicle?
- 3 A I own a vehicle.
- 4 Q Okay. What kind of vehicle do you own?
- 5 A I owned at that time a Chevy Malibu.
- 6 Q Okay.
- 7 A Now, you said that you were storing some of your
- 8 inventory at Mr. Roach's house.
- 9 A Correct.
- 10 Q And you know Mr. Roach to be mentally unstable?
- 11 A I know now he's mentally unstable. At the time I didn't
- 12 know him that well.
- 13 Q But yet you kept a substantial amount of inventory at
- 14 his, at his residence?
- 15 A I mean, that wasn't per my idea. So.
- 16 Q So you didn't know where your inventory was?
- 17 A I knew it was at Scott Roach's house, but I mean, that
- 18 was the extent.
- 19 Q How much, at that time, roughly how much of your
- 20 inventory was there in dollar amount? A couple of thousand
- 21 dollars?
- 22 A Possibly.
- 23 Q Okay. With a person that you did not know?
- 24 A My business partner knew him.
- 25 Q Okay.

Danielle Gibson - Cross by State

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1 A So I trusted that.

2 Q Do you have any children with Mr. Myers?

3 A I do not.

4 Q Okay. And on December 11th, 2015, were you at the
5 residence of Scott Roach that morning?

6 A No.

7 Q Were you there the night before?

8 A No.

9 Q That's all the questions I have. Thank you.

10 THE COURT: Redirect?

11 MR. WISE: No, Your Honor. You can come down.

12 THE COURT: You may step down. You're free to leave.
13 You may call your next witness.

14 MR. WISE: Is she here? Let me -- I need to talk to a
15 witness just two seconds.

16 THE COURT: All right. We'll wait right here for you.

17 MR. WISE: All right.

18 THE COURT: Ladies and gentlemen of the jury, I'm going
19 to ask if you could just stand and stretch while we're waiting
20 on the witness. You may be seated.

21 Yes, ma'am. Please come forward. I'm going to ask if
22 you would -- if you could to come over to this Bible that's
23 over here by the witness stand, place your left hand on the
24 Bible and raise your right and as the clerk administers the
25 oath.

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1 MS. MYERS: I will swear, but I don't swear on Bibles. I
2 don't. I don't.

3 THE COURT: You may affirm.

4 MS. MYERS: Affirm, yeah.

5 THE COURT: Well, raise your right hand.

6 Whereupon, Loushonda Myers is called to the stand, duly
7 sworn by the clerk and testifies as follows:

8 THE CLERK: Please be seated, state your full name and
9 spell it for the record, please.

10 THE COURT: Have a seat in the witness chair, pull up
11 real close to that microphone, speak loudly, clearly and
12 slowly in order that we might hear any -- everything that you
13 have to say.

14 MS. MYERS: My name is Loushonda Myers, and that is
15 spelled L-O-U-S-H-O-N-D-A, M-Y-E-R-S.

16 DIRECT EXAMINATION

17 BY MR. WISE:

18 Q Ms. Myers, where do you live?

19 A In Georgetown.

20 Q And where do you live in Georgetown?

21 A In Whites Creek.

22 Q All right. And you're employed?

23 A Yes. I am.

24 Q All right. You got to speak to that microphone over
25 there. You did so well in starting out.

Loushonda Myers - Direct by Defense

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- 1 A Yes. I am. Yes. I am.
- 2 Q And where are you employed?
- 3 A Wells Fargo in Georgetown.
- 4 Q And how long you been employed there?
- 5 A Almost four and a half years.
- 6 Q All right. Have any education beyond high school?
- 7 A Yes.
- 8 Q Where?
- 9 A Several different colleges I've been to.
- 10 Q Okay. You're -- what relationship are you to Marvin
- 11 Myers?
- 12 A That is my brother-in-law.
- 13 Q All right. And you've known him how long?
- 14 A I can't even count how long. It's been a while.
- 15 Q All right. In December of 2015 do you know where Marvin
- 16 Myers lived?
- 17 A In December at that time I believe he was with his
- 18 grandmother's.
- 19 Q All right. And that's -- I forgot the street name
- 20 myself. Do you remember the street name?
- 21 A [REDACTED] Alex Alford.
- 22 Q All right. Alex Alford?
- 23 A Yes.
- 24 Q All right. Do you know him to have lived anywhere else?
- 25 A Not specifically I don't know any addresses.

- 1 Q Do you know Scott Roach?
- 2 A I do.
- 3 Q And how long have you known Scott Roach?
- 4 A I don't know him closely, but I've -- I know of him and
- 5 I've known of him a couple of years.
- 6 Q And how do you know, quote, of him so to speak?
- 7 A Through my brother-in-law.
- 8 Q Did you know they were friends?
- 9 A Yes. Uh-huh.
- 10 Q All right. Do you know what -- did Scott Roach have some
- 11 problems?
- 12 A Yes.
- 13 Q Do you know how they kind of manifested themselves at
- 14 times?
- 15 A Yes. The, the behavior, behavior difficulties, same
- 16 things, yeah.
- 17 Q Do you know of your own personal knowledge what Marvin
- 18 would do if Scott Roach had behavioral problems?
- 19 A Normally he would talk to him, try to calm him down, you
- 20 know, just take him to the side and just --
- 21 Q Have you ever had occasion to carry Marvin over to Scott
- 22 Roach's house?
- 23 A I probably did.
- 24 Q You knew where Scott Roach lived?
- 25 A Yeah.

Loushonda Myers - Cross by State

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1 Q Okay. All right. Thank you very much.

2 A Uh-huh.

3 THE COURT: All right. Cross examination, Mr. Todd.

4 MR. TODD: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. TODD:

7 Q Ms. Myers.

8 A Yes.

9 Q You are from Georgetown?

10 A I am.

11 Q And you've lived here the majority of your life?

12 A Yes.

13 Q Okay. Did you go to school here, high school here?

14 A I did.

15 Q Okay. And you said you work at Wells Fargo?

16 A I do. Uh-huh.

17 Q And you are the Defendant's brother or sister-in-law?

18 A Correct. Uh-huh.

19 Q Okay. And who is your husband?

20 A My husband is Tyree Myers.

21 Q Okay. And do you have any children with Mr. Myers, with
22 Mr. Tyree?

23 A I do.

24 Q How many children do you have?

25 A I am not going to answer that question.

- 1 THE COURT: Rephrase the question.
- 2 Q Ms. Myers, how many children do you have with Tyree
- 3 Myers?
- 4 A I don't feel that that is --
- 5 THE COURT: You, you need to answer the question.
- 6 A I need to answer the question?
- 7 THE COURT: Yes. You do, and I'm ordering you to.
- 8 A I have a couple of children with him, two.
- 9 Q Can you give me -- two children?
- 10 A Yes. I do.
- 11 Q And what are their ages, ma'am?
- 12 A My son will be 28 -- 20 and the other one is 18.
- 13 Q Okay. Now, where do you live specifically in -- are you
- 14 in the City of Georgetown? Is it?
- 15 A No. I'm not.
- 16 Q But where is, where is this location of where you live?
- 17 A You want my street address?
- 18 Q Yes. That would be wonderful.
- 19 A That is ■ Wateree Trail in Georgetown, South Carolina.
- 20 Q And where is Wateree Trail? Just, just -- I know my way
- 21 around Georgetown pretty well, but some of these places are
- 22 kind of out in -- I'm just trying to figure out where, where
- 23 you are in relation to this, this --
- 24 A It's in, it's in Whites Creek. As I stated before it's
- 25 in, it's in Whites Creek.

Loushonda Myers - Cross by State

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1 Q Okay.

2 A Are you familiar with that area?

3 Q Yes, a little bit.

4 A Okay.

5 Q Thank you very much.

6 A And I hate to ask you this, but is your husband a
7 fugitive of justice?

8 Q When are we going to object?

9 THE COURT: You need to, you need to, you need to listen
10 to the questions and answer the questions. It's not your job
11 to comment on the questions, nor to ask him questions. He
12 asks the questions, you provide the answers.

13 A Okay. To my -- through my knowledge from some things
14 that did happen to me in 2010 as a result of the behavior of
15 the Georgetown County Solicitor's Office, as well as the
16 police department, when they conducted a raid on my home and
17 attempted to frame me for several different crimes, which was
18 unsuccessful, that is when they alleged that he was a
19 fugitive.

20 Q They alleged that he's a -- as in -- they came to your
21 house to look for him; is that correct?

22 A No. They didn't come to my house to look for him. He
23 was never at my home. Like I just stated, it was a set up
24 from the Solicitor's Office, as well as the Georgetown County
25 Police Department as well, to come to my home and all of those

1 things have been resolved in my favor, both civilly and
2 criminally as well has been resolved in my favor, and I
3 currently am suing, but it's been resolved in my favor.

4 Q Okay. But, but to answer my question, your husband is a
5 fugitive from justice; is that correct?

6 A I said he is alleged.

7 Q Well, that's -- is your -- do you know where he is?

8 A No. I don't.

9 Q Okay. Have you been in contact with him with any time in
10 the last 10 years?

11 A No.

12 Q Okay. Now, do you know what he was charged with, what
13 you say he was allegedly charged with?

14 MR. WISE: Your Honor, I don't know if this is really
15 relevant at this point now.

16 MR. TODD: Your Honor, it goes to her credibility.

17 MR. WISE: I think he's got the information he needs.

18 THE COURT: All right.

19 A May --

20 THE COURT: I'll, I'll sustain the objection. Move on.

21 BY MR. TODD:

22 Q Ms. Myers, do you recognize the State of South Carolina
23 as a state? Are you a sovereign citizen, I guess would be the
24 best?

25 A Oh, a sovereign citizen, what is that?

Loushonda Myers - Cross by State

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1 Q It -- that is someone that believes that the state is a
2 fictitious state.

3 THE COURT: Once, once again.

4 A I don't understand what, what that is.

5 THE COURT: Once, once again, you can't ask him
6 questions.

7 A I'm -- I don't understand the question.

8 THE COURT: If you don't know, you can say, "I don't
9 know," but you can't ask him questions.

10 A Okay. I don't know.

11 Q Okay. Have you ever held your out -- yourself out to be
12 an attorney?

13 A No.

14 Q Have you ever held yourself out to be a private attorney
15 general?

16 A I, I -- it -- I don't understand what you mean by -- hold
17 -- held -- holding myself out to be a private attorney
18 general.

19 Q Did you present yourself to the Court at some point in
20 time recently where you presented yourself to represent
21 another individual in court?

22 A I never attempted to represent another individual.

23 Q Were you held in contempt of court in the last two years
24 presenting yourself as an attorney?

25 A I am currently appealing any contempt of court, and I've

1 never actually made an admission of guilt, and once again,
2 like I stated before, I have been being targeted and I am -- I
3 have always proven the facts and it's always been resolved in
4 my favor.

5 Q Ma'am. That wasn't the question I asked. Have you been
6 incarcerated due to the fact that you presented yourself as an
7 attorney in the last two years?

8 A In the last two years, let me see this is 20 --

9 MR. WISE: I'm going to object, Your Honor. I don't know
10 if this deals with --

11 THE COURT: Sustained.

12 MR. WISE: -- moral turpitude.

13 Q We'll just go on to the next.

14 A Okay.

15 Q On December 11th, 2015 --

16 A Uh-huh.

17 Q -- were you on Park Street in Georgetown?

18 A No. I don't believe I was on Park Street.

19 Q Okay. Did you have on occasion to go to the residence of
20 Mr. Scott Roach during December of 2015?

21 A Not -- it's hard. Like it's hard for me to remember
22 sometimes what I ate for breakfast like.

23 Q Oh, I understand.

24 A During December I, I, I am not sure. I do not recall.

25 Q Okay. But you know specifically you were not there the

Loushonda Myers - Redirect by Defense

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1 day that the raid occurred where, where your brother-in-law
2 was arrested.

3 A I do know that specifically. I was not there at that
4 day.

5 Q Okay. So you are not aware of any of the things
6 surrounding this case as far as what was found in the house or
7 anything like that? You were not privy to that information at
8 that residence?

9 A Oh, I know what was told to me by Nicole Bliss --

10 Q Okay.

11 A -- who was someone that was actually present there.

12 Q But you weren't there to get any of that information?

13 A No. I was not physically present there.

14 Q Okay.

15 A Uh-huh.

16 Q That's all the questions I have. Thank you very much.

17 A All right.

18 THE COURT: Any redirect?

19 MR. WISE: Just one, one little question.

20 REDIRECT EXAMINATION

21 BY MR. WISE:

22 Q When again did you start working at Wells Fargo Bank?

23 A It was in 2013. Yes.

24 Q Okay. So that, that was several years after this 2010
25 incident?

1 A Oh, yeah.

2 Q Okay.

3 A Yes. Yes. Several years afterwards. Yes.

4 Q Thank you. Thank you. That's all I have.

5 A Yes.

6 THE COURT: You may step down. You're free to leave.

7 A Okay. Thank you. Thank you.

8 MR. WISE: Your Honor, I've got several more witnesses
9 but they were not able to get here on relatively short notice
10 this afternoon.

11 THE COURT: All right. Madam Forelady, ladies and
12 gentlemen of the jury, we're going to recess for the evening.
13 We'll reconvene at 9:30 in the morning, 9:30 sharp. Once
14 again, no independent investigation, do not discuss the case
15 amongst yourselves, with anyone else, be here at 9:30, 9:30
16 sharp. Everyone remain seated as the jury exits the
17 courtroom.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: Anything from the State before we recess for
21 the evening?

22 MR. TODD: No, Your Honor.

23 THE COURT: Anything from Defense?

24 MR. WISE: No, Your Honor. As I say I anticipate, you
25 know, being through by 11. You were talking about wanting to

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1 talk about some charges and so forth. If we want to --

2 THE COURT: I'm going to ask you if you could -- if each
3 of you could come forward and take a look at the verdict form.

4 MR. TODD: And Your Honor, we do have some research on
5 the lesser includeds, and we can take that up.

6 (Whereupon, an off-the-record bench conference is held.)

7 THE COURT: Might counsel approach the bench for just one
8 moment?

9 (Whereupon, an off-the-record bench conference is held.)

10 THE COURT: All right. Let's come to order. Mr. Todd,
11 you're recognized.

12 MR. TODD: Thank you, Your Honor. I'm going to pass
13 forward some cases that I have dealing with our argument that
14 a -- with the trafficking charges that possession with intent
15 to distribute is not a lesser included. Our -- the State's
16 argument is that with the trafficking it either is or it
17 isn't. The intent element is not there with the trafficking
18 charge, which is part of the possession with intent to
19 distribute, and we have case law to support the fact that if
20 there's no argument as to the weight, and that's uncontested,
21 that it either is trafficking or it's not. So essentially the
22 way the jury would look at is they're either going to find for
23 a trafficking charge or they're not going to find and they're
24 going to find him innocent. Your Honor, the Court's
25 indulgence. I'll pass forward these cases. Here's three

1 cases, Your Honor.

2 THE COURT: All right. Let's talk about this Bryan F.
3 Pay [spelled phonetically].

4 MR. TODD: Your Honor, with the Pay case, this is a
5 trafficking in marijuana case, and the argument that the Court
6 found to be persuasive was the fact that the weight of the
7 marijuana was undisputed. It exceeded the minimum amounts for
8 the trafficking, and because of that, there was no reason to
9 find any lesser included, and they found that only the
10 trafficking charge should be submitted to the jury, not the
11 lesser includeds.

12 They also talked about how trafficking is based solely
13 just on possession, that you don't have the other elements.
14 You have to prove it's a possession of that weight and the
15 fact that it is drugs. It's actually less elements to go
16 forward on.

17 THE COURT: All right. What is -- what does the Defense
18 have to say about that?

19 MR. WISE: Your Honor, in Section 44-53-370(B) it
20 specifically says that possession with intent to distribute is
21 a lesser included of trafficking, and it has no exceptions
22 like when the weight's in dispute. That law was passed, if
23 you'll pardon me while I sit down and, and read from my, my
24 little brief, the law that passed that was --

25 THE COURT: Was it after '90 or after '96?

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1 MR. WISE: I'd have to find it again. Oh, I know where my
2 answer is. It's in a, it's in another form. It would -- you
3 know, we've been through these cases in this other issue. The
4 Pee [spelled phonetically] case it was definitely after '96.
5 I'm thinking 2001, 2002. There's -- because the cases don't
6 apply. There's -- let me, let me find the e-mail where I
7 wrote the judge and that will clarify that. Hold on a second.

8 MR. TODD: Your Honor, if I may, there is a 2014 case out
9 of Horry County, State v. Gore, that actually cites these
10 other cases and their reason for not going and charging a
11 lesser included from what I understand.

12 MR. WISE: I hadn't run across the 2014.

13 THE COURT: And that was a Judge Cottingham case, Your
14 Honor.

15 MR. WISE: All right. Here we go. Excuse me, what's
16 2014?

17 MR. TODD: State v. Wesley Gore.

18 MR. WISE: What's the cite on that?

19 MR. TODD: Ms. Richardson is about to go pull those
20 cases.

21 MR. WISE: Okay.

22 MR. TODD: She, she --

23 MR. WISE: Hold on. There's also a case of State --

24 THE COURT: Mr. Wise, if you want to, you can -- if you
25 have to sit down. If you need to look at your computer why

1 don't you get that stand over there and put it on the stand.

2 MR. WISE: That's, that's a good idea because I do need
3 to look at this.

4 There's also a case State versus Sellers that appears to
5 hold that, but Sellers was decided after the law was changed
6 in 2000 with Act Number 355. Prior to that, that provision
7 was not in there. Now, the Gore case I have not read nor has
8 it been referenced to me by any -- I hadn't -- I frankly
9 hadn't read the Gore case. I'd have to look it up and read
10 it, too, but the law was changed in the year 2000 and added
11 that provision into it. The State generally cites State
12 versus Sellers which is a PCR case saying that you don't
13 charge that, but if you go back and look at Sellers it was
14 actually tried before the year 2000. So 2000 is when the law
15 changed. That, that I guarantee you, but beyond that I'd have
16 to read Gore to really let you know, but I can read it
17 overnight.

18 THE COURT: Well, I'd like to see it right now. Do you
19 have it?

20 MR. WISE: All right. Well --

21 MR. TODD: Your Honor, Ms. Richardson was just telling me
22 about it and, and she went to go pull the case.

23 MR. WISE: Let me see what I can find.

24 MR. TODD: But it's my understanding it was out of Horry
25 County. It was State v. Wesley Gore from 2014.

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1 MR. WISE: Oh, shoot. The server's down or, or I'm not
2 hooked up to it. If Gore is good law I'm going to lose an
3 issue on appeal.

4 THE COURT: Say that again.

5 MR. WISE: If Gore is good law I'm going to lose this
6 issue on appeal in another case.

7 THE COURT: Right.

8 MR. WISE: G-O-R-E?

9 MR. TODD: G-O-R-E.

10 MR. WISE: I think it resolved another issue from my
11 quick analysis, but let me get to it and see.

12 THE COURT: Do we have a copy of it?

13 MR. TODD: Yes, Your Honor.

14 THE COURT: Let's all take a look at it.

15 MR. WISE: It, it really, it really -- I don't think it
16 involves the issue involved here. It talks about whether or
17 not a charge of simple possession should be given based upon
18 the fact that a small amount of cocaine was found elsewhere,
19 which is not -- they were not relying upon the code section
20 that I cited, and I'll pass up the comment that cert was
21 granted in January of 2015, and we ain't got a ruling yet on
22 the cert petition?

23 MR. TODD: Your Honor, I'll also pass forward the State
24 v. Grandy case. It is cited in the case you have there which
25 cites Matthews.

1 MR. WISE: That's a -- it's -- to me it's a totally
2 different issue. The, the issue in Grandy and in Gore is
3 whether or not there's evidence of a lesser included where a
4 jury could find a little bit -- well, take this case for
5 example, where the jury could find the small amount of
6 marijuana in the jacket pocket was his but none of the rest of
7 it was, we would be entitled to a lesser included of simple
8 possession of heroin based upon that fact. What Grandy said
9 was there aren't any facts by which you can get a lesser
10 included of simple possession. We are relying strictly upon
11 the statute which says that when you are charged with
12 trafficking you are entitled to a lesser included of
13 possession with intent. I assume that was passed for the sole
14 reason that some legislature's constituent got charged with
15 trafficking and he thought he should have been convicted of a
16 lesser included and passed the law saying it's okay.

17 THE COURT: Let me see that statute.

18 MR. WISE: It's at the very end or near the end. Let me
19 find it again.

20 THE COURT: It says the offense of possession with intent
21 to distribute in Section 44-53-370(A) is a lesser included
22 offense of offenses of trafficking based upon possession
23 described in this subsection, is that what you're talking
24 about?

25 MR. TODD: The Court's indulgence, Your Honor. I'm

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1 trying to find that. The Court's indulgence, Your Honor.

2 MR. WISE: It's on page eight of the statute, about two-
3 thirds of the way down.

4 THE COURT: Might counsel approach the bench for one
5 moment?

6 (Whereupon, an off-the-record bench conference is held.)

7 THE COURT: All right. We'll reconvene at 9:30 in the
8 morning, 9:30 sharp.

9 MR. WISE: All right.

10 MR. TODD: Yes, sir. Thank you.

11 OFF THE RECORD

12 (On the record, April 19, 2017. The following takes
13 place outside the presence of the jury.)

14 THE COURT: Anything from the State before we proceed?

15 MR. TODD: No, Your Honor. We're ready to go.

16 THE COURT: Anything from Defense?

17 MR. WISE: Nothing from the Defense, Your Honor.

18 THE COURT: All right. We're ready for the jury.

19 Might counsel approach the bench for one moment?

20 (Whereupon, an off-the-record bench conference is held.)

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: Mr. Wise, you're recognized.

24 MR. WISE: Thank you. Call Mr. Mattison.

25 THE COURT: Yes, sir. Please come forward. I'm going to

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1 ask if you could to place your left hand on the Bible and
2 raise your right hand as the clerk administers the oath. See
3 the Bible right there? I want you to put your left hand on
4 the Bible and raise your right hand.

5 Whereupon, Ernest Mattison is called to the stand, duly
6 sworn by the clerk and testified as follows:

7 THE CLERK: Thank you. Please be seated and state your
8 full name for the record and spell it, please.

9 THE COURT: Come on around this way. Watch your step.
10 Have a seat in that witness chair. Pull up real close to that
11 microphone.

12 MR. MATTISON: Okay.

13 THE COURT: Speak loudly, clearly and slowly in order
14 that we can hear everything that you have to say. Let's start
15 with your full name, please, sir.

16 MR. MATTISON: Ernest Mattison.

17 THE COURT: All right. Very good. Spell that last one
18 for us.

19 MR. MATTISON: M-A-T-T-I-S-O-N, Mattison.

20 THE COURT: Very good. Mr. Wise.

21 DIRECT EXAMINATION

22 BY MR. WISE:

23 Q Mr. Mattison, are you employed? Are you working now?

24 A No. I'm not.

25 Q Are you retired?

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1 A I'm retired.

2 Q What did you retire from?

3 A I retired from the South Carolina National Guard, which I
4 did 19 years, and three years in the regular service and two,
5 three years inactive, give me 25 years for retirement.

6 Q All right. And go ahead. Did you retire from any other
7 company?

8 A I retired from doing the work I do, you know.

9 Q And what was that?

10 A I was a brick mason.

11 Q All right. And how many years were you a brick mason?

12 A Forty-five.

13 Q All right. Where do you live?

14 A [REDACTED] North Alex Street, Georgetown.

15 Q Here in Georgetown? All right. Do you know Marvin
16 Myers?

17 A Yes. I do.

18 Q Do you know where he lives?

19 A Yes.

20 Q Where?

21 A Well, he live with us three, four nights a week or
22 whatever, and if he come in too late, he didn't get in, he
23 goes somewhere else.

24 Q All right. So you have a kind of a curfew?

25 A Yes. You know, you got to be in the house at a certain

- 1 time.
- 2 Q All right. How long has he been living there?
- 3 A Huh?
- 4 Q How long has he been living there?
- 5 A Four, five years or whatever.
- 6 Q In December of 2015, which was a little over a year and a
- 7 half ago, was he -- he was living there then?
- 8 A Yes.
- 9 Q All right.
- 10 A Uh-huh.
- 11 Q Do you know Scott Roach?
- 12 A Yes.
- 13 Q And how do you know Mr. Roach?
- 14 A I know him through Marvin, uh-huh.
- 15 Q Through Marvin?
- 16 A Right.
- 17 Q Did, did they know each other?
- 18 A Did they know each other?
- 19 Q Well, let me -- that was a bad question. All right. So
- 20 you, you know Scott Roach through, through Mr. Myers?
- 21 A Right.
- 22 Q All right. What did -- did you ever go by Mr. Roach's
- 23 house?
- 24 A Yes, sir. Went by there. He called me to come and carry
- 25 him different places, you know. If he had to go to the store

Ernest Mattison - Cross by State

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1 or something because he didn't have no ride, you know, no car
2 or anything, and since I knew Marvin, and you know, and he
3 asked me to come over and give him a ride.

4 Q Are you aware that Mr. Roach had some problems, some
5 mental problems?

6 A Yes. And you know, he started acting a little skittish
7 and thing, I, I, I wouldn't go around him.

8 Q All right.

9 A You know.

10 Q Would Marvin go around him when he started acting
11 skittish?

12 A Yeah. Because he was able to talk to him or whatever.

13 Q Uh-huh. He was able to talk to him?

14 A Uh-huh.

15 Q All right. And would that help Mr. Roach out?

16 A Yes. That help him, you know, because he used to listen
17 to the things that he was telling him or whatever.

18 Q Thank you very much. Answer any questions Mr. Todd may
19 have.

20 THE COURT: Mr. Todd, cross examination.

21 MR. TODD: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. TODD:

24 Q So you live at [REDACTED] North Alex Alford Street?

25 A Yes.

- 1 Q And you've lived there with Mr. Myers for about five
2 years?
- 3 A Yes.
- 4 Q How long have you lived there?
- 5 A About ten, 12 years.
- 6 Q What is your relationship with Mr. Myers?
- 7 A That's my nephew.
- 8 Q So he's family?
- 9 A Huh?
- 10 Q He's family, close family?
- 11 A Right.
- 12 Q Okay. So you wouldn't want anything to happen to him; is
13 that correct?
- 14 A That's correct.
- 15 Q Now, are you all pretty close?
- 16 A Yeah. We pretty tight.
- 17 Q And you say he stays about three nights a week there?
- 18 A Three or four nights a week. If he didn't come home in
19 time he didn't get in the house.
- 20 Q What's your curfew? What time is the curfew?
- 21 A Anytime after 12 you done move.
- 22 Q So you lock the doors after 12?
- 23 A Mostly 11.
- 24 Q Mostly 11.
- 25 A A majority of the time.

Ernest Mattison - Cross by State

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1 Q Okay. So you don't know where he goes after 11 o'clock?

2 A No. I ain't know. I have no idea where he goes.

3 Q Okay. Now, I don't mean to embarrass you, but you do
4 have a criminal record; is that correct?

5 A Do I have a criminal record?

6 Q Yes, sir.

7 A I don't know.

8 Q You don't know?

9 A No.

10 Q Do you recall pleading guilty to possession of cocaine
11 base 2010?

12 A Yes.

13 Q So that would be a yes you do have a record? Are you an
14 addict?

15 A No. No. Someone had left that in my vehicle and I got
16 stopped and I didn't know it was in there. That's how that
17 come about.

18 Q Who left it in your vehicle?

19 A I don't know. I don't know who it were. I picked a guy
20 up and he asked me to give him a ride. So I give him a ride
21 and dropped him off to this place, and when I left I got
22 stopped.

23 Q Okay. But you also said that you cart Mr. Myers around
24 on a regular basis; is that correct?

25 A Say what now?

- 1 Q Did you tell the jury a few minutes ago that you cart Mr.
2 Myers around on a regular basis?
- 3 A I ride him around?
- 4 Q Drive him around, yes, sir.
- 5 A No.
- 6 Q Okay.
- 7 A I say Roach.
- 8 Q You drive Roach around on a regular basis?
- 9 A Right. If he calls and asks me. I didn't say nothing
10 about Mr. Myers.
- 11 Q How well do you know Mr. Roach?
- 12 A I don't know him that well. The only thing I know him it
13 was through him.
- 14 Q So do you talk to him on the phone?
- 15 A Nope.
- 16 Q That's all the questions I have. Thank you.
- 17 THE COURT: Any redirect?
- 18 MR. WISE: No redirect. You can come down.
- 19 THE COURT: You may step down. You're free to leave.
- 20 A All right. Thank you, sir.
- 21 THE COURT: Yes, sir.
- 22 MR. WISE: Need to check and see if my other witness is
23 here. Indulge me just a minute? Can we approach for a
24 minute?
- 25 THE COURT: Yes.

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1 (Whereupon, a bench conference is held in the presence
2 but out of the hearing of the jury.)

3 THE COURT: Madam Forelady, ladies and gentlemen of the
4 jury, I'm going to ask that you retire to the jury room. Once
5 again, do not discuss the case. Madam Forelady, I'm going to
6 ask that you enforce that rule. Everyone remain seated as the
7 jury exits the courtroom.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: You can call him as a witness if --

11 MR. WISE: Excuse me?

12 THE COURT: If, if he's going to testify now is the time
13 to do it.

14 MR. WISE: Right.

15 THE COURT: Pardon?

16 MR. WISE: He should be here in a few minutes.

17 THE COURT: All right. Has -- Mr. Myers, if you could
18 stand where you are and remind you that you're still under
19 oath.

20 MR. MYERS: Yes, sir.

21 THE COURT: Have you discussed with your lawyer about
22 whether or not you intend on testifying?

23 MR. MYERS: Yes, sir.

24 THE COURT: All right. Have you understood all your
25 conversations with him?

1 MR. MYERS: Yes, sir.

2 THE COURT: Have you made a decision with regard to your
3 testimony?

4 MR. MYERS: Yes, sir.

5 THE COURT: And what do you intend on doing?

6 MR. MYERS: I won't testify, sir.

7 THE COURT: Very good. Thank you very much.

8 MR. WISE: All right. He should be here in, like I say,
9 in about -- we just -- he's definitely on his way.

10 MR. TODD: Did he say he was going to testify?

11 MR. WISE: Huh?

12 MR. TODD: Did he say he was going to testify?

13 MR. WISE: Not going to testify.

14 MR. TODD: Okay. I'm sorry.

15 MR. WISE: And this witness will not be long either.

16 THE COURT: What does the State have to say about request
17 to charge number one?

18 MR. TODD: Your Honor, we're doing some research on that,
19 but our understanding was that was an outdated charge and
20 everything has been updated and did not include the -- all the
21 portions of that, that our request would be to go with the
22 standard request to charge that you have before Your Honor in
23 the last -- I guess it was the last year they produced it.

24 THE COURT: Do you think State versus Edwards is still
25 good law?

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1 MR. TODD: I don't know off the top of my head, Your
2 Honor. If I could have --

3 THE COURT: Pardon?

4 MR. TODD: I do not know off the top of my head. I was
5 handed that this morning.

6 THE COURT: What do you have to say about request to
7 charge number two? I'm sort of inclined not to do that
8 because each of you had the -- and I assume we're talking
9 about the gentleman who took the Fifth Amendment?

10 MR. WISE: No. We're talking Mr. Bliss.

11 THE COURT: Mr. Bliss.

12 MR. WISE: Mr. Bliss and his wife, the testimony was that
13 they were confidential informants working for the County of
14 Georgetown.

15 THE COURT: All right. And why is it peculiarly within
16 the power of the State to produce this witness? You could
17 subpoena them; couldn't you?

18 MR. WISE: I, I agree with that sense, but they are a Co-
19 Defendant. They are not working for me. They're working for
20 the County of Georgetown, and to be frank with you, if I
21 subpoena them they could invoke the Fifth. If the Government
22 subpoenas them, the Government can basically waive, waive --
23 give them immunity and let them testify.

24 MR. TODD: Your Honor, in regard to this case they were
25 not working for the State. They were arrested with the Co-

1 Defendant. They have attorneys. They have not pled. Their
2 cases are still pending. So it would more than likely they
3 would plead the Fifth as well, but they --

4 THE COURT: All right. Well, regardless, you know, that's
5 pure speculation as to whether or not they would take the
6 Fifth, but each side has equal access to the witness and, and
7 each could subpoena the witness. So based on that, I'm going
8 to deny the request to charge number two, and the Supreme
9 Court has, indeed, redefined circumstantial evidence, and I'm
10 going to charge the one that the Supreme Court has prescribed.

11 MR. TODD: I believe the most current one is State versus
12 Logan.

13 THE COURT: That's the one I'm charging.

14 MR. TODD: That's correct, Your Honor. I just got the
15 fax. Thank you.

16 MR. WISE: All right. Let me go -- can we step outside
17 and check on him real quick?

18 THE COURT: Yes.

19 MR. WISE: All right.

20 (Mr. Wise exits and re-enters courtroom.)

21 THE COURT: I originally did not have a charge with
22 regard to the criminal record of a witness, but I will,
23 indeed, do that, and he's going to bring that. I wanted to
24 bring that to your attention before I forgot. I'm going to
25 charge the general law about there being multiple charges and

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1 that each one should be considered separately and distinctly
2 and will charge presumption of innocence, reasonable doubt.
3 I'm going to charge the simple version of it and the
4 alternative reasonable doubt, the longer one. I'm going to
5 explain the diversion -- duties of the jury and the trial
6 judge. I'm going to charge direct and circumstantial evidence
7 and credibility of witnesses, expert witnesses, failure of the
8 Defendant to testify, trafficking with regard to cocaine. Pay
9 close attention now. Trafficking with regard to cocaine and
10 cocaine base, possession with intent to distribute cocaine
11 and/or cocaine base, and trafficking -- no, and possession
12 with intent to distribute heroin and possession of heroin,
13 distribution of controlled substance within the proximity of a
14 school or park, heroin, possession of marijuana and heroin,
15 mere presence charge. Any additional requests? Any
16 objections to what I'm charging from the State?

17 MR. TODD: No objections from the State, Your Honor.

18 THE COURT: Any, any additional requests?

19 MR. TODD: No, Your Honor. I think that's --
20 sufficiently covers it.

21 THE COURT: Mr. Wise.

22 MR. WISE: Your Honor, of course the -- my request to
23 charge, the old Edwards charge, my request to charge number
24 one would, be an objection.

25 THE COURT: It is denied.

1 MR. WISE: And of course, number two. How does the Court
2 define reasonable doubt in your charge?

3 THE COURT: The firmly convinced. It's the long -- it's
4 the same one that's been charged for 20 years. I'm going to
5 charge reasonable doubt is the kind of doubt that would cause
6 a reasonable person to hesitate to act and then the longer
7 version of it.

8 MR. WISE: Do you give the charge that somewhat -- some
9 judges do that says if you believe there's a real possibility
10 of his not being guilty or is that in there or not in there?

11 THE COURT: If on the other hand you think there's a real
12 possibility the Defendant is not guilty then you must give the
13 Defendant the benefit of the doubt and find him not guilty.

14 MR. WISE: Good enough.

15 THE COURT: All right. All right. Each of you have had
16 an opportunity to review the verdict form. Any objections
17 from the State?

18 MR. TODD: No objection from the State, Your Honor.

19 THE COURT: Any objection from the Defendant, Mr. Wise?

20 MR. WISE: None from us.

21 THE COURT: Do you have your witness?

22 MR. WISE: Yes, sir.

23 THE COURT: All right. We're ready for the jury.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

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1 THE COURT: Madam Forelady, ladies and gentlemen of the
2 jury, thank you for your patience.

3 Mr. Wise, you're recognized.

4 MR. WISE: Call Mr. Funny.

5 THE COURT: Yes, sir. Please come forward. I'm going to
6 ask if you could to come over here towards the Bible on the
7 witness stand. I want you to face this direction. Place your
8 left hand on the Bible and raise your right hand as the clerk
9 administers the oath.

10 MR. FUNNY: Face which way?

11 THE COURT: This way.

12 Whereupon, Brian Michael Funny is called to the stand,
13 duly sworn by the clerk and testified as follows:

14 THE CLERK: Thank you. Please be seated and state your
15 full name for the record and spell it, please.

16 THE COURT: Yes, sir. Come here and have a seat in that
17 witness chair, pull up real close to that microphone. I'm
18 going to ask that you speak loudly, clearly and slowly in
19 order that we can hear everything that you have to say.

20 MR. FUNNY: Okay.

21 THE COURT: And start with your full name, please, sir.

22 MR. FUNNY: My full name is Brian Michael Funny.

23 THE COURT: Spell that last one.

24 MR. FUNNY: F-U-N-N-Y.

25 THE COURT: Very good.

1 MR. WISE: Thank you.

2 DIRECT EXAMINATION

3 BY MR. WISE:

4 Q Mr. Funny, where do you live?

5 A I stay in Myrtle Beach, South Carolina

6 Q All right. You work up there?

7 A Yes.

8 Q What do you do?

9 A Well, currently now I run my own company, Original Game
10 Changers Apparel, my clothing company.

11 Q You work with her?

12 A Excuse me?

13 Q You work with your grandmother?

14 A My grandmother?

15 Q Excuse me. Who owns the company?

16 A Oh, nah. I own the company.

17 Q You own the company?

18 A Yes.

19 Q Excuse me. I misunderstood you, and that's your full-
20 time employment?

21 A Yes.

22 Q Do you know Marvin Myers?

23 A Yes.

24 Q All right. How long you known him?

25 A Since 1989, '88 or something, since the eighties.

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1 Q Okay. A good many years?

2 A Yes.

3 Q All right. Did you have occasion to see him on the night
4 of December the 10th of 2015?

5 A Yes, sir.

6 Q All right. Hand you this and ask you if you can
7 recognize it.

8 A Yes. This is the, the party we went to.

9 Q Okay.

10 A That night, the flyer for the party.

11 MR. WISE: I'd like to move -- introduce this as
12 Defendant's Two.

13 THE COURT: Any objection from the State?

14 MR. TODD: No objection, Your Honor.

15 MR. WISE: All right.

16 THE COURT: Defendant's Two is into evidence.

17 MR. WISE: All right.

18 (Defendant's Exhibit Number Two [Flyer] introduced into
19 evidence and appropriately marked.)

20 BY MR. WISE:

21 Q Now what time did that party start?

22 A It started I believe like around ten, but we, we got
23 there like around 11, like around 11 that night.

24 Q All right.

25 A Well, he was at my house. He came to my house earlier

1 that day probably like around six, seven, and I know we was
2 there just playing video games because we play a lot of video
3 games, NBA2K, like we was just playing that for a couple of
4 hours, for some hours then. I got ready and we went to the
5 party like around, yeah, like around 11, 11:30, something like
6 that.

7 Q And what time did you all leave there?

8 A We left there like around 2:30 because I remember being
9 -- I got home like around 2:45.

10 Q All right. Who was driving?

11 A Well, he drove me there like. He -- I rode with him
12 there and he dropped me back off home.

13 Q So he drove you both, but how many of you went?

14 A Nah. Just me and him.

15 Q All right.

16 A Yeah.

17 Q So two of you -- you -- he dropped you off about what
18 time?

19 A Excuse me?

20 Q He dropped you off about what time?

21 A Around 2:45. I remember -- yeah, it was like around 2:45
22 when he dropped me off.

23 Q And that was in --

24 A In Myrtle Beach.

25 Q In Myrtle Beach.

Brian Funny - Cross by State

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1 A Yeah.

2 Q And what's the address he dropped you off at?

3 A It's [REDACTED] Rose Water Loop.

4 Q All right. Do you know about how long it takes you to
5 get from Myrtle Beach to -- down here to Georgetown?

6 A Like 35, 40 minutes, depending on how fast you're
7 driving.

8 Q Okay. And does that flyer you got refresh your memory
9 about the events for that night?

10 A Yes.

11 Q It tells you what night it was?

12 A Yeah. Yeah. I know what night it -- yeah. Uh-huh.

13 Q Thank you very much. Answer any questions Mr. Todd may
14 have.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION

17 BY MR. TODD:

18 Q Now, you said you're from Myrtle Beach or you live in
19 Myrtle Beach?

20 A Yes. I live in Myrtle Beach.

21 Q How long have you lived in Myrtle Beach?

22 A About four years now.

23 Q Where are you from originally?

24 A Georgetown.

25 Q So you grew up here in Georgetown?

- 1 A Yes.
- 2 Q And that's how you know Mr. Myers from --
- 3 A Yes.
- 4 Q Okay. Are you related to him at all?
- 5 A No.
- 6 Q Did you meet him at school? How'd you meet him?
- 7 A Well, we lived in the same neighborhood when I was
- 8 younger.
- 9 Q Okay. And where did he live when -- where did you live
- 10 when you were younger?
- 11 A Where did I live?
- 12 Q Yes, sir. Georgetown, Rutledge Street.
- 13 Q Rutledge Street?
- 14 A Yes.
- 15 Q Do you remember what street he lived on?
- 16 A State Street.
- 17 Q Okay. And this party stuck out to you. Why, why did
- 18 this party stick out to you so well?
- 19 A Well, the person performing that's on the flyer
- 20 performing like that's a good friend of mine. We grew up --
- 21 he grew up with me, too. So he asked me to come out and see
- 22 him perform. I think this was the first performance he did.
- 23 So he asked me to come out and support him. So we went out
- 24 and support him like.
- 25 Q Has he done other things since then?

Brian Funny - Cross by State

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1 A Yes.

2 Q How many things have you been to since then?

3 A Who -- this right -- for this person?

4 Q Yes.

5 A I think two other things, a couple of performances, stuff
6 like that like, yeah.

7 Q And is he primarily in Myrtle Beach?

8 A Well, he performs kind of all over like.

9 Q And you said you work for an apparel company? Is that?

10 A Well, Original Game Changers, my clothing company, like I
11 own my own company. So I work for myself like now.

12 Q Okay. Where's your, where's your office located or how's
13 your business run?

14 A How does it run?

15 Q Yes.

16 A Well, I mainly like I sell my clothes online and, and
17 face to face in person, like that's how I -- that's how I'm
18 doing it now, like it's just starting up so.

19 Q Do you sew your own clothe?

20 A Yes. I sell my own clothes.

21 Q What about manufacturing? Do you make your own clothes?
22 Do you sew?

23 A Yes. I make my own clothes. I have a heat press that I,
24 I order the, I order the, the image from a company and they
25 send me the image, I press my own shirts.

1 Q So it's a lot of t-shirts and stuff like that?

2 A Yes.

3 Q Now, you said you rode with Mr. Myers on that night. Do
4 you recall what kind of car he was driving?

5 A Nah. I don't recall the exact car he was driving.

6 Q Was it a nice car, little car?

7 A I believe it was a SUV. It was a SUV at the time. Yeah.

8 Q Is that the car he normally drives or does he drive other
9 cars?

10 A What, around that time?

11 Q Yes.

12 A I -- you said normally?

13 Q Had he been driving that car for a while or, or was that
14 the first time you'd ever been in that car with him?

15 A Well, that was my first time in the car with him. I
16 can't say if he'd been driving it for a while or he, or he was
17 normally driving any car like.

18 Q Did you leave anything in his car?

19 A Not in -- not of my knowledge that I did.

20 Q Okay. That's all the questions I have. Thank you.

21 MR. WISE: Thank you. Nothing further on redirect.

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

23 MR. WISE: And with that, Your Honor, the Defense rests.

24 THE COURT: All right. Madam Forelady, ladies and
25 gentlemen of the jury, at this juncture, we're required to

Motions

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1 take up some matters of law outside of your presence. I'm
2 going to ask that you retire to the jury room. Once again, do
3 not discuss the case.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Be happy to entertain motions at this time.

7 MR. WISE: Your Honor, again, renew my motion for
8 directed verdict I made at the end of the State's case.
9 There's nothing new to my argument because no really new facts
10 came out in the Defense presentation.

11 I also would request that the State be required to elect
12 on the proximity charge involving the heroin between
13 possession with intent to distribute and possession with
14 intent to distribute within proximity to a school. I think
15 it's unconstitutional for the jury to convict on both as it
16 violates the double jeopardy provisions of both the State and
17 Federal Constitutions.

18 THE COURT: What does the State have to say about that?

19 MR. TODD: Your Honor, as we discussed earlier, they are
20 two separate charges, two separate sources of elements and the
21 State has routinely held out that they are two separate
22 charges and should be held -- can be tried together at the
23 same time.

24 THE COURT: Your motions are noted. You're protected on
25 the record. We're ready to proceed forward. I understand

1 that the Defendant has made a motion that the State open in
2 full on the law and the facts and that you be allowed to
3 reply.

4 MR. TODD: Understood, Your Honor. We're ready to do
5 that.

6 THE COURT: All right. Based on the Defendant's motion
7 that's how we will proceed and --

8 MR. WISE: Can, can we have about five minutes to kind of
9 collect some thoughts?

10 THE COURT: All right.

11 MR. WISE: I just want to make some quick notes.

12 THE COURT: All right.

13 MR. WISE: Thank you very much.

14 THE COURT: All right. We'll stand at ease for five
15 minutes.

16 OFF THE RECORD

17 (On the record. The following takes place outside the
18 presence of the jury.)

19 THE COURT: Anything from the State before we proceed?

20 MR. TODD: No, sir.

21 THE COURT: Anything from the Defense?

22 MR. WISE: None from Defense.

23 THE COURT: We're ready for the jury.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

Closing Argument by State

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1 THE COURT: Madam Forelady, ladies and gentlemen of the
2 jury, you have heard all of the evidence that's going to be
3 presented in this case. As I had mentioned to you in the
4 opening remarks, this is the time where the lawyers have an
5 opportunity to give you closing arguments, very similar in
6 form to opening statements, but at this point in time their
7 presentation will be truly argumentative in that you have
8 heard all of the evidence and these very fine lawyers are
9 going to be able to point to the evidence that supports their
10 relative position on this case.

11 You and I have not been dealing with this case that long,
12 but these lawyers have been dealing with it for a tremendous
13 amount of time. So it's important for you to pay very close
14 attention to these closing arguments. It will aid you
15 immensely in your deliberation process. This is a very
16 important case and pay very close attention.

17 The procedure that we're going to go is that the State is
18 required to open in full. The Defense will have their closing
19 argument and the State, since they have the burden of proof,
20 will be given an opportunity to reply.

21 Mr. Todd.

22 MR. TODD: Thank you, Your Honor.

23 Ladies and gentlemen, this has been a relatively quick
24 trial, a day and a half of testimony. You heard from us in
25 the beginning, and you're going to hear a little bit from us

1 now.

2 As the Judge said, the things that you need to consider
3 are what you heard and what you saw. We have the burden of
4 proof, and we've been presenting our case as it was came into
5 fruition. We heard from officers. We heard from an expert.
6 We heard from a chain witness. It's relatively simple, but it
7 is very important. There are some complexities. There's a
8 lot of people involved, but the meat is what you need to pay
9 attention to. We're going to give you all the stuff to go
10 back and look at. There's a lot of stuff in evidence, and I
11 really want you to take time to look at everything.

12 I know I'm going to show you just a few pictures because
13 there's 146 pictures. I'm going to show you a few. I'm sure
14 Mr. Wise is going to show you a few different pictures, but I
15 do want you to look at every single one of them. We want you
16 to have a full view of what happened so you can make an
17 educated and informed decision on what took place, and to make
18 sure that we have met our burden of proof, and we have the
19 burden of proof. We have to show all the elements.

20 We've said elements a few times. A person has been
21 charged with some very serious crimes. Trafficking charge is
22 very serious. It is a weight-dictated crime. One of the
23 things you have to look at is was the weight there? Our
24 legislature has decided that, look, when you have this much,
25 this is the crime. You're going to see it. I'm going to go

Closing Argument by State

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1 through the -- what we have as our elements, what is basically
2 the indictment, the things that we have to prove to show that
3 he is, in fact, guilty of this crime, and in the trafficking
4 charge you're not going to see where there's intent. It is
5 simply that they are a part, that they have possession,
6 control, dominion or they helped, they had knowledge, they
7 were a part.

8 There's been a lot of question about where Mr. Myers
9 lives, but you heard just one of the last few witnesses, Mr.
10 Mattison, talked about, "Well, yeah, he lives Alex Alford
11 Drive. He's there three, four nights a week, so long as he's
12 there before midnight," but sometimes they close the door at
13 11. What does that mean? There's seven days in a week. He's
14 somewhere else. They're carting him to Scotty Roach's house.

15 You've heard from his girlfriend. She was with him two
16 nights before and stayed in a hotel. Now, they do some
17 traveling. They own a company together. The company hasn't
18 made a whole lot of money. They do a good bit of traveling,
19 drive some nice cars. That is what we call a front. They're
20 going places in rental cars, large amounts of money, buying
21 shoes and selling them. One year they netted, they made
22 before expenses \$8,000 between the two of them, another year
23 nothing. On that day Mr. Myers had over \$4,000 in his pocket.
24 He was in a rental car, a luxury SUV, an Infiniti. Rental
25 cars are expensive. You can lease a car for much cheaper.

1 You can buy a car for much cheaper. Rental cars are pretty
2 expensive things. You can switch them around.

3 I'm going to go through a few things with you. We'll go
4 through the charges. We'll go into detail about everyone that
5 testified.

6 Trafficking in cocaine, in my opening I talked about, I
7 talked about a lot of ors. This isn't ands. This isn't a
8 list of all the things that have to be necessary. There's a
9 bunch of ors, and that's one of things you have to look at.

10 Knowingly, that's going to be a big piece. The argument
11 is that this was in a garbage can in a room that he didn't
12 stay in very much, he just crashed there for the night, he had
13 no idea that stuff was in there.

14 Now, that's interesting because I have found that you
15 keep things that are important to you in close proximity. You
16 keep them in important places. You keep your mementos, your
17 little knickknacks, maybe a little money stash somewhere away
18 from other people, but you keep it close by, somewhere you can
19 go back to all the time.

20 Now, there were some things in this room that kind of
21 interesting. Certificate of achievement, Ray Myers, this was
22 the only Myers in the house. Look at the date of it, 2014,
23 '15 year Book Club, Book Club Challenge. There are some mail
24 from his address but taken over to Mr. Roach's house, the time
25 stamps on it. He wasn't getting mail there, but he was taking

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1 his mail there.

2 A flyer from his father's funeral, had that for over ten
3 years. I'm not saying that he claimed that as his residence.
4 I'm not saying he got mail there. I claimed my mother's house
5 as my residence for many years, so did my wife. She still
6 gets mail there sometimes. We've been married 15 years, but
7 he laid his head there. He laid his head there pretty often.

8 One of the other things was he did come in late, very
9 late. Now, the door was locked the morning they broke in, and
10 you're going to look through these pictures. This was a drug
11 house. There's no question in anyone's mind when you look
12 through these pictures this house, the only purpose for this
13 house was to use and sell drugs. There was drugs everywhere.
14 There was a sword and a machete on the front door wedged in so
15 you could get to it. There was guns in the back room. There
16 were drugs in the laundry room, every single room in this
17 house for the most part there was drugs in. We're not saying
18 all the drugs belonged to Mr. Myers. We're only saying the
19 drugs that he had in his room were his. If they weren't his,
20 he had to know they were there.

21 So let's go through these. Knowingly, he had to know.
22 Selling or manufacturing or cultivating or delivering or
23 purchasing or bringing into the state. What I want you to
24 think about he took trips in rental cars, to Atlanta, a few
25 other places. Providing financial assistance to do the above,

1 he had a bunch of money in his pocket, much more than anybody
2 else in the house.

3 Aiding and abetting, attempting or conspiring to do the
4 above. What does that mean? He was part. He knew, either a
5 contact or he was someone that knew other people or he was
6 someone that watched over it, brought it in or being in actual
7 or constructive possession of. Actual possession is when you
8 have it. You've got it. It's yours. Constructive possession
9 is a little bit different. That means you have control over
10 it, you know where it is, and in this case with the cocaine 28
11 grams or more that's what he's charged with. In the State of
12 South Carolina it requires ten grams of cocaine to be found to
13 be trafficking. It was 58 grams, I believe. That's more than
14 five times the amount of cocaine just for the entry level
15 trafficking, more than five times, and here again, or
16 attempting or conspiring or being accessory before the fact.
17 That means you were helping someone to get it, that means
18 you're trying to actively participate in the drug trade, and
19 the last one to do the above, basically to be a drug
20 trafficker.

21 There's several drugs in here. You'll get to look
22 through this. Cocaine's the big one, white powder. A lot of
23 people have never seen it. That's a big chunk, and we also
24 have crack cocaine in here, found right next to powder
25 cocaine, and the expert, Ms. Black, had said that there's

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1 different uses for it, different wants to ingest it, but I'll
2 tell you that the elements are essentially the same. There
3 wasn't as much. It's in a different category. It's a
4 different drug, believe it or not. When you add an element to
5 something it's kind of like, you know, making different types
6 of metal, you add other metals to make iron or you add things
7 together it changes the molecules, it becomes something else.
8 So you, you do things to change it from one to another. So
9 it's a different statute. He's charged with two separates
10 crimes. Even though they say cocaine base and cocaine it's
11 because it's two different things, but again, the elements are
12 all the same, knowingly possessed to do all, any of these
13 things, to sell, manufacture, cultivate, deliver, purchase or
14 bring into a state. I really want you to think about that,
15 bring in to the state, also have in possession, really want
16 you to think about when someone has in their possession they
17 have dominion and control. They control its destiny, even if
18 they're just safekeeping it for somebody else. They are
19 controlling it at that time, and in this case we're talking
20 about 10 grams. I think there was about 14.

21 Possession, again, this is what I'm talking about to be
22 in control, you have control over it, you have the power over
23 it at that time, might not necessarily be yours, it might not
24 be -- you may be holding it for someone else, but you know
25 it's there, no question in your mind, it's there, and you can

1 use it. This is a purely weight-controlled statute. When you
2 have that much the legislature, the state has said when you
3 have that much this is crime that you are committing, and this
4 is what I've been talking about constructive possession,
5 dominium and control. It also says dominion and control of
6 the premises for which the drugs are found. We're arguing
7 this is his room. At Mr. Roach's house, this is his room.
8 When he comes in that's the bed he sleeps in. There was a
9 bunch of people in that house that night. He came in
10 supposedly sometime after 2:45, and he dropped that other guy
11 off in Myrtle Beach, so well after 3:00 o'clock. There was a
12 bunch of people in that house, but no one was in that bed.
13 Why wasn't anybody in that bed? It's Mr. Myers' bed.
14 Interestingly enough, it was the only bedroom that had its own
15 bathroom. Mr. Roach owned the house, but no one else, no one
16 else is in there.

17 It's a little bit more, this is just the law of South
18 Carolina just to present what we're taught. If he was in the
19 room and had no idea any of this stuff was in there, that's
20 mere presence. That is not a crime. Mr. Wise is going to
21 tell you that. If you're just in the room and you have no
22 idea anything's going on, nothing is yours, when you have no
23 reasonable person, that's another thing. It's reasonableness,
24 how reasonable is something. No reasonable person in that
25 room would have any idea there's going to be drugs in there.

Closing Argument by State

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1 I would argue if you go into that house you know there's drugs
2 in that house. It's a drug house.

3 Knowingly is one of the first things. It means that you
4 control its disposition. You, you know it's there. You are,
5 you are the one that -- it's kind of hard to find, but you
6 know it's in there.

7 Now, with the heroin and the marijuana, the heroin is in
8 one package. It also is -- we are -- charged Mr. Myers with a
9 possession with intent to distribute. Again, this is a
10 weight-controlled or other things in the area. That's the
11 heroin. Wasn't very much, but it doesn't take a whole lot of
12 heroin, and when the expert was on the stand she was talking
13 about the slips that she gets in. We know about the slips
14 because that's when we do a controlled buy we buy \$20 worth,
15 \$40 worth. They come in little slips, one hit slips. When
16 she measures them the most common measurement she had .02
17 ounces. I mean, it's a little bit. Two -- they measure them
18 in grains. They actually have a different way of measuring
19 them because it takes so little heroin to make someone -- to
20 get someone high, and we were to take it out and break it
21 apart it looks like brown sugar. It's granual [sic]. It
22 takes just a little pinch. It, it looks like a cooking spice,
23 really does, and you measure it the same way.

24 Now, with possession with intent to distribute you have
25 to possess it. Again, it has to be in your possession under

1 your dominion and control, constructive or in actual
2 possession. Again, we're arguing constructive possession, but
3 this came out of the jacket that was in the Infiniti that Mr.
4 Myers was driving the night before, and he claimed the jacket.
5 We're claiming he knew it was there. He knew it was in his
6 jacket pocket. Now, the reason he's charged with possession
7 with intent to distribute is because of its weight. Now, what
8 does that mean? You have the intent to distribute, dispense
9 or deliver or aid, it's pretty much the same thing as
10 trafficking, all these things, the ors, the ors. The Judge is
11 going to talk about all these different ors. To conspire,
12 distribute, dispense or deliver a quantity, this was a small
13 quantity. How small? With the heroin it was 1.02 grams, not
14 a whole lot, but again, it is 15.74 grains. For -- under
15 statutory law and case law he's charged with PWID heroin you
16 have to have more than two grains. We've got 15. What does
17 that mean? It means we can infer. We can state that when you
18 have that much we believe you intend to get rid of some of it.
19 We do not believe someone is going to use that much at one
20 time or in a short period of time. We believe they're going
21 to do other things with it.

22 Some of the other factors to consider with regards to the
23 marijuana, and generally, it's everything in the house. What
24 other things would make it seem as if someone had in their
25 possession with intent to distribute. Weight is one of the

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1 big things, the heroin, it's real easy.

2 Packaging materials, there was packaging materials in the
3 house. A lot of things that you see as packaging materials,
4 it's not anything fancy. It's sandwich bags, stuff you keep
5 in the kitchen, little rubber bands. A lot of times they put
6 it in the corner of the sandwich bag, twist it up, and keep it
7 in a container something like that, just in smaller parts.

8 Scales, look through these picture. There's scales all
9 over this house, in every drawer, they're all over, and large
10 amounts of currency. That's another thing to consider, had
11 over \$4,000 in his pocket. My wife would never let me carry
12 \$4,000 in my pocket, ever. I mean, that just doesn't happen.
13 Most people don't carry around more than 20 or \$40 because we
14 have debit cards. Why would you have that much currency? You
15 can infer because it's, it's a cash business. You don't deal
16 in checks. You're not checking someone's credit, taking cash
17 money.

18 Now we have another charge, the possession with intent to
19 distribute marijuana charge. As Officer Marlow had stated on
20 the stand when they were going to the house, the house is on
21 Park Street. They pass by the park going to his house. When
22 they parked in his driveway he said there was a house, there
23 was less than 200 yards. The judge is going to talk about the
24 law. It's all the same elements as with possession with
25 intent to distribute near a park. There's a park less than

1 200 yards from that house.

2 Now, we've heard a good bit of testimony. The lead agent
3 on the case was Agent Tempalsky. He's the deputy commander
4 for our unit. This was his case. He knew the ins and outs of
5 it. He answered every question he could. He had a helmet cam
6 on. He was in charge of where people went and getting
7 assigned where they, where they went and you saw from his
8 video it was about as professional as someone could be. There
9 was a lot of people involved. There was officers outside. A
10 lot of those officers never came in the house.

11 Now, we arguably could have brought every single officer
12 in here and had them testify as to what they did. You could
13 have the dog catcher come in and say, "Yes. You know what,
14 there was a couple of pit bulls in the back that belonged to
15 Mr. Roach. We took them into custody because no one else was
16 going to be at the house to take care of them." Does that
17 have anything to do with our case? No. We're glad the dogs
18 are okay. I'm a dog lover. I'm glad they're fine. We're
19 glad they went to St. Francis Animal Center. They were taken
20 care of.

21 There was a bunch of other agents in marked cars. They
22 perceived what happened, but not any better than these agents
23 that went in, no any better than Officer Tempalsky who not
24 only got in there saw what he saw, but also debriefed
25 everybody. So he had a full understanding of what happened

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1 throughout the whole place with his agents.

2 Now, some of the things that happened, people were patted
3 down. I believe everybody was just getting up from being
4 asleep. So a lot of the drugs were in their stash places. I
5 don't recall anybody actually having anything on their person.
6 We didn't hear any testimony about that. So you just have to
7 take what he said.

8 Now, he told you they went in the morning. He went in.
9 They secured that first premises and he along with Agent
10 Marlow searched Mr. Myers' room. That was their primary focus
11 because that's where they went, talked about how they searched
12 things in detail. Agent Marlow, he is very meticulous. He
13 takes his time. He testified as to that. He does take his
14 time. He's slow, but you know what, he's very thorough. He
15 finds stuff, and he's not afraid to get dirty. He explained
16 he'll dip his hands in anything. Why would he do that? He's
17 been doing it a long time. People can hide some things in
18 some pretty funky places. Again, those are things that people
19 hold dear to them. That is their livelihood. That is how
20 certain people make money. These things are worth a good bit
21 of money to the right people.

22 Now, again, the interesting thing was how the crack and
23 the cocaine were held. They were in a bag with Zeon Myers'
24 achievement award in another bag, in a nice little bag, one
25 that you might have for a store, a little handle on it, but

1 then in, inside that was a gray bag and another bag inside of
2 it. They smelled marijuana when they went in the room. No.
3 They didn't test the little things. Should they have tested
4 it? I don't know. Should they have tested it for DNA? I
5 don't know that it matters. The other stuff in the room
6 definitely matters. A burnt cigarette, cigar or possibly
7 marijuana, would that change the fact that he's charged with
8 these crimes? No. Does it change the fact that it was within
9 arm's reach of him? No. Does it change the fact there was no
10 one else in that room? No. Those are things we want you to
11 consider.

12 Now, agents came up and testified as to what they did
13 searching the car, finding the heroin, even talked with Mr.
14 Myers about, "Hey, is the jacket yours, the toys yours," --
15 put the toys inside, delivery, secure, and they even nailed
16 back the door and locked it up just to keep the rest of the
17 items, the non-contraband items safe, and they talked about --
18 specifically Agent McKay talked about his knowledge of the
19 CIs. Again, I told you CIs are not great people. They're not
20 people that can, you know, they typically don't have great
21 jobs. They're users. We know that, but they can get into
22 places that these guys can't. We can't send them into drug
23 dealer places, and they don't -- they might know who's dealing
24 drugs but they can't go buy from them, but users can, and a
25 user with 40 bucks can find stuff just about anywhere. It's

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1 a culture. It really is. A lot of them are connected. There
2 is no doubt that Joshua Bliss and Kathryn Nicole Bliss are
3 users. Their pictures are in here. Take a look at them. You
4 can look at these people and tell they're users.

5 Mr. Roach is a user. Mr. Roach has problems. We've
6 heard testimony about that from all of Mr. Myers' witnesses.
7 He has problems. There is no doubt. He is a drug dealer,
8 yes, absolutely. I don't know if he has the mental capacity
9 to do much other than what he does. He's not a kingpin,
10 that's for sure. I'm not sure he can balance a checkbook.
11 One of the things you don't do is you don't leave your drugs
12 out where other users can get to them, because guess what
13 they're going to do, they're going to use and use and use.
14 They'll use as much as they can, as much as they have. So you
15 keep your large quantities with you, away from the users.
16 This guy is a healthy looking guy. I do not believe he's a
17 user. He does not have a look. He looks like a dealer to me,
18 in his pants pocket roughly \$4,000 worth of cash a little bit
19 more, large amounts of drugs within arm's reach of him in his
20 room.

21 Now, one of the things is we have to prove everything
22 beyond a reasonable doubt. What does that mean? We have to
23 make sure that you are firmly convinced. The Judge is going
24 to give you a charge on if you hesitate, if you go, "Look, he
25 might not have done it," that's something to consider, but if

1 a reasonable person, someone with sound mind that's taken the
2 facts as they're presented, looking at all the evidence is
3 convinced that this man has committed these crimes, that's
4 where you come in, that's where you hold him accountable.
5 That's what the Judge is going to charge you to do. That's
6 what I'm asking you to do. Your job as a jury is to look at
7 the facts of the case, to look at the evidence that has been
8 presented to you to evaluate if we've met our burden, and your
9 job is to hold this man accountable for what he's done. He
10 has trafficked in cocaine. He has trafficked in crack
11 cocaine, and those other drugs, he was holding those and was
12 getting ready to sell those. He possessed them with the
13 intent to distribute them, and all this was done within 200
14 yards of a park. Please hold this man accountable. Find him
15 guilty for the charges he's charged with. Thank you.

16 THE COURT: Mr. Wise, you're recognized.

17 MR. WISE: Madam Forelady, and ladies and gentlemen of
18 the jury, if you go to your jury room or when you go to your
19 jury room and you say to yourself or even say among
20 yourselves, "You know, Marvin Myers is probably guilty. He
21 probably possessed those drugs in that room. He probably did
22 it," what should your verdict be? Your verdict should be not
23 guilty because we don't talk about what probably happened,
24 what possibly happened or what might have happened on that
25 morning of December the 11th when we talk about proof beyond a

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1 reasonable doubt. It is the highest standard known to man
2 short of an absolute certainty. We say that it is there to
3 protect a Defendant in a criminal case, but that's only part
4 of it. It is also there to help the jury so that when this
5 Government has proven a case to that high standard of beyond
6 any and all reasonable doubt, no juror wakes up two days later
7 or three days later and says, "Did I make the right decision?"
8 It is that type of clarity when we talk about this. It is
9 that part of our criminal justice system we brag about when we
10 talk to other countries about our criminal justice system, and
11 against that standard we have -- you have to weigh the
12 evidence in this case.

13 As I mentioned in opening statement, this really is
14 somewhat akin to the instant replay in a football game where
15 the call on the field is not guilty and now you have to
16 evaluate the evidence, looking back at the testimony and say
17 is the call on the field correct? Is there irrefutable
18 evidence that the call on the field is wrong? And there
19 isn't. There isn't, and the reason there isn't is there is
20 not in this record a scintilla of evidence, not a scintilla,
21 which is the smallest monocle you can find, that Marvin Myers
22 ever picked up any of those drugs that he is accused of
23 possessing, not a scintilla of evidence he touched any of
24 them. They had the means to do that. They could have sent
25 the bags. You've got five adults in this house. You've got

1 drugs throughout the house. If you want to prove somebody in
2 that house possessed a specific drug it is not complicated to
3 send a bag off and have DNA tested on it. It's not difficult.
4 It was not done.

5 His Honor talked to you in the opening about the fact
6 that the burden is on this Government to prove the case, that
7 the Government knows it's bringing these charges, the
8 Government knew when they got up that morning and assembled
9 prior to this raid what they were going to do. They knew they
10 were going into a house. They knew to wear some protection.
11 They knew to wear cameras. In fact, if you go look at that
12 video you will find no fewer than six officers had helmet
13 cameras in that house, no fewer than six.

14 Mr. Marlow's camera we know was on because if you look at
15 the video that right at the door you can see the red light on
16 it. So we know it was on. We have, unfortunately, in this
17 case one video camera for you to look at and see, just one.
18 When they were preparing for this, did they even check the
19 equipment to see if it was working? Did they check the
20 equipment to even see if they knew how to operate it? Twenty-
21 five years of experience on conducting law enforcement, did
22 not even bring the first recording device to videotape what
23 was happening in that house other than their helmet cameras
24 and they cut those off after a while. They brought no other
25 equipment to let you know how things were and what they were

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1 like. They didn't do it.

2 We know for a fact two people in that house, two people
3 in that house, Josh Bliss and his wife, Nicole, were working
4 for Georgetown as undercover agents. We know that. We did
5 not hear from them in this case. That you can consider.

6 They make a lot to do about the fact that, "Well, Mr.
7 Myers had 4000 something dollars on him." They introduced
8 deposit slips where Mr. Myers has deposited on one occasion
9 \$5,000, another occasion \$1500. You know, something a drug
10 dealer doesn't do, but certainly something that someone who is
11 running a business does, but they want to ignore that and give
12 a spin on what he had in his pocket.

13 They said, "Oh, he only had \$4,000 -- \$8,000 in income
14 over four months." Income is one thing, gross receipts is
15 something else entirely. Gross receipts is the total amount
16 that's received in a period of time from a business. Income
17 is what's left after you pay the bills. You've got to have --
18 put money in the bank to pay the bills. It's not that much
19 under those circumstances. Oh, then they said that the shoes
20 in there were Mr. Myers. Well, that's correct because they
21 were part of what he sold in the business. His girlfriend
22 testified to that. That's what he sold in the business,
23 expensive shoes.

24 Now, I said to you in opening, and the Judge will charge
25 you in this, it is not illegal to be in a house with drugs in

1 it. It is not a good idea. It is not illegal. It is also
2 not illegal to be in a house with drugs in it and you know the
3 drugs are in the house. That's not illegal. What is illegal
4 is to bring those drugs in the house because they're yours.
5 Constructive possession is not about can someone grab the
6 drugs and run with them. Constructive possession is about has
7 that person possessed the drugs in the past. For example, if
8 my desk drawer back in Greenwood is locked and somebody raids
9 my office and they find in that locked drawer something
10 illegal, heaven forbid they did, they would have a good
11 argument that I'm in constructive possession of it because
12 it's locked and I have the key and that is a way of proving
13 and the only way it could have gotten in there is if I had the
14 key, unlocked it, put it in there. It is a way of proving
15 past actual possession, not the ability to pick the drugs up
16 and go somewhere then. Otherwise, if you were in a car and
17 someone in the back seat of your car had drugs in it and left
18 them there you could be guilty of possession of drugs, which
19 is not true because you have to know they're there and have
20 the ability and the desire to convert them to your use. So
21 simply because drugs are in this house does not make it the
22 fact that Marvin Myers is guilty. They've got to prove more
23 than that. They've got to prove much more than that.

24 I also note with interest, and you can consider this,
25 when Joshua Bliss went and made a drug buy he didn't buy from

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1 Marvin Myers. He bought from Mr. Roach. Everybody agrees
2 with that. That's why they were searching this house. Right?
3 Yeah. Based upon the mere fact that he was in that house and
4 had been there in that house less than, oh, I guess four hours
5 they want to say everything in that room he knew it was there
6 and he possessed it. Well, if he knew it was there that's not
7 sufficient to convict. They've got to prove more than that.
8 They've got to prove that he did, in fact, possess that drug,
9 he did, in fact, possess those packages, and you -- and
10 there's no proof of it. There's no proof of it.

11 Now, then they come in and say, "Well, he admitted the
12 coat was his when we came in with a bunch of toys and stuff."
13 Unfortunately that was not recorded, been nice if it had been,
14 been nice if their preplanning had allowed for coming in with
15 a video camera and record any spontaneous statement anybody
16 made, but they didn't do that. They elected not to do that by
17 the way. It wasn't, it wasn't like they tried and it didn't
18 work. They elected to do it. They chose not to bring in
19 recording devices to film the entire process and they want to
20 say, "Well, we brought this jacket in. He said, 'Yeah, that's
21 my jacket,' and we pulled the heroin out." Well, where's the
22 jacket? They seized it. They admit seizing it. Where's the
23 jacket? Did they bring the jacket in this courtroom so that
24 you can look at the jacket and even get some visual idea as to
25 whether or not it even fits Marvin Myers? They didn't do it.

1 They have the burden. That's what the Court said. They have
2 the obligation to bring forth this evidence to prove to you.
3 They elected not to bring the jacket into the courtroom, and
4 do we dare say it? Did they not bring the jacket into the
5 courtroom because they were afraid if it didn't fit you must
6 acquit? That is literally something that you're entitled to
7 consider. They have the burden. They have the burden of
8 proving everything. They chose not to bring the jacket. They
9 chose not to bring the recording equipment. They chose not to
10 do anything. They chose not to do the DNA testing on any of
11 the drugs. They chose -- they, they chose all these things
12 and then want to have you to say, "I'm from the Government.
13 Trust me. He's guilty." Well, that isn't the way it works,
14 and it isn't the way it should work in this country. If the
15 Government is going to accept the burden of taking somebody
16 who is in a house that doesn't belong to him that he can get,
17 you know, he doesn't stay there on a regular basis. Yes. He
18 had some personal property there, but he doesn't stay there on
19 a regular basis, and for them to come in and say, "Simply
20 because drugs were in that house we know they're yours and we
21 have means of proving they're yours if we want to and we
22 didn't do it," that's their choice. That's their decision.

23 The State began by saying this is relatively simple and
24 it is. It's relatively simple, is there any proof Marvin
25 Myers touched any of those drugs in this room, in that room.

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1 That is as simple as it gets. That's as simple as this case
2 can be, and the answer is no. There isn't. Once you realize
3 that or analyze that that's as far as you need to go. The
4 Judge is going to charge you mere presence isn't sufficient.
5 Just because they're in the room doesn't mean you're guilty.
6 They have to prove the person not only knew they were in the
7 room but actually possessed them, and there's no proof of that
8 in this case, none whatsoever, and then he's -- they say, "Oh,
9 Mr. Myers had to know they were there." What does that prove?
10 That proves simply that saying because they're there he's
11 guilty and that's not the law. That is simply never has been
12 the law because you can even listen to the Judge's charge
13 he'll tell you. You can even say, yes, he knew they were but
14 that's only part of the obligation of the Government to prove
15 in this case. They have to prove not only that he knew it was
16 there but he possessed it, that he brought it in there.
17 There's no scintilla of testimony in this case as to how long
18 those drugs had been there. We know that for the previous two
19 nights Marvin Myers wasn't around except for about four, you
20 know, 3:30 in the morning. We know that. You know, there's
21 not a scintilla of evidence that he brought them in. There's
22 not a scintilla of evidence of how long they had been there,
23 if they had been there for several days. It, it -- they
24 didn't offer any proof of that. All they can prove is he was
25 close to the drugs, and if that is sufficient to convict a

1 citizen in this country then anybody, I mean, who happens to
2 hang around or associate with somebody who's involved with
3 drugs is susceptible to being convicted for drug possession
4 because of who they associate with and not what they possessed
5 and what they knew and what they intended to do. He had to
6 have known, that doesn't meet their burden of proof. It
7 doesn't even come close. Then they've got some things I need
8 to argue simply -- although I think you -- the evidence is
9 clear that they haven't met -- not met their burden of proving
10 that Marvin Myers possessed any of these drugs. They've also
11 accused him of things like possession with intent. If Roach
12 possessed these drugs and they were in his house and he had
13 knowledge of them, he's possessing of them because he had the
14 intent to sell those drugs because he did twice, and that's
15 kind of easy to prove with him. There's not a scintilla of
16 evidence in this case of any possession with intent to
17 distribute, none, none. Even the chemist expert said, "I'm
18 not here saying these amounts were anything other than
19 personal use because I don't know. I don't know." That's the
20 burden the State has, too, and I think when you analyze the
21 facts of this case and look at all, the overall facts, you'll
22 realize that Marvin Myers has been close to Scott Roach for
23 years and years and years. Scott Roach has some serious
24 mental problems. He had become his friend. He had tried to
25 help him out, and unfortunately, the payment he gets is being

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1 there when the raid occurred, and that's not sufficient to
2 convict, simply not. The Government has not offered any
3 evidence he touched those drugs. They didn't take steps to
4 try to prove that. They had two informants in that house that
5 could have probably enlightened you with something if, if they
6 had something that would help the Government, but they didn't.
7 The burden on the State is to prove it beyond any and all
8 reasonable doubt. They are the ones, as the Judge said in
9 opening, elected to bring these charges. They're the ones
10 that organized everything to make this come about, and the
11 burden on them is to do it in such a way that when you go home
12 at night you can rest assured that you've made the right
13 decision. When they haven't done it that way then the verdict
14 should be not guilty, and basically tell Georgetown, "You've
15 got to do it right. You've got to bring the proof because we
16 don't put people, we don't convict people for who they
17 associate with or the fact they happen to be around drugs."
18 We convict people only for actually owning those drugs,
19 possessing those drugs and having them under your control, not
20 ability to control necessarily, but having them under your
21 control, and there's simply no proof of it in this case. The
22 proper verdict should be not guilty. Thank you.

23 THE COURT: Mr. Todd, you're recognized.

24 MR. TODD: Thank you, Your Honor.

25 A few things that were brought up, that Ms. Gibson being

1 one of them, Ms. Gibson had stated when I was asking her
2 questions about her testimony that they have basically between
3 two years \$8,000 worth of revenue, and when I questioned her
4 about her expenses that's when she started saying, "Well, they
5 didn't make much money." So \$8,000 over the course of two
6 years is not very much. In regards to the inventory being in
7 Mr. Roach's house he must have spent a lot of time there. Ms.
8 Gibson stated there was a couple of thousand dollars worth of
9 inventory in that room he was staying in that belonged to
10 them, some nice shoes. She also stated that it was an online
11 -- pretty much was predominantly online. That's not a cash
12 business. That's using PayPal and taking credit cards. Mr.
13 Myers said that he was -- through the testimony or through Mr.
14 Wise I think going to help out Mr. Roach. They had become
15 friends. Mr. Roach was on tape selling marijuana two times.
16 Is he helping him or was he using him? Was he going over
17 there because he was using Mr. Roach? The burden is high. We
18 have presented the case. We are the ones that have the
19 burden. If we haven't met it, cut him loose. Let him go. I
20 agree. That's why I'm here. We don't meet our burden, let
21 him go, but you've seen everything. Please look at every
22 single picture, this, consider all the testimony. Find this
23 man guilty.

24 THE COURT: Madam Forelady, ladies and gentlemen of
25 the jury, you've heard all the evidence. You've heard the

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1 closing arguments. Now it's my responsibility to charge you
2 the law. I wish there was an easy way to do that. There's no
3 entertaining way to charge you the law, but it's important
4 because I've watched you all throughout the trial of this case
5 and you all have been paying attention. When the lawyer'd ask
6 a question you'd look at the lawyer. When the witness would
7 answer you'd look at them. I could tell you've been paying
8 attention. So you have all of the tools necessary to make a
9 finding of fact, but you've got to apply your findings to the
10 law. So it's going to be important for you to pay very close
11 attention. That's sort of like taking medicine. You need to
12 -- there's no pleasant way to do it, but it's important and
13 we're getting towards the middle of the day. I'm going to ask
14 you to perk up and pay very close attention.

15 Madam Forelady, ladies and gentlemen of the jury, the
16 indictment in this case allege a number of different offenses
17 against the Defendant. The charges, including those that they
18 were indicted for and the lesser included offenses, I'm going
19 to explain to you at a later point in time, include
20 trafficking in cocaine, possession with intent to distribute
21 cocaine, trafficking in cocaine base, possession with intent
22 to distribute cocaine, possession with intent to distribute
23 heroin, possession of heroin, proximity of a school with
24 regard to heroin, possession with intent to distribute
25 marijuana and possession of marijuana.

1 Each indictment charges a separate and distinct offense.
2 You must decide each indictment separately on the evidence and
3 the law applicable to it uninfluenced by your decision as to
4 any other indictment. The Defendant may be convicted or
5 acquitted on any or all of the offenses charged. You'll be
6 asked to write a separate verdict of guilty or not guilty for
7 each indictment.

8 The Defendant has pled not guilty to these indictments
9 and that puts the burden on the State to prove the Defendant
10 guilty. A person charged with committing a criminal offense
11 in South Carolina is never required to prove himself innocent.
12 I charge you that it is an important rule of law that the
13 Defendant in a criminal trial, no matter what the seriousness
14 of the charge may be, will always be presumed to be innocent
15 of the crime for which the indictment was issued unless guilt
16 has been proven by evidence satisfying you of that guilt
17 beyond a reasonable doubt. This presumption of innocence does
18 not end when you begin your deliberations, but it accompanies
19 the Defendant throughout the trial until you reach a verdict
20 of guilt based on evidence satisfying you of that guilt beyond
21 a reasonable doubt. The presumption of innocence is like a
22 robe of righteousness placed about the shoulders of the
23 Defendant which remains with the Defendant until it has been
24 stripped from the Defendant by evidence satisfying you of the
25 Defendant's guilt beyond a reasonable doubt. The presumption

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1 of innocence is not mere legal theory. It's not just a legal
2 phrase. It's a substantial right to which every Defendant is
3 entitled unless you the jury are satisfied from the evidence
4 of the Defendant's guilt beyond a reasonable doubt.

5 What is reasonable doubt in the law? A reasonable doubt
6 is the kind of doubt that would cause a reasonable person to
7 hesitate to act. The State has the burden of proving the
8 Defendant guilty beyond a reasonable doubt. Some of you may
9 have served as jurors in civil cases where you were told that
10 it is only necessary to prove that a fact is more likely true
11 than not true, such as by a greater weight or preponderance of
12 the evidence. In a criminal case the State's proof must be
13 more powerful than that. It must be beyond a reasonable
14 doubt. Proof beyond a reasonable doubt is proof that leaves
15 you firmly convinced of the Defendant's guilt. There are very
16 few things in this world that we know with absolute certainty,
17 and in criminal cases the State does not require proof that
18 overcomes every possible doubt. If based on your
19 consideration of the evidence you are firmly convinced the
20 Defendant is guilty of the crime charged, you must find the
21 Defendant guilty. If on the other hand you think there is a
22 real possibility that the Defendant is not guilty, you must
23 give the Defendant the benefit of the doubt and find him not
24 guilty.

25 I remind you that during this trial you and I have

1 certain duties to perform. As the trial judge it is my
2 responsibility to preside over the trial, and I also have the
3 duty to rule on the admissibility of evidence. You are to
4 consider only the competent evidence before you. You are to
5 consider only the testimony which has been presented from this
6 witness stand, any exhibits which have been made a part of the
7 record and any stipulations of counsel. I have the additional
8 duty to charge you the law. As the presiding judge I am the
9 sole judge of the law, and it is your duty as jurors to accept
10 and apply the law as I now state it to you. If you already
11 have an idea as to what the law is or what the law ought to be
12 and it does not agree with what I now tell you the law is, you
13 must abandon this idea because you are sworn to accept the law
14 and apply the law exactly as I state it to you. In every case
15 in this court before the -- before a jury, the jury becomes
16 the sole and exclusive judge of the facts. A trial judge
17 cannot intimate, state, comment on or make any statement to a
18 trial jury about the facts. Since you, the jury, are the sole
19 judge of the facts, you are not to infer from what I have said
20 during the progress of this trial in ruling upon the
21 admissibility of evidence or otherwise or anything that I say
22 now during the course of this instruction to you that I have
23 any opinion about the facts. The law simply does not allow me
24 to have an opinion about the facts. This is a matter solely
25 for you, the jury, to determine. As jurors it is your duty to

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1 determine the effect, value, weight and truth of the evidence
2 presented during this trial.

3 Madam Forelady, ladies and gentlemen of the jury, there
4 are two types of evidence which are generally presented during
5 a trial, direct evidence and circumstantial evidence. Direct
6 evidence directly proves the existence of a fact and does not
7 require deduction. Circumstantial evidence is proof of a
8 chain of facts and circumstances indicating the existence of a
9 fact. Crimes may be proven by circumstantial evidence. The
10 law makes no distinction between the weight or value to be
11 given to either direct or circumstantial evidence. However,
12 to the extent the State relies on circumstantial evidence, all
13 of the circumstances must be consistent with each other, and
14 when taken together, point conclusively to the guilt of the
15 accused beyond a reasonable doubt. If these circumstances
16 merely portray the Defendant's behavior as suspicious, the
17 proof has failed. The State has the burden of proving the
18 Defendant guilty beyond a reasonable doubt. This burden rests
19 with the State regardless of whether the State relies on
20 direct evidence, circumstantial evidence or some combination
21 of the two.

22 Necessarily, you must determine the credibility of
23 witnesses who have testified. Credibility simply means
24 believability. It becomes your duty as jurors to analyze and
25 evaluate the evidence and determine which evidence convinces

1 you of its truth. In determining the believability of
2 witnesses who have testified you may believe one witness over
3 several witnesses or several witnesses over one witness. You
4 may believe a part of the testimony of a witness and reject
5 the remaining part of the testimony of that same witness. You
6 may believe the testimony of a witness in its entirety or
7 reject the testimony of a witness in its entirety. You may
8 consider whether any witness has exhibited to you any
9 interest, bias, prejudice or other motive in the case. You
10 may also consider the appearance and manner of a witness while
11 on the witness stand, their demeanor.

12 A person who has a past criminal record is competent to
13 testify during a trial. A past record does not affect the
14 ability of that witness to testify. The past record may only
15 be considered by you, if at all, in determining the witness'
16 believability. However, you are the sole judge of the facts
17 in the case and the believability of any and all of the
18 witnesses.

19 The Rules of Evidence ordinarily do not permit witnesses
20 to testify to opinions or conclusion, conclusions. An
21 exception to this rule exists for witnesses we call expert
22 witnesses. A witness who by education and experience has
23 become expert in some art, science, profession or calling may
24 state an opinion as to relevant and material matter in which
25 the witness claims to be an expert and may also state the

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1 reasons for the opinion. You should consider any expert
2 opinion received in evidence in this case like any other
3 evidence, give it the weight you think it deserves. You
4 decide that the opinion of an expert witness is not based on
5 sufficient education and experience, if you conclude that the
6 reasons given in support of the opinion are not sound, that
7 the opinion is outweighed by other evidence, you may disregard
8 the opinion entirely. An expert witness' testimony is to be
9 given no greater weight than that of other witnesses simply
10 because the witness is an expert. Further, you are not
11 required to accept an expert's opinion even though it is not
12 contradicted.

13 I instruct you and emphasize that the fact the Defendant
14 did not testify is not a factor to be considered by you in any
15 manner in your deliberations on your consideration on the
16 question of the guilt or the innocence of the Defendant. It
17 must not be considered by you in any manner whatsoever. A
18 Defendant has the constitutional right to remain silent, and
19 the assertion of this right must not be considered by you in
20 your deliberations. I repeat, under your oath, you are to
21 draw no conclusions whatsoever from the fact the Defendant in
22 this case did not testify. The fact that the Defendant did
23 not testify should not even be discussed in the jury room.
24 Madam Foreman, I'm going to ask that you enforce that rule.
25 There will be no discussion about the fact that the Defendant

1 in this case did not testify because, after all, the burden of
2 proof, as I have stated to you, is on the State. The
3 Defendant is not required to prove his innocence. The burden
4 of proof remains on the State to prove guilt beyond a
5 reasonable doubt.

6 I'm going to charge you the substantive law with regard
7 to the numerous offenses that have been levied against the
8 Defendant. The Defendant is charged with trafficking in
9 cocaine and cocaine base. The State must prove beyond a
10 reasonable doubt that the Defendant knowingly sold,
11 manufactured, cultivated, delivered, purchased, brought into
12 this state, provided financial assistance or otherwise aided,
13 abetted, attempted, or conspired to sell, manufacture,
14 cultivate, deliver, purchase, or bring into this state, was
15 knowingly in actual or constructive possession, knowingly
16 attempted to become in actual or constructive possession of
17 cocaine or cocaine base.

18 Cocaine, with regard to cocaine, the State must also
19 prove beyond a reasonable doubt that the amount of cocaine or
20 any mixture containing cocaine was 28 grams or more but less
21 than 100 grams. With regard to cocaine base, the State must
22 also prove beyond a reasonable doubt that the amount of
23 cocaine base is 10 grams or more but less than 28 grams.

24 Possession with intent to distribute, if you determine
25 that the State has not proven trafficking in cocaine or

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1 cocaine base beyond a reasonable doubt, you should then
2 consider whether the State has proven beyond a reasonable
3 doubt that the Defendant is guilty of possession with intent
4 to distribute cocaine and/or cocaine base. Possession with
5 intent to distribute contains all of the elements of
6 trafficking except the amount of cocaine or cocaine base. In
7 addition, the State must prove beyond a reasonable doubt that
8 the Defendant had the intent to distribute the cocaine and/or
9 cocaine base..

10 The Defendant is charged with possession with intent to
11 distribute heroin. The State must prove beyond a reasonable
12 doubt that the Defendant possessed heroin with intent to
13 distribute it. To prove possession the State must prove
14 beyond a reasonable doubt that the Defendant had both the
15 power and the intent to control the disposition or use of the
16 heroin. Possession may be either actual or constructive.
17 Actual possession means that the heroin was in the actual
18 physical custody of the Defendant. Constructive possession
19 means that the Defendant had dominion and control or the right
20 to exercise dominion or control over either the heroin itself
21 or the property on which the heroin was found. Mere presence
22 at the scene where the drugs were found is not enough to prove
23 possession. Two or more persons may have joint possession of
24 a drug.

25 The State must also prove beyond a reasonable doubt the

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1 Defendant intended to distribute the heroin. Distribute means
2 to deliver other than by administering or dispensing a drug.
3 Intent may be shown by acts and conduct of the Defendant and
4 other circumstances from which you may naturally and
5 reasonably infer intent.

6 In determining whether the Defendant had the intent to
7 distribute the cocaine and/or cocaine base and/or heroin you
8 may consider the circumstances surrounding the Defendant's
9 alleged possession. You may also consider the amount of the
10 substance alleged to have been possessed, the manner in which
11 it was allegedly possessed, the place where it was allegedly
12 possessed and other factors which you consider to be
13 important. You must find that the Defendant did not -- you
14 must find that the Defendant did not intend to have the
15 cocaine and/or cocaine base and/or heroin solely for his own
16 use.

17 I'm going to charge you the law with regard to
18 distribution of a controlled substance within the proximity of
19 a school or park. The Defendant is charged with possession
20 with intent to distribute heroin within proximity of a school
21 or park. The State must prove beyond a reasonable doubt that
22 the Defendant distributed, sold, purchased, manufactured or
23 unlawfully possessed with intent to distribute heroin while
24 in, on or within one-half mile of the grounds of a public or
25 private elementary, middle or secondary school, a public

Charge

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1 playground or park, a public vocational or trade school or
2 technical education center or a public or private college or
3 university. The person must have knowledge that he or she is
4 on -- is in, on or within one-half mile of the grounds of a
5 public or private elementary, middle or secondary school, a
6 public playground or park, a public vocational or trade school
7 or technical educational center or a public or private college
8 or university.

9 I charge you the law with regard to possession. To prove
10 possession the State must prove beyond a reasonable doubt that
11 the Defendant had both the power and the intent to control the
12 disposition or the use of the marijuana and/or heroin in this
13 instance. Possession may be either actual or constructive.
14 Actual possession means that the marijuana and heroin was in
15 the actual physical custody of the Defendant. Constructive
16 possession means that the Defendant had dominion and control
17 or the right to exercise dominion or control over either the
18 marijuana or heroin itself or the property on which the
19 marijuana and/or heroin was found. Mere presence at the scene
20 where the drugs were found is not enough to prove possession.
21 Two or more persons may have joint possession of a drug.
22 Ladies and gentlemen of the jury, mere presence at the scene
23 is not sufficient to prove someone guilty of a crime. A
24 Defendant's presence where a crime is being committed or mere
25 association with a person who commits a crime does not make a

1 Defendant an accomplice or an aider and abettor of the person
2 committing the crime. The burden is on the State to prove
3 every element of the crime charged. If you find after
4 reviewing all of the evidence that the Defendant has proved --
5 if the -- that the State has proved the Defendant was only
6 present at the scene of a crime and that they have not proved
7 beyond a reasonable doubt any other participation in the crime
8 then you must find the Defendant not guilty. The law is that
9 proof of one being at the scene of a crime is not sufficient
10 to find one guilty.

11 Madam Forelady, I'm going to come forward and share with
12 you the verdict form.

13 Madam Forelady, I'm going to ask if you could stand.
14 Madam Forelady, like I had mentioned to you earlier, you're
15 going to have one vote with regard to deliberations, but
16 you're charged with an additional responsibility in that you
17 are to preside over the deliberation process, and that
18 essentially means that you're to ensure that everybody's voice
19 is heard. In addition to that, if there are questions that
20 develop throughout this trial, they will communicate that
21 question or concern to you, you reduce it to writing, give it
22 to the bailiff, and I'll be happy to answer those if indeed I
23 can.

24 FORELADY: Okay.

25 THE COURT: This is the verdict form, and it must be

Charge

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1 unanimous. It can't be 11 to 1, 8 to 4, 6 to 6. Everyone has
2 to agree, and the verdict form is fairly long and we're going
3 to go over it. It says the State of South Carolina, County of
4 Georgetown, the State of South Carolina versus Marvin Luther
5 Myers, and it's got that we're in General Sessions, 15th
6 Judicial Circuit, Verdict Form, we, the jury in the above
7 action find by unanimous consent as follows -- they have
8 indicted Mr. Myers of trafficking in cocaine 28 to 100 grams.
9 You'll be called upon to determine whether or not they have
10 proven beyond a reasonable doubt that he is not -- that he is
11 guilty of that offense or not guilty. There are two different
12 choices you can check, and it goes -- and just follow this.
13 Although it's a -- I mean, it's a long form, just follow it
14 one at a time.

15 FOREPERSON: Okay.

16 THE COURT: And it goes, if you find the Defendant guilty
17 of trafficking in cocaine proceed to number two because
18 possession with intent to distribute cocaine is a lesser
19 included offense. If you find him not guilty of trafficking,
20 then you can consider possession with intent to distribute
21 cocaine. You can't find him guilty of both obviously.

22 FOREPERSON: Uh-huh.

23 THE COURT: And if you'll just follow through in a linear
24 fashion that will become clear to you once again.

25 FOREPERSON: Okay.

1 THE COURT: All right. Number Two, trafficking in
2 cocaine base more than ten grams, less than 28 grams, once
3 again, a place for not guilty or guilty.

4 FOREPERSON: Uh-huh.

5 THE COURT: And it says, if you find the Defendant guilty
6 of trafficking in cocaine proceed to III. If you find the
7 Defendant not guilty, you may consider the lesser included
8 offense of possession with intent to distribute cocaine base.

9 FOREPERSON: I understand.

10 THE COURT: All right. And we've got possession of
11 heroin with intent to distribute. Once again, you're called
12 upon to make a decision with regard to that. If you find the
13 Defendant guilty of possession of heroin with intent to
14 distribute, proceed to IV. However, if you find him not
15 guilty, then you can consider whether or not he's guilty of
16 merely possessing the heroin, and there's a place for not
17 guilty or guilty, and, and possession with intent to
18 distribute in close proximity of a school, not guilty or
19 guilty, and, and then possession of marijuana with intent to
20 distribute, there's a place for not guilty or guilty. If you
21 find the Defendant not guilty, you may consider the lesser
22 included offense of possession of marijuana, and obviously, if
23 you find him not guilty of possession with intent to
24 distribute, he can't be guilty of possession of heroin with
25 intent to distribute in close proximity of a school.

Charge

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1 FOREPERSON: Okay.

2 THE COURT: And that's set forth in there as well.

3 FOREPERSON: All right.

4 THE COURT: All right. And there's a place for you to
5 sign and place for you to date.

6 FOREPERSON: Uh-huh.

7 THE COURT: And you certify that it's unanimous and
8 notify the bailiff upon your conclusion in reaching of a
9 verdict and I'll allow you to have a seat.

10 FOREPERSON: All right.

11 THE COURT: I'm going to ask the alternates, Mr. Holmes
12 and Ms. Lanier [sic], if you all will remain with us. Do not
13 go back into the jury room. If there are questions that
14 develop throughout your deliberations, there are certain
15 questions I can answer. If there's a question with regard to
16 the law, certainly that's my job. I can charge you the law,
17 but the difficult questions in this case are the factual
18 disputes that you all are going to be called upon to resolve.
19 If in your mind after discussing the question that you have,
20 if you can't determine whether it's a question of law or a
21 question of fact, write it down and I'll help you in that
22 regard, but I really don't think that there are going to be
23 any questions because you all have paid close attention to the
24 evidence that's been presented in this case, you've paid
25 attention to, to the law and you have all the tools necessary

Charge

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1 to resolve this case. I'm certain that you will, indeed, do
2 that.

3 I'm -- when I send you out of the -- have sent you out of
4 the room throughout the trial of this case I always tell you
5 not to begin deliberations, and once again, I'm going to ask
6 you to do that because I'm going to have to ask these very
7 fine lawyers if they have an objection to the manner in which
8 I have charged the law, whether or not I've charged something
9 incorrectly, I've left something out or I need to add
10 something in addition to that, and if that be the case I'll
11 call you back in, we'll address that issue and then we'll send
12 you back in and tell you to begin deliberations. If there's
13 not any questions, I'm going to ask that the bailiff gather up
14 all of the documentary evidence and they will present that to
15 you and tell you to begin deliberations, but once again, do
16 not begin discussing this case until you receive instructions
17 to do so. In addition to that, at 12:30 lunch will be
18 provided so you all can deliberate uninterrupted. All right.
19 Mr. Foreman -- Madam Forelady, in addition to that, if someone
20 were to get up to use the restroom during deliberations, stop
21 deliberations because everybody has to participate in all the
22 deliberative process, and I'm going to ask the alternates if
23 they'll remain here in the courtroom and everyone remain
24 seated as the jury returns to the jury room, but do not begin
25 deliberations. Very good. You may follow.

Charge

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1 (Alternates released by Court.)

2 THE COURT: All right. Are there any objections to the
3 manner in which, in which I have charged the law from the
4 State?

5 MR. TODD: None from the State, Your Honor.

6 THE COURT: Any from Defense?

7 MR. WISE: I have, I have two minor matters, and I hope I
8 took it down correctly. I may not have. You described
9 possession of the drugs as having actual physical custody, but
10 I didn't hear a knowledge requirement with that phrase of
11 description of the drug, and I could have missed that. It was
12 after you went through I think just about all the -- toward,
13 toward the end.

14 THE COURT: All right. Hang on, hang on just a second.
15 All right. Well, I'll -- I will indeed charge that.

16 MR. WISE: Thank you. One other, one other thing, too,
17 is that you also described control over property where drugs
18 are found, I don't think that's a proper charge in this case
19 because he really had no control over the property. The
20 property belonged to Mr. Roach.

21 THE COURT: That's a factual question for the jury to
22 resolve.

23 MR. WISE: Then I think we need to add a knowledge
24 element of that, too, that even though the control over the
25 property and knowledge of the drugs were there.

1 THE COURT: I'll -- I will charge the knowledge factor
2 with regard to possession. Your other objection is noted.

3 MR. WISE: All right.

4 THE COURT: All right. We're ready for the jury. Bring
5 the jury, bring the jury back in.

6 (The following takes place in the presence of the jury.)

7 THE COURT: Madam Forelady, ladies and gentlemen of the
8 jury, pay very close attention as I charge you the law with
9 regard to possession. To prove possession the State must
10 prove beyond a reasonable doubt that the Defendant had both
11 the power and the intent to control the disposition or use of
12 the marijuana or heroin. Possession may be either actual or
13 constructive. Active possession means that the marijuana
14 and/or heroin was in actual -- was in the actual physical
15 custody of the Defendant. Constructive possession means that
16 the Defendant had dominion and control or the right to
17 exercise dominion or control over either the marijuana and/or
18 heroin itself or the property on which the marijuana and/or
19 heroin was found. Mere presence at the scene where the drugs
20 were found is not enough to prove possession. The Defendant's
21 knowledge and possession may be inferred when a substance is
22 found on the property under the Defendant's control. However,
23 the inference is simply an evidentiary fact to be taken into
24 consideration by you along with other evidence in the case and
25 to be given the weight you decide it should have. Two or more

Charge

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1 persons may have joint possession of a drug. You may return
2 to the jury room.

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Any further objections from the State --

6 MR. TODD: No, sir.

7 THE COURT: -- or there were no objections.

8 MR. TODD: There were none to begin with, Your Honor.

9 THE COURT: Do you have -- all right. Very good. Any?

10 MR. WISE: I understand that you used the word inference
11 in keeping with State versus --

12 THE COURT: That's the reason why I -- you know, you --
13 you talked about inference --

14 MR. WISE: Right.

15 THE COURT: -- and that's the reason why I didn't charge
16 that, but that is the --

17 MR. WISE: Allens charge.

18 THE COURT: -- that is the charge that's prescribed by
19 the Supreme Court and I deliberately left out the inference
20 because you asked me not to charge inference.

21 MR. WISE: Well, I -- and I don't -- I didn't ask you to
22 recharge it the second time either, just wanted to put
23 knowledge in there.

24 THE COURT: Okay.

25 MR. WISE: And secondly, you made reference just to

1 marijuana and the heroin as opposed to crack cocaine and
2 cocaine. Obviously the same rule is going to apply to both.

3 THE COURT: Those are the only simple possessions that
4 were there. I think they, they understand that. Possession
5 was defined within the possession with intent to distribute.
6 I addressed that and obviously possession is defined in my
7 secondary charge as well.

8 MR. WISE: Okay.

9 THE COURT: Your objection is noted, but overruled.

10 MR. WISE: Thank you.

11 THE COURT: All right. Very good. All right. Anything
12 further from the State?

13 MR. TODD: No, Your Honor, not at this time.

14 THE COURT: All right. I'm going to ask the Defense
15 counsel and the State to come forward and, and I'm going to
16 ask that all the documentary evidence be placed on this table.

17 (Exhibits reviewed by counsel for State and Defense and
18 approved.)

19 THE COURT: All right. All right. Mr. Todd, is
20 everything in that pile in evidence?

21 MR. TODD: Yes, sir. All the pictures, the drugs, the
22 video, as well as the Defense's two items.

23 THE COURT: All right. Is there anything in that pile
24 that's not in evidence?

25 MR. TODD: No, Your Honor.

Question From Jury

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1 THE COURT: Mr. Wise, is everything in that pile in
2 evidence?

3 MR. WISE: Everything in that pile is in evidence.

4 THE COURT: Is there anything in the pile that's not in
5 evidence?

6 MR. WISE: Nothing in there that's not into evidence.

7 THE COURT: I'm going to ask the bailiff to give this
8 documentary evidence to the jury, along with pencil and pad
9 and tell them to begin deliberations.

10 All right. We'll stand at ease, and let the record
11 reflect that it's 12:15.

12 MR. TODD: Thank you, Your Honor.

13 (Deliberations begin at 12:15 p.m.)

14 OFF THE RECORD

15 (On the record. Question from jury at 1:55 p.m.)

16 THE COURT: They have asked -- I'll read verbatim what
17 the note says, "The jury requests a written statement of the
18 definition of trafficking and possession according to South
19 Carolina law." I'll recharge them that. I'm not giving them
20 a written charge.

21 Any --

22 MR. WISE: Now you can give them --

23 THE COURT: I'm going to give them the -- I'm going to
24 read to them the charge.

25 MR. WISE: My client was in the parking lot. He's on his

1 way up.

2 THE COURT: Pardon?

3 MR. WISE: My client was in the parking lot in the sun
4 for some reason. He's on his way up. I just got a phone
5 call.

6 THE COURT: Okay. Well, he's invited to come. We're
7 ready for the jury.

8 MR. WISE: Well, let me get him here.

9 (Whereupon, the following takes place in the presence of
10 the jury. Jury enters courtroom at 2:05 p.m.)

11 THE COURT: Madam Forelady, ladies and gentlemen of the
12 jury, the Defendant is charged with trafficking in cocaine
13 and/or cocaine base. The State must prove beyond a reasonable
14 doubt that the Defendant knowingly sold, manufactured,
15 cultivated, delivered, purchased, brought into this state,
16 provided financial assistance or otherwise aided, abetted,
17 attempted, or conspired to sell, manufacture, cultivate,
18 deliver, purchase, or bring into this state, was knowingly in
19 actual or constructive possession, knowingly attempted to
20 become in actual or constructive possession of cocaine and/or
21 cocaine base.

22 With regard to powder cocaine, the State must also prove
23 beyond a reasonable doubt that the amount of cocaine or any
24 mixture containing cocaine was 28 grams or more, but less than
25 100 grams.

Question From Jury

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1 With regard to cocaine base, the State must also prove
2 beyond a reasonable doubt that the amount of cocaine base is
3 10 grams or more but less than 28 grams.

4 To prove possession the State must prove beyond a
5 reasonable doubt that the Defendant had both the power and the
6 intent to control the disposition or use of the marijuana
7 and/or heroin. Possession may be either actual or
8 constructive. Actual possession means that the marijuana
9 and/or heroin was in the actual physical custody of the
10 Defendant. Constructive possession means that the Defendant
11 had dominion and control or the right to exercise dominion or
12 control over either the marijuana and/or heroin itself or the
13 property on which the marijuana and/or heroin was found. Mere
14 presence at the scene where the drugs were found is not enough
15 to prove possession. The Defendant's knowledge and possession
16 may be inferred when a substance is found on the property
17 under the Defendant's control. However, this inference is
18 simply an evidentiary fact to be taken into consideration by
19 you along with other evidence in the case and to be given the
20 weight you decide it should have. Two or more persons may
21 have joint possession of a drug.

22 You may return to the jury room and resume
23 deliberations.

24 (Whereupon, the following takes place outside the
25 presence of the jury. Deliberations resume at 2:09 p.m.)

1 THE COURT: Anything from the State before we recess?

2 MR. TODD: No, sir, Your Honor.

3 THE COURT: Anything from Defense?

4 MR. WISE: The same objection I had before, use of the
5 word inference of dominion and control from being in
6 possession of the property, an inference of knowledge of the
7 drugs from being in control of the property on which it was
8 found I think is the way it was worded. I think that
9 inference, again, violates the State Constitution on --
10 comment on the facts and also violation of due process under
11 these facts where Mr. Myers did not own the property on which
12 the drugs were found.

13 THE COURT: You very well might be right, but the Supreme
14 Court's drafted it that way. So we'll see if they'll revisit
15 it. Very good. All right. We will stand at ease.

16 OFF THE RECORD

17 (On the record. Verdict is reached at 3:12 p.m. The
18 following takes place outside the presence of the jury.)

19 THE COURT: All right. I understand that, that they have
20 reached a verdict, and regardless of what the verdict is,
21 someone generally is upset, and if you think that you might be
22 in a position to where you can't control your emotions and you
23 feel like you've got to react in an outward way, now would be
24 a good time for you to leave. However, if there's any
25 outbursts or any show of emotion with regard to the verdict

Verdict

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1 I'm giving the law enforcement instructions not to wait for
2 any other instructions, but if there's any outbursts, they're
3 going to take you into custody. We will not have any
4 outbursts in this courtroom.

5 All right. Anything from the State before we proceed?

6 MR. TODD: No, Your Honor.

7 THE COURT: Anything from Defense?

8 MR. WISE: Nothing from the Defense.

9 THE COURT: We're ready for the jury.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: Madam Forelady, have you reached a verdict?

13 FOREPERSON: We have, we have, sir.

14 THE COURT: Is it, indeed, unanimous?

15 FOREPERSON: Yes. It is, sir.

16 THE COURT: I'm going to ask if you can give the bailiff
17 the verdict form.

18 (Complies with request and Court reviews.)

19 THE COURT: All right. The verdict form appears to be
20 in, in appropriate order. I'm going to ask the clerk if you
21 could publish.

22 THE CLERK: The State of South Carolina versus Martin
23 [sic] Luther Myers, case number 2016-GS-22-00464, we, the jury
24 in the above-entitled action find by unanimous consent as
25 follows: trafficking cocaine, not guilty; possession with

Verdict

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1 intent to distribute cocaine, guilty; trafficking cocaine base
2 more than 10 grams, not guilty; possession with intent to
3 distribute cocaine base, guilty; possession of heroin with
4 intent to distribute, not guilty -- I don't understand one.
5 What is this heading for this one?

6 THE COURT: Possession.

7 THE CLERK: Just possession of heroin, guilty; possession
8 of marijuana with intent to distribute, not guilty; possession
9 of marijuana, guilty.

10 THE COURT: All right. Very good. Thank you.

11 Is this your verdict so say you all?

12 (Jury indicates affirmatively.)

13 THE COURT: Okay. All right. Any additional requests
14 for polling from the State?

15 MR. TODD: No, Your Honor.

16 THE COURT: Any additional requests for polling from the
17 Defense?

18 MR. WISE: We'd request the jury be polled.

19 THE COURT: All right. Very good.

20 THE CLERK: Ladies and gentlemen of the jury, when I call
21 your number will you please answer the following questions:
22 in the case of the State of South Carolina versus Martin [sic]
23 Luther Myers, Jr., indictments 2016-GS-22-461 through 468,
24 Madam Foreperson, Number 105, was this your verdict?

25 JUROR 105: Yes, it was.

Polling of Jury

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1 THE CLERK: Is this still your verdict?
2 JUROR 105: Yes, it is.
3 THE CLERK: Number 46, was this your verdict?
4 JUROR 46: Yes.
5 THE CLERK: Is this still your verdict?
6 JUROR 46: Yes.
7 THE CLERK: Thank you. Number 67, was this your verdict?
8 JUROR 67: Yes.
9 THE CLERK: Is this still your verdict?
10 JUROR 67: Yes.
11 THE CLERK: Number 70, is -- was this your verdict?
12 JUROR 70: Yes.
13 THE CLERK: Is this still your verdict?
14 JUROR 70: Yes.
15 THE CLERK: Thank you. 73, was this your verdict?
16 JUROR 73: Yes, ma'am.
17 THE CLERK: Is this still your verdict?
18 JUROR 73: Yes.
19 THE CLERK: Thank you. 81, was this your verdict?
20 JUROR 81: Yes.
21 THE CLERK: Is this still your verdict?
22 JUROR 81: Yes.
23 THE CLERK: 93, was this your verdict?
24 JUROR 93: Yes, ma'am.
25 THE CLERK: Is this still your verdict?

1 JUROR 93: Yes, ma'am.

2 THE CLERK: Thank you. 135, was this your verdict?

3 JUROR 137: Yes, ma'am.

4 I thought 137.

5 THE CLERK: 135?

6 JUROR 137: Oh, I'm sorry.

7 JUROR 135: Yes.

8 THE CLERK: Was this your verdict?

9 JUROR 135: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR 135: Yes.

12 THE CLERK: Thank you. 136, was this your verdict?

13 JUROR 136: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR 136: Yes.

16 THE CLERK: Thank you. 137, was this your verdict?

17 JUROR 137: Yes, ma'am.

18 THE CLERK: Is this still your verdict?

19 JUROR 137: Yes, ma'am.

20 THE CLERK: Thank you. 143, was this your verdict?

21 JUROR 143: Yes, ma'am.

22 THE CLERK: Is this still your verdict?

23 JUROR 143: Yes, ma'am.

24 THE CLERK: Thank you. 153, was this your verdict?

25 JUROR 153: Yes.

Polling of Jury

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1 THE CLERK: Is this still your verdict?

2 JUROR 153: Yes.

3 THE CLERK: Thank you. The jury has been polled.

4 THE COURT: All right. Madam Forelady, ladies and
5 gentlemen of the jury, that concludes your service on this
6 case and for the balance of the week. I understand that we
7 have a good deal of business to do for the balance of the
8 week, but no more jury trials. I want to thank you for your
9 time and your service. You've earned a three-year exemption.
10 If called upon to serve on a jury -- a jury in this courtroom
11 you'll have earned a three-year exemption. However, that does
12 not apply for Federal Court, municipal court or magistrate's
13 court, but if you're subpoenaed to participate in jury service
14 in this court, you have earned a three-year exemption. Tell
15 them that you served this week and you can elect not to serve
16 if you choose to do so.

17 You have been able to do what nobody else in this
18 courtroom has been able to do. You've been able to give this
19 case some finality, and for that I appreciate it. I know that
20 you all had things that you all would rather be doing, and
21 there's certainly not anything more important than serving on
22 a jury. We need your service, and know you all had other
23 things that you'd rather be doing, but if you think about the
24 alternative, if we couldn't subpoena people who had jobs and
25 were responsible and had other things to do, then we would be

1 relegated to getting people who had absolutely nothing better
2 to do, and it would not -- we would not receive the same type
3 of wisdom that, that you have brought to this case. Thank you
4 very much.

5 You have discharged your duty with regard to being the
6 finders of fact, and you've applied it to the law, you've
7 rendered a verdict, and it's my job as the trier of law to
8 sentence Mr. Myers. You don't have to take part in that if
9 you would -- don't want to. However, we're going to take a
10 brief recess, and those of you who would like to leave at this
11 juncture, you can go in and get your personal belongings and
12 the bailiff will show you the door. However, for those who
13 would like to witness the sentencing, you can have a seat here
14 in the courtroom, and you're free to do that, certainly not
15 required to, but if you would like to, if you're interested in
16 that, feel free to do that.

17 All right. We'll stand at ease for five minutes, and
18 before we do that I'd like to get the sentencing sheets from
19 the State.

20 MR. TODD: Yes, Your Honor. I'll pass them forward.

21 THE COURT: All right. We'll stand at ease for about
22 five minutes.

23 OFF THE RECORD

24 (On the record.)

25 THE COURT: Please be seated.

Sentencing

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1 I'm going to ask Mr. Myers if he could stand with
2 counsel, if he could, and be glad to hear from the State with
3 regard to sentencing, particularly with regard to any criminal
4 record that he might have.

5 MR. TODD: Thank you, Your Honor. Your Honor, I do have
6 in hand three certified convictions, along with their
7 certified indictments. The first one is a sentencing sheet
8 from July 24th, 2000. That is for a possession of crack
9 cocaine. Your Honor, on April 22nd, 2004, there is a -- also a
10 certified conviction for possession of marijuana with intent
11 to distribute, second offense, and another possession of
12 marijuana from 2006, Your Honor. This -- I also have a
13 certified copy of the conviction, sentencing sheet, as well as
14 the indictment. Your Honor, would you like me to place those
15 into Court's Exhibits?

16 THE COURT: It's not necessary. I was just asking what
17 his record was.

18 MR. TODD: Do you want to see them at all or --

19 THE COURT: I mean, I, I take you at your word.

20 MR. TODD: Okay. Thank you, sir.

21 THE COURT: All right. All right. What were the
22 sentences on those?

23 MR. TODD: Your Honor, with the possession of crack
24 cocaine he received a three-month sentence. With the
25 possession with intent to distribute charge, second offense,

1 from April 22nd, 2004, he received looks like one year -- oh,
2 five years suspended to one year, and then on his possession
3 charge, this would be from October 20th, 2006, it looks like he
4 received a 90 day sentence.

5 THE COURT: All right. All right.

6 Anything further with regard to sentencing?

7 MR. TODD: Your Honor, you have seen the entirety of this
8 case. Your Honor, we would leave sentencing at your
9 discretion.

10 THE COURT: All right. Mr. Wise, be glad to hear from
11 you and your client and anybody who would like to speak on his
12 behalf.

13 MR. TODD: Your Honor, I want to go into a little more
14 background about his relationship with Scotty Roach. Mr.
15 Myers met Scotty Roach through his younger brother because
16 they're about the same age, and Mr. Myers began to recognize
17 that, even in high school, that Mr. Roach had some mental
18 health issues. His father suffered from the same mental
19 health issues. Somehow or another Marvin was able to get a
20 hold of Scotty when he had a bad episode and kind of talk him
21 out of it. They kind of became friends through that, and he
22 would get in touch with Marvin when he needed some help, and
23 he would go see him and spend the day there, sometimes two or
24 three days and then calm him down.

25 If you look through and in part of the discovery we got

Sentencing

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1 in this, were the cell phone calls, not only was Mr. Roach and
2 Mr. Myers but also Mr. Bliss, there simply is not a lot of
3 telephone communication from them that would leave anyone to
4 believe that they're engaged in any sort of ongoing
5 enterprise, and one -- I think there are three calls or one
6 phone call from Mr. Bliss, and two of those are text messages
7 from Nicole Bliss, who is his -- Mr. Bliss' wife. I would
8 also point out to the Court that since December the 20th or
9 December the 11th of 2015 Mr. Myers has not been arrested on
10 any other drug charges or anything, unlike Mr. and Mrs. Bliss
11 who have gotten re-arrested, and I think Ms. Bliss has been
12 re-arrested three times. The only other person who hadn't got
13 arrested since then is, is Crystal LeDay, who's awaiting
14 sentencing, too. Obviously, we don't agree with the jury
15 verdict, but it is, it is what it is. Mr. Myers has been
16 working at a business as described in court. He is the father
17 of several children. He has his son here. If you'd stand up,
18 please, and he, he wishes to address the Court on, on behalf
19 of his father.

20 THE COURT: Glad to hear from him. Yes, sir. Your full
21 name?

22 MR. HOLLY: Malachi Sterling Holly [spelled phonetically].

23 THE COURT: Be glad to hear from you.

24 MR. HOLLY: I really don't know where to begin, but I
25 just want to start by saying Mr. Marvin Myers has been in my

1 life from the time I can remember. Biologically, he's not my
2 father, but he took that place as a father, and he raised me,
3 and he's my hero. He's all I know. I can't imagine my life
4 without him and I really want him to be here for my
5 graduation. I'm a senior at [REDACTED] High School, and I
6 just want to say I love you, Daddy. That's it.

7 THE COURT: Very good.

8 MR. WISE: Thank you. He -- if you look at his phone
9 bills there, the two primary people he talks to on his phone
10 are, quite frankly, his, his girlfriend and his other child's
11 mother. So he stays in contact with, with, with the child's
12 mother and does -- and has been supporting them. So he has
13 good family support. I've been down here a lot and met with
14 them at their house or his house, and he has good family
15 support. The verdict is what it is, as they say. We can't
16 deal with that, but I just hope the Court can see fit to be as
17 lenient as possible on him. I, you know, I don't, I don't
18 know frankly what else to add to that. He's always been in
19 court when he's needed to be. He's not been a problem on that
20 except for Monday when he was 30 minutes late, but outside of
21 that, when court has been held he's been here. He's abided by
22 the terms of his bond. So I think the Court can consider all
23 that. I don't, I don't know if he needs -- frankly, what he
24 needs is, is not withstanding his good intentions, he needs to
25 stay away from people who are involved in drugs, even if his

Sentencing

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1 being around them are with the best of intentions.

2 THE COURT: All right. Mr. Myers, what do you have to
3 say for yourself?

4 MR. MYERS: Well, as in Mr. Wise was saying as in Scott,
5 Scott Roach, he was a -- he became a good friend of mine
6 because of my father, the sicknesses my father. My father had
7 schizoid, bipolar, ADHD, and I knew how to, being that my
8 father had those things, he died from it, and I knew how to
9 control Scott issues. So he would call me, he would call me
10 periodic, periodic after night or through the week he would
11 call me going through things, crying and different things of
12 that nature, and I would like be there for his rescue, you
13 know, and this and not only, not only him, Bliss, Nicole Bliss
14 and Joshua Bliss I also was there for them, too. I spoke to
15 these people like as in to get off of these things, you know,
16 because they lost they kids, and you know, I still have my
17 kids. I also helped coach the AAU basketball team for my, my
18 son, you know, my football practice I had a regular routine
19 every day that I followed. I had to come home. When I wake
20 up in the morning I would go to my store. I work in my store.
21 Then after the store about 3:00 o'clock my son comes home. I
22 have to go to football. I never missed a football practice.
23 I never missed a football game. I was there consistently. So
24 like at the end of the -- I never had really no time to, to do
25 anything. I was consistently with my kids, and when Roach

1 would call I would, I would be there for him, too. So other
2 than, you know.

3 MR. WISE: Just would also add, too, Your Honor, he was a
4 pretty good high school athlete in, in basketball.
5 Unfortunately, dropped out of high school, and you know, if he
6 had stayed in high school and pursued his athletic abilities,
7 you know, the world could have been substantially different
8 from him, but that's water over the dam, as they say, but I do
9 think he has as good a heart. In fact, there's a message on
10 his phone that we received in discovery from Nicole Bliss that
11 talks about, "Thank you for the talk. It meant a lot to us,"
12 but obviously it didn't mean too much to her because she got
13 back in trouble. So --

14 THE COURT: Right.

15 MR. WISE: Yeah.

16 MR. MYERS: Your Honor, I'm just -- I'm asking the Court,
17 asking you, Your Honor, to be lenient because my kids they
18 need me in they life, and I'm there for them every day. I see
19 my kids every day. I help them out every day, school work. I
20 take them to every place they need to -- things they need to
21 go and places like that. I'm there for them, Your Honor, and
22 I'm just asking you to be lenient, Your Honor.

23 MR. WISE: Somebody was going to say on his past, but
24 excuse me. Go ahead. Come on up. This is his daughter.

25 THE COURT: Yes, ma'am, your, your full name?

Sentencing

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1 MISS MYERS: Zaria Amaria Jordan Myers [spelled
2 phonetically].

3 THE COURT: Say that again now.

4 MISS MYERS: Zaria Amaria Jordan Myers.

5 THE COURT: Okay. Very good.

6 MISS MYERS: I don't know where really to start, but my
7 daddy is like my best friend. My daddy would run a foot if he
8 have to, a mile if he have to for me, and I have a lot of
9 things that's coming up, and I want him to be there, and I
10 don't want to have to look in the crowd knowing that my father
11 is not there, and my daddy do anything for me, and I know that
12 if you all take him away I wouldn't know what else to do. My
13 daddy is like my life. He's shown me a lot of things in morals
14 to life that no one else could have showed me. That's it.

15 THE COURT: Very good.

16 MR. WISE: Thank you.

17 THE COURT: All right.

18 MR. WISE: I would, I would point out, what 33, how old
19 are you?

20 MR. MYERS: Thirty-six, sir.

21 THE COURT: Thirty-six.

22 MR. WISE: Thirty-six, and he has no crimes of violence
23 in his, in his history. That's his sister would like to speak
24 briefly, too. I apologize.

25 THE COURT: Yes. Yes, ma'am, your full name?

1 MS. MYERS: Hi. My name is Gabrielle Myers.

2 THE COURT: Be glad to hear from you, yes.

3 MS. MYERS: Yes, sir. I'd like to say that my brother,
4 Marvin, I'm just asking that the Court and that you, Your
5 Honor, will please have mercy in his sentencing. I know that
6 he has a previous record, but it does not justify -- I just
7 ask that you please have mercy in his sentencing because he is
8 a great role model in my life as well, and he is an awesome
9 father. He's an awesome brother, and he is also great in the
10 community as well with the children. So I'm just asking that
11 you would please have mercy on his sentencing. We really need
12 him to be here still in society to, to, to help lead us and,
13 and guide us in the community and, and our family as well.

14 THE COURT: Very good. Thank you.

15 MS. MYERS: Thank you.

16 MR. WISE: And also in the audience is his mother's out
17 here and you met several of the other people and other friends
18 and supporters of him.

19 THE COURT: Very good. Thank you. How much time was he
20 in detention before this matter came up?

21 MR. TODD: Your Honor, it looks like about four days.

22 MR. WISE: Excuse me, what'd you have?

23 MR. TODD: Four days. He went on the 11th and it looks
24 like he was bonded out on the 14th.

25 MR. WISE: Okay. Four days.

Sentencing

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1 THE COURT: Mr. Myers, your lawyer has done a very fine
2 job on your behalf. You might not understand the significance
3 of the verdict, but the trafficking offenses are -- or at
4 least one of them is a non-parolable offense with a minimum
5 mandatory amount of time, and it's a serious offense, which is
6 subject to the three-strike rule for later, for subsequent
7 criminal conduct, but all of the offenses that you were
8 convicted of are non-violent and they're parole eligible, and
9 the jury in their infinite wisdom found that that's what you
10 were guilty of and you're blessed in that regard.

11 On indictment 2016-GS-22-00463, possession of marijuana,
12 the sentence of the Court is you be committed to the State
13 Department of Corrections for a period of one year, sentence
14 to run concurrent, credit for four days. With regard to
15 possession of heroin, the sentence of the Court on indictment
16 2016-GS-22-00462, possession of heroin, the sentence of the
17 Court is you be committed to the State Department of
18 Corrections for a period of two years, sentence to run
19 concurrent, credit for four days. With regard to indictment
20 2016-GS-22-00467, possession with intent to distribute cocaine
21 base, the sentence of the Court is you be committed to the
22 State Department of Corrections for a period of seven years,
23 sentence to run concurrent, credit for four days. With regard
24 to indictment 2016-GS-22-00468, possession with intent to
25 distribute cocaine, the sentence of the Court is that you be

Motions

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1 committed to the State Department of Corrections for a period
2 of seven years, sentence to run concurrent, credit for four
3 days. Good luck to you.

4 Any motions at this time from anybody?

5 MR. TODD: None from the State, Your Honor. I'm sure Mr.
6 Wise might.

7 MR. WISE: I, I would again renew my motion for a new
8 trial on the grounds that I think the charge was improper in
9 reference to the word inference. In that obviously the jury
10 struggled with many of the facts in the case, and I think
11 that, that impacted it, and also on the grounds that the Court
12 should have directed verdict on the grounds that there was no
13 real proof, substantial circumstantial evidence to carry the
14 case to the jury except for the heroin charge, and also the
15 failure to grant the two requests to charge, request to charge
16 number one and two.

17 THE COURT: Well, I, I, I kind of differ with you with
18 regard to that because the -- as far as substantial -- I think
19 there was substantial circumstantial evidence on each, but in
20 my mind the circumstantial evidence on the heroin was less
21 than the cocaine because, number one, the car was rented by
22 someone else, number two, there was no identifying mark on the
23 coat and the coat was not produced. So one could argue that's
24 less than the cocaine that was found in a bag with an award
25 from one of his children --

Motions

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1 MR. WISE: I was looking at it in the light --

2 THE COURT: -- and it was in his, and it was in his
3 presence.

4 MR. WISE: I was looking at it in the light most
5 favorable to the State and that was the comment by the officer
6 that said he admitted it was his. So --

7 THE COURT: Right.

8 MR. WISE: -- that's what I thought merited that one
9 going to the jury.

10 THE COURT: Right. Well, that -- there was substantial
11 circumstantial evidence with regard to all of them, and I
12 think the verdict form probably is a reflection of mercy more
13 than anything else. Good luck to you.

14 MR. WISE: All right. Thank you.

15 MR. TODD: Thank you, Your Honor.

16 THE COURT: And your motions are denied.

17 (Adjourned.)

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Certificate

309

1 C E R T I F I C A T E

2

3 I, the undersigned, Grace L. Hurley, Official Court
4 Reporter for the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate and complete Transcript
6 of Record of the Hearing held in the case of State versus
7 Marvin Luther Myers, Jr., held in the Court of General
8 Sessions for Georgetown County, Georgetown County Courthouse,
9 Georgetown, South Carolina, on April 18-19, 2017.

10 I do hereby certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

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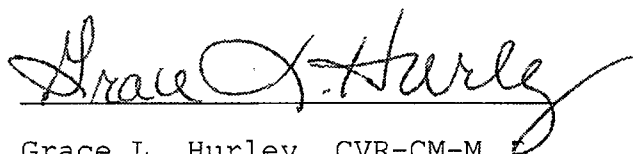
21

22

23

24 August 14, 2017.

25



Grace L. Hurley, CVR-CM-M

Official Reporter

WITNESSES

15th Circuit Drug Enforcement Unit

DOCKET NO. 2016-GS-22-00462 ✓**The State of South Carolina**

County of Georgetown

Richard D. Todd, Jr.

15G01097

COURT OF GENERAL SESSIONS

MAY, 2016 TERM

REST WARRANT NUMBER

2016A2210501122

CDR: 0183 844-63-0370(b)(1)
DOI: 12/11/2016**THE STATE**

vs.

MARVIN LUTHER MYERS, JR.NORTH ALEX ALFORD DR.
GEORGETOWN, SC 29440

DOB: 1980

SSN: B / M

ACTION OF GRAND JURY**TRUE BILL**ATTORNEY: C. Rauch Wise**Indictment for****POSSESSION WITH INTENT TO
DISTRIBUTE HEROIN**Jimmy A. Richardson, II, Solicitor

Foreperson of Grand Jury

Date: 5-25-16

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

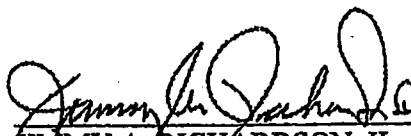
At a Court of General Sessions, convened on May 25, 2016, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

CDR: 0183 §44-53-0370(b)(1)

That Marvin Luther Myers, Jr. did in Georgetown County on or about December 11, 2015, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Heroin, a Schedule I controlled substance under the provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(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
FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF Georgetown
 STATE VS.
Marvin Luther Myers Jr
 AKA: _____
 Race: _____ Sex: M Age: 36
 DOB: 1980 SS# [REDACTED]
 Address: North Alex Alford Dr.
 City, State, Zip: Georgetown, SC 29440
 DL#: [REDACTED] SID#: SC01231702

INDICTMENT/CASE#: 2016GS2200462
 A/W#: 2015A2210501122
 Date of Offense: 12/11/2015
 S.C. Code §: 44-53-0370(b)(1)
 CDR Code #: 0183

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Poss. of Heroin, 1st offense 0-2 yrs + 100 = \$5,000

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(d)(1) of the S.C. Code of Laws, bearing CDR Code # 0176
☒ 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:

Todd, Jr., Richard D.

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 2 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4-19-17 § 24-13-40 to be calculated and applied
☒ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections. 4 days

☐ 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

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	\$ ~~500.00~~
§ 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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 20.00 beginning 1MO after release

\$ _____ 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.

Presiding Judge

Judge Code: 2140

Sentence Date: 4/19/17

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WITNESSES

15th Circuit Drug Enforcement Unit

ARREST WARRANT NUMBER

2016A2210501124

CDR: 0187 844-53-0370(b)(2)

DOI: 12/11/2015

ACTION OF GRAND JURY**TRUE BILL**

James H. HOLLIN
 Foreperson of Grand Jury
 Date: 5-25-16

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2016-GS-22-00463**The State of South Carolina**

County of Georgetown

Richard D. Todd, Jr.

16G01097

COURT OF GENERAL SESSIONS

MAY, 2016 TERM

THE STATE

vs.

MARVIN LUTHER MYERS, JR.

NORTH ALEX ALFORD DR.

GEORGETOWN, SC. 29440

DOB: 1980

SSN: [REDACTED]

B / M

ATTORNEY: C. Rauch Wise

Indictment for

**POSSESSION OF MARIJUANA
WITH INTENT TO DISTRIBUTE****Jimmy A. Richardson, II, Solicitor**

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on May 25, 2016, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

CDR: 0187 §44-53-0370(b)(2)

That Marvin Luther Myers, Jr. did in Georgetown County, on or about December 11, 2015, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver, a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and in violation of Section 44-53-0370(b)(2), 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
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Georgetown

VS.

Marvin Luther Myers Jr

AKA:

Race: BLACK Sex: M Age: 36

DOB: [REDACTED]-1980 SS#: [REDACTED]

Address: [REDACTED] North Alex Alford Dr.

City, State, Zip: Georgetown, SC 29440

DL#: [REDACTED] SID#: SC01231702

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession of <1oz. of Marijuana, 2nd Offense

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(d)(4) of the S.C. Code of Laws, bearing CDR Code # 0182

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB74770

Todd, Jr., Richard D.

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 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 4 days☐ 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

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/ca	\$
3% to County (if paid in installments)		\$ 8.25

TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

INDICTMENT/CASE#: 2016GS2200463

A/W#: 2015A2210501124

Date of Offense: 12/11/2015

S.C. Code § : 44-53-0370(b)(2)

CDR Code #: 0187

SENTENCE SHEET

Presiding Judge

Judge Code: 2146

Sentence Date: 4/19/17

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WITNESSES

15th Circuit Drug Enforcement Unit

REST WARRANT NUMBER

2015A2210501133

CDR: 0450 §44-53-0375(C)(1)(a)

DOI: 12/11/2015

ACTION OF GRAND JURY**TRUE BILL**

[Signature]
 Foreperson of Grand Jury
 Date: 5-25-16

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2016-GS-22-00467**The State of South Carolina**

County of Georgetown

Richard D. Todd, Jr.

15G01097

COURT OF GENERAL SESSIONS**MAY, 2016 TERM****THE STATE**

vs.

MARVIN LUTHER MYERS, JR.NORTH ALEX ALFORD DR.
GEORGETOWN, SC 29440

DOB: 1980

SSN: [REDACTED]

B / M

ATTORNEY: C. Rauch Wise**Indictment for****TRAFFICKING IN COCAINE BASE
MORE THAN 10 GRAMS, LESS
THAN 28 GRAMS****Jimmy A. Richardson, II, Solicitor**

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on May 25, 2016, the Grand Jurors of Georgetown County present upon their oath:

TRAFFICKING COCAINE BASE
MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

CDR: 0450 §44-53-0375(C)(1)(a)

That Marvin Luther Myers, Jr. did in Georgetown County on or about the December 11, 2015, knowingly, sell, deliver, purchase, or bring into this state; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of more than ten grams but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-110, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(C)(1), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


JIMMY A. RICHARDSON, II
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

387

COUNTY OF Georgetown
 STATE VS.
Marvin Luther Myers Jr

AKA: _____
 Race: BLACK Sex: M Age: 36
 DOB: 1980 SS#: [REDACTED]
 Address: North Alex Alford Dr.
 City, State, Zip: Georgetown, SC 29440
 DL#: [REDACTED] SID#: SC01231702

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession With Intent to Distribute Cocaine Base, 1st Offense 0-15yrs +/or ≤ \$75K

in violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3014

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] SCB74770
Todd, Jr., Richard D 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 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4-19-17
☒ 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. 4 days

☐ 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(I) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2146

Sentence Date: 4/19/17

☐ 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.

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 20.00 beginning 1 Mo After Release

\$ _____ paid to Public Defender Fund

Other: _____

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16th Circuit Drug Enforcement Unit

REST WARRANT NUMBER

2016A2210501134

CDR: 2359 §44-53-0370(e)(2)(b)1
DOI: 12/11/2015

ACTION OF GRAND JURY

TRUE BILL

Twila H. Williams
Foreperson of Grand Jury
Date: 5-25-16

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of Georgetown

Richard D. Todd, Jr.

15G01097

COURT OF GENERAL SESSIONS

MAY, 2016 TERM

THE STATE

vs.

MARVIN LUTHER MYERS, JR.

NORTH ALEX ALFORD DR.
GEORGETOWN, SC 29440

DOB: 1/1980

SSN: [REDACTED]

B / M

ATTORNEY: C. Rauch Wise

Indictment for

TRAFFICKING IN COCAINE
(28 – 100 GRAMS)

Jimmy A. Richardson, II, Solicitor

*Park ?
Street*

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on May 25, 2016, the Grand Jurors of Georgetown County present upon their oath:

TRAFFICKING COCAINE (28 - 100 GRAMS)

CDR: 2359 §44-53-0370(e)(2)(b)(1)

That Marvin Luther Myers, Jr. did in Georgetown County on or about December 11, 2015, knowingly sell, deliver, purchase or bring in this State, or aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than twenty-eight (28) grams, but less than one-hundred (100) grams, same being a controlled substance all within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of section 44-53-370(e)(2)(b), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


JIMMY A. RICHARDSON, II
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE VS.Marvin Luther Myers Jr

AKA:

Race: BLACK Sex: M Age: 36DOB: -1980 SS# [REDACTED]Address: North Alex Alford Dr.City, State, Zip: Georgetown, SC 29440DL#: [REDACTED] SID#: SC01231702*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession With Intent to Distribute Cocaine, 1st offense

0-15 yrs. & 100 \$25,000

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2200468A/W#: 2015A2210501134Date of Offense: 12/11/2015S.C. Code §: 44-53-0370(e)(2)(b)1CDR Code #: 2359

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB74770Todd, Jr., Richard D.

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 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 4 days☐ 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
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§ 56-5-2995 (DUI Assessment)	\$12	\$
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§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 8.25

TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 20.00 beginning 1 Mo After Release

\$ _____ 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.

Presiding Judge

Judge Code:

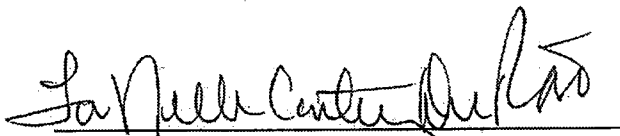
Sentence Date:

Michael Miller
2146
4/19/17 Scanned

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,

A handwritten signature in black ink, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

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

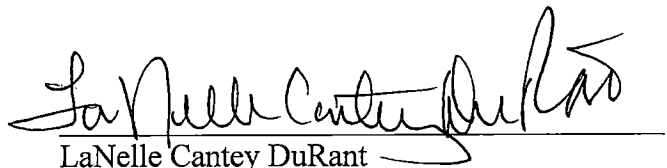
ATTORNEY FOR APPELLANT

This 2nd day of March, 2018.

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,


LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 2nd day of March, 2018.

RECEIVED

MAR 02 2018

SC Court of Appeals