

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
William H. Seals, Circuit Court Judge

RECEIVED

MAR 16 2018

ARTHUR L. RIVERS,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002201

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

RASHEEDA CLEVELAND
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED SEPTEMBER 15, 2009.....	1
FINAL BRIEF OF APPELLANT	480
FINAL BRIEF OF RESPONDENT	496
FINAL REPLY BRIEF OF APPELLANT.....	523
<u>STATE V. RIVERS</u> , 2011-UP-495 (S.C. Ct. App. filed November 7, 2011).....	530
PETITION FOR REHEARING.....	533
ORDER DENYING PETITION FOR REHEARING.....	541
PETITION FOR WRIT OF CERTIORARI	543
RETURN TO PETITION FOR WRIT OF CERTIORARI.....	564
REPLY TO STATE'S RETURN TO PETITION FOR WRIT OF CERTIORARI.....	590
ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	597
REMITTITUR	598
APPLICATION FOR POST-CONVICTION RELIEF	599
RETURN.....	606
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 9, 2017	611
ORDER OF DISMISSAL.....	640
INDICTMENTS AND SENTENCE SHEETS.....	654

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

2008-GS-10-07788
2008-GS-10-07795
2008-GS-10-07796

STATE OF SOUTH CAROLINA)

) TRANSCRIPT OF RECORD

-vs-

) September 15, 2009

ARTHUR LEE RIVERS,

) Charleston, South Carolina

) Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

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

Rutledge DuRant, Assistant Solicitor
Culver Kidd, Assistant Solicitor
Attorneys for the State

James Smiley, Esquire
Laree Hensley, Esquire
Attorneys for the Defendant

Amanda K. Haffenden, RPR, CRR.
Circuit Court Reporter

	I N D E X				
	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
1					
2					
3	Ryan Blakeley	42 178	50 216	66 263	70 --
4					
5	Robert Tague	71 267	76 274	-- --	-- --
6	Arthur Rivers	82 374	91 395	411 --	-- --
7					
8	Nathan McCoy	125	143	--	--
9					
10	Nicole Perry	147	150	--	--
11	Doris Yarbrough	153	156	--	--
12	Kathy Kjellman	161	166	174	176
13	William Summersell	286	291	299	--
14	James Milz	300	305	312	--
15	Judith Robinson	328	335	337	--
16	Yvonne Rivers	338	342	--	--
17					
18					
19					
20					
21					
22					
23					
24					
25					

	E X H I B I T S			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	State's 1	Group of nine photos	67	195
4	State's 2	Bag of evidence	67	195
5	State's 3	Report	67	195
6	State's 4	Photograph	67	193
7	State's 5	Photograph	67	193
8	State's 6	Photograph	67	193
9	State's 7	Photograph	67	193
10	State's 8	Photograph	67	195
11	State's 9	Photograph	67	195
12	State's 10	Photograph	192	195
13	State's 11	Photograph	192	195
14	State's 12	Photograph	192	195
15	State's 13	Photograph	209	210
16	State's 14	Photograph	209	210
17	State's 15	Photograph	209	210
18	Defendant's 1	Form B	169	169
19	Defendant's 2	Photograph	257	257
20	Defendant's 3	Photograph	257	257
21	Defendant's 4	Photograph	257	257
22	Defendant's 5	Photograph	257	257
23	Defendant's 6	Photograph	257	257
24	Defendant's 7	Photograph	257	257
25	Defendant's 8	Photograph	257	257

	E X H I B I T S			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	Defendant's 9	Photograph	257	257
4	Defendant's 10	Photograph	257	257
5	Defendant's 11	Photograph	257	257
6	Defendant's 12	Photograph	257	257
7	Defendant's 13	Photograph	257	257
8	Defendant's 14	Photograph	257	257
9	Defendant's 15	Photograph	257	257
10	Defendant's 16	Form C	310	312
11	Court's 1	Amended Indictment	416	--
12	Court's 2	Jury question	464	464
13	Court's 3	Jury Question	464	464
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (September 15, 2009.)

2 MR. DURANT: SLED weight came back under ten
3 grams, so I think we need to go with possession. It
4 would be a third offense.

5 THE COURT: All right. Simple possession,
6 third?

7 MR. DURANT: That's correct.

8 THE COURT: Okay. Do you have any objection?

9 MR. SMILEY: So instead of trafficking crack
10 cocaine within proximity of a school, it will be
11 possession with intent to distribute cocaine within
12 proximity of a school, my understanding, correct?

13 THE COURT: He just said simple possession.

14 MR. SMILEY: That is why -- simple is --
15 we'll need to do that right now and be done.

16 MR. DURANT: We've got cocaine trafficking.

17 THE COURT: Here is what I have in front of
18 me: I have a trafficking crack, a trafficking powder,
19 and assault on a police officer. Okay. Trafficking
20 powder is still the same.

21 MR. SMILEY: All right. I won't object on
22 the crack.

23 THE COURT: Okay. So we're going to amend
24 this to --

25 MR. SMILEY: Possession of crack.

1 THE COURT: Possession of crack cocaine
2 third.

3 MR. DURANT: That's correct.

4 MR. SMILEY: Or possession of crack, because
5 if the jury sees the indictment, they shouldn't see third
6 offense.

7 MR. DURANT: That's fine with me. There is a
8 heads up real quick on a Denno hearing we're going to
9 need to have one of those for a confession.

10 THE COURT: What I would like to do is get
11 the jury in here, draw them, and if we need to take up
12 some stuff, let them go to lunch, just so we can do
13 something other than have them just setting down there
14 twiddling their thumbs because there is a lot of them
15 sitting down there, not doing anything else. All right.
16 So you got possession of crack, trafficking powder, and
17 resisting.

18 MR. SMILEY: Yes, sir.

19 THE COURT: All right. And you want to plead
20 to any of them?

21 MR. SMILEY: Well, we worked on a deal at one
22 point, and it got taken off the table. I talked to my
23 client. If the deal was extended, would he take it, and
24 he says he doesn't want to roll the dice on 30 years, but
25 he's not guilty, and that is his problem. So we would

1 have to talk about an offer at that point, and he would
2 have to extend the offer again. Which I don't want to
3 tell you -- I'm not complaining.

4 Biggest thing, Judge, is I got to get my
5 client here. I'm going to step out right real quick.

6 THE COURT: All right.

7 MR. DURANT: We've got a chain in the chain
8 who brought the drugs from Charleston County up to SLED.
9 He's in tamp PA right now. We absolutely need him, but I
10 think the case law, or the law is clear that you don't
11 need to have everybody in the chain, you know, to testify
12 to the chain. You need every substantial link.

13 There would be testimony from the intake
14 person at SLED that she got these drugs from James Milz,
15 and James Milz is the guy in Charleston County who took
16 the drugs from the evidence intake at Charleston County
17 up to SLED.

18 Another thing is this: With regard to the
19 fungibility, non-fungibility of goods, obviously, drugs
20 are fungible, we need to establish a chain on drugs, I
21 think that there is a good argument that once these drugs
22 are put into a SLED test kit and sealed, tamper-proof
23 SLED test kit by an officer that comes before the guy who
24 took it to SLED, at that point there, it's written on,
25 it's signed on, it becomes non-fungible, so that --

1 THE COURT: The character of the evidence
2 doesn't change itself. It's either fungible or
3 non-fungible from now until the end of time. A gun is
4 non-fungible. Drugs are always going to be fungible.
5 They don't become non-fungible just because you seal
6 them. That's the whole point.

7 MR. DURANT: Absolutely.

8 THE COURT: But they don't suddenly become
9 non-fungible. The question is, does he still have to
10 have the link, or is it just a sealed envelope or not,
11 but, technically, they don't become non-fungible just
12 because you've sealed them in an envelope.

13 MR. DURANT: I agree with that, completely.
14 Drugs are always fungible.

15 THE COURT: But that's not what you said.

16 MR. DURANT: I'm just saying that the bag
17 that the drugs are in, it's a tamper-proof bag, drugs
18 can't be tampered with, would be considered non-fungible.

19 THE COURT: The bag is non-fungible, but the
20 bag is not evidence. It's the container. The drugs are
21 the evidence. The drugs are fungible.

22 MR. DURANT: I can see I probably need to
23 drop this argument.

24 THE COURT: I'm just saying you got -- I'm
25 listening to what you're saying, and you're trying to say

1 that drugs become non-fungible when you stick them in a
2 bag. I'm not saying they are always fungible, whether or
3 not you have linked it up enough and you still have to
4 have everybody along the way touch it, that is a
5 different argument, but I'm just trying to be a little
6 more precise. Cocaine does not become non-fungible
7 simply because you put it in a bag.

8 MR. DURANT: I understand that. I'm just
9 trying to say that the fungible drugs that are clearly
10 not distinguishable from any others of like, would in a
11 circumstance put in a tamper-proof bag, if there would be
12 testimony about the bag not being able to be tampered
13 with --

14 THE COURT: And sealed and it's got the name
15 put on it and all that, that is a totally distinct
16 argument.

17 MR. DURANT: Right.

18 THE COURT: The way I see it. I could be
19 wrong. I'm wrong all the time. Mr. Smiley might agree
20 with me on this one.

21 MR. SMILEY: I do, Your Honor. And just for
22 the record, on November the 19th, 2008, I filed my
23 standard request for disclosure of evidence in compliance
24 with Brady versus Maryland, and included in that is a
25 Rule 6 request that they present the chain be challenged

1 in Court, Your Honor. In fact, my exact words are -- let
2 me make sure I put them down right -- my paragraph 11 is
3 disclosure chain of custody is to be made pursuant to
4 provisions of criminal -- South Carolina rules of
5 criminal procedure. Demand is hereby made for the
6 personal testimony of all personnel with any chain of
7 custody as the item of evidence to comply with Rule 6,
8 Your Honor.

9 Therefore, I believe he is of a substantial
10 link since he had sole custody and possession of drugs
11 and transported them from one place to another. Their
12 argument is, well, you know, someone else can testify to
13 it. My last trial, it was going to be a simple chain,
14 and as soon as we started doing it, there was two best
15 kits and it started coming apart, so I would like to have
16 the personal testimony of those in the chain, Your Honor.

17 MR. DURANT: Your Honor, if I may, just on
18 this issue, I'm not going to rest my argument wholly on
19 this bag as a non-fungible item; therefore, the drugs are
20 perceived as non-fungible themselves, but the case law
21 clearly is that you have to present a chain as far as
22 practicable.

23 I'm reading from a 2007 Supreme Court case,
24 State v. Tony Tjuan Sweet: Fungible evidence; however,
25 is not prerequisite to establishing a chain of custody

1 sufficient for admissibility. Where other evidence
2 establishes the identity of those who have handled the
3 evidence and reasonably demonstrates the matter of
4 handling of the evidence, our Courts have been willing to
5 fill gaps in the chain of custody due to an absent
6 witness.

7 And I think that the SLED best kit,
8 tamper-proof, goes a long way to -- that kind of
9 testimony would go a long way to establishing the manner
10 of which these drugs were kept.

11 MR. SMILEY: And if I can respond, State vs.
12 Sweet is where an evidence custodian retired, and in that
13 case, they said it's permissible for the replacement
14 custodian, the one that took that person's job, to
15 testify, and also coupled with that was that the -- was
16 that it was, in fact, in a best kit, and that led to
17 their ability to let the other person testify in his
18 behalf. They didn't just leave that out of the link,
19 that part of the chain.

20 MR. DURANT: Now, there will be testimony
21 from the SLED intake person that the witness that we're
22 requesting not testify brought the evidence to SLED.

23 THE COURT: If it's marked and identified
24 with the person's name, then I think you've met your
25 burden. If the problem that you run into is where it's

1 not identified and you can't identify what happened to
2 it, where it was during the period of time, but if you've
3 got the person's name on there, who dropped it off,
4 deposited where they deposited it, and if it's stored at
5 a period of time, and the next person picked it up and
6 that person is identified, you're okay. It's where you
7 have these gaps where you don't know who handled or where
8 it was done, but if you have got a name on there, I don't
9 think you have to produce every single person along the
10 chain.

11 MR. DURANT: That's what we have, Your Honor.

12 MR. SMILEY: We had a guy that takes it out
13 of evidence in one place who doesn't testify, drives it
14 some period of time and then drops it somewhere else --

15 THE COURT: That, I don't know what the deal
16 is. That's just what -- if there is a gap, they got a
17 problem. If they don't have a gap, they don't have a
18 problem, but they don't have to produce, as I understand
19 it, every single person along the way, as long as they
20 can identify who had it, where it was at.

21 MR. SMILEY: Yes, sir. I think they're going
22 to produce about three out of eight people, because they
23 aren't going to use people inside of SLED that also
24 handled it, because I agreed that wasn't a substantial
25 part because it was inside a locked facility, but this

1 person actually travels outside locked facilities and
2 takes the drugs from point A to point B, so he's not
3 going to be able to testify where he put the drugs, how
4 he got them there. That's fine, I'm not going to object
5 to it. I think Rule 6 requires it, and we can go from
6 there.

7 MR. DURANT: Well, I didn't understand you
8 consented for this trial. I know we talked about the
9 consent on the internal SLED chain person last night,
10 before we thought we were calling this case today.

11 MR. SMILEY: He said, If I don't call it this
12 week, all those people inside of SLED, will you
13 stipulate, and I said yeah, those people are inside of
14 SLED. So I'm not going to break my word about that. I
15 said I would stipulate to that.

16 MR. DURANT: Unfortunately, we've got to call
17 the case this week, and so we've got those witnesses
18 coming.

19 THE COURT: Go with what you got.

20 MR. SMILEY: It will give my guy an appeal
21 issue for certain. That's fine.

22 MR. DURANT: The one guy that we're talking
23 about that wouldn't need to be here only handled this
24 evidence while it was in a sealed SLED bag, and he did
25 mark the bag, so it is accounted for. I think we'll

1 present the evidence that the best kit is a tamper-proof
2 best kit.

3 THE COURT: Come over here a minute. I want
4 to make sure before I bring the jury in that -- on this
5 trafficking crack indictment, you take a strike out up
6 here.

7 Before we begin, let's put on the record that
8 he wants to turn that offer down. All right. You're
9 Mr. Arthur Lee Rivers?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: We're here today. We're going to
12 start your trial in a few minutes. They're bringing the
13 jury panel up. Your lawyer knows about this, but now
14 that you're here, I just want to make sure you
15 understand.

16 One of the charges was trafficking crack
17 cocaine, but the amount came in below the statutory for
18 trafficking and possession with intent to distribute, so
19 that indictment has been amended to possession of crack
20 cocaine, so I want you to understand that. You agree to
21 that. Your attorney has agreed to it earlier, to the
22 amendment, but that actually benefits you, all right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, you also have a remaining
25 charge of trafficking powder cocaine in excess of ten

1 grams and because this would be your third offense, you
2 got a minimum of 25 years, no parole, no suspended
3 sentence. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, I'm told the state offered
6 you an earlier plea, prior to coming to trial -- and what
7 were the terms of that plea again?

8 MR. DURANT: It was a minimum of five years
9 up to thirty.

10 THE COURT: All right. So you had five to
11 thirty years, and you rejected that offer; is that
12 correct?

13 THE DEFENDANT: Yes, sir.

14 MR. SMILEY: There is more explanation to
15 that, but yes, sir, he did. He was charged at the time,
16 we believed, with six counts, three counts to an Arthur
17 Lee Rivers, and then three counts that we're in trial on.

18 We were offered to plead to a set of charges
19 that would have been five to thirty. It turns out the
20 other set of charges were not my client and have since
21 been null prossed.

22 That came up last week, as we were already on
23 the trial docket at that point in time, but my client had
24 indicated even then that he did not want to plead to this
25 count either, Your Honor, just to let you know.

1 THE COURT: I just want to make sure we have
2 the plea offers that were on the table and that he knows
3 about them and he rejected them, because I don't want to
4 go back and have PCRs come back later on and he says, Oh,
5 I didn't know about these offers.

6 So whatever offers were on the table, I want
7 them on the record that he knew about them and he
8 rejected them.

9 MR. SMILEY: Yes, sir, and he did reject the
10 five to thirty offer, Your Honor, as it was then
11 withdrawn and placed on the trial docket. It's my
12 understanding that just shortly, a few minutes ago, the
13 prosecutor was kind enough to offer us a plea to 15 years
14 at 85 percent, negotiated, and my client declined to
15 accept that offer, Your Honor.

16 THE COURT: Is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand now, you're
19 going to go to trial here in a few minutes on possession
20 of crack cocaine. It would be your third offense if
21 convicted. Trafficking cocaine, powder cocaine, third
22 offense. If convicted, your sentence on that would be a
23 minimum of 25 years, up to 30 years. There is no
24 suspended sentence, there is no parole, so you would have
25 to do at least 85 percent of whatever I give you, and

1 whatever I give you, the minimum would be 25 years. So
2 you have to do, roughly, somewhere around 20, 22 years.

3 MR. SMILEY: Yes, sir, 21 years.

4 THE COURT: Twenty-one years, you would have
5 to do at least 21 years. You are turning down an offer
6 that will work out to about 12 and a half. Do you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: That's what you want to do? I'm
10 not trying to coerce you. I just want to make sure that
11 you turning down this offer is on the record, because if
12 you get convicted, you can't come back and say, I didn't
13 understand that.

14 I want to make sure you understand you are
15 turning down an offer that will give you about 12 years
16 in prison, where if you get convicted, you will get a
17 sentence where you will end up doing a minimum of 21
18 years in prison so you would have an extra ten years in
19 prison over what you're turning down. Do you understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you want to go to trial
23 instead of accept that plea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Anybody promising you

1 anything or threatening you to make sure you go to trial?

2 THE DEFENDANT: No, sir.

3 THE COURT: And your turning this down is
4 your decision and your decision alone?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. And you also got this
7 charge of resisting arrest. That is a ten-year offense.
8 You want to go to trial on that as well?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. All right. Well, let's go
11 ahead then, and we'll get started. You got the jury
12 panel coming up? All right. Bring them in.

13 (In open court, jury present.)

14 THE COURT: All right, folks. Welcome back.
15 Those of you were in the panel yesterday, we met. For
16 those of you who weren't in my panel yesterday, I'm Roger
17 Young, and I'm one of the resident judges here for the
18 Ninth Circuit, and we are getting ready to draw a jury
19 now for our next case.

20 I want to apologize for the delay in getting
21 you up here this morning. We had a case we started
22 yesterday that was supposed to last, everybody thought,
23 about a day and a half. We ended up -- that turned into
24 a plea late yesterday afternoon, so we scrambled to get
25 another case together that we thought was not going to

1 start before tomorrow started today. One of the lawyers
2 came down with the flu so we had to scramble to get
3 another one, so it took a little bit of time, and that is
4 what the delay was for this morning. But I really, truly
5 hate to have y'all setting back there with nothing to do
6 and wondering what's going on, and so I do apologize
7 because it is just one of my pet peeves is to keep juries
8 waiting.

9 I know we're taking you away from your normal
10 time, and we really do apologize for that delay. We're
11 going to start here in a couple of minutes. We're going
12 to draw this jury. We'll take a little break for lunch.
13 Those of you that aren't picked are free to go for the
14 rest of the day. The rest of you will have to be back
15 after your lunch break, and we'll start this trial very
16 shortly.

17 Now, our next trial that we have called here
18 is the State of South Carolina versus Arthur Lee Rivers.
19 I'm going to ask Mr. Rivers to stand and face the jury
20 panel here. This is Mr. Arthur Lee Rivers, who is in the
21 blue shirt, standing to my left, your right. He is the
22 defendant in this case, and he is charged with three
23 indictments. He's charged with possession of crack
24 cocaine, he is charged with trafficking powder cocaine,
25 and he is also charged with assaulting a police officer

1 while resisting arrest.

2 Now, first thing I want to tell you is that
3 he is just charged with these crimes, and the fact that
4 he is charged with these crimes is not to be considered
5 by you in any way, shape, or form as evidence of guilt.
6 All right?

7 He is charged with these crimes. He has pled
8 not guilty to these crimes, and it is incumbent upon the
9 state to then give him a jury trial and try to convince
10 the 12 of you folks beyond a reasonable doubt that he is
11 guilty of these charges.

12 He does not have to prove his innocence. The
13 state has to prove his guilt. So he has asked for a jury
14 trial. We have brought y'all together. We're going to
15 draw a jury of 12 of you to listen to the evidence and
16 make a decision as to whether or not you believe the
17 state has met its burden of proving he is guilty beyond a
18 reasonable doubt.

19 Now, I'm going to ask you a few questions
20 just to make sure that you don't know these parties,
21 don't have any knowledge of the case, such that it would
22 affect your ability to be fair and impartial jurors.

23 Now, Mr. Rivers, of course, again, as I
24 stated, is the defendant. Is there any member of the
25 jury panel who is related by blood or marriage or

1 acquainted in any way at all with Mr. Arthur Lee Rivers,
2 the defendant in this case? If so, please stand. All
3 right. I find none.

4 Now, he's represented by Mr. Smiley, Jim
5 Smiley, who is standing now before you. Is there any
6 member of the jury panel who is related by blood or
7 marriage or acquainted in any way with him or perhaps
8 you've been represented by he or a member of his law
9 firm? If so, please stand. Okay. I find none.

10 Now, the State of South Carolina brings the
11 charge and is represented in the capacity of the
12 prosecution by our solicitor's office. That is what we
13 call the prosecuting attorneys in this state. Some
14 states they're called prosecuting attorneys or the
15 district attorney. We call them the solicitors in South
16 Carolina, and the only reason I've been able to figure
17 that out is because it's about a 300-year-old way of
18 doing it and because we're in South Carolina, we're
19 probably going to continue it for another 300 years of
20 doing it that way.

21 But the Ninth Circuit solicitor's office is
22 bringing these charges, and they are represented in this
23 case by Mr. Rutledge Durant and Mr. Culver Kidd who are
24 standing in front of you now. Is there any member of the
25 jury panel who is related by blood or marriage or

1 acquainted in any way with either of these two gentlemen,
2 or perhaps you have been employed by the solicitor's
3 office, or perhaps you or an immediate family member have
4 been prosecuted by the solicitor's office, or, perhaps,
5 you and an immediate family member have been a victim of
6 a crime in which you have had some working relationship
7 with the solicitor's office, either directly or
8 indirectly? If so, would you please stand. I find none.

9 All right. Now, I'm going to read you a list
10 of people who might be called as witnesses in this case.
11 When I call out these names, if you are related by blood
12 or marriage or acquainted with any of these folks, I
13 would ask that you stand when I call their names. Deputy
14 Ryan Blakely with the Charleston County Sheriff's office?
15 I find none. Lieutenant Robert Tague, T-a-g-u-e, with
16 the Charleston County sheriff's office? All right. I
17 find none. Deputy Ricky Craver with the Charleston
18 County sheriff's office? I find none. Deputy Will
19 Summersell with the Charleston County solicitor's office?
20 I find none. Investigator Kathy Kjellman,
21 K-j-e-l-l-m-a-n with the Charleston County sheriff's
22 office? I find none. Investigator James Milz, M-i-l-z,
23 with the sheriffs office? I find none. Nathan McCoy
24 with the South Carolina Law Enforcement Division also
25 known as SLED? Nikki Perry with SLED? I find none.

1 Doris Yarbrough with SLED? Tyrone Johnson? I find none.
2 Judith Johnson? I find none, and Yvonne Rivers, I find
3 none.

4 Has any member of the jury panel or any of
5 your immediate family members ever had any criminal
6 charges adjudicated by the Charleston County solicitor's
7 office? If so, please stand. I find none.

8 Any member of the jury panel ever been a
9 witness in either a civil or a criminal case? If so,
10 please stand.

11 Yes, ma'am, your name and number?

12 A PROSPECTIVE JUROR: Juror 307, Lorraine
13 Dustan.

14 THE COURT: You would give us just a brief
15 idea what it was.

16 A PROSPECTIVE JUROR: There have been several
17 civil cases in which I was a witness?

18 THE WITNESS: How long ago was that?

19 A PROSPECTIVE JUROR: Several years ago.

20 THE COURT: You weren't a party, you were
21 just a witness?

22 A PROSPECTIVE JUROR: I was an expert
23 witness.

24 THE COURT: All right. Thank you. Is there
25 any member of the jury panel who's previously served on a

1 jury that was unable to render a verdict in a criminal
2 case? If so, please stand. All right. I find none.

3 Any member of the jury panel have any problem
4 following the law as the judge cités it to you, even if
5 you believe it is inappropriate or unfair? If so, please
6 stand. I find none.

7 Is there anybody who has any difficulty
8 sitting in judgment of another person due to religious
9 convictions, philosophical beliefs, moral beliefs, or
10 political orientation? If so, please stand. I'm sorry.
11 Yes, sir. Your name and number?

12 A PROSPECTIVE JUROR: 325, Franklin Smith.

13 THE COURT: Okay.

14 A PROSPECTIVE JUROR: Sir, I believe on
15 religious grounds that you shouldn't judge another
16 person, and I also believe that when you do that, you are
17 putting yourself in the same position that they are.

18 THE COURT: You're putting yourself in the
19 same position as who?

20 A PROSPECTIVE JUROR: As the person that
21 you're judging.

22 THE COURT: Well, a lot of times that comes
23 out of a passage, I think, in Matthew where it says don't
24 judge other people, basically, because you're going to be
25 judged by the same standards that you judge people.

1 A PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Now, what we're going to ask you,
3 and everybody else to do, is to sit over here and listen
4 to the evidence as it's presented in the Court and base
5 your decision on the evidence that is in the courtroom,
6 and the law that I charge you applies to the facts of
7 this case and not on anything else. Do you think can you
8 do that?

9 A PROSPECTIVE JUROR: Yes, sir, I could.

10 THE COURT: Okay. Well, good. That's all we
11 ask. Thank you. Anyone else?

12 All right. Is there any person that knows of
13 any reason why they could not render either the state or
14 the defense a fair and impartial verdict? Both parties
15 are entitled to a fair and impartial trial. All right.
16 I find none.

17 Any member of the jury panel ever had an
18 unpleasant experience with a law enforcement officer? If
19 so, please stand. Well, nobody is standing. All right.
20 I'll take that as a no.

21 All right. Let's see. Any member of the
22 jury hold any social, ethnic, or racial views that would
23 render you incapable of being fair and impartial in a
24 case involving a defendant who is from a certain social,
25 ethnic, or racial background? If so, please stand. I

1 find none.

2 Is any member of the jury panel a former law
3 enforcement employee, or any of your immediate family
4 members employed by any law enforcement agencies? If so,
5 please stand.

6 Yes, sir, your name and number.

7 A PROSPECTIVE JUROR: I had a sister that is
8 in law enforcement in Charlotte, North Carolina.

9 THE COURT: Okay. Do you think you would
10 still be able to be a fair and impartial juror, both for
11 the state and the defense?

12 A PROSPECTIVE JUROR: I can.

13 THE COURT: Your name and number again?

14 A PROSPECTIVE JUROR: My name is Carl Butler,
15 44.

16 THE COURT: Thank you. Yes, sir. Your name
17 and number?

18 A PROSPECTIVE JUROR: 325, Frank Smith. My
19 brother was a police officer in Greenville County for 14
20 years.

21 THE COURT: Do you think that would affect
22 your ability to be fair and impartial either for the
23 state or against the state or for the defense or against
24 the defense?

25 A PROSPECTIVE JUROR: No, sir.

1 THE COURT: All right. Yes, sir?

2 A PROSPECTIVE JUROR: Robert Kmett, juror
3 163. My deceased brother was a Cleveland, Ohio, police
4 officer for about 20 something years.

5 THE COURT: Okay. Do you think that would
6 affect your ability to be fair or impartial for or
7 against either party?

8 A PROSPECTIVE JUROR: No, sir.

9 THE COURT: All right. Thank you. Anyone
10 else? All right. Is there any member of the jury panel
11 related by blood or marriage or personal friend or
12 acquaintance of anyone employed with the solicitor's
13 office? Okay. I find none.

14 Has any member of the jury panel been the
15 victim of a crime in the last five years, either you or
16 an immediate family member or a close friend been the
17 victim of a crime in the last five years? Okay. I find
18 none.

19 Any member of the jury panel read in the
20 newspaper or heard anything in the media about this case?
21 I don't know that there has been anything, but if you
22 have, would you please stand. All right. I find none.

23 Has any member of the jury panel formed an
24 opinion about this case? If so, please stand. I find
25 none. Any member of the jury panel formed an opinion

1 about the guilty or innocence of this defendant? If you
2 would, please stand. I find none.

3 Are any member of the jury panel or any of
4 your immediate family members members of any victims
5 rights or law enforcement organizations, such as Citizens
6 Against Violent Crime, People Against Rape, Mothers
7 Against Drunk Driving, Persons Empowered to Save Teens,
8 or any community or neighborhood watch programs or
9 anything like that? Yes, sir, your name and number?

10 A PROSPECTIVE JUROR: Robert Kmett, juror
11 163. My daughter is a professor at MUSC and works in the
12 crime victims center as a psychologist.

13 THE COURT: Okay. Would that affect your
14 ability to be fair and impartial in this case?

15 A PROSPECTIVE JUROR: No, sir.

16 THE COURT: All right. Thank you. Yes,
17 ma'am?

18 A PROSPECTIVE JUROR: Kim O'Connell, 317, and
19 we're members of Mothers Against Drunk Driving. We have
20 been for 22 years.

21 THE COURT: Would that affect your ability to
22 be fair and impartial in this case?

23 A PROSPECTIVE JUROR: No, sir.

24 THE COURT: All right. Thank you. Anyone
25 else? Any member of the jury panel have an immediate

1 family member arrested for any charge involving drugs or
2 violence? Yes, ma'am. Your name and number?

3 A PROSPECTIVE JUROR: 301, Emmy Brooks. My
4 brother had a cocaine charge within the last three years.

5 THE COURT: Okay. Would that you affect your
6 ability to be fair and impartial in this case?

7 A PROSPECTIVE JUROR: No, it would not.

8 THE COURT: Yes, sir, your name and number?

9 A PROSPECTIVE JUROR: 325, Frank Smith. I
10 was convicted in court for possession of marijuana.

11 THE COURT: You or a family member? Did you
12 say you were?

13 A PROSPECTIVE JUROR: I was, yes.

14 THE COURT: How long ago was that?

15 A PROSPECTIVE JUROR: '96.

16 THE COURT: Would that affect your ability to
17 be fair and impartial in this case?

18 A PROSPECTIVE JUROR: I don't think so, no,
19 sir.

20 THE COURT: All right. Thank you. Yes,
21 ma'am?

22 A PROSPECTIVE JUROR: Patricia Parrish, 207.
23 I have a nephew who has been arrested for DUI.

24 THE COURT: Okay. And it's currently
25 pending?

1 A PROSPECTIVE JUROR: I don't think so.

2 THE COURT: How long ago was it?

3 A PROSPECTIVE JUROR: I don't know. He lives
4 in Anderson, not locally.

5 THE COURT: Would it affect your ability to
6 be fair and impartial in this case?

7 A PROSPECTIVE JUROR: No, sir.

8 THE COURT: All right. Thank you. Anyone
9 else?

10 A PROSPECTIVE JUROR: Yeah, I had a simple
11 possession in '99.

12 THE COURT: Okay. And that was who?

13 A PROSPECTIVE JUROR: That was me.

14 THE COURT: All right. And was it a
15 conviction or an arrest?

16 A PROSPECTIVE JUROR: It was a conviction.

17 THE COURT: And what was it for?

18 A PROSPECTIVE JUROR: Simple possession of
19 marijuana.

20 THE COURT: Would it affect your ability to
21 be fair and impartial in this case?

22 A PROSPECTIVE JUROR: No, sir.

23 THE COURT: Okay.

24 A PROSPECTIVE JUROR: Cory Brown, number 35.

25 THE COURT: All right. Any member of the

1 jury panel or immediate family member or close personal
2 friend been the victim of a violent act? If so, please
3 stand. I think I've covered it all. Anything further
4 from the state?

5 MR. DURANT: Nothing from the state, Your
6 Honor.

7 THE COURT: From the defendants?

8 MR. SMILEY: No, Your Honor.

9 THE COURT: All right.

10 Now, what we're going to do is if you were in
11 my panel yesterday, a criminal trial moves pretty fast.
12 In a civil trial, we give them lists and send them off
13 for 15, 20 minutes to let them study that list. We do it
14 different in criminal cases.

15 We're going to then start in a second. The
16 clerk will call out a name. If he calls out your name,
17 would you come in front of this panel, like this
18 gentleman is doing right now, turn around, face the back.
19 The state will then have the opportunity to say seat the
20 juror or present the juror or strike the juror.

21 If they do not strike the juror, the defense
22 will have the opportunity. If you don't get struck by
23 the defense, you go over to the jury box, and we will
24 then call the next name and continue on until we get 12
25 jurors, and we'll do one alternate as well. If you don't

1 get picked, don't take it personally. There are a
2 million reasons why people don't get picked for juries.

3 Once we get that done, we will take a break
4 for lunch, and when we come back we'll start the case, so
5 if you're ready, Mr. Clerk.

6 THE CLERK: Yes, sir. Juror 320, William
7 Neaton.

8 (The prospective juror, a white male,
9 approaches.)

10 THE CLERK: What say you for the state?

11 MR. DURANT: Please excuse the juror.

12 THE CLERK: Please have a seat back in the
13 audience. You've been excused from the trial of this
14 case.

15 Juror number 34, Joseph Brinson, 34.

16 (The prospective juror, a white male,
17 approaches.)

18 THE CLERK: What say you for the state?

19 MR. DURANT: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. SMILEY: Please excuse the juror.

22 THE CLERK: Juror number 315, Sarah Leech,
23 315.

24 (The prospective juror, a white female,
25 approaches.)

1 THE CLERK: What say you for the state?

2 MR. DURANT: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MR. SMILEY: Please seat Ms. Leech.

5 THE CLERK: Please have a seat in the jury
6 box. You've been selected for the trial of this case.
7 Juror 326, David Stasko.

8 (The prospective juror, a white male,
9 approaches.)

10 THE CLERK: What say you for the state?

11 MR. DURANT: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. SMILEY: Please seat Mr. Stasko.

14 THE CLERK: Have a seat in the jury box.
15 Juror number 245, William Simmons.

16 (The prospective juror, a white male,
17 approaches.)

18 A PROSPECTIVE JUROR: I think one of the
19 questions had to do with a jury trial with a hung jury?

20 THE COURT: Yeah. Were you a juror on a hung
21 jury?

22 A PROSPECTIVE JUROR: Right, but I believe it
23 was a civil trial.

24 THE COURT: A civil trial?

25 A PROSPECTIVE JUROR: It had to do -- I think

1 the term is different.

2 THE COURT: That's fine. Thank you for
3 bringing that to our attention.

4 THE CLERK: What say you for the state?

5 MR. DURANT: Please present this juror.

6 THE CLERK: What say you for the defendant?

7 MR. SMILEY: Please excuse the juror.

8 THE CLERK: Have a seat back in the audience.

9 You've been excused from trial of this case. Juror
10 number 207, Patricia Parrish, 207.

11 (The prospective juror, a white female,
12 approaches.)

13 THE CLERK: What say you for state?

14 MR. DURANT: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. SMILEY: Please excuse the juror.

17 THE CLERK: Please have a seat back in the
18 audience. You've been excused from the trial of this
19 case.

20 Juror 280, Janet Walsh

21 (The prospective juror, a white female,
22 approaches.)

23 THE CLERK: What say you for the state?

24 MR. DURANT: Please excuse the juror.

25 THE CLERK: Have a seat back in the audience.

1 You've been excused from the trial of this case. Juror
2 number 248, Christopher Sires, 248.

3 (The prospective juror, a white male,
4 approaches.)

5 THE CLERK: What say you for state?

6 MR. DURANT: Please present the juror.

7 THE CLERK: What say you for the defendant?

8 MR. SMILEY: Please seat Mr. Sires.

9 THE CLERK: Mr. Sires, please have a seat in
10 the jury box. You've been selected as a juror in this
11 case.

12 Juror number 265, Michael Zisco, 265.

13 (The prospective juror, a white male,
14 approaches.)

15 THE CLERK: What say you for the state?

16 MR. DURANT: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. SMILEY: Please seat Mr. Zisco.

19 THE CLERK: Sir, please have a seat in the
20 jury box. You've been selected as a juror in this case.

21 Juror number 35, Cory Brown.

22 MR. DURANT: Please excuse this juror.

23 THE CLERK: Have a seat in the audience.

24 You've been excused from the trial of this case. Juror
25 294, Lily Woods.

1 (The prospective juror, a black female,
2 approaches.)

3 THE CLERK: What say you for the state?

4 MR. DURANT: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 MR. SMILEY: Please seat the juror.

7 THE CLERK: Please have a seat in the jury
8 box. You've been selected for this case.

9 Juror number 70, Steve Crossland, 70.

10 (The prospective juror, a white male,
11 approaches.)

12 THE CLERK: What say you for the state?

13 MR. DURANT: Please present this juror.

14 THE CLERK: What say your for the defendant?

15 MR. SMILEY: Please excuse Dr. Crossland.

16 THE CLERK: Dr. Crossland, please have a seat
17 back in the audience. You've been excused from the trial
18 of this case.

19 Juror number, Teresa Bozzelli, 33.

20 (The prospective juror, a white female,
21 approaches.)

22 THE CLERK: What say you for the state?

23 MR. DURANT: Please excuse this juror.

24 THE CLERK: Have a seat back in the audience.
25 You've been excused from the trial of this case. That is

1 four strikes for the state.

2 Juror 307, Lorraine Dustan, 307.

3 (The prospective juror, a white female,
4 approaches.)

5 THE CLERK: What say you for the state?

6 MR. DURANT: Please excuse this juror.

7 THE CLERK: Please have a seat back in the
8 audience. You've been excused from the trial of this
9 case. 82, James Drennan, 82.

10 (The prospective juror, a white male,
11 approaches.)

12 THE CLERK: Any challenge from the state?

13 MR. DURANT: None from the state.

14 THE CLERK: What say your for the defendant?

15 MR. SMILEY: Please seat Mr. Drennen.

16 THE CLERK: Please have a seat in the jury
17 box. You've been selected as juror in this case. Juror
18 304, Gail Carew, 304.

19 (The prospective juror, a white female,
20 approaches.)

21 THE CLERK: Any challenge from the state?

22 MR. DURANT: None from the state.

23 THE CLERK: What say you for the defendant?

24 MR. SMILEY: Please seat Ms. Carew.

25 THE CLERK: Please have a seat in the jury

1 box. Juror number 274, Cheryl Waddell, 274.

2 (The prospective juror, a white female,
3 approaches.)

4 THE CLERK: Any challenge from the state?

5 MR. DURANT: No challenge from the state.

6 THE CLERK: What say you for the defendant?

7 MR. SMILEY: Please seat the juror.

8 THE CLERK: Please have a seat in the jury
9 box. 301, Emmy Brooks, 301.

10 (The prospective juror, a white female,
11 approaches.)

12 THE CLERK: Any challenge from the state?

13 MR. DURANT: No, no challenge from the state.

14 THE CLERK: What say you for the defendant?

15 MR. SMILEY: Please seat Ms. Brooks.

16 THE CLERK: Please have a seat in the jury

17 box. Juror number 140, Ellen Hughes, 140.

18 (The prospective juror, a black female,
19 approaches.)

20 THE CLERK: Any challenge from the state?

21 MR. DURANT: No, no challenge from the state.

22 THE CLERK: What say you for the defendant?

23 MR. SMILEY: Please seat Ms. Hughes.

24 THE CLERK: Please have a seat in the jury

25 box. Juror 13, Colleen baker, 13.

1 (The prospective juror, a white female,
2 approaches.)

3 THE CLERK: Any challenge from the state?

4 MR. DURANT: No challenge.

5 THE CLERK: What say you for the defendant?

6 MR. SMILEY: Please seat Ms. Baker.

7 THE CLERK: Ms. Baker, please have a seat in
8 the jury box.

9 Juror number 204, William Newton, 204.

10 (The prospective juror, a white male,
11 approaches.)

12 THE CLERK: Any challenge from the state?

13 MR. DURANT: No challenge from the state.

14 THE CLERK: What say you for the defendant?

15 MR. SMILEY: Please excuse the juror.

16 THE CLERK: Please have a seat back in the
17 audience. That's five strikes for defendant. Juror 263,
18 Rex Strecker, 263.

19 (The prospective juror, a white female,
20 approaches.)

21 THE CLERK: Any challenge from the state?

22 MR. DURANT no challenge from the state.

23 THE CLERK: Any challenge the defendant?

24 MR. SMILEY: Please seat Ms. Strecker.

25 THE CLERK: Please have a seat in the jury

1 box. You've been selected as a juror in this case. Now
2 striking for the alternate, strikes are one and two.
3 Juror number 292, Eugene Wilson.

4 (The prospective juror, a white male,
5 approaches.)

6 THE CLERK: What say you for the state?

7 MR. DURANT: Please present the juror.

8 THE CLERK: What say you for the defendant?

9 MR. SMILEY: Please excuse Mr. Wilson.

10 THE CLERK: Mr. Wilson, please have a seat
11 back in the audience.

12 Juror number 44, Carl Butler, 44.

13 (The prospective juror, a white male,
14 approaches.)

15 THE CLERK: What say you for the state?

16 MR. DURANT: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. SMILEY: Please seat Mr. Butler.

19 THE CLERK: Mr. Butler, please have a seat in
20 the jury box. The jury is selected and are seated.

21 THE COURT: All right. Anything from the
22 state?

23 MR. DURANT: Nothing from the state, Your
24 Honor.

25 THE COURT: From the defense?

1 MR. SMILEY: Nothing, Your Honor.

2 THE COURT: All right. Folks, you are our
3 jury now for this case, and we'll begin this after lunch.

4 Since it's just about 1:00 right now, I'm
5 going to send you back to the jury room with the
6 bailiffs, and they'll show you where to report back to
7 after lunch, and if you would, report back by about 2:20,
8 we'll get started at 2:30, but if you report back at
9 2:20, that will give you a chance to get to know each
10 other for a couple minutes, and I always like to let you
11 pick the foreperson of the jury, if you want to try to do
12 that. If you don't, then I'll pick somebody. Anybody
13 can be the foreperson except the alternate.

14 All right? So go back there. Don't talk
15 about the case, don't deliberate, don't begin any
16 discussions. We'll see you back at 2:30. Thank you.

17 (Recess taken.)

18 A F T E R N O O N S E S S I O N

19 THE COURT: We need to do a suppression
20 hearing here?

21 MR. DURANT: Yes, sir, Your Honor.

22 THE COURT: All right. Call your witness.

23 MR. DURANT: We are going to have a
24 suppression hearing.

25 State calls Deputy Ryan Blakeley.

1 RYAN BLAKELEY,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. DURANT:

6 Q. For purposes of this Denno hearing, could I bring
7 us up to speed where this statement was? And just for
8 the record, Deputy Blakeley, first of all, where are you
9 employed?

10 A. Charleston County sheriff's office.

11 Q. How long have you been employed there?

12 A. Just over six years.

13 Q. What is your current position?

14 A. I'm a deputy on the road.

15 Q. Was that your position in June of 2008?

16 A. It was.

17 Q. Was there an incident that day involving the
18 defendant, Arthur Lee Rivers?

19 A. Yes, sir.

20 Q. Did you know Arthur Lee Rivers through this date?

21 A. Through work engagements, yes.

22 Q. And I believe that he was -- did you arrest him
23 that day?

24 A. I did.

25 Q. Where was he when you arrested him?

1 A. We were on the hill, which is going up Ardwick
2 Road and Balmoral on Johns Island.

3 Q. That's in Charleston County?

4 A. Yes, sir.

5 Q. What was he being arrested for?

6 A. The charges that day was trafficking cocaine base,
7 trafficking cocaine, and assault while resisting arrest.

8 Q. Now, how did you arrest him? Where were you?
9 There had been -- just to bring us up to speed, there had
10 been a chase? Were you chasing him?

11 A. There was a foot chase, yes, sir.

12 Q. Were you able to apprehend him?

13 A. I was.

14 Q. And how did you apprehend him?

15 A. We ended up apprehending him through use of force,
16 and then after that we were placing him in the handcuffs
17 and putting him under arrest.

18 Q. Who was around when you apprehended him?

19 A. There was myself at first, once I got control of
20 him, and due to the fact I didn't have any handcuffs at
21 the time, Deputy Craver arrived on the scene and we used
22 his handcuffs to actually physically place him in a set
23 of handcuffs and place him under arrest.

24 Q. When you placed him under arrest, did you
25 Mirandize him?

1 A. He was Mirandized, yes, sir.

2 Q. Where was he Mirandized?

3 A. He was Mirandizes in the open field at that point
4 and a second time inside the police cruiser.

5 Q. Let's talk about the first time now.

6 A. Okay.

7 Q. Where were you the first time you Mirandized him?

8 A. Back in the woods part behind the trailers on
9 Ardwick Road, which I think y'all have the pictures.

10 MR. SMILEY: I can't understand --

11 THE COURT: Could you maybe just speak into
12 that microphone a little bit.

13 BY MR. DURANT:

14 Q. Okay. Where were you the first time you
15 Mirandized him?

16 A. In the open field of the woods behind the trailers
17 on Ardwick Road.

18 Q. How did you do that?

19 A. By a Miranda card that I purchased about six years
20 ago that I carry to work every day.

21 Q. Is it routine for you to advise someone of their
22 Miranda rights via the card?

23 A. Yes, sir. Every time I arrest someone, I read
24 them the same Miranda rights from the same card from the
25 same place I keep every day at work. It never changes.

1 Q. Do you have it on you right now?

2 A. Yes, sir.

3 Q. Could you demonstrate to the Court how you
4 Mirandized Arthur Lee Rivers.

5 A. Carry it right here in my pocket. Its a card and
6 it's just got simple Miranda warnings on it as you can
7 see here, and I read it off the card verbatim every time.

8 Q. And if you would, just do it for the Court, how
9 you Mirandize --

10 A. You have the right to remain silent. Anything you
11 say can and will be used against you in a court of law.
12 You have the right to talk to a lawyer and have him
13 present with you while you're being questioned. If you
14 can't afford at any time to hire a lawyer, one will be
15 appointed to represent you before any questioning, if you
16 wish. You can decide at any time to exercise these
17 rights and not answer any questions or make any
18 statements.

19 Do you understand each of these rights which I've
20 explained to you? Having these rights in mind, do you
21 wish to talk to me now?

22 Q. Did he indicate that he understood his rights?

23 A. Yes, sir, he did.

24 Q. How did he indicate?

25 A. He gave me a yes.

1 Q. Did he wish to speak to you at that time?

2 A. Not right away he did not.

3 Q. What happened then at that point?

4 A. At that point in time we escorted him back to the
5 cruiser, placed him inside the cruiser to secure him.
6 From that point when we went to locate the rest of the
7 property that we found for the charges, he was banging on
8 the car window in the back passenger side to get our
9 attention. Myself and Lieutenant Tague were right there.
10 We opened the door. He was trying to talk to us, which
11 then again he was advised the second time of his Miranda
12 rights. At that point in time, I advised him if he wants
13 to talk --

14 Q. Let's take it step by step. Slow down. I'll ask
15 you a question, you just give me a simple answer. First
16 of all, the charges, you didn't arrest him for the drugs
17 until you knew that he had the drugs, right?

18 A. That's right.

19 Q. He was under arrest for assaulting you, right?

20 A. Yes.

21 Q. So when you took him to the car, you didn't know
22 where the drugs were at that time, you didn't know what
23 they were, and you placed him in the cruiser?

24 A. Yes.

25 Q. And a short time after that, did y'all find drugs?

1 A. We did.

2 Q. Did you find drugs in an area you observed the
3 defendant throw items that you believed to be drugs?

4 A. Yes, sir.

5 Q. So at this point, drugs were recovered out there
6 at the scene; is that right?

7 A. Yes, sir, they were.

8 Q. Where is the defendant when the drugs are found?

9 A. Inside the vehicle, inside the cruiser.

10 Q. What was done with those drugs once they were
11 recovered?

12 A. They were taken from where they were recovered to
13 my passenger seat of the cruiser, which I do every time I
14 get narcotics.

15 Q. And where was the defendant in the cruiser?

16 A. In the back of the patrol car.

17 Q. Okay. Did you try to talk to the defendant at any
18 time when you went and put the drugs in the cruiser?

19 A. No, sir.

20 Q. Did he indicate he wanted to talk to you at any
21 time when you went to put the drugs in the cruiser?

22 A. Not right away. That's when he banged on the
23 windows, when we actually went to talk to him.

24 Q. So you put the drugs in the cruiser.

25 A. Yes.

1 Q. And did you close the cruiser?

2 A. Yes, sir.

3 Q. And did you step away from the cruiser?

4 A. I did.

5 Q. And did anything draw your attention again to the
6 cruiser?

7 A. When Mr. Rivers was banging on the back door.

8 Q. What was he doing?

9 A. He was trying to get our attention to talk or do
10 something. I don't know what he was doing. He was just
11 trying to get our attention at that point.

12 Q. At that point, what did you do?

13 A. Turned around, opened the car door to make sure he
14 was okay. He wanted to talk to us. He was advised the
15 second time with his Miranda warning.

16 Q. How did you do that?

17 A. From the card.

18 Q. Did he again indicate to you he understood his
19 rights?

20 A. He did.

21 Q. Now, be specific here. Did you ask him if he
22 wanted to say anything to you, having his rights in mind?

23 A. When he was trying to talk to us, I advised him, I
24 need a yes or no answer. If you want to talk to me, I
25 need a yes or no. He advised yes, and that is when he

1 started to talk.

2 Q. Did he appear confused in any way?

3 A. No, sir.

4 Q. Did he say he was?

5 A. No, sir.

6 Q. Did you threaten him in any way?

7 A. No, sir.

8 Q. Did you threaten his family in any way?

9 A. No, sir, absolutely not.

10 Q. And having his rights in mind, did he speak to
11 you?

12 A. He did.

13 Q. What did he tell you? First of all -- let me get
14 another question out. Was anybody with you?

15 A. Lieutenant Tague was with me, my supervisor at the
16 time.

17 Q. So it was just you and Lieutenant Tague?

18 A. At the back seat of the cruiser, yes, sir.

19 Q. Okay. And having his rights in mind, did he speak
20 to you?

21 A. He did.

22 Q. What did he say?

23 A. The first thing that he advised me when he talked
24 to me is that, I was a good person but fucked up today,
25 is the first thing he told me.

1 I said all right. He continued to go ahead and
2 say that the coke and weed, being cocaine and marijuana,
3 are mine, and that the crack, or cocaine base, was not.

4 Q. Okay. And did you record that statement in your
5 incident report?

6 A. Yes, sir, I did.

7 Q. Did he appear intoxicated when you were talking to
8 him?

9 A. No, sir.

10 Q. Did he say he was?

11 A. No, sir.

12 Q. At any time when you were talking to him did he
13 ask for an attorney?

14 A. No, sir.

15 MR. DURANT: Thank you, sir. Please answer
16 any questions that Mr. Smiley may have for you.

17 CROSS-EXAMINATION

18 BY MR. SMILEY:

19 Q. When you arrived on the scene initially, where was
20 Mr. Rivers?

21 A. He was walking up Ardwick Road.

22 Q. He was walking up the road? And you got out --
23 you stopped your car?

24 A. Yes, sir.

25 Q. And you got out to detain him?

1 A. No, sir. That's not correct.

2 Q. Okay. You got out of your car. When you got out
3 of your car what did you do?

4 A. I walked up to another man that was there named
5 David Tyrone Robinson and arrested him for two active
6 warrants.

7 Q. Okay.

8 MR. DURANT: Are we going to get into his
9 whole testimony about what he did that day?

10 MR. SMILEY: I'm going to the point where my
11 client was detained and asked questions.

12 THE COURT: Let's just get to the point where
13 his client was beaten.

14 BY MR. SMILEY:

15 Q. So you walked up. Mr. Robinson was on the side of
16 the road, and you had warrants for him, so you put him in
17 cuffs; is that correct?

18 A. Sort of. Mr. Robinson was sitting in a chair in
19 the back of Ardwick Road.

20 Q. He was in a chair where?

21 A. The back of Ardwick Road. He was sitting by a
22 shed, in back of the church.

23 Q. When you got out of the car, you walked to
24 Mr. Robinson, who was sitting in the chair by a shed off
25 of the road?

1 A. Yes.

2 Q. And you had seen Mr. Rivers walking along the
3 road?

4 A. Yes, sir.

5 Q. So when you were affecting the arrest of
6 Mr. Robinson, Mr. Rivers was still walking along the
7 road?

8 A. He was walking up to where Mr. Robinson was.

9 Q. He was walking towards you and the shed?

10 A. Yes, sir.

11 Q. After you had Mr. Robinson detained, at some point
12 you turned to detain Mr. Rivers; is that correct?

13 A. After that point, yes, sir.

14 Q. And was Mr. Robinson cuffed at the point that you
15 went to detain Mr. Rivers?

16 A. Yes, sir, he was already handcuffed.

17 Q. Okay. So you went to detain Mr. Rivers with a
18 second pair of handcuffs?

19 A. Yes, sir.

20 Q. And you carried two pairs on your person?

21 A. Every day.

22 Q. There wasn't any active warrants out on
23 Mr. Rivers, correct?

24 A. Not after I ran his ID.

25 Q. So you had already gotten his ID?

1 A. Not at this point.

2 Q. So you went to detain him, and you had a second
3 pair of cuffs and you grabbed him -- or did you tell him
4 he was under arrest?

5 A. He wasn't under arrest at that time.

6 Q. He wasn't under arrest. Did you tell him that you
7 were detaining him?

8 A. Have you read the report, by chance?

9 Q. I have --

10 A. We're missing a whole key point before we get up
11 to this point.

12 MR. SMILEY: Your Honor, I ask that he answer
13 the questions. I understand what he wrote.

14 THE COURT: Answer the question that is asked
15 to you. If you need to explain your answer, you can
16 explain your answer.

17 MR. DURANT: Your Honor, if I may, I think
18 we're getting into more of the reasonable suspicion
19 grounds for detention, rather than the alleged beating or
20 chasing or anything like that. There are some
21 significant questions to get into for the detention, if
22 we want to have a suppression hearing based on that.

23 MR. SMILEY: Part of Miranda, Your Honor, is
24 my client was in custody, and you have to establish
25 custody, so I'm just asking --

1 THE COURT: That part where he put him in
2 cuffs --

3 MR. SMILEY: I'm trying to get to the point
4 that he's being arrested.

5 THE COURT: Okay. Let's get there.

6 BY MR. SMILEY:

7 Q. So at that point you took your second pair of
8 cuffs and you attempted to place Mr. Rivers -- to detain
9 Mr. Rivers?

10 A. Yes, sir.

11 Q. Okay. And you reached out and told him that he's
12 being detained and tried to put him under control with
13 the cuffs?

14 A. Yes, sir.

15 Q. And he pulled away from you.

16 A. Yes, sir.

17 Q. Then what happened?

18 A. I reached for his arm a second time, and when I
19 did that, that is when he went ahead and pushed me down,
20 shoved me.

21 Q. Okay. Did he shove you and you fell?

22 A. I didn't fall back, but I did lose my balance,
23 yes, sir.

24 Q. Did you lose control of him?

25 A. Yes, sir.

1 Q. What did he do then?

2 A. Fled the scene.

3 Q. Okay. So he started running.

4 A. Yes, sir.

5 Q. And you gave chase?

6 A. Yes, sir, I did.

7 Q. All right.. Where did you make contact with him
8 again?

9 A. About -- possibly 25, 30 feet into the wood line.

10 Q. Okay. And describe what happened at the second
11 point you made contact with him.

12 A. At that point, since I was already shoved and I
13 knew at that point if I put hands on him again there
14 would be a confrontation, I deployed my Taser against
15 Mr. Rivers, which did not work at that point. Mr. Rivers
16 got a couple more feet, fell to the ground. I went to
17 get on top of him, tried to Tase him again put him in
18 handcuffs at this point put him under arrest for
19 assaulting police. We were both on the ground. I went
20 to grab his tank top to pull him back down. He was
21 getting up. Tank top rips completely. He gets up, goes
22 about another 10 or 15 or 20 feet or so. I get back up,
23 go back after him, grab him again, grab his pants, pull
24 him to the ground. We start a wrestling match, this goes
25 on for another 5, 10, 20 feet or whatever, back to

1 Ardwick, and at that point we're in an all out street
2 wrestling match.

3 Q. All right. So at the point that you all were in a
4 wrestling match, how did you gain control of him?

5 A. I gained control at the point when I followed him
6 down to the ground. I just laid on top of him to prevent
7 him from getting up until my backup arrived.

8 Q. All right. At some point did you strike him in
9 the face?

10 A. Yes, sir, I did.

11 Q. With your knee?

12 A. Yes, sir.

13 Q. Okay. You had testified that you had deployed the
14 Taser once.

15 A. I did. It was ineffective.

16 Q. It was ineffective. Did you deploy it a second
17 time?

18 A. No, sir, I did not. I discarded it on the ground
19 at that point.

20 Q. Okay. Other than striking my client in the face
21 with a knee, did you strike him with some other blows?

22 A. Some brachial stuns; there was some open and
23 closed -- at that point in time when we were out there,
24 it was a street fight.

25 Q. Okay. So -- forgive me for not catching the word,

1 brachials, would you explain to me what you mean when you
2 said brachial --

3 A. A brachial stun is more like a neck type thing we
4 learn in our PPC classes to try to gain control.

5 Q. So you kned him in the face.

6 A. As the report reads --

7 Q. No, please don't read from the report. I'm asking
8 you from your memory what happened.

9 A. I tried an inner groin strike with my knee, which
10 we're taught in PPC class. At that point, due to the
11 fact that we're both moving around, it's June, July,
12 sweating, been fighting for a good eight or nine minutes
13 at this point, which is a good amount of time out there
14 by yourself, Mr. Rivers moved. When he moves, moves to
15 duck his head, instead of getting an inner groin strike
16 that we're taught, he was struck in the face.

17 Q. So if I understand correctly, you attempted to
18 knee him in the groin and caught him in the face?

19 A. Yes, sir. Right.

20 Q. And then you used brachials chops?

21 A. More like a stun, with the bottom part of a wrist.

22 Q. To his neck area or --

23 A. Side of the neck.

24 Q. Side of the neck? So you started striking him
25 there. Okay. And at that point, you gain control and

1 cuffed him?

2 A. No, sir.

3 Q. Okay. Then what happened?

4 A. I said no, sir.

5 Q. Then what happened?

6 A. He was gaining control and I was on top of him,
7 waiting for backup to arrive to handcuff him, because at
8 that point I did not have my second pair of handcuffs.

9 Q. So after you did the brachial stuns and hit him in
10 the face, at some point you just sat on top of him and it
11 stopped.

12 A. Yes, sir.

13 Q. Backup arrived, a second set of handcuffs or a
14 third set?

15 A. Third set.

16 Q. Third set of handcuffs were provided and he was
17 handcuffed?

18 A. Yes, sir.

19 Q. And he was placed under arrest at that point in
20 time?

21 A. Yes, sir.

22 Q. Now, where he was handcuffed is where you read him
23 his Miranda rights the first time?

24 A. Yes, sir.

25 Q. So in that field, after he was handcuffed and

1 those handcuffs were provided by Deputy Craver, you then
2 read him his Miranda rights?

3 A. Yes, sir.

4 Q. Was Deputy Craver present?

5 A. Yes, sir.

6 Q. Was any other deputies present?

7 A. No, sir.

8 Q. Okay. And at that point in time, Mr. Rivers did
9 not indicate he wished to talk to you?

10 A. No, sir, he did not.

11 Q. Then he was taken back and placed in your cruiser?

12 A. That's correct.

13 Q. Was that cruiser occupied by anyone else?

14 A. No, sir, it was not.

15 Q. Where was Mr. Robinson during all this?

16 A. He was sitting in the same chair where he was told
17 to stay when we gave chase on the foot pursuit.

18 Q. Okay. All right. And then at that point in time,
19 he's in the back of the car. He's been Mirandized once.
20 Then, after you've done that, you all begin to look for
21 drugs, correct?

22 A. Yes, sir.

23 Q. And you find, in that field or wherever, crack,
24 cocaine, and marijuana?

25 A. Yes, sir, we did.

1 Q. All right. And you brought those drugs back and
2 put them in the front seat of the cruiser that had
3 Mr. Rivers in it?

4 A. Yes, sir.

5 Q. And closed him in and left the drugs on the front
6 seat and were outside the car, correct?

7 A. Yes, sir.

8 Q. From the time you read him his Miranda warnings
9 the first time until the time you closed him in the car
10 with drugs on the front seat, about how much time had
11 elapsed?

12 A. It's hard to say. Maybe no more than ten minutes,
13 probably.

14 Q. And so yourself, Detective Tague, I guess Deputy
15 Craver, was there any other deputies on the scene?

16 A. You said --

17 Q. Deputy Tague, take?

18 A. Lieutenant Tague.

19 Q. Yourself and Deputy Craver were there on the
20 scene. Were there any other deputies present?

21 A. A few more deputies ended up arriving on the scene
22 at that point because at that point in time, obviously,
23 when something happens, everybody comes to you, so there
24 were other deputies out there.

25 Q. So all the other deputies witnessed Mr. Rivers

1 knocking on the window?

2 A. Not all of them, no, sir.

3 Q. But they were there, correct?

4 A. Yes, sir.

5 Q. So when he knocked on the window, you opened the
6 back door?

7 A. Yes, sir.

8 Q. And read him his Miranda rights?

9 A. Yes, sir.

10 Q. Had you asked him if he needed any medical
11 attention at that point?

12 A. I didn't.

13 Q. You didn't?

14 A. No, sir.

15 Q. And so you read him his Miranda rights again.

16 A. Yes, sir.

17 Q. And then asked him if there was anything he wanted
18 to tell you, and it had to be yes or no.

19 A. Yes, sir. That's correct.

20 Q. Okay. And he answered yes.

21 A. Yes, sir.

22 Q. So at that point, you hadn't told him he was under
23 arrest for any drugs.

24 A. No, sir.

25 Q. So you asked him, if you want to answer any

1 questions, he said yes, and what was the question you
2 asked him?

3 A. I didn't ask him any questions. I just simply --
4 I wanted to hear what he wanted to say, and that is when
5 he stated the two quotes that I gave to Mr. Durant.

6 Q. Okay. So even though you told him only to answer
7 yes and no and he said yes, he then just started talking?

8 A. Yes, sir.

9 Q. Was he still seated in the car?

10 A. Yes, sir.

11 Q. Were you still standing over him?

12 A. I was standing over him.

13 Q. And Lieutenant Tague, he was standing in close
14 proximity also?

15 A. He was right there, yes, sir.

16 Q. So you got Mr. Rivers in the back of the police
17 car with his hands cuffed behind him?

18 A. Yes, sir.

19 Q. As you and the lieutenant are standing there and
20 he tells you that the crack isn't his but the cocaine and
21 marijuana is?

22 A. Yes, sir.

23 Q. And that he's a good person and he just fucked up?

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

25 Q. Did he make any other statements?

1 A. No, sir.

2 THE COURT: Let's me ask you a question: I'm
3 trying to get my mind, where did you find the drugs, in
4 his car or in your car?

5 THE WITNESS: No, sir. They weren't in a
6 vehicle. They were on -- that is what I was trying to
7 get out earlier where they were, but they were in a trash
8 pile type on the side of the road Mr. Rivers was walking.
9 We didn't really get to that.

10 THE COURT: The drugs were in a pile of
11 trash?

12 THE WITNESS: Yes, sir. They were discarded.

13 THE COURT: You saw him throw it?

14 THE WITNESS: That is the whole reason for
15 all this. That is what I was trying -- when you said
16 just answer the man's questions, that is what I was
17 doing.

18 THE COURT: Okay. I wasn't getting it in my
19 head because I heard front seat, back seat.

20 THE WITNESS: We just never talked about the
21 reason why we went to narcotics.

22 THE COURT: Okay. Just wanted to get that
23 clear. Go ahead. I'm sorry for interrupting you.

24 BY MR. SMILEY:

25 Q. At that point he admits to the cocaine and the

1 marijuana, but not the crack.

2 A. That's correct.

3 Q. And you charged him with all three, correct?

4 A. Yes, sir.

5 Q. Did you ask him if he wanted to put that in
6 writing, that oral statement?

7 A. To be honest with you, sir, I really don't
8 remember if I asked him that or not.

9 Q. It wasn't reduced to writing, was it?

10 A. It was not, no, sir.

11 Q. Did you ask him any other questions?

12 A. Not at that time.

13 Q. Did he make any other admissions?

14 A. Not to me.

15 Q. After he said, that you just closed him back up?

16 A. Yes, sir.

17 Q. Did you take any notes of any sort before you made
18 your incident report?

19 A. No, sir. That only notes that I would ever take
20 would just be the weights of the drugs.

21 Q. So this incident report that you did is the only
22 record that you have of the incident?

23 A. Yes, sir.

24 Q. In deploying the Taser, was there any reports that
25 were filled out with that?

1 A. The only report that would be filled out for the
2 Taser is actually this report itself, given the title and
3 then the narrative, and then it would also be put on the
4 use of force report, or it's just a sheet that we fill
5 out.

6 Q. Does that use of force report contain any of my
7 client's admissions?

8 A. No, sir. Use of force report is just a one-page
9 sheet. It's a checklist.

10 Q. I don't have it. It wasn't provided to me in
11 discovery, so I'm just asking. So there was a report
12 that was filled out in that regard. Okay. Did my
13 client -- did you ever ask my client about his
14 educational background --

15 A. No, sir.

16 Q. -- before asking him any questions?

17 A. No, sir.

18 Q. All right. Now, you say my client wasn't under
19 the influence of any drugs or alcohol?

20 A. Without a blood test, I wouldn't be able to tell
21 you yes or no, just what I observed.

22 Q. What you testified in direct --

23 A. I didn't smell any alcohol. I didn't smell any
24 marijuana.

25 Q. Okay. Did you ask him if he had taken any drugs

1 or alcohol before you arrested him?

2 A. No, sir.

3 Q. Did you ask him any other questions before that to
4 determine my client's lucidity after being struck in the
5 head?

6 A. No, sir.

7 Q. Was my client seen by EMS?

8 A. Yes, sir. I believe EMS came out to the scene.

9 Q. EMS came out to the scene to see Mr. Rivers?

10 A. I'd have to check with Lieutenant Tague, but I'm
11 almost pretty sure they did. I know we had to go to
12 CCOH, which is our doctor for Charleston County.

13 MR. SMILEY: That is all the questions I have
14 for this witness.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. DURANT:

18 Q. Did Mr. Rivers ever ask to be seen by a doctor?

19 A. No, sir.

20 Q. Did he ever request for EMS to come check him out?

21 A. No, sir.

22 Q. Was there anything about his condition that caused
23 you concern?

24 A. No, sir.

25 Q. For his health?

1 A. No, sir.

2 MR. DURANT: Could we mark just for this
3 hearing nine photos.

4 (Photographs marked for identification as
5 State's Exhibit Nos. 1-9.)

6 MR. DURANT: Any objection to entering this
7 for this hearing?

8 MR. SMILEY: For the purpose of this hearing,
9 no.

10 BY MR. DURANT:

11 Q. Showing you what is already in evidence -- state
12 moves for No. 1 into evidence at this hearing.

13 I'm showing you what is marked as State's 1 for
14 this hearing, which are nine photos, ask you to take a
15 look at them. Do you recognize those?

16 A. Yes, sir, I do.

17 Q. What do they depict?

18 A. Those are the pictures of the marks and scars and
19 injuries that Mr. Rivers and myself I had that day after
20 the incident.

21 Q. Do they fairly and accurately depict the condition
22 of both you and Mr. Rivers once he was placed into
23 custody?

24 A. Yes, sir.

25 Q. And I believe there are five pictures of

1 Mr. Rivers?

2 A. Yes, sir.

3 Q. One depicting his face, two depicting his body?

4 A. Yes, sir.

5 Q. And two of his shoulder?

6 A. Yes, sir. That's correct.

7 Q. And there are four pictures, which depict you?

8 A. Yes, sir. That's correct.

9 Q. And your condition after this?

10 A. Yes, sir.

11 Q. And your arm, some injuries on your arm, your
12 nose, arms?

13 A. Yes, sir.

14 Q. And this was the condition that both you and
15 Mr. Rivers were in immediately after this chase and once
16 he was placed in custody?

17 A. Yes, sir.

18 MR. DURANT: Your Honor, if I could pass this
19 up to Your Honor, State's 1.

20 BY MR. DURANT:

21 Q. Now, this chase, when you were chasing Mr. Rivers,
22 was this a significant physical event for yourself?

23 A. Yes, sir.

24 Q. Do you believe it was for Mr. Rivers?

25 A. Yes, sir.

1 Q. You said it took, I think, approximately ten
2 minutes after he was detained and put in the car?

3 A. Yes, sir.

4 Q. How were you breathing once he was put in the car?

5 A. I was winded.

6 Q. What about Mr. Rivers?

7 A. Same.

8 Q. And how long do you think he sat in that car
9 before he drew your attention to it again?

10 A. Probably about 10 or 15 minutes or so.

11 Q. When you went back to see what he wanted, what was
12 your physical condition at that time? Had you recovered
13 a little bit?

14 A. I was calmed down, back to normal, but slightly
15 winded.

16 Q. What about Mr. Rivers?

17 A. The same.

18 Q. And was it at that point that he told you that,
19 The cocaine and the marijuana are mine and the crack
20 isn't?

21 A. Yes, sir.

22 Q. Was the car on when Mr. Rivers was sitting in it?

23 A. Yes, sir.

24 Q. Was the air conditioning on?

25 A. Yes, sir, it was.

1 MR. DURANT: Thank you. Please answer any
2 questions the defense may have.

3 MR. SMILEY: Just a couple more.

4 RECROSS-EXAMINATION

5 BY MR. SMILEY:

6 Q. Now, you weren't struck in the head, though, were
7 you, with a knee?

8 A. No, sir.

9 Q. And while you were able to see his external
10 injuries, you couldn't be aware of his internal injuries?

11 A. No, sir.

12 Q. And you didn't ask any questions of him before
13 Mirandizing him and questioning him about his mental
14 acuity, though, did you?

15 A. No, sir.

16 MR. SMILEY: That's all I have.

17 THE COURT: You can step down. Do you have
18 any other witnesses?

19 MR. DURANT: State calls Lieutenant Tague.

20 THE COURT: Are you going to put your guy up
21 on this hearing? Because what I'm going to get at is I'm
22 going to let the jury go down and take a cigarette break
23 or a smoke, if it's going to be beyond this guy.

24 MR. SMILEY: I haven't determined. There is
25 a possibility, Your Honor, and I think this lieutenant

1 may take a few minutes, yes, sir.

2 THE COURT: All right. You can go ahead and
3 tell the jury we're probably going to be another few
4 minutes and if they want to go downstairs and take a
5 smoke break or go outside

6 ROBERT TAGUE,
7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. DURANT:

11 Q. Good afternoon, Lieutenant Tague. How are you
12 doing?

13 A. Fine.

14 Q. What is your current position?

15 A. I'm a lieutenant with the Charleston sheriff's
16 office assigned to the uniformed patrol division.

17 Q. How long has that been your position?

18 A. I've been in that position approximately ten years
19 now.

20 Q. How long have you been with the Charleston County
21 sheriff's office?

22 A. Thirty-three years.

23 Q. In your current position -- was that your position
24 in June of 2008?

25 A. Yes, sir.

1 Q. Did you have the occasion to be out at the
2 intersection of Ardwick Road and Balmoral Road in Johns
3 Island on that day?

4 A. Yes, sir.

5 Q. Why were you called out there?

6 A. I responded out there in reference to Deputy
7 Blakeley being involved in an arrest situation, and I
8 responded basically because it turned into, basically, an
9 emergency situation for us, where he wasn't responding to
10 his radio. And I knew that he was out there dealing with
11 some people, and I didn't know when he was in trouble or
12 not and needed assistance.

13 Q. Do you recall about what time you arrived on the
14 scene?

15 A. No, sir, I don't.

16 Q. Was it daytime, nighttime?

17 A. It was in the afternoon, early afternoon hours.

18 Q. What did you observe upon arrival?

19 A. When I arrived there, Deputy Blakeley was already
20 there; Deputy Summersell; I believe Deputy Craver had
21 already arrived on the scene, and had -- Deputy Blakeley
22 had taken an individual into custody and played him in
23 the back seat of his vehicle.

24 Q. Did you see a suspect in custody at that time?

25 A. Yes, sir, I did.

1 Q. And the person was in the back of Deputy
2 Blakeley's cruiser?

3 A. Yes, sir, he was.

4 Q. At any time did the person in the back of the
5 cruiser do anything to call your attention?

6 A. As I was standing there, speaking with Deputy
7 Blakeley and the other deputies about what had
8 transpired, the individual in the back of the car was --
9 I can't recall -- he was either using his head or his
10 shoulder, trying to bang on the window to get our
11 attention. And myself and Deputy Blakeley walked over to
12 the car and opened up the rear door to see what he
13 wanted.

14 Q. And at that point, did Deputy Blakeley Mirandize
15 the defendant?

16 A. Yes, sir, he did.

17 MR. SMILEY: I'm going to ask that the
18 questions not be leading so we get a more accurate
19 response about what happened out there. Objection.
20 Leading.

21 THE COURT: You know, we're in a suppression
22 hearing, and I'm really not bothered by the form of the
23 question here. He's just trying to move it along. Go
24 ahead.

25 BY MR. DURANT:

1 Q. What happened when y'all opened the door?

2 A. Deputy Blakeley asked the individual what he
3 wanted, and at that time, he stated he wanted to talk to
4 us. Deputy Blakeley Mirandized him right there in the
5 back seat of the cruiser.

6 Q. Was anybody else there?

7 A. I don't believe -- there were several other people
8 in the area, like I said, two other deputies, as I
9 recall. They weren't directly dealing with what Deputy
10 Blakeley and I were at the vehicle, they were standing
11 off at some distance.

12 Q. So who all was at the vehicle?

13 A. Just myself and Deputy Blakeley.

14 Q. And did you hear Deputy Blakeley Mirandize the
15 defendant?

16 A. Yes, sir, I did.

17 Q. And do you see the person that was Mirandized here
18 in Court today?

19 A. Yes, sir, I do.

20 Q. What is he wearing?

21 A. Blue button up shirt, black male, dark pants, as
22 far as I can tell.

23 Q. Is that the man that was in the back of the car?

24 A. Yes, sir, it is.

25 Q. How did Deputy Blakeley Mirandize Mr. Rivers?

1 A. I believe he carries a Miranda card in his front
2 shirt pocket and pulled the card out of his pocket and
3 read the Miranda warning verbatim off the card.

4 Q. Did Mr. Rivers appear to understand his rights
5 once they were read to him?

6 A. Yes, sir.

7 Q. Did he exhibit any confusion about his rights?

8 A. No, sir.

9 Q. Did he say he was confused?

10 A. No, sir.

11 Q. Did he appear intoxicated?

12 A. No, sir.

13 Q. Did he say he was?

14 A. No, sir.

15 Q. Was he asking for medical assistance?

16 A. Not that I recall, no.

17 Q. At any point did you threaten him in any way?

18 A. No, sir.

19 Q. Did Deputy Blakeley?

20 A. No, sir.

21 Q. And having his rights in mind, did he give you a
22 statement?

23 A. Yes, sir, he did.

24 Q. What did he tell you?

25 A. He made the comment that the coke -- if I remember

1 this correctly, the coke and the weed were his, but the
2 crack was not his.

3 Q. And what happened after he gave you that
4 statement?

5 A. We basically closed the door of the vehicle,
6 discussed some administrative procedures a little
7 further. EMS had arrived on the scene shortly
8 thereafter, and they were concerned about possible blood
9 exposure between Deputy Blakeley and Mr. Rivers, and that
10 was the extent of it.

11 Q. But you heard that man say that cocaine and
12 marijuana was his and the crack wasn't?

13 A. Yes, sir.

14 MR. DURANT: Thank you, sir. Please answer
15 any questions the defense may ask.

16 CROSS-EXAMINATION

17 BY MR. SMILEY:

18 Q. Lieutenant Tague, from the time you arrived on the
19 scene until this conversation took place, about how much
20 time had transpired?

21 A. Probably no more than five, ten minutes.

22 Q. All right. When you arrived on the scene, you
23 came up and met with Deputy Blakeley and the other
24 officers outside the car, and then he knocked on the car,
25 pretty much in that order?

1 A. That's correct.

2 Q. Were you aware that Mr. Rivers had been struck in
3 the head by Deputy Blakeley's knee at that point?

4 A. I know there was a struggle. To what extent at
5 that point, I did not know. I could tell both of them
6 had minor cuts and bruises.

7 Q. But you had been made aware that the deputy had
8 struck him in the head with a knee.

9 A. No, sir.

10 Q. Okay. And, of course, at that point you were
11 aware that -- Deputy Blakeley had attempted to use his
12 Taser on the defendant, Rivers, correct?

13 A. Yes, sir.

14 Q. Were you aware that he had used, and forgive me
15 for not saying it right, brachial chops to the
16 defendant's shoulder and neck area?

17 A. No, sir, not at that time.

18 Q. The other gentleman that was cuffed out there,
19 Mr. Robinson, where was he in relation to this?

20 A. I believe, to the best of my recollection, he was
21 placed in another vehicle. The incident he was taken
22 into custody for was totally separate.

23 Q. I understand. Just asking where he was. He was
24 in another vehicle?

25 A. Yes, sir.

1 Q. Now, when Mr. Rivers was knocking on the back
2 window, trying to get your attention, there were four of
3 you there, right, give or take, talking, right?

4 A. Yes. We were standing in a group away from the
5 vehicle.

6 Q. I understand. And even though Deputy Blakeley and
7 Mr. Rivers had had an altercation, he was still the one
8 that went to the door and opened it?

9 A. Yes, him and I.

10 Q. Were any questions asked of Mr. Rivers before the
11 Mirandizing to determine the effects of the blows to his
12 head?

13 A. No, sir.

14 Q. Had EMS arrived on the scene at that point?

15 A. Yes. They were there prior to my arrival.

16 Q. Had EMS seen Mr. Rivers at that point?

17 A. I believe they had, yes.

18 Q. Had anybody spoken with EMS before there was an
19 attempt to speak with Mr. Rivers?

20 A. I spoke with them. They were -- like I said,
21 their main concern that they advised me that there was
22 some minor cuts and abrasions for both Mr. Rivers and
23 Deputy Blakeley, and their main concern to me at that
24 point appeared to be there might have been some blood
25 exposure, and both of them needed to be examined.

1 Q. Did you know from your personal knowledge whether
2 EMS had examined Mr. Rivers for the possibility of a
3 concussion?

4 A. No, sir, I did not.

5 Q. You are not aware, or they did not?

6 A. I'm not aware if they did.

7 Q. All right. So he pulls out -- he, being Deputy
8 Blakeley -- pulls out the Miranda card and reads it to
9 Mr. Rivers who is sitting in the back of the cruiser with
10 you right there, correct?

11 A. Yes, sir.

12 Q. And at the end of it, he asks him if he wanted to
13 say anything.

14 A. Yes, sir.

15 Q. And that is when Mr. Rivers said the part about,
16 The cocaine and the weed is mine, but the crack is not.

17 A. First he said, after he was advised and given his
18 Miranda warnings, Are you willing to talk to us? And, in
19 fact, he said yes.

20 Q. He said yes, and then his next statement is, the
21 cocaine and weed is mine, but not the crack.

22 A. That's correct.

23 Q. Did he make any other statements that you know of?

24 A. Something to the effect that I had F'd up today.

25 Q. Okay. Anything else?

1 A. Not that I recall, no, sir.

2 Q. All right. At any point, Lieutenant, did y'all
3 ask him if he wanted to give a written statement?

4 A. No, sir.

5 Q. Did you prepare any kind of reports in relation to
6 this case?

7 A. The only report I prepared was the administrative
8 report as far as the possible blood warning exposure.

9 Q. But you did prepare a report in this case. It was
10 for the airborne exposure of the blood --

11 A. Let me back up. I didn't. We have specific
12 people in the sheriff's office that do that. We
13 contacted the person who is our exposure -- one of our
14 exposure officers, and I believe a report was prepared
15 from that.

16 Q. Okay. You, yourself, did you personally record
17 anything about this incident?

18 A. No, sir.

19 Q. Did you take any notes of any sort?

20 A. No, sir.

21 Q. All right. Just a couple more questions, Your
22 Honor, and I'll be done.

23 Were you part of the search for items in this
24 case?

25 A. No, sir.

1 Q. Were you aware of any questions posed to
2 Mr. Rivers by anybody concerning his educational
3 background?

4 A. No, sir.

5 Q. As to his intoxication level?

6 A. No, sir.

7 Q. Okay. And I believe you said in observing Mr.
8 Rivers he did not appear to be under the influence of any
9 alcohol or drugs?

10 A. No, sir.

11 MR. SMILEY: Nothing further.

12 THE COURT: Redirect?

13 MR. DURANT: No further questions, Your
14 Honor.

15 THE COURT: Okay. You can step down. Thank
16 you. Got any other witnesses?

17 MR. DURANT: Not on this issue.

18 THE COURT: You got any, Mr. Smiley?

19 MR. SMILEY: Beg the Court's indulgence.

20 I would call Arthur Rivers, and I'm going to
21 put on the record, as I explained to my client. For the
22 purpose of this hearing, I'm going to ask him to testify
23 about not waiving his right to remain silent to the trial
24 itself. It's my understanding that he can do that.

25 THE COURT: Right. You still got to tell the

1 truth.

2 MR. SMILEY: Absolutely, but he may not -- he
3 can testify now.

4 THE COURT: He can still not testify during
5 the trial, and anything you say here will not be entered
6 into that record.

7 ARTHUR RIVERS,
8 having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SMILEY:

12 Q. For the record, will you state your date of birth.

13 A. [REDACTED].

14 Q. Okay. I'm going to cut to the part that you were
15 put in the cuffs in this case. I know there's a lot of
16 other, but I'm going to get to the pertinent part of this
17 case, all right?

18 Tell the Court what happened when Deputy Blakeley
19 attempted to cuff you. Start there. What happened?

20 A. Well --

21 Q. Where -- let's start, where were you when that
22 happened?

23 A. In front of the house.

24 Q. When you say house, which house?

25 A. It's, like, two houses. There's a little house on

1 the left and one in the back.

2 Q. Okay. And which one were you in front of?

3 A. The one to the left.

4 Q. All right. Where was Mr. Robinson in relation to
5 you at that point?

6 A. Standing up, right in front of me.

7 Q. Okay. He was in front of the same house?

8 A. Yeah.

9 Q. Had he already been cuffed?

10 A. Yes, yes.

11 Q. Okay. And then Deputy Blakeley attempted to cuff
12 you, and then what happened?

13 A. Well, I asked him what he was cuffing me for.

14 Q. Uh-huh?

15 A. And he didn't give me an explanation why, so I
16 tried to run after that.

17 Q. So when he tried to cuff you, you ran, and then
18 what happened?

19 A. He ran behind me, and when I got to the cut, he
20 Tased me. I fell down.

21 Q. Stop right there. How far from the front of the
22 house to the cut do you think it was, distance wise?

23 A. Fifty, fifty feet, maybe.

24 Q. From here to that door or further?

25 A. A little further.

1 Q. Okay. From maybe here to the hallway?

2 A. Yes, sir.

3 Q. Okay. And from the point that you ran -- well,
4 what is the cut? Explain to Your Honor what --

5 A. It's, like, a bunch of bushes behind this
6 abandoned trailer on the left-hand side, and there is the
7 house right there on that side.

8 Q. Okay. So you ran towards this cut, and when you
9 reached the cut, what happened?

10 A. I fell down, after he Tased me in the sticky
11 briars.

12 Q. So he deployed the Taser and shot you with the
13 Taser?

14 A. Yes, sir.

15 Q. Did it actually work?

16 A. Yes.

17 Q. You felt it?

18 A. Yes, sir.

19 Q. And it knocked you down?

20 A. Yes.

21 Q. After it knocked you down, what happened then?
22 You were in the sticky briars. What did he do?

23 A. I fell in the sticky briars, and I couldn't get
24 up, but when I looked back like this, when I was trying
25 to get up, he dived on top of me.

1 Q. After he dove on top of you, what happened then?

2 A. He was talking to me the whole time.

3 Q. While he was on top of you, did he strike you?

4 A. Yes, sir.

5 Q. How did he strike you?

6 A. Couple times with his hand and his knees.

7 Q. All right. Were you on your back or on your
8 stomach?

9 A. On my stomach.

10 Q. Okay. So you had fallen down on your stomach, and
11 he was on top of you?

12 A. Yes, sir.

13 Q. Were you attempting to get up?

14 A. Yes, sir.

15 Q. And he hit you with his fist and his knees?

16 A. And the Taser.

17 Q. And the Taser. He had already Tased you, right?

18 A. He hit me with his fist and his knees, yes, sir.

19 Q. When he was doing that, what part of his body was
20 it, your head, where?

21 A. My sides, my head.

22 Q. Did he put a knee in your head at one point?

23 A. Yes, sir.

24 Q. That wrestling match fight that was going on in
25 the briars there, were you attempting to flee from him or

1 fight back?

2 A. Flee.

3 Q. How long did it take until you gave up fighting?

4 A. Maybe about -- maybe a good five minutes, probably
5 a little longer.

6 Q. Did you lose your shirt during that?

7 A. No, sir.

8 Q. Still had your shirt on.

9 A. Uh-huh.

10 Q. At some point, did they cuff you?

11 A. Yes, sir.

12 Q. All right. Did he tell you at any time from there
13 to the point he cuffed you why he was attempting to
14 arrest you?

15 A. No, sir.

16 Q. All right. After he gets you cuffed, was there
17 any other deputies around?

18 A. No. Actually, deputies didn't show up until we
19 was already back out the bush in the yard.

20 Q. Did he take you out of the bushes in cuffs or did
21 he take you without cuffs?

22 A. Without cuffs.

23 Q. So he pulled you out of the bushes into the yard,
24 and the other officer showed up?

25 A. Yeah.

- 1 Q. At that point were you handcuffed?
- 2 A. No, sir.
- 3 Q. Still weren't handcuffed.
- 4 A. No.
- 5 Q. All right. At any point while you were in the
6 field there, did he attempt to ask you any questions?
- 7 A. No, sir.
- 8 Q. Did he ask you if you had any injuries?
- 9 A. No, sir.
- 10 Q. At some point, you got cuffed there in the field,
11 right?
- 12 A. Yes, sir.
- 13 Q. After they cuffed you, what did they do with you?
- 14 A. Put me in the back seat of the car.
- 15 Q. Of his car?
- 16 A. His car.
- 17 Q. Okay. Was his car running?
- 18 A. I think so. I don't remember.
- 19 Q. Was it hot or cold, or you couldn't remember?
- 20 A. Hot.
- 21 Q. All right. When he placed you in the back seat --
- 22 A. Are you talking about outside or in the car?
- 23 Q. In the car. So it wasn't stifling inside the car?
- 24 A. No.
- 25 Q. He put you in the back seat of the car; windows

1 were up?

2 A. Yes, sir.

3 Q. And he closed you in there by yourself?

4 A. Yes, sir.

5 Q. At that point had he told you what you were under
6 arrest for?

7 A. No, sir.

8 Q. At that point, had he read you any Miranda rights?

9 A. After he jumped in the car.

10 Q. He asked you when you were in the car?

11 A. Yeah.

12 Q. At any point, did you try to get his attention by
13 knocking on the windows with your shoulder or head?

14 A. No, sir.

15 Q. Or any part of your body? Once you were in the
16 car cuffed, your next encounter is when he opened the
17 back door.

18 A. Yes, sir.

19 Q. When he opened the back door, what did you think
20 was happening?

21 A. He took me out, took pictures or something like
22 that.

23 Q. Okay. Well, at some point, did he read you
24 Miranda rights? Do you remember that?

25 A. No, sir.

1 Q. He didn't read you Miranda rights. Did he ask you
2 any questions at any point?

3 A. No, sir.

4 Q. Did Lieutenant Tague, the older officer that just
5 testified, and Deputy Blakeley, did they ever come up
6 together and try to talk to you?

7 A. No, sir.

8 Q. Did they ever come up together to see you at all?

9 A. Well, both -- once they opened the door, when they
10 told me to jump out, a couple of them was there. One of
11 them was taking pictures.

12 Q. Okay. So there wasn't conversation, to your
13 recollection, regarding drugs.

14 A. No, sir.

15 Q. Do you remember seeing drugs in the front of the
16 police car?

17 A. No, sir.

18 Q. Do you remember them putting any in there?

19 A. No, sir.

20 Q. Would it be fair to say that you had been hit in
21 the head pretty good?

22 A. Yes, sir.

23 Q. Were you thinking straight at that point?

24 A. Maybe not, because I was dehydrated for one.

25 Q. Dehydrated? So did they ever ask you if -- about

1 being beat in the head, whether you could think straight,
2 whether you could carry on a conversation, anything like
3 that?

4 A. No, sir.

5 Q. Do you remember seeing the EMS?

6 A. No, sir.

7 Q. They didn't come up and examine you?

8 A. No, sir.

9 Q. Okay. This statement about that they say you
10 made -- that, The cocaine and weed is mine but not the
11 crack, you don't have any recollection of giving that
12 statement?

13 A. No, sir.

14 Q. At what point did they tell you that you were
15 under arrest for drugs?

16 A. After he took the pictures and he was in the car
17 doing paperwork and I was back in the back seat.

18 Q. Okay. Did he ask you any questions then about the
19 drugs?

20 A. No, sir.

21 MR. SMILEY: Beg the Court's indulgence.

22 That's all I have. Answer any questions the
23 solicitor might have.

24 THE COURT: Mr. Durant?

25

1 CROSS-EXAMINATION

2 BY MR. DURANT:

3 Q. Mr. Rivers, you know Deputy Blakely.

4 A. Yes, sir.

5 Q. You've known him for a while, right?

6 A. By face, yes, sir.

7 Q. Y'all have had dealings in the past?

8 A. Yes, sir.

9 Q. Would that be fair to say?

10 A. Yes, sir.

11 Q. And I don't think he's ever arrested you before,
12 has he?

13 A. No, sir, but --

14 Q. But you have been arrested in the past?

15 MR. SMILEY: Objection, Your Honor. That is
16 irrelevant to this hearing.

17 THE COURT: You got a point?

18 MR. DURANT: Absolutely, Your Honor. I think
19 it's very relevant because he's been arrested many times
20 before. I think he's been Mirandized many times before.
21 I think he's had the opportunity to understand these
22 rights many times before, and I think it bears on his
23 understanding of his rights at this time.24 MR. SMILEY: Thinking and knowing are two
25 different things. He's not going to be able to show you

1 evidence that he was ever Mirandized before.

2 THE COURT: Just ask him the questions.

3 Obviously, that probably would not come in in a hearing
4 before the jury, but move along.

5 BY MR. DURANT:

6 Q. Do you know what your Miranda rights are?

7 A. I know a little now, but when he was saying --

8 Q. You didn't know them before this day?

9 A. Not really.

10 Q. Did you know them this day?

11 A. A little bit.

12 Q. Never had them spoken to you before?

13 A. Yes, sir.

14 Q. And you understood them before?

15 A. Not really.

16 Q. You've been convicted of, I think -- can I go into
17 this, Your Honor?

18 THE COURT: No. Let's just get to the date
19 and time that we are talking about here. You don't need
20 to impeach him right now.

21 BY MR. DURANT:

22 Q. You remember clearly what was going on this day;
23 is that right?

24 A. Today?

25 Q. Today, do you remember what happened on the 16th

1 of June?

2 A. Yes, sir.

3 Q. And that is because you were there?

4 A. Yes, sir.

5 Q. You lived it?

6 A. Yes, sir.

7 Q. You remember exactly where you ran from Deputy
8 Blakeley?

9 A. Yes, sir.

10 Q. Do you remember exactly how Deputy Blakeley came
11 and captured you?

12 A. Yes, sir.

13 Q. And you weren't an easy person to catch, or were
14 you?

15 A. Yes, sir.

16 Q. You were? It happened pretty quickly? And how
17 far did you run from the deputy?

18 A. From here about out to the hallway, maybe,
19 distance wise.

20 Q. In that short of a period, y'all had a pretty
21 physical confrontation, right?

22 A. I wouldn't say physical, because he was on top the
23 whole time.

24 Q. So it wasn't physical, didn't get physical?

25 A. I mean, he hit me. I never tried to hit him back

1 or nothing like that.

2 Q. So it's your testimony that you were hit for no
3 reason?

4 A. No. Maybe for running.

5 Q. When you got to the car and you were sitting there
6 in the car, you said you were Mirandized, right?

7 A. In the car?

8 Q. Right.

9 A. Yeah.

10 Q. They came and read you your rights?

11 A. Yes, sir.

12 Q. And do you know why they did that?

13 A. I think it was because I resisted arrest by
14 running from them.

15 Q. But two officers approached the car and came and
16 told you your Miranda rights, right?

17 A. He told me my Miranda rights after, when we were
18 in the car together.

19 Q. When you were in the car together?

20 A. Yeah.

21 Q. So not at the scene?

22 A. Yeah, in the officer's car, on the scene.

23 Q. Okay. And how many officers approached the car?

24 A. None. It was just me and him in there.

25 Q. Was there ever a point when two officers came to

1 the car and gave you Miranda rights?

2 A. There was -- like I said, he read the rights to me
3 when the both of us was in the car. Other officers was
4 by the car when he took me out of the car and we took
5 pictures.

6 MR. DURANT: May I approach for the pictures,
7 Your Honor.

8 BY MR. DURANT:

9 Q. So this picture that is part of the nine pictures
10 in State's 1, you're saying that is when they brought you
11 out of the car and took your picture?

12 A. This is at the place.

13 Q. What place?

14 A. The place where we went after we left the scene.

15 Q. The police station?

16 A. No. Some other place we went at.

17 Q. The place where you went to get medically
18 screened?

19 A. Yes.

20 Q. Okay. So you were saying there were other
21 pictures taken of you out there at the scene?

22 A. On the scene, yes.

23 Q. Let's cut right to the chase. Did you tell the
24 officers anything about drugs?

25 A. No, sir.

1 Q. That's what you said?

2 A. Yes, sir.

3 Q. So you're saying -- you were sitting here, and you
4 heard two offer officers say that. Were they lying?

5 MR. SMILEY: Objection, Your Honor.

6 THE COURT: Sustained. Pitting witnesses.

7 MR. DURANT: Thank you.

8 THE COURT: You got any other questions?

9 MR. DURANT: No. No further questions, Your
10 Honor.

11 THE COURT: Redirect?

12 MR. SMILEY: No, sir.

13 THE COURT: You can step down. You got any
14 other witnesses?

15 MR. SMILEY: No, sir.

16 THE COURT: All right. Well, it's your
17 motion. You want to make an argument?

18 MR. SMILEY: Yes, sir. The purpose of this
19 hearing is first to determine whether my client is in
20 custody, to see if the Miranda would apply, and it does
21 appear he was in custody of some sort, Your Honor.

22 Then it's whether, looking at the totality of
23 the circumstances, was my client's waiver freely,
24 knowingly, and voluntarily given, absent duress, promises
25 or, otherwise.

1 I argue, Your Honor, that the alleged
2 statements the deputies speak of being suppressed because
3 my client obviously had been subject to an attack by the
4 deputy in which blows to the head were involved,
5 substantial blows to the head were involved, and no
6 attempt was made for asking my client to understand and
7 then waive his rights to remain silent.

8 Whether my client was suffering from the
9 result of those blows, whether he had a concussion or
10 otherwise, he was clearly thinking, as my client
11 testifies that he doesn't remember giving any statements
12 whatsoever. I believe also that there certainly is
13 duress involved when the person who talked with my client
14 at great length because the person, by the deputy's
15 testimony, is in a very enclosed small space to which my
16 client is confined is supposedly read his rights.

17 Not only was the large deputy, Blakeley there
18 but Lieutenant Tague, in very close quarters, and
19 therefore I think looking at the totality of the
20 circumstances that it was not free of duress and, also, I
21 don't know if my client had the ability to waive those
22 rights given his physical condition, and the lack of the
23 deputies to ascertain that my client wasn't suffering
24 from any mental disability as a result of the attack, and
25 therefore I would make a motion to suppress the

1 statements in violation of my client's Fifth Amendment
2 right to remain silent, the South Carolina constitution,
3 and Miranda, Jackson versus Denno and its progeny.

4 That's all I have, Your Honor.

5 THE COURT: Mr. Durant?

6 MR. DURANT: Thank you, Your Honor.

7 May it please the Court, state contends
8 that -- the state views both of these officers was
9 knowingly, intelligently, freely and voluntarily, after
10 Miranda, after twice being informed of his Miranda
11 rights, you heard testimony from Deputy Blakeley he was
12 Mirandized twice. Both times understood his Miranda
13 warnings. Second time, there was testimony from
14 Lieutenant Tague as well that he was there when the
15 defendant was Mirandized, understood his rights.

16 Both officers testified they didn't threaten
17 him in any way. He didn't appear to be confused in any
18 way, didn't say he was, didn't ask for a lawyer. He
19 didn't appear to be intoxicated in any way.

20 And both officers said, you know, having
21 those rights in mind, he said, The cocaine is mine. The
22 marijuana is mine. The crack is not mine.

23 I think clearly that is enough to make it to
24 the jury, for the jury to decide. We're here. There is
25 enough evidence, preponderance of the evidence that this

1 statement was freely, knowingly, intelligently, and
2 voluntarily given. I think everything is just as it is.

3 There is no medical testimony about the
4 defendant's condition, whether he had a concussion. This
5 is all very hypothetical, and you have the pictures as
6 well that show the condition of the defendant at or about
7 the time this statement was given. The state asks that
8 it be heard by the jury.

9 MR. SMILEY: Your Honor, you can't see inside
10 the pictures. You can see the scrapes and bruises on the
11 outside. EMS was on the scene, and it does not appear
12 they had examined him. I wish I was on the scene at the
13 time. I would have had him examined, but it was very
14 clear that the officers should make sure he had a clear
15 head before they asked him to waive those important
16 constitutional rights.

17 This is common sense, that a man that has
18 just beaten you is now asking you questions that you
19 would need to comply; therefore, I would make a motion
20 that it be suppressed.

21 THE COURT: All right. Well, clearly, he was
22 in custody at the time of the confession. I find that
23 the state has proven that he actually initiated a
24 discussion. He wasn't really asked any questions.

25 According to the testimony, he got Mirandized

1 twice, and it appears to me, under a totality of the
2 circumstances he initiated the contact with the state,
3 and the officer -- the only question the officer asked
4 him was if he wanted to make a statement, and he answered
5 yes and then proceeded to enunciate that he was claiming
6 possession of some of the drugs, but not all of the
7 drugs.

8 So I also find that there is no evidence that
9 shows that the struggle affected his ability to know what
10 he was doing, so the motion is denied. All right.

11 Let's take about a ten-minute break and then
12 we'll get started.

13 MR. SMILEY: Couple other motions,
14 sequestration motion.

15 THE COURT: You can have your investigating
16 or principal officer there, but all the rest have to be
17 sequestered.

18 MR. SMILEY: Also, 403 motion, prior bad
19 acts, tends to introduce anything by way of prior bad
20 acts --

21 THE COURT: Why don't we wait until we
22 determine if your guy is going to testify.

23 MR. SMILEY: Our bad acts are going to start
24 coming out on the stand with Deputy Blakeley. He's
25 already started testifying about prior conduct with my

1 client.

2 THE COURT: Well, all right. Go ahead.

3 MR. SMILEY: I'm going to make a motion in
4 limine that the officer, saying that he knows my client
5 and that he has had numerous contacts with him, that that
6 be excluded under a 403 analysis, Your Honor.

7 THE COURT: The way I understand prior bad
8 acts would come in would be to impeach his credibility
9 and so he has got to testify first, or to show that he's
10 got some kind of a pattern or anything like that. So I
11 don't really know how that would play into this, so do
12 you want to be heard on that, Mr. Durant?

13 MR. DURANT: Your Honor, the state didn't
14 offer any prior bad acts in this case, but simply the
15 fact that Deputy Blakeley knows the defendant --

16 THE COURT: He can say he knows him, but as
17 far as how he knew him, well, I arrested him before. I
18 knew he was a drug dealer --

19 MR. DURANT: We won't get into anything like
20 that, just that he's encountered him on the street and he
21 knows him.

22 THE COURT: Don't get into why he had
23 arrested him or anything like that.

24 MR. SMILEY: Lastly, Your Honor, my client is
25 not been charged, nor is he being prosecuted for

1 marijuana. I would ask that it be excluded.

2 MR. DURANT: Your Honor, we can take that out
3 of the statement. I have to inform both of my officers,
4 if you want to, to exclude that part of the defendant's
5 statement when it gets to that point of the testimony;
6 however, I think he had been charged with possession of
7 marijuana at the magistrate's court.

8 THE COURT: I don't know. He's here today on
9 these two cocaine charges, powder, crack, and resisting.

10 MR. DURANT: I can instruct them not to
11 mention the marijuana when they talk about his
12 confession.

13 THE COURT: Okay.

14 MR. SMILEY: And I've got his booking report.

15 THE COURT: Anything else?

16 MR. SMILEY: I believe that's all, Your
17 Honor. I just wanted to take care of these preliminary
18 matters before it's too late.

19 THE COURT: All right. Let's go ahead and
20 take ten minutes. Let the jury know we'll be ready to go
21 in ten minutes.

22 (Recess taken.)

23 (In open court, jury not present.)

24 MR. SMILEY: It appears there is a report
25 that was prepared in relation to the case that I wasn't

1 provided under Brady or Rule 5 that I don't know
2 Mr. Durant knew existed, but I think I'm entitled to it,
3 and that would have been any reports that were created in
4 relation to the use of force in this case. I think
5 they're pertinent and certainly discoverable and would
6 ask that I have those before the deputy testifies so I
7 could review them.

8 THE COURT: Do you have any reports?

9 MR. DURANT: Your Honor, I don't have any
10 reports. My understanding is the use of force reports
11 are administrative only. They don't have anything to do
12 with evidentiary matters pertaining to a defendant.
13 That's my understanding. I certainly don't have it.

14 THE COURT: If it pertains to the case, I
15 suppose that might be somebody else's decision to make as
16 to whether it has any evidentiary value to it. You don't
17 have one in your possession?

18 MR. DURANT: No, I do not.

19 THE COURT: Do the officers have one?

20 MR. DURANT: Your Honor, Deputy Blakeley says
21 he doesn't have one. He just explained to me that -- he
22 also informs me that Lieutenant Tague deals with them.

23 THE COURT: What I want you to do is get a
24 copy of it this evening and provide it to Mr. Smiley. If
25 he needs to revisit that tomorrow, then we'll perhaps

1 have the deputy recalled if he needs to, but, you know,
2 right now we're making very, very slow progress on this
3 case today, and I would like to get it started because I
4 imagine you're going to be calling the deputy as the
5 first witness?

6 MR. DURANT: Well, Your Honor, we're going to
7 call witnesses out of order because we had three
8 witnesses from SLED come up, and I don't want to have
9 them come back up tomorrow, so there are two chain of
10 custody witnesses and the drug analyst.

11 THE COURT: All right. Well, then let's get
12 them going, and you might very well then just have a full
13 shot at it tomorrow. Be sure you get a copy of that to
14 him.

15 All right. Anything else?

16 MR. SMILEY: That's all I know of at the
17 moment, Your Honor.

18 THE COURT: All right.

19 MR. DURANT: Nothing from the state.

20 THE COURT: All right. Bring the jury in.

21 (In open court, jury present.)

22 THE COURT: All right. Who did you elect
23 foreperson?

24 A PROSPECTIVE JUROR: Me, 301 Emmy Brooks.

25 THE COURT: All right. Congratulations.

1 All right. Before we get started, I need to
2 place you under oath, so if you would raise your right
3 hand, the clerk and administer your oath to you.

4 (Jury duly sworn.)

5 THE COURT: All right, folks. Thank you
6 again for your patience. We had to take up some things
7 that we normally would have just been able to take up
8 without wasting your time, but, again, just because of
9 the haphazard way, the nature of the case roster, what's
10 gone this week, we weren't able to do that, and I really
11 apologize because I know we're taking you away from your
12 formal lives, and the number one complaint I think jurors
13 have is setting around with nothing to do and wondering
14 what is going on.

15 I assure you if you were setting in the back,
16 we're doing something in here, and it's all designed to
17 streamlined to get the case to you as quickly and as
18 expeditiously as possible so you don't have to waste your
19 time sitting listening to a bunch of testimony you
20 otherwise wouldn't have to listen to. So that is on me
21 and I appreciate you working with us on that.

22 Now, I want to explain to you a little bit
23 about what we'll be doing over the next day or so as far
24 as this case goes. As I explained to you earlier during
25 the jury selection process, the State of South Carolina

1 has charged Mr. Arthur Lee Rivers with three charges:
2 First, he was charged with trafficking cocaine, he's also
3 charged with possession of crack cocaine, and he was also
4 charged with resisting arrest.

5 Now, he has pled not guilty to each of these
6 charges, and so we are here today for his jury trial,
7 because when you plead not guilty in this case and in
8 this country, you are entitled to a trial by jury if you
9 so desire, and the state then has the burden of proving
10 that he is guilty of these charges beyond a reasonable
11 doubt.

12 Now, these are the indictments which present
13 these cases and basically give us jurisdiction over the
14 case, and it also puts Mr. Rivers on notice of what he is
15 charged with. These documents are not evidence. All
16 right? The fact that he has been charged with a crime is
17 not to be considered by you in any way, shape, or form as
18 to whether or not you believe he is guilty of the crime.
19 These are simply charging indictments or charging papers.
20 When I send them back to you, it will be for the sole
21 purpose that on the back of them there is a place for you
22 to write the verdict, all right, guilty or not guilty,
23 and you'll see one of the charges has some writing on it,
24 which I'll explain to you a little bit later on, but
25 don't consider the fact he has been charged or you have

1 these indictments. Indictments are not evidence.

2 Evidence is what you will hear from the
3 witness stand. You will hear testimony of people who
4 will tell you what they saw, they heard, they touched,
5 they felt, they smelt, that sort of thing. That is
6 evidence. We also might have photographs or some
7 documents. That is evidence, but indictments are not
8 evidence, and, also, what the lawyers say is not
9 evidence, so in a couple minutes, you are going to have
10 the lawyers get up and give you a brief overview of what
11 this case is about. Those are what are called opening
12 statements, and it's designed to help you follow the
13 testimony a little bit so you'll know what to expect and
14 it just doesn't leave you going, Man, what is this case
15 all about sort of deal.

16 It's just a brief overview, and it does not
17 have any evidentiary value whatsoever, because if the
18 lawyers were able to give evidence, they would be
19 witnesses. They would be sworn under oath and put in the
20 witness stand and allowed to testify, and, most
21 importantly, they wouldn't be allowed to be the lawyer
22 then because lawyers are not allowed to be witnesses in a
23 case in which they're acting as a lawyer.

24 So the lawyers will get up and make opening
25 statements, and then, because the state has the burden of

1 proof, the state will get to present their case first and
2 call witnesses first and ask the questions of the
3 witnesses first. That is because they, again, will have
4 the obligation of proving to you beyond a reasonable
5 doubt that Mr. Rivers is guilty of the crimes with which
6 he has been charged. All right?

7 Mr. Rivers does not have to prove he is
8 innocent, and that is a very, very important concept for
9 you to get your head around. All right? The state has
10 to prove he is guilty. He doesn't have to do anything
11 except show up, and he's done that, all right? He
12 doesn't have to call witnesses. His lawyer doesn't have
13 to ask questions. His lawyer doesn't even have to say
14 anything if they don't want to. They can sit over there
15 mute if they want to, and, frankly, they don't even have
16 to tell me if they want to at this point present a case.
17 All right?

18 It is the state's burden of proving guilt.
19 The defense does not have to prove innocence, all right,
20 so that is important for you to remember, and I will
21 remind you of that probably from time to time and
22 certainly at the end of the trial.

23 So the state will call their witnesses first,
24 they'll get to ask questions, which the first round of
25 questions when the state asks, whoever called the

1 witness, we call that direct examination. Then, if the
2 defense wants to, they can cross-examine the witnesses,
3 and then I usually let one more round of redirect and
4 recross, and then we move on to the next witness. All
5 right? So after the state calls all of their witnesses,
6 then and if the state -- or the defense wants to put up a
7 defense, they can call witnesses if they want to, but
8 it's important that you remember they don't have to put
9 up a defense, and I'll explain that to you in more detail
10 at a later point in the trial.

11 Now, we will, after all of the witnesses have
12 testified, have closing arguments, and I will charge you
13 on the law that you apply to the facts as you find them,
14 and then you will retire to the jury room to deliberate
15 for your verdict. Now, we have different roles in this
16 trial. You are the judges of the facts. I'm the judge
17 of the law. There is a dispute about facts that you will
18 hear, and whatever you decide, and how you resolve these
19 facts, we're bound by that, all right? But you're also
20 bound by the oath that you just took to apply the law as
21 I charge it to you to the facts as you find them.

22 Why is that important? Well, that is
23 important because I have two roles in this trial. Number
24 one: It's to make sure that both sides get a fair trial,
25 because I don't have a dog in this fight. Whatever the

1 outcome of the case is, it really doesn't matter to me.
2 I've got another one to try when this one is done, and
3 next week I'll be doing something else, just like you
4 will be. I don't have, just like you, friends to reward
5 or enemies to punish. My job is to make sure both sides,
6 the state and the defense, get a fair trial.

7 But I'm also supposed to charge you on the
8 law, and that is where, if there is ever any kind of
9 appeal from this case, the appeal comes from, because
10 whatever you decide the facts are and how you resolve
11 them, we're bound by that, so if there is an appeal, it's
12 one of two things: I either charged you incorrectly on
13 the law, or I made a ruling improperly on the trial, that
14 is, I let you hear evidence that you weren't supposed to
15 hear or I kept you from hearing something that you were
16 supposed to hear. All right?

17 So, occasionally, you might hear a lawyer
18 jump up and say, Objection. All right? They're not
19 trying to hide anything. Really, what we're trying to do
20 is to make sure that you are only hearing evidence that
21 is what we call legally competent evidence, that is,
22 you're supposed to hear it, because, again, if I make a
23 mistake and let you hear something that you weren't
24 supposed to hear or kept you from hearing something that
25 you were supposed to hear, again, we might have to do

1 this all over again sometime down the road, and we don't
2 want to do that.

3 We just want to do it one time, so when a
4 lawyer says objection, I have to rule on that, and
5 sometimes I have to rule based on what I hear so far. I
6 might go overruled or sustained. Sometimes I might have
7 to say, Come up here a minute and let me hear what you
8 say, little explanation outside of your earshot. There
9 is a time or two I might have to send you out so I can
10 hear what a witness might say in order to then determine
11 whether it's proper for you to hear it, okay? So we're
12 really not trying to keep (C) a bunch of secrets or
13 anything.

14 The trial will flow pretty freely once you
15 get going because we have good lawyers involved in this
16 case and nobody is really trying to hide anything,
17 present the evidence, and we'll let you decide what the
18 outcome of the case should be.

19 All right? Now, one last thing I want to
20 talk to you about, and that is the state's burden of
21 proof. I told you, and I will hammer it in more than one
22 time, but the burden of proof in a criminal case is what
23 we call a beyond a reasonable doubt. All right? I told
24 you the state has to prove what they have alleged, and
25 they're alleged he committed these crimes. The standard

1 by which they have to prove that is beyond a reasonable
2 doubt.

3 If any of you have served in a civil trial,
4 you probably heard the judge talk about the standard of
5 proof, or the burden of proof being a preponderance of
6 the evidence. And a preponderance of the evidence simply
7 means the greater weight of the evidence or is whatever
8 the side trying to prove more likely true than not true.

9 You may probably use an example of the scales
10 where you just have to tip the scales just a little bit
11 to prove a preponderance of the evidence, the greater
12 weight of the evidence. You just got to tip it a little
13 bit. You're talking in terms of 51 percent maybe. But
14 in a criminal case like this, the state has a much
15 heavier burden of proof, and they have to tip those
16 scales a lot. Beyond a reasonable doubt is basically
17 evidence that would leave you firmly convinced of the
18 defendant's guilt.

19 All right? And if at the end of this trial
20 you are not firmly convinced that the defendant is guilty
21 of these charges, then you must acquit him, or give a
22 verdict of not guilty. All right? Again, he doesn't
23 have to prove his guilt, the state has to prove that he's
24 guilty. All right? So that burden of proof is much
25 heavier in a criminal case than in a civil case. Keep

1 that in mind. Keep an open mind throughout the trial
2 because you're going to hear a lot of evidence over the
3 next day or so, and things have a way of going back and
4 forth. Just like you found out in life, you need to hear
5 both sides of the story before you make up your mind.

6 Well, it's the same thing. And you'll go
7 back and forth, probably. After you hear one side of the
8 witness's testimony, then you hear cross-examination and
9 then you go back and forth. Just like you might change
10 your mind several times in the course of a witness's
11 testimony, same things goes throughout a trial, so you
12 got to keep an open mind throughout the whole thing.

13 That is why whenever we take a break I say,
14 Remember, don't begin your deliberations or discussions
15 yet, and the reason is you haven't heard all the evidence
16 so you can't make up your mind.

17 Now, I told the lawyers, I have months ago
18 obligated myself to speak at a College of Charleston
19 class this evening, so we have to break somewhere around
20 quarter to 5:00, so we'll probably get in a few short
21 witnesses, but then we'll start back in tomorrow morning
22 at 9:30 and we will more then likely, from what I
23 understand, complete this case by the end of the day
24 tomorrow. That is the plan. Nothing has gone according
25 to plan so far this week, but we'll give it our best

1 shot.

2 So right now, I'm going to turn it over to
3 the lawyers. And the state again has the burden of proof
4 so they get to go first on the opening statement, so,
5 Mr. Durant, if you're ready, you may begin.

6 MR. KIDD: Thank you, Your Honor. May it
7 please the Court. My name is Culver Kidd. I'm an
8 assistant solicitor with the Charleston County
9 solicitor's office. It's my and Mr. Durant's job here to
10 prosecute people who have been charged with crimes in
11 Charleston County.

12 Now, this case is about drugs. The crux of
13 this case is about drugs. It's about nothing else. It's
14 about the dealings of drugs, possession of drugs; it's
15 about assaulting a police officer while resisting arrest.
16 Those are three charges, which Mr. Rivers is charged with
17 here today.

18 I don't want you to be distracted by anything
19 else going on in this case. There's a lot of side notes
20 that are taking place and we're going to get off on
21 tangents with, but keep in mind, this case is about the
22 possession, trafficking of drugs. That's what matters in
23 this case, that's what is important, and that is what we
24 need to confine most of our attention to.

25 A lot of people refer to drug crimes as a

1 victimless crime. You know, a crime, when I prosecute a
2 murder case, when you have a victim's family who has lost
3 a loved one or someone who has been assaulted, it's a lot
4 easier when you come in here when you have a victim that
5 can take the stand and cry and get passionate about it.
6 People refer to a drug crime as a victimless crime, so
7 it's a lot harder to kind of get revved up and ready to
8 go, but at the same time, I think it's a bit of a
9 misnomer. I don't think drug crimes are victimless
10 crimes. In fact, I think our society is the victim of
11 these kinds of crimes, and that is why they're illegal.

12 In that vein, I think this case is a lot
13 about choices and accountability. It's about being held
14 accountable for the choices we make in our lives, and
15 this case is about holding Mr. Rivers accountable for the
16 choices he made in his life. I'm going to go through,
17 and I'm going to try to draw you a little diagram here.
18 Bear with me a little bit because I'm not much of an
19 artist, but I'm going to try to draw you a little bit of
20 diagram to give you a little bit of a picture about what
21 happened on June 16 of 2008.

22 You're going to hear from Deputy Blakeley who
23 is sitting over there at counsel table with us about how
24 he was going to serve warrants on an individual by the
25 name of David Tyrone Robinson. It's completely unrelated

1 to this case, but he was responding to a place called
2 Ardwick Road. It's on Johns Island. I'm not sure how
3 familiar y'all are with the area. If you take Maybank
4 Highway over to Johns Island, take a left on River Road
5 over there, you go about a mile down and there is a
6 little dirt road called Ardwick Road. Deputy Blakeley
7 has been there many times. It's kind of known as a high
8 crime, or high drug area, so he's familiar with the
9 people around there, so when he heard that there was
10 arrest warrants pending for this guy named David Tyrone
11 Robinson, he said, Well, I know where he's at. So he
12 goes over to arrest Mr. Robinson.

13 Now, once again, bear with my art here, but
14 let's say this is River Road here --

15 THE COURT: Tell you what, Mr. Kidd, save the
16 demonstrative aides for evidence. You don't have to mess
17 with that for opening statements.

18 MR. KIDD: Yes, Your Honor. Let me move
19 forward then.

20 He responds to River Road, or to Ardwick Road
21 which is right off River Road. He pulls in, up a dirt
22 road, and Deputy Blakeley will tell you all this. He
23 pulls in. He's by himself in his cruiser. He pulls up
24 Ardwick Road to this place they call the hill. It's kind
25 of a clearing under some trees. There is a bunch of park

1 benches and whatnot, and he sees Mr. Rivers over there in
2 front of a house, pulls up in his cruiser, puts it in
3 park.

4 Before he gets out of his cruiser, he sees
5 Mr. Rivers walking the opposite way walking down Ardwick
6 Road toward his cruiser but kind of veering off to the
7 right, which is a little dirt path over towards the same
8 direction where Mr. Robinson is sitting.

9 Initially, Mr. Rivers doesn't recognize, or
10 doesn't look up and see Mr. Blakeley, but once he does,
11 you'll hear from Mr. Blakeley he kind of looks like a
12 deer in the headlights once he sees Deputy Blakeley
13 there. He's in a marked cruiser with the lights on top.
14 He sees him like a deer in the headlights and immediately
15 takes his hand and he throws an object on the side of
16 this little path where he's walking.

17 Deputy Blakeley will tell you, instantly, he
18 knew that something was afoot. He had two goals now: He
19 had to serve these arrest warrants on Mr. Robinson and he
20 needed to investigate what was going on with Mr. Rivers
21 because he knew something wasn't right. He gets out of
22 his car, and he wants to kind of play it cool, not to
23 alert Mr. Rivers so he doesn't flee, and he can kind of
24 take care of both of these situations.

25 He approaches Mr. Robinson, places him under

1 arrest for the outstanding warrants, and then at the same
2 time, Mr. Rivers is walking up towards him. He then
3 approaches Mr. Rivers and asks Mr. Rivers for his ID,
4 consent to search, and he tries to detain Mr. Rivers so
5 he can investigate what he saw thrown down on the side of
6 the road.

7 When he tries to grab Mr. Rivers' wrist,
8 Mr. Rivers pushes him back and runs. Deputy Blakeley
9 gives chase, deploys his Taser, which is ultimately
10 ineffective. They end up getting into what ultimately
11 turns into a fight between Deputy Blakeley and Mr.
12 Rivers. It turns into a wrestling match more than a lot
13 of blows being thrown, but they're struggling. Deputy
14 Blakeley is trying to gain control of Mr. Rivers.
15 Mr. Rivers is trying to get away. It goes on for
16 probably five or ten minutes, which is a long time to be
17 engaged in a fight. They're both exhausted.

18 Deputy Blakeley is out there, all alone.
19 He's on a dirt road, in the middle of Johns Island, all
20 by himself. He has one suspect in handcuffs, and he's
21 engaging in a confrontation with Mr. Rivers right here.

22 That is a scary situation for anyone to be
23 in. It's a scary situation for Deputy Blakeley to be in.
24 He has an idea that something is going on, something drug
25 related, but he doesn't know, but what he does know is

1 that drugs, guns, and violence go hand in hand. So he's
2 scared for himself, and you'll hear from other officers
3 that when Deputy Blakeley is not responding to his radio
4 call, they realize something is wrong as well, and so
5 they send everyone out to his location.

6 And when the other deputies arrive, he's out
7 there in the field, kind of laying on top of Mr. Rivers,
8 holding him. He doesn't have any handcuffs. He doesn't
9 have anything else. He's just kind of restraining him
10 until the other officers get there. They put him in
11 cuffs, put him in the car. You'll hear from the other
12 officers that once they got him detained in the back of
13 the car that Deputy Blakeley instructed another deputy,
14 Deputy Summersell, who you also will hear from today, to
15 look over on the other side of the path where he saw
16 Mr. Rivers throw an object as soon as Mr. Rivers saw him,
17 and what they recovered was proximately 20 grams of
18 cocaine and approximately 20 grams of crack cocaine.

19 This is not an amount of drugs that is for
20 use. This is a large amount of cocaine, and there is one
21 question I want you to continue to ask yourselves
22 throughout the trial and the presentation of this
23 evidence. I want to ask yourself, why would he run? Why
24 would Mr. Rivers run away from Deputy Blakeley?

25 He's got two very good reasons to run: He's

1 got thousands of dollars worth of drugs and the penalty
2 that goes along with them. He's got those reasons to
3 run. Now, I want to go over one kind of nuance with the
4 law with you, and I will try to be somewhat short because
5 the judge is going to charge you on the law and he is the
6 authority on the law. If I make any statement to you
7 that is inconsistent with the law that Judge Young
8 charges you, I defer to Judge Young. He is the authority
9 on the law, but there is one thing I want you to
10 recognize.

11 When he charges you on the law of trafficking
12 of cocaine, a lot of times we think of trafficking
13 cocaine as kilos of cocaine in a trunk somewhere or a lot
14 of different Miami Vice type scenarios, but, in fact, the
15 law of trafficking cocaine, and he'll charge it to you,
16 could be either the manufacturing or the selling of it.
17 It can be a lot of things, but the law of trafficking
18 cocaine, which Mr. Rivers is charged with, you can be
19 guilty of trafficking cocaine if you just possess over
20 ten grams of cocaine, nothing else. As long as you find,
21 as a jury, that he at least possessed over ten grams of
22 cocaine, then he is guilty of trafficking cocaine.

23 You need no other factors. You don't have to
24 find that he sold it or that he manufactured or it or
25 anything else. As long as you find that he possessed

1 over ten grams of cocaine, then he's guilty of
2 trafficking cocaine. I just point that out because it's
3 just kind of thrown down in the bottom of a charge that
4 you're going to get, and it's going to say or possessed
5 between 10 and 28 grams of cocaine, and I just want you
6 to remember that when he's charging the law because it's
7 very important.

8 I also want you to bear with us a little bit
9 because things haven't gone quite as planned and we're
10 going to call some witnesses out of order, so the story
11 is not going to run real smooth, but we're going to be as
12 quick as we can. I want to thank you in advance. I know
13 this has been a long process, and I know it's not where
14 you want to be right now, but what you do as jurors is
15 extremely important, and it means a lot to us and the
16 system.

17 I'm confident that after you hear the
18 testimony coming from the officers on the stand and all
19 the other witnesses that there will be no confusion that
20 Mr. Rivers is guilty of not only trafficking in cocaine,
21 but possessing crack cocaine and assaulting a police
22 officer while resisting arrest, and I think that when you
23 take everything into consideration and the law that the
24 judge charges you and you apply that to those facts as
25 you find them, there can be no question that you will

1 return a verdict of guilty on all these counts. Thank
2 you very much.

3 THE COURT: Mr. Smiley?

4 MR. SMILEY: May it please the Court. You
5 may lawfully resist an unlawful arrest. The judge is
6 going to charge you on the law, but we'll start with
7 that.

8 Mr. Kidd said, why would he run? I think the
9 evidence will show you why he ran. The evidence in this
10 case is going to be fairly contested, of course, and I
11 think at the end of this case the evidence is going to
12 show that the state hasn't proven that Mr. Rivers
13 possessed anything.

14 I think it's undisputed, at this point.
15 Mr. Rivers didn't have anything on him. He didn't have
16 money; he didn't have drugs; he didn't have weapons. I
17 think it's going to be also fairly undisputed that
18 Mr. Rivers got his butt kicked by this deputy. He was
19 placed in handcuffs. This is what I want you to
20 remember, starting this case: Arthur Lee Rivers, he's an
21 innocent man. He starts innocent, and he remains
22 innocent in this case until and if the state can prove
23 him guilty beyond a reasonable doubt.

24 And as the judge has already mentioned to
25 you, it's not 50/50. It's not, in football terms, just

1 getting to the 50 yard line. It's beyond a reasonable
2 doubt. It's driving down the score. They have to
3 overcome any reasonable doubt you might have. I don't
4 believe that the evidence will support that.

5 Now, it's, Like oh, come on. They found
6 drugs. They got Mr. Rivers. He must be guilty. Well,
7 that is why we're here. We start with he's innocent.
8 Each of us in this courtroom have different jobs. Deputy
9 Blakeley's job is to enforce laws, to arrest people.
10 That is his job. If he was right all the time, we
11 wouldn't need the prosecutor. We wouldn't need me, we
12 wouldn't need the judge, and we wouldn't need you, so his
13 job is to arrest people.

14 Then we have the prosecutor, the State of
15 South Carolina. Their job, once that case is given to
16 them, is to do justice. That is their goal, to do
17 justice, to take a case and to prosecute it if they
18 believe it's got merit. That is their job. Just because
19 the deputy says it's so, just because the prosecutor says
20 it's so doesn't make it so. That is why I'm here, why
21 the judge is here, and that is why y'all are here.

22 My job, my job is to zealously represent
23 Arthur Lee Rivers, do everything ethically, in my power,
24 to zealously represent him, to make sure the police have
25 done their job, make sure the prosecution has done their

1 job.

2 Judge Young's job is to make sure I follow
3 the rules, that the prosecutor follows the rules, and to
4 make sure we get a fair trial and to give you the law,
5 and y'all have the most important job. Y'all's job is to
6 determine the facts, the hardest job, but that is your
7 job. So we start with Arthur is innocent until and if
8 they prove beyond a reasonable doubt to y'all. Y'all
9 determine what the truth is in this case. Y'all are the
10 only people that matter. What I think doesn't matter.
11 What the prosecutor thinks doesn't matter; what the
12 officer thinks doesn't matter; it's what y'all think.

13 Now, in this case, there is going to be drugs
14 found on the ground, in a trash pile, I think is going to
15 be the description. There is going to be a struggle long
16 before that in which Mr. Rivers is put in custody or
17 detained, which there was a fight where he was struck
18 several times and a Taser was deployed, so you're going
19 to hear from the deputies on what they found. What I
20 want you to keep with you the whole time, the most
21 important thing, is common sense. Does it fit? What did
22 I hear? What did they say? What didn't they say? Does
23 it fit?

24 That is your job, and it's really that
25 simple, and at the end of this case, I think you'll find

1 the state doesn't come anywhere close to meeting their
2 burden, and there is only one just thing to do, and that
3 is to come back with a verdict that speaks the truth, and
4 that is not guilty.

5 Thank you very much.

6 THE COURT: All right, folks. We're going to
7 have a few short witnesses out of order, because the
8 prosecutor said we've got to put some chain of custody
9 testimony in to establish custody of evidence, namely the
10 drugs in this case, and so we would normally have this
11 presented at a different point in time in the trial, but
12 because these folks work for SLED and they're here today,
13 we don't want to have to have them drive back and forth
14 again tonight, so everybody has agreed we'll call them
15 out of order, and they'll be fairly quick witnesses and
16 we'll just go ahead and do that this afternoon since we
17 have to break early. So call your first witness.

18 MR. KIDD: State calls Nathan McCoy.

19 NATHAN McCOY,

20 having been first duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. KIDD:

24 Q. Good afternoon, Mr. McCoy. How are you doing
25 today? Can you tell the jury where you are employed.

1 A. I'm employed for the South Carolina Law
2 Enforcement Division, otherwise known as SLED.

3 Q. And what is your title with SLED?

4 A. I am a special agent forensic chemist at SLED.

5 Q. What are your duties as a forensic chemist at
6 SLED?

7 A. My duties as a forensic chemist is to analyze any
8 unknown substances for the presence of controlled
9 substances.

10 Q. How do those substances come to your attention?

11 A. How do they come to me?

12 Q. Yes.

13 A. First, they get logged in and logged in at SLED,
14 and then, you know, at certain times I'll go down and
15 pick up the evidence on them.

16 MR. KIDD: May I approach the court reporter,
17 Your Honor? Just mark this for identification purposes
18 only.

19 BY MR. KIDD:

20 Q. I'm going to show you what has been marked for
21 identification purposes as State's Exhibit 1. Do you
22 recognize that item?

23 A. Yes, I do.

24 Q. Can you tell the jury what that is then.

25 A. This is a heat sealed pouch. On the other side it

1 contains several baggies, ziplock bags, evidence bag, and
2 these ziplock bags contain a substance inside.

3 Q. I'm getting a little ahead of myself, I guess.

4 Can you tell the jury a little bit about your
5 qualifications and your training, schooling that
6 qualifies you to be a forensic chemist with SLED?

7 A. Yes. I graduated from the College of Charleston
8 in 2002 with a bachelor of science in biochemistry and a
9 bachelor of arts in chemistry, and I also received
10 training at SLED in the field of drug analysis as a
11 forensic chemist.

12 Q. When you're analyzing something like cocaine, what
13 sort of tests would you run on it?

14 A. We usually run two different types, one being a
15 presumptive test and one being a confirmatory test.
16 Presumptive test is basically just a chemical test, and
17 we get some idea from that. A confirmatory test is where
18 we place the substance on an instrument of some sort to
19 confirm what the substance may be.

20 Q. Does that test have a name?

21 A. Yes. Confirmatory test is called Fourier
22 transform infrared spectrometer. We call it FTIR for
23 short. That is one test that we can do, one instrument.

24 Q. And before we go to the other test, how is that
25 test performed?

1 A. That test is performed, basically take our
2 substance, place it on top of the instrument, and it uses
3 light waves to excite the molecules in the substance, and
4 based on excitement of the molecules, it gives us a
5 certain wave pattern, and every substance has a certain
6 wave pattern.

7 Q. So based on that wave pattern, can you identify
8 what the substance is?

9 A. That's correct.

10 Q. Did you perform that test on the substances in the
11 bag in front of you?

12 A. No. I did not perform that test on any
13 substances.

14 Q. What test on those substances did you perform?

15 A. I performed an instrument that we call
16 gas-chromatography mass-spectrometry, GCMS. That is the
17 test I performed.

18 Q. Can you describe to the jury what is involved in
19 that.

20 A. GCMS, basically what it is, we extract a sample in
21 a solution, a liquid, place the sample on the instrument,
22 and what it does, in the gas-chromatograph portion of it,
23 it turns it into, a gas and there is different
24 characteristics that each molecule has. GC portion of it
25 is just a -- it's like 30 meters of a line it goes

1 through, and different characteristics of molecule will
2 slow it down or speed it up.

3 Then it moves into what we call the
4 mass-spectrometer. Basically, what it does is it takes a
5 substance that goes through it and it gets hit by a beam
6 of electrons, breaks it up, and based on the pattern that
7 it breaks up, we will be able to confirm what kind of
8 substance it is.

9 Q. And you performed that test on the substances in
10 front of you?

11 A. Yes, I have.

12 Q. And what was the results of that test?

13 A. There were several items --

14 Q. I guess before you get into that, when you analyze
15 something, do you prepare a report?

16 A. Yes, I do.

17 MR. KIDD: I beg the Court's indulgence.

18 BY MR. KIDD:

19 Q. Let me back up just one more time. How long have
20 you been employed with SLED?

21 A. I've been at SLED since January of 2003.

22 Q. January of 2003? And what kind of training does
23 SLED run you through?

24 A. At SLED, we basically just receive on-the-job
25 training with other agents where they put us through a

1 program which is anywhere from eight months to a year,
2 just analyzing, you know, test samples, 100 samples, a
3 different instrument that we use, and we also receive
4 seminar-based training from the DEA, Drug Enforcement
5 Agency.

6 Q. Have you ever testified in trial before?

7 A. Yes, I have.

8 Q. And how many times have you testified in trial?

9 A. Twenty times.

10 Q. Have you ever been qualified as an expert?

11 A. Yes, I have.

12 Q. In what field?

13 A. In the field of forensic chemistry and drug
14 chemistry.

15 MR. KIDD: Your Honor, at this time I would
16 like to move Mr. McCoy in as an expert witness in the
17 field of chemical analysis.

18 THE COURT: Do you wish to voir dire or
19 challenge?

20 MR. SMILEY: I do not, Your Honor.

21 THE COURT: All right. Folks, normally when
22 somebody testifies, we only want them here to tell us
23 what they saw, they heard, they touched, they felt, they
24 smelt, that sort of thing, but sometimes the law says
25 that when somebody, because of education or training or

1 experience in a field becomes an expert, we allow them to
2 testify not only to what they to saw and their
3 observations and that sort of thing, but we also allow
4 them to give us their opinion, because they are an
5 expert, and give us the basis for their opinion.

6 Now, this witness has been qualified as an
7 expert in the field of forensic chemistry, and so he will
8 be allowed to testify and give you an opinion as well as
9 his observation and give you the basis for his opinion.
10 You are not required to give an expert's opinion any
11 greater weight simply because he is an expert, and you
12 determine how much weight to give this witness's
13 testimony along with any other witnesses's testimony in
14 this trial, the weight that you feel like it deserves.

15 All right? You may condition.

16 MR. KIDD: Thank you, Your Honor.

17 BY MR. KIDD:

18 Q. Mr. McCoy, can you tell the jury how you came into
19 possession of that bag of substances there? Where did
20 you get it from?

21 A. I received this substance, which would normally
22 come in a best bag from log-in, from an individual down
23 in log-in who would give it to me.

24 Q. Do you know who that was?

25 A. Just give me one second. That individual,

1 forensic technician, Doris Yarbrough.

2 Q. Okay. So Doris Yarbrough brought you that, and
3 you referred to it as a best kit?

4 A. Yes, a best kit. I retrieved it from her.

5 Q. Can you explain to the jury what a best kit is.

6 A. Basically just best evidence submission kit. It
7 just refers to just an envelope. It's got blue siding on
8 the side and a place to seal the evidence. It's a tamper
9 evident bag. It's not going to prevent somebody from
10 going in there, but if somebody was to try to go back
11 into the bag, I always know if somebody tampered with it.

12 Q. So -- can I see the bag real quick. So the way
13 this looks now is not the way you received it?

14 A. That's correct.

15 Q. And why is that?

16 A. The reason, that being because I performed
17 analysis on the substance inside the best bag.

18 Q. So you had to open the bag in order to perform
19 your analysis?

20 A. That is correct.

21 Q. And could you tell the jury what the purpose of
22 the best kit is.

23 A. The purpose of the best kit, really, is for drug
24 evidence as well as it is a tamper evident bag. If
25 somebody was to try to gain access to the bag, just based

1 on the way it's sealed and some of the markings on it, we
2 would be able to know if somebody had cut into it.

3 Q. And when you received that best kit, had it been
4 tampered with?

5 A. No, it had not.

6 Q. Okay. How do you know that that best kit is
7 related to this case?

8 A. I mean, before -- prior to -- before it gets to
9 SLED, I wouldn't have any idea.

10 Q. But on the outside of the best kit, is there an
11 identifying number?

12 A. Yes, there is. On the best kit there are a couple
13 numbers. There is a bar code on it, and that number will
14 have what we call a B number, B with six digits behind
15 it. When the agency brings it in, they log it in,
16 perform their functions and log-in, and they're assigned
17 this case, the lab number, and according to what
18 information they bring in from the agency, it will give
19 us subject names and minimal information about the case.

20 Q. So when you prepare your report, you tie that
21 number to the best kit?

22 A. Yes.

23 Q. Can you tell the jury what kind of information you
24 put in your report.

25 A. Information I put in the report, basically the

1 officer that -- the requesting officer that wants the
2 report, the lab number on there. We put their case
3 number, if it's available. We also put the subject name
4 listed on the report that the officer had given to us, as
5 well we put items of the case on the report. And then we
6 also, you know, submit another form, what we call a form
7 A, which would have different type of tests that were
8 performed on the case.

9 Q. Can you open that bag in front of you? Do you
10 need anything to open it?

11 A. You got something for me to open it up with?

12 MR. SMILEY: Your Honor, may we approach?

13 THE COURT: Yes.

14 (Discussion held at sidebar.)

15 THE COURT: Move along.

16 BY MR. KIDD:

17 Q. You can go ahead and open the bag. The substances
18 that you have there in front of you, are those the
19 substances you tested?

20 A. Yes, it is.

21 Q. And how did those substances come packaged to you?

22 A. How do they come packaged to me?

23 Q. Uh-huh?

24 A. These particular substances anyway, inside the
25 best bag, as I told you, also these came inside -- you

1 know, usually they'll come in an evidence bag with
2 baggies that the original substance comes in. They also
3 had, like, a prescription bottle that had baggies inside
4 that as well with subsequent packaging too.

5 Q. And then so the bags that those drugs are in today
6 are not the bags that they came in to you?

7 A. That's correct.

8 Q. And did you repackage them?

9 A. Yes, I do. I repack all evidence on all my cases
10 I handle.

11 Q. Can you tell the jury what the results of your
12 tests on those substances were.

13 A. You just want me to run down the list here?

14 Q. That would be fine.

15 A. I have one item, 1.1.1, which is a rock substance.
16 Found it was cocaine base, crack.

17 Q. And just to back up a little bit, where was that
18 substance -- how was that substance packaged when it came
19 to you?

20 A. This was a previous item, which is just a
21 prescription bottle, wrapped in duct tape and contained
22 an empty plastic corner bag. It was just inside here
23 loose, and that is a rock substance inside this bottle,
24 loose.

25 Q. And how much was that?

1 A. It was cocaine base crack, and it weighed 6.67
2 grams.

3 Q. What was the next substance you tested?

4 A. The next substance, which also was contained
5 inside this prescription bottle, and that was contained
6 inside the plastic corner bag, which is here, and that
7 was a rock substance as well, and that is cocaine base,
8 crack, and it weighed 1.35 grams.

9 Q. And did you say where that bag was -- how was it
10 packaged when it came?

11 A. It was packaged inside of a plastic corner bag,
12 which was inside of this prescription bottle.

13 Q. Okay. And what about the next item?

14 A. Next item, which is 1.1.2.2, that was packaged
15 inside of a plastic corner bag which was also package
16 inside a plastic corner bag of the previous item. It was
17 rock substance and it was cocaine based crack. It
18 weighed 0.21 grams.

19 Q. Could you tell the jury about the next item.

20 A. Next item, which is 1.1.3, it also was contained
21 inside the prescription bottle. It was a plastic corner
22 bag containing a rock substance -- correction, plastic
23 corner bag containing a powder substance, that was found
24 to be cocaine found 0.08 grams.

25 Q. And the next item?

1 A. The next item which I have listed as 1.2, which is
2 this evidence bag, it contained a plastic corner bag as
3 well, and inside that plastic corner bag, item 1.2.1, was
4 a plastic corner bag containing a compressed powder
5 substance, and that substance found to be cocaine powder,
6 16.01 grams.

7 Q. And could you tell the jury, was that inside the
8 bottle?

9 A. No. That was inside a plastic corner bag, which
10 that was inside another plastic corner bag, inside the
11 evidence bag.

12 Q. Could you tell the jury what a corner bag is.

13 A. Basically, what we describe a plastic corner bag
14 is if you were to take a ziplock bag or sandwich bag and
15 you cut the corner off of it, this side of the corner
16 bag. It's tied up. That's what we call a corner bag.
17 They use a corner of a bigger bag.

18 Q. And could you tell the jury about the last item?

19 A. Last item, which is 1.2.1, it was inside of a
20 plastic corner bag, which is also --

21 Q. I believe you already did 1.2.1.

22 A. I'm sorry. Item 1.2.2, that was also inside of a
23 plastic corner bag, inside an evidence bag. It is a
24 plastic corner bag containing compressed powder substance
25 and there was cocaine found, weighed to be 4.37 grams.

1 Q. So --

2 THE COURT: How much did you say?

3 THE WITNESS: 4.37 grams.

4 BY MR. KIDD:

5 Q. So if you wanted to do some rough math, if you
6 added up the 1.2.1 and the 1.2.2 items, what is that
7 total weight on the cocaine found right there?

8 A. You said 1.2.1 and 1.2.2?

9 Q. Those last two items, yes.

10 A. Roughly, looks like 20.38 grams.

11 Q. And can you tell the jury a little bit about the
12 difference between powder cocaine and crack cocaine?

13 A. The difference between powder and crack cocaine,
14 it is a just a chemical makeup of the substance itself.
15 You know, powder cocaine is more of an acidic base -- not
16 acidic base, but same type substance, where cocaine,
17 crack, is more of a basic substance. It's just a
18 compound that is slightly different on how it's made.
19 The main molecule itself is virtually identical. It's
20 just cocaine powder, it's got an acid unit attached to
21 it.

22 Q. I just wanted to be clear about your involvement
23 with these drugs, particularly. You testified earlier
24 that you got these drugs from Doris Yarbrough; is that
25 correct?

1 A. That's correct.

2 Q. You tested them; is that correct?

3 A. I'm sorry?

4 Q. Then you tested them?

5 A. That's correct.

6 Q. And then you prepared this report here?

7 A. That's correct.

8 Q. Which these findings you have just gone over with
9 the jury, and then what did you do with them?

10 A. I repacked all the evidence in all the individual
11 ziplock bags, separated them out, placed all the evidence
12 in the best bag inside the K-pack pouch, seal it up, put
13 the date and my initials, the date it was sealed, and we
14 normally put that in our vault until at a later date I
15 return them down to login downstairs and give it to the
16 technician down there, and on a later date an agency will
17 come by and pick up the evidence.

18 MR. KIDD: Court's indulgence. One second.

19 BY MR. KIDD:

20 Q. Can we explain to the jury a little bit about how
21 the different items are coded, like 1, 1.1 -- that first
22 number, what does that symbolize, that first number one?

23 A. Item 1.1 or its submission number one?

24 Q. Submission number one.

25 A. Submission number one is basically just a

1 submission that was given to SLED by the agency, and it
2 just contains basic information, when they brought it to
3 SLED, the best kit number, and the officer or deputy.

4 That number is just basically submission, so if
5 there was two or three different submissions on this
6 case, this particular case, the same lab number, you'll
7 have submission one, then you'll have another submission
8 they brought in later. That would be submission number
9 to. That is the significance of that number.

10 Q. So all the drugs you tested under this lab number
11 from this best kit came -- submitted as one package?

12 A. That's correct.

13 Q. So that all submission number one, which signifies
14 that first number one in each of those items that you
15 wrote down?

16 A. That's correct.

17 Q. Now, could you tell the jury what the second --
18 when you said 1.1, what is that second one?

19 A. That 1.1, usually we get the biggest container
20 that everything is in and you break it down from there.
21 That 1.1, which is find to be just a prescription bottle,
22 and all the numbers that are behind that, going from
23 1.1.1 all the way down to 1.1.3, all of those evidence
24 were inside this prescription bottle.

25 Q. And then when you get to the 1.2s, what are

1 those -- what does that symbolize?

2 A. Everything that was part of 1.2 was all inside the
3 evidence bag, and this evidence bag contained items 1.2.1
4 as well as 1.2.2.

5 Q. Okay. And then you testified you repackaged them,
6 and what did you call that bag you sealed them in?

7 A. We call it K-pack pouch. It's a resealable bag.

8 Q. And is it tamper proof?

9 A. No, it's not.

10 Q. Okay. But at that point, you had already done
11 your report and made your findings about what was
12 submitted to you in that best kit?

13 A. That's correct.

14 Q. And so if the condition of drugs had changed after
15 that, it wouldn't matter because your findings in your
16 report have already been done; is that correct?

17 A. That's correct?

18 Q. Okay. Do you sign your report?

19 A. Yes, I do.

20 Q. Does anyone review it? Do you have any order of,
21 like, checks and balances?

22 A. Yes. We usually -- we have a lab partner inside
23 the lab that we take all our cases to before it can be
24 disbursed out to the agency, just basically review the
25 case, look over the data, make sure there aren't any

1 grammatical errors and just go through the case from
2 beginning to end.

3 Q. Double-checking your work or anything like that?

4 A. That's correct.

5 Q. Do you know anyone involved in this case?

6 A. No, I don't.

7 Q. Do you care what sort of drugs -- do you care
8 whether there were drugs or no drugs found?

9 A. No, I don't.

10 MR. KIDD: May I approach the court reporter?

11 THE COURT: Yes.

12 (State's Exhibit Nos. 2 and 3 were marked for
13 identification.)

14 MR. KIDD: Just for the sake of clarity, the
15 reporter just informed me the best kit, which I handed to
16 my witness, was marked as State's Exhibit 2 for
17 identification. I called it 1, and just for clarity,
18 that is State's Exhibit No. 2. I would like to hand you
19 what has been marked for identification purposes as
20 State's Exhibit No. 3. Do you recognize that?

21 THE WITNESS: Yes, I do.

22 BY MR. KIDD:

23 Q. Could you tell the jury what that is.

24 A. This is a copy of the report that we dispatch at
25 the agency.

1 Q. And is that the same report that we were talking
2 about earlier?

3 A. Yes, it is.

4 Q. And this is the report that you prepared?

5 A. Yes, it is.

6 MR. KIDD: No more questions.

7 THE COURT: Cross?

8 MR. SMILEY: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. SMILEY:

11 Q. Mr. McCoy, if I understand correctly, you're an
12 analyst. You sit in your lab, and you take a set of
13 items, in this case, chemical analysis, to try to
14 determine what it is, weigh it, put it back? That is
15 basically your job over and over and over?

16 A. That's correct.

17 Q. Okay. So when you're given an item such as this
18 pill bottle, you don't know where it came from or whose
19 it was. Your job isn't to determine all that, but to
20 determine if there is a substance inside, what it is.

21 A. That is correct.

22 Q. All right. And the collection of this evidence,
23 like the bags and that, you don't know how it was
24 collected. You just know it was brought to you. You
25 took what was brought to you and tested it.

1 A. That's correct.

2 Q. And your testing confirmed that you had two
3 different substances, correct?

4 A. That is correct.

5 Q. That you had a quantity of crack cocaine, and you
6 had a quantity of cocaine?

7 A. That is correct.

8 Q. And the crack cocaine was contained inside the
9 pill bottle and the cocaine was contained inside of an
10 evidence pouch?

11 A. Yes. All the crack that was found was contained
12 inside the pill bottle. The majority of the cocaine
13 powder was found inside the evidence bag. There was one
14 bag inside the pill bottle that also contained cocaine.

15 Q. So there was some cocaine inside the pill bottle?
16 It wasn't completely separated?

17 A. That's correct.

18 Q. So I believe it was Ms. Yarbrough, she actually
19 gets it out of, for lack of a better word, inventory and
20 brings it to you, or brings it to the lab, you test it,
21 and then it's taken back down to that lab?

22 A. The procedure is I will go down to our log-in room
23 and hand the evidence technician a list of drugs, and
24 they'll go out and go inside their big vault that they
25 have that they only have access to and pull out the

1 evidence I requested.

2 She gives me the evidence, transfers it to me, and
3 then I'll go upstairs to our lab, place it in our vault,
4 analyze it, and when I'm done analyzing the evidence and
5 the report has been sent out, I'll take the evidence,
6 take it back downstairs to the evidence technicians, and
7 they store it and it's out of my hands after that.

8 Q. So you got this evidence from Ms. Doris Yarbrough;
9 is that correct?

10 A. That's correct.

11 Q. And can you tell us who you gave the evidence back
12 to.

13 A. Who I have the evidence back to? I gave the
14 evidence back to a Patricia Cooks.

15 Q. Okay. Now, you did your test on October the 1st,
16 correct?

17 A. My testing -- I analyzed this evidence on October
18 the 28th.

19 Q. Okay. You were given the evidence from that vault
20 on October 1st?

21 A. Correct.

22 Q. So between the 1st and 28th of October, you got it
23 up in another part of your lab?

24 A. Yes. Within our lab, we have a secured vault
25 inside the drug analysis lab which only the drug chemists

1 in that lab have access to. It's stored in there until I
2 analyze it at a later date.

3 Q. After you store it, you put it back in there?

4 A. That's correct. After I analyze the evidence,
5 I'll put it back in there, heat sealed up, back in our
6 vault until the report is sent out, and then I send it
7 down.

8 Q. Okay. So you got the evidence October 1st, did
9 your thing on the 28th of October, put it back, and then
10 you actually took it back down, like, in December, right,
11 December the 16th?

12 A. That's correct.

13 Q. Okay. And that is your total connection to this
14 case, right?

15 A. That's correct.

16 MR. SMILEY: Nothing further.

17 MR. KIDD: Nothing further, Your Honor.

18 THE COURT: All right. You can step down.

19 THE WITNESS: You want me to put the evidence
20 bags back in the bag?

21 THE COURT: Yes, put it back in the bag.
22 Call your next witness.

23 MR. KIDD: State calls Nikki Perry.

24 NICOLE RENEE PERRY,
25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. KIDD:

4 Q. Good afternoon, Ms. Perry. I'm going to try to be
5 as brief as I can and get us in and out of here. Can you
6 tell the jury where you're employed.

7 A. I'm employed with the South Carolina Law
8 Enforcement Division, commonly known as SLED.

9 Q. What are your duties in SLED?

10 A. I'm a forensic technician in the evidence control
11 division. I log in evidence brought in by agencies
12 across the state of South Carolina.

13 Q. To your best recollection, did you ever come in
14 contact with a piece of evidence which is labelled
15 L08-09461, a lab number?

16 A. I did.

17 Q. And can you tell the jury from the beginning when
18 that evidence first came into your hand to the end, what
19 was your involvement with that evidence.

20 A. On June 18, 2008, Deputy James Milz of the
21 Charleston County sheriff's office brought in a sealed
22 best kit. He would bring it into the evidence control
23 department. I would take -- they require a SLED forensic
24 services request form. He would hand me that, and it is
25 a sealed tamper evident pouch. It's sealed when it's

1 brought into me. It's located inside a best kit
2 envelope.

3 I take the paperwork, and I will log-in all of the
4 information regarding the case into our system. At that
5 time, our computer will generate a unique lab number for
6 that case. I will place that bar code on to the best kit
7 evidence envelope, and at that time I will place it our
8 drug evidence intake storage, and that is located in our
9 evidence room.

10 Q. And what has been marked for identification
11 purposes, State's Exhibit No. 3, which I believe is in
12 front of you right here, can you tie that best kit that
13 is in that bag to the lab number that we just talked
14 about a minute ago?

15 A. Yes, sir. It has our label placed on the front,
16 L08-09461, item number one.

17 Q. You just testified a minute ago on June 18, Deputy
18 James Milz dropped that off to you? Is that like a
19 hand-to-hand transfer?

20 A. It is.

21 Q. Hand-to-hand transfer. So he puts the drugs in
22 your hands, and what do you do with it?

23 A. He hands me the best kit envelope with the sealed
24 tamper evident package inside.

25 Q. Where do you store it?

1 A. After it's logged in, I'll store it in our sealed
2 evidence room, in the evidence control department.

3 Q. Does anyone have access to that?

4 A. Just the forensic technicians in that department.

5 Q. And you say it came to you as a best kit. The
6 jury has been told a little bit about what a best kit
7 was. Was there any sign on that best kit that it had
8 been tampered with or altered in any way?

9 A. It was sealed when it was brought in to me. There
10 was no sign of tampering.

11 Q. You didn't open the best kit, did you?

12 A. No, sir.

13 Q. And after you dropped that evidence into your --
14 what did you call it, a locker?

15 A. It's our drug intake storage. It's an area in our
16 evidence room where we place drugs that wait to be --
17 that is where they sit before the analysts come and pick
18 them up.

19 Q. And when you put them in there, did you have any
20 other involvement with that amount of drugs sitting in
21 front of you, or anything having to do with this lab
22 number?

23 A. Not until after analysis. On January 7, I
24 returned it to Brent Roy with the Charleston County
25 sheriff's office.

1 Q. So did they come up there and pick it up?

2 A. Yes.

3 Q. But that was after the analysis had been done?

4 A. Right.

5 MR. KIDD: No further questions, Your Honor.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MR. SMILEY:

9 Q. Yes, Your Honor. How are you doing? I'm Jim
10 Smiley. So this bag, this outer bag, is the one you
11 created?

12 A. No. All I -- he brings --

13 Q. Let me help you here. So this outer bag was
14 already -- this already came to you sealed?

15 A. No.

16 Q. No. Help me out here.

17 A. This bag right here is --

18 Q. This one?

19 A. The tamper evident pouch that is brought in the
20 best kit evidence envelope, and that is sealed and that
21 is what is brought into me.

22 Q. So there is an envelope that is not here. Is that
23 what you're telling me?

24 A. There is an envelope that is placed inside of.

25 Q. That's not here. So that envelope you can't see

1 through.

2 A. No. You can't see through it.

3 Q. So he brought you an envelope and gave it to you.

4 Based on that, you then made bar codes for it?

5 A. Right. There is paperwork inside of that envelope
6 that is not sealed in the bag. I take the paperwork and
7 we work on a set to detain basis. I type in the
8 information off of the sheet, and it produces a lab
9 number.

10 Q. So before it arrived to you, you don't know where
11 it had been?

12 A. No, sir.

13 Q. You're just there to collect what is brought to
14 you?

15 A. Right.

16 Q. You don't even know really what is contained, just
17 what it says it contains?

18 A. Right.

19 Q. And so when you're looking at these drugs laying
20 out here, you don't know whether they were in that bag or
21 not. You just know you got a bag, an envelope, that had
22 a bag in it and some paperwork?

23 A. Right. It is sealed when it's brought in to me.
24 I don't know what is inside the bag.

25 Q. And you said that best kits, you can look at them

1 and see if they've been tampered with?

2 A. The analyst is the person who checks the seal.

3 Q. You don't actually do that?

4 A. I make sure it's sealed, but I don't check for
5 tampering.

6 Q. Okay. So you got it, filled out the paperwork,
7 and put it in the control, and then that was your only
8 involvement until it went back out.

9 A. Right.

10 Q. And the opposite takes place, basically; you take
11 it out, give it to them, they sign for it, and you're
12 gone, right?

13 A. Right.

14 Q. So as far as what is in it, how it got there, you
15 don't really know. You just take what you get.

16 A. Right.

17 Q. Okay.

18 MR. SMILEY: That's all I have.

19 THE COURT: Redirect?

20 MR. KIDD: No, Your Honor.

21 THE COURT: You can step down. Thank you.

22 Next witness?

23 MR. KIDD: State calls Doris Yarbrough.

24 DORIS YARBROUGH,

25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. KIDD:

4 Q. Good afternoon, Ms. Yarbrough. How are you today?

5 A. Fine.

6 Q. I'll be real brief. Can you tell the jury who you
7 work for.

8 A. I work for South Carolina Law Enforcement
9 Division, also known as SLED.

10 Q. Can you tell the jury what your duties are with
11 SLED?

12 A. I'm a forensic technician in the log-in
13 department.

14 Q. Just to cut right to the chase, did you ever have
15 a chance to become involved with a piece of evidence
16 labeled with lab number L08-09461? Did you have a chance
17 to become involved with evidence with that lab number?

18 A. I did.

19 Q. And can you tell the jury what the extent of your
20 involvement was with that piece of evidence.

21 A. I obtained the evidence from our drug vault and
22 gave it to the drug chemist.

23 Q. Do you know what day that was?

24 A. It was on October the 1st of 2008.

25 Q. So where did you go to get that piece of evidence?

1 A. In our evidence room, in our locked drug vault.

2 Q. And that is a secure area?

3 A. It is.

4 Q. Do you recognize that best kit that's laid out on
5 the podium in front of you?

6 A. I recognize the lab number.

7 Q. You recognize the lab number. Is that lab number
8 on that best kit?

9 A. It is.

10 Q. And did y'all have a -- did y'all generate a sheet
11 that shows you how a piece of evidence, in whose hands
12 they go through internally in SLED?

13 A. We do.

14 Q. And that is one of the reasons you're able to tell
15 us how -- what you did with this piece of evidence; is
16 that correct?

17 A. Correct.

18 Q. You're saying on October 1st, you went and got
19 that evidence out of your storage room?

20 A. Correct.

21 Q. And what did you do with it?

22 A. I took it into my custody and then transferred it
23 to the drug chemist.

24 Q. And who was that drug chemist?

25 A. Nathan McCoy.

1 Q. And was that the extent of your involvement?

2 A. Yes, sir.

3 Q. Did you do anything else with the drugs?

4 A. No, sir.

5 Q. Did you open the bag?

6 A. No, sir.

7 Q. Did the best kit appeared to be tampered with at
8 the time you received it?

9 A. No, sir.

10 Q. Did the best kit appear to be tampered with?

11 A. I just looked at it and made sure the number was
12 correct that I was getting.

13 Q. So there was no obvious signs of it being tampered
14 with or opened; you checked it to match up the numbers
15 and took it to Mr. McCoy?

16 A. Well, I took it to my desk and he got it there.

17 Q. And he came and picked it up there?

18 A. Correct.

19 Q. So does he come down to you?

20 A. He does.

21 Q. And then gives you a sheet? Is that how it works?

22 A. Yes.

23 Q. You go get it, bring it down to your desk?

24 A. Yes.

25 MR. KIDD: No further questions.

1 THE COURT: Mr. Smiley?

2 CROSS-EXAMINATION

3 BY MR. SMILEY:

4 Q. Ms. Yarbrough, Jim Smiley. I've just got a couple
5 questions. So you work in the intake?

6 A. Correct.

7 Q. So you've got all kinds of evidence logged in
8 under your control, basically, right?

9 A. Correct.

10 Q. And it's not just drugs, it's other stuff too,
11 right?

12 A. Correct.

13 Q. And you've got lots of different scientists and
14 experts working for you at SLED, right?

15 A. Correct.

16 Q. And they do different kinds of tests, but they
17 actually come get the evidence from you?

18 A. Correct.

19 Q. In this, case there was a request made for drug
20 analysis, but there could be other requests, correct?

21 A. Correct.

22 Q. Y'all have fingerprints for instance, people that
23 do fingerprint analysis at SLED?

24 A. Correct.

25 Q. So if there had been a request to get fingerprints

1 off this bottle, then the fingerprint guy would have come
2 down and made a request for the evidence, and it would
3 have been checked out to him, correct?

4 A. Correct.

5 Q. And y'all do DNA also, right?

6 A. Correct.

7 Q. And if the DNA person wanted to see whose DNA was
8 on any of that evidence, if they had been requested to,
9 they would have come to you and gotten it?

10 A. Correct.

11 Q. But in this case, only one person was needed, and
12 that was because only a request was made for drug
13 analysis?

14 A. Correct.

15 Q. And that was Mr. McCoy, correct?

16 A. Correct.

17 MR. SMILEY: Thank you.

18 MR. KIDD: No further questions.

19 THE COURT: Okay. You can step down. Do you
20 have any other witnesses for this afternoon, from SLED?

21 MR. KIDD: Not from SLED, no, Your Honor.

22 THE COURT: We'll break for today then, and I
23 want to send you him this evening now with a couple of
24 instructions. You've got picked for a jury trial, and so
25 everybody is going to want to know did you get picked,

1 and you are going to say yes, I did get picked, but the
2 judge told me I cannot talk about this case. All right?

3 It's real important. Why? Everything you
4 need to know about this case we're going to tell you
5 about in this courtroom, and you'll hear it primarily
6 from the witness stand, from witnesses.

7 It is completely improper and unfair to both
8 sides for you to make your decision based on what other
9 people tell you, what they think about the case, and you
10 get impressions formed by talking with other people and
11 things like that.

12 And so you are duty bound under your oath to
13 not talk about this case with other people, and I know
14 the temptation is there, but just resist it. There will
15 be plenty of time to talk about this case with other
16 people after it is over with, because if you do that and
17 we find out, then we'll have to, at a minimum, do this
18 all over again, and then I got to deal with the fact you
19 violated a Court order and what to do with you on that.

20 But, most importantly, it's unfair to these
21 folks, both sides, to have you just base your discussions
22 on other things outside the courtroom. Sometimes now, in
23 this day and age with technology, people get invested in
24 this, and they want to go on the Internet and do research
25 and see what they can find out and do their own

1 independent analysis. Don't that. Just whatever you
2 need to know about this case we will tell you in this
3 courtroom, and afterwards you can do all the stuff you
4 want. You can go be CSI and all that other stuff, if you
5 want to.

6 Trust me: The reason I'm telling you this is
7 because we've learned the hard way that you got to tell
8 people this. So, please, just go home this evening.
9 Don't discuss the case with anyone, including each other,
10 come back tomorrow morning at 9:30. Be in the jury room,
11 and we'll get started hopefully right on time tomorrow
12 with that.

13 Thank you so much for your patience today.
14 We'll see you tomorrow.

15 Okay. Anything before we leave? Thank you,
16 we'll see y'all in the morning.

17 (Recess taken.)

18 (September 16, 2009.)

19 (In open court, jury not present.)

20 MR. SMILEY: Yes, sir, just one thing. Your
21 Honor, yesterday I made a request for some discovery that
22 we didn't know about, the state didn't know about, and I
23 was provided very timely the report that Inspector Roger
24 Antonio with the Charleston County sheriff's office
25 internal affairs is their -- a checklist of everything

1 that is included.

2 One of the things that says is included is
3 statements of the victim, witnesses, and deputies. That
4 is not included in the packet, and it appears they either
5 don't exist or they were pulled out. I've got a call in
6 to Investigator Antonio. I have not heard back from him
7 at this point. Just wanted to make the Court aware, he
8 was not on my witness list, but it's possible I would be
9 wanting to call him as a witness after I speak with him.

10 THE COURT: Okay. All right. Other than
11 that, are you ready?

12 MR. SMILEY: Just put it on the record, and
13 thank you very much. Yes, the defense is ready to
14 proceed, Your Honor.

15 THE COURT: Are you ready, Mr. Durant?

16 MR. DURANT: Yes, sir, Your Honor. If I
17 could clarify, just with the officer, though, I mean, I
18 know it says it's statements. It may or may not be
19 written statement. I'll look into it for you.

20 MR. SMILEY: I don't know. He wasn't the
21 officer that did it. I have a call in to Inspector
22 Antonio. I'm just trying to make the Court aware as to
23 what I'm doing behind the scenes so it doesn't come up
24 later on, why didn't you do this, just to let you know
25 I'm on top of it, Your Honor.

1 (In open court, jury present.)

2 THE COURT: All right, folks. We're going to
3 resume with the state calling the next witness so
4 Mr. Solicitor, if you're ready, call your next witness.

5 MR. KIDD: Thank you, Your Honor. State
6 calls Investigator Kjellman.

7 KATHY KJELLMAN,

8 having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. KIDD:

12 Q. Can you tell the jury who it is you work for?

13 A. Charleston County sheriff's office.

14 Q. What are your duties with the sheriff's office?

15 A. I'm an investigator with the crime scene lab.

16 Q. What does that entail?

17 A. I respond to various crime scenes, process them,
18 process the scene for evidence and am responsible for
19 picking up the daily evidence that comes in.

20 Q. Okay. I'm going to show you what has been marked
21 for identification purposes only as State's Exhibit
22 No. 2. Do you recognize the best kit inside the bag?

23 A. Yes, I do.

24 Q. And how do you recognize that?

25 A. It's got my initials on it, and I recognize it

1 from the entry I made on it the day it came in.

2 Q. Can you explain to the jury why you initial bags
3 like that? What purpose does that serve?

4 A. When it comes in, it comes in sealed, and I mark
5 my initials on the top of the bag to be sure that it is
6 sealed when it comes to me.

7 Q. And the purpose of -- what is the purpose of a
8 best kit?

9 A. It's a best evidence sample kit for turning in
10 drugs. It has got to be sent to SLED for analysis.

11 Q. So what do your initials indicate to that?

12 A. That the bag was sealed when I picked it up.

13 Q. So it wasn't tampered with?

14 A. No.

15 Q. And do you write a date on there too?

16 A. Yes.

17 Q. And what was that date?

18 A. 6/17 of 2008.

19 Q. So June 17th of 2008. How did you come into
20 contact with that bag?

21 A. On a daily basis we go up to the main building at
22 headquarters and collect the evidence out of lockers that
23 came in overnight.

24 Q. So do you know how it gets into those lockers?

25 A. The deputies from the road turn it in.

1 Q. So, hypothetically speaking, a deputy sees the
2 drugs on the street, he comes and puts in a locker, and
3 how do you know to go pick up?

4 A. It's a normal routine we do every morning.

5 Q. Something you do every morning. You go and pick
6 it up out of these secure lockers, and what do you do
7 with it?

8 A. I pick it up, take it over to my office, and it
9 gets validated back to my office and given a storage
10 location.

11 Q. What do you mean, validated?

12 A. The deputy will enter it into the computer, and it
13 would be entered at that point as pending evidence. When
14 it comes to me, I'll validate it saying, yes, it is in my
15 custody, and it's given a storage location after that.

16 Q. Is there a way from the identifying numbers on
17 marks on the bag that you know what officer put it in the
18 locker where you picked it up from?

19 A. He prints and signs his name on the bag.

20 Q. Can you tell the jury whose name is printed on
21 that bag?

22 A. It's printed R.P. Blakeley.

23 Q. And so when you take it back and you log it in the
24 system, where do you store the evidence from this?

25 A. There's a secure room. We call it the vault. We

1 store it in there. There is various locations for drugs.

2 Q. Does anybody have access to that?

3 A. Anybody that works back there. There are six of
4 us.

5 Q. Only six people have access to where those drugs
6 are stored?

7 A. Yes.

8 Q. And all those people were employed with the
9 sheriff's office?

10 A. Yes.

11 Q. Were you able to -- you said you log it into a
12 computer system?

13 A. Yes.

14 Q. What is the purpose of that computer system?

15 A. Tracking evidence.

16 Q. So the computer system allows you to see where
17 that evidence -- like, if someone were to do something
18 with that evidence, would they have to mark it in the
19 computer system?

20 A. It would be logged in the computer system if it
21 ever left the building or if we've done anything to it,
22 process it, bring it in for any reason.

23 Q. And you have a lot of experience using that
24 computer system?

25 A. Yes.

1 Q. Were you able to tell where that evidence went,
2 based on that computer system?

3 A. Yes.

4 Q. Can you tell the jury what happened to that
5 evidence next.

6 A. The next entry we have is on -- it looks like June
7 18. It's small writing. I'm sorry. It looks like June
8 18, and Investigator Milz --

9 MR. SMILEY: Objection.

10 THE COURT: What is your objection?

11 MR. SMILEY: Hearsay.

12 MR. KIDD: May we approach, Your Honor?

13 THE COURT: No. Overruled. Go ahead.

14 THE WITNESS: It looks like June 18
15 Investigator Milz had checked it out to take it to SLED
16 that day.

17 MR. KIDD: Court's indulgence.

18 BY MR. KIDD:

19 Q. And while that evidence was in your possession,
20 you never opened the bag?

21 A. No.

22 Q. To the best of your knowledge, no one ever
23 tampered with it or changed the quality of that evidence?

24 A. No.

25 Q. Compromised the quality of that evidence?

1 A. No, sir.

2 MR. KIDD: No further questions, Your Honor.

3 THE COURT: Cross.

4 CROSS-EXAMINATION

5 BY MR. SMILEY:

6 Q. You just work in evidence, or do you go out and
7 collect evidence?

8 A. I go out and collect evidence at crime scenes.

9 Q. Were you asked to collect evidence at this crime
10 scene?

11 A. No.

12 Q. So when you go out to a scene to collect evidence,
13 you can take pictures, correct?

14 A. Yes.

15 Q. And mark where the evidence was at the crime scene
16 before it's collected?

17 A. Yes.

18 Q. Do you dust for fingerprints?

19 A. Yes.

20 Q. So you've got a dual role. You've got one if you
21 were called to a scene, and then you also worked in the
22 evidence --

23 A. The evidence lab, yes.

24 Q. Thanks, the evidence lab. But you're not the only
25 crime scene tech?

1 A. No, sir.

2 Q. There's other ones too?

3 A. There's other ones.

4 Q. And you don't just take into custody just drugs,
5 but you take into evidence all kinds of stuff, right?

6 A. Yes.

7 Q. For instance, if there was clothes collected in
8 this case, it would come through for evidence, it would
9 come to you at some point, or the lab, at some point,
10 correct?

11 A. Yes, sir.

12 Q. If you were able to raise some fingerprints at the
13 scene, they're collected as evidence, correct?

14 A. Yes.

15 Q. And they're kept for safekeeping until someone
16 else can examine them; is that fair to say?

17 A. Yes.

18 Q. And as a crime scene tech, one of the things that
19 you can do is measure distances about where evidence is
20 found in relation to other parts of a crime scene,
21 correct?

22 A. Yes.

23 Q. Now, you said that you, as part of your normal
24 routine, go to the drop box and collected whatever had
25 been turned in the night before, right?

1 A. Yes.

2 Q. Before it got there and put into the bag that you
3 collected, you don't know what happened, where it came
4 from, or what happened, other than what is put on the
5 bag, right?

6 A. No.

7 Q. Is it typical to want more than one kind of
8 evidence into one best kit?

9 A. Yes.

10 Q. So it doesn't matter if you get mixed up or not,
11 you just collect the bag?

12 A. Right.

13 Q. All right. Beg the Court's indulgence one moment.
14 Now, when you collect the evidence from that drop box and
15 take it to -- log it into your system --

16 A. Yes.

17 Q. -- do you fill out any paperwork?

18 A. No.

19 Q. You don't do a form B?

20 A. Well, for the best kit, I do, yes.

21 Q. You do a form B, so whoever in your department
22 collects that evidence fills out a form B saying they
23 collected it from the lock box or that deputy, correct?

24 A. Yes.

25 Q. Now, also, one of the things that is done is that

1 form B, it's notarized, correct?

2 A. Yes.

3 Q. Is it typically yourself, if you collected it,
4 that would notarize it?

5 A. If I picked it up from the box and entered it, it
6 would probably be me that notarized it, yes.

7 Q. And that is to affirm that what the deputy said
8 was true, correct?

9 A. Yes.

10 Q. Even though you didn't witness him put it there,
11 and it's the next day, you still swear to the fact that
12 that is what he did, correct?

13 A. Yes.

14 Q. Okay. And, in this case, you collected that
15 evidence from the drop box, right?

16 A. Yes.

17 MR. SMILEY: Could I get this marked as
18 Defendant's Exhibit 1.

19 (Form B marked for identification as
20 Defendant's Exhibit No. 1.)

21 BY MR. SMILEY:

22 Q. I'm going to show you what has been marked as
23 Defendant's Exhibit 1 and see if you recognize it. Do
24 you recognize it?

25 A. I recognize the form B, yeah.

1 Q. Okay. Do you see anything there that says it goes
2 to this case? How about that?

3 A. It's got the same serial number that the best kit
4 has.

5 Q. Okay. So it appears that form B goes with this
6 case, correct?

7 A. Yes.

8 Q. Okay. And that is the formula your department
9 fills out when they collect the evidence from the drop
10 box, correct?

11 A. This particular form is the one Investigator Milz
12 filled out when it went to SLED.

13 Q. Could I see that for a moment? I thought you
14 filled one out when you collect it from the drop box.

15 A. There is a chain of custody form that comes with
16 the best kit.

17 Q. Okay. Well, let me ask you this: Does this form
18 not tell you that Detective Milz collected it from Deputy
19 Blakeley? Doesn't it say that? You're familiar with
20 that form?

21 A. Yes.

22 Q. And on that form, it says that Deputy Blakeley
23 made a lawful arrest June the 16th, right?

24 A. Yes.

25 Q. And that Investigator Milz collected that from

1 Deputy Blakeley, doesn't it say that, and deposited it in
2 your evidence control?

3 A. It says Blakeley delivered it to the evidence
4 locker in Charleston County, yes.

5 Q. You just testified you went and got it out of a
6 lock box and took it over there, correct? So it wasn't
7 done twice, was it?

8 A. No.

9 Q. Okay. So either you're mistaken or Investigator
10 Milz did it, correct?

11 A. Anybody can have access to those lockers.

12 Q. Okay. So you're saying that -- my question is,
13 just so I can figure it out here, did you -- you
14 collected the evidence in this case.

15 A. Yes, from a locker.

16 Q. Did you fill out a form B?

17 A. No.

18 Q. Okay. But deputy -- or Investigator Milz filled
19 out a form B, correct?

20 A. Yes.

21 Q. And that is his signature on the bottom, right?

22 A. Yes.

23 Q. And that is where he swore under oath there at the
24 bottom, being a notary, that he collected it from Deputy
25 Blakeley, correct? Isn't that what it says?

1 A. It was collected from the evidence locker.

2 Q. Okay. May I hold that again, please. And that is
3 the right control number at the top, right?

4 A. Yes.

5 Q. This is to certify Blakeley, Ryan P., is employed
6 by the Charleston County sheriff's office. It says that,
7 right? And that on June the 16th that he seized, it
8 says, I seized from Arthur Rivers pursuant to a lawful
9 arrest on Ardwick Drive the following substances, and it
10 talks about a rock-like substance and a powder substance,
11 right?

12 A. Yes.

13 Q. And then it says on June the 16th, he made
14 delivery of those substances to the evidence locker,
15 correct?

16 A. Yes.

17 Q. All right. And then evidence locker of the
18 sheriff's office, in the same condition as when I
19 received it, right?

20 A. Yes.

21 Q. And Investigator Milz appeared to sign this and
22 notarized it, correct?

23 A. Yes.

24 Q. Okay.

25 MR. SMILEY: At this point I would like to

1 enter Defendant's 1 into evidence.

2 MR. DURANT: May we approach, Your Honor?

3 THE COURT: Yes.

4 (Discussion held at sidebar.)

5 MR. SMILEY: For the record --

6 THE COURT: It's admitted.

7 MR. SMILEY: Thank you very much, Your Honor.

8 (Defendant's Exhibit No. 1 was admitted into
9 evidence.)

10 BY MR. SMILEY:

11 Q. Did you fill out any forms in relation to this
12 case?

13 A. I don't believe I did. I would have to look at it
14 and make sure and see if my signature is on it.

15 Q. Standard procedure would be when you collect
16 evidence and take it from one point to another that you
17 would document that. You did that, correct?

18 A. Yes.

19 Q. Did you document it in this case?

20 A. I did not take it any place.

21 Q. Did you collect the evidence?

22 A. From the evidence locker, correct.

23 Q. And you moved it to another place?

24 A. Yes.

25 MR. SMILEY: Nothing further.

1 MR. KIDD: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. KIDD:

4 Q. I'm going to move back one second, real quick. Is
5 a crime scene often called out to drug scenes?

6 A. No.

7 Q. Do you fingerprint -- can you tell the jury,
8 what's a good surface that is conducive to lifting
9 fingerprints?

10 A. Anything that is smooth and clean.

11 Q. Can you tell the jury what is a surface that would
12 not be conducive to lifting fingerprints?

13 A. Anything that has any kind of texture to it.

14 Q. For example, would a plastic bag be a good surface
15 to lift a fingerprint from?

16 A. If it's a plastic bag that has been crinkled up --
17 typically with bags like this, if it would be in a bag,
18 it would be crinkled up at the top. That wouldn't be a
19 very good surface.

20 MR. KIDD: Court's indulgence.

21 BY MR. KIDD:

22 Q. When you initialed the top of that best kit, could
23 you tell the jury, again, why did you initial that, and
24 what does that signify?

25 A. It just signifies when the bag came to me it was

1 sealed and it wasn't tampered with.

2 Q. So the bag did come into your possession and you
3 testified you got it from the evidence locker; is that
4 correct?

5 A. Yes.

6 Q. So that is where you got it when you put those
7 initials on it?

8 A. Yes.

9 Q. And if Deputy Milz got it, where would he have got
10 it from?

11 MR. SMILEY: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. KIDD: Court's indulgence.

14 BY MR. KIDD:

15 Q. I'm going to show you what has been marked as
16 Defense Exhibit No. 1. Do you recognize the signature,
17 not the notary's signature, but on the signature line, do
18 you recognize that signature?

19 A. I can tell you that I can't read it.

20 Q. But it's different from the notary signature at
21 the bottom of the page; is that correct?

22 A. Yes.

23 Q. And whose signature is on the notary line?

24 A. Investigator Milz.

25 Q. Is it appropriate for someone to notarize the same

1 document that they sign?

2 A. No.

3 Q. So, technically, you don't know who signed this
4 form B?

5 A. It's supposed to be signed by Ryan Blakeley.

6 Q. Can you tell the jury what is the significance of
7 this form B that Mr. Smiley was just talking about?

8 A. This form tells me that Deputy Blakeley received
9 it from Arthur Rivers in a lawful arrest, and on June 16
10 he made delivery of the rock-like substance and the white
11 powder to the evidence locker at headquarters.

12 Q. So it doesn't signify anything being taken away
13 from that evidence locker?

14 A. No.

15 MR. DURANT: No further questions, Your
16 Honor.

17 MR. SMILEY: Just a couple.

18 RE-CROSS-EXAMINATION

19 BY MR. SMILEY:

20 Q. You were asked how often -- or is it often that
21 you're called out to drug scenes, and your answer was no,
22 but when there is an assault on a police officer, you are
23 more likely to get called to a scene, aren't you?

24 A. Sometimes, depending on the circumstances.

25 Q. And the truth is nobody requested fingerprints in

1 this case, that you know of?

2 A. No.

3 Q. And when you talk about what surfaces are better
4 for getting fingerprints than others, you don't know
5 whether there are fingerprints unless you attempt to get
6 them, right?

7 A. Yes.

8 Q. Now, last thing, notary, are you a notary?

9 A. Yes.

10 Q. And so to become a notary, you know the rules that
11 go along with it, right?

12 A. Yes.

13 Q. And when you notarize someone else's signature,
14 you're actually supposed to see the signature, right?

15 A. Yeah.

16 Q. You're supposed to be present when the person
17 signs the form, right?

18 A. I'm --

19 Q. That's what notaries do, right?

20 A. Yes.

21 MR. SMILEY: That is all I got. Thank you.

22 THE COURT: All right. You can step down.

23 Thank you. All right. Call your next witness.

24 MR. DURANT: State calls officer Ryan

25 Blakeley.

1 RYAN BLAKELEY,
2 having been first duly sworn,
3 was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. DURANT:
6 Q. Would you please tell the jury where you're
7 employed?
8 A. Charleston County sheriff's office.
9 Q. How long have you been employed there?
10 A. Just over six years.
11 Q. What is your position?
12 A. I'm a master deputy on the road for uniformed
13 patrol.
14 Q. How long has that been your position?
15 A. Six years I've been there.
16 Q. What are your duties and responsibilities in that
17 position?
18 A. I answer normal calls for service, alarms, barking
19 dogs, break-ins, burglaries, traffic stops, wrecks,
20 anything that the sheriff's office calls us for service
21 for.
22 Q. And in that position, was that your position in
23 June of 2008?
24 A. Yes, sir, it was.
25 Q. And in that position, did you happen to be in the

1 area of Ardwick Road and Balmoral on Johns Island on June
2 16, 2008?

3 A. I was.

4 Q. What were you doing in that area?

5 A. I was serving warrants on Ardwick Road.

6 Q. Do you remember who you were serving a warrant on?

7 A. Yes. It was a man by the name of Robinson. His
8 full name was David Tyrone Robinson.

9 Q. Why were you looking for Mr. Robinson?

10 A. Because he had two active warrants through the
11 sheriff's office.

12 Q. So were you able to find Mr. Robinson?

13 A. Yes, sir, I did.

14 Q. Tell us what happened, how you got out there, from
15 the very beginning. Where did you go to find
16 Mr. Robinson?

17 A. I went down Ardwick Road on Johns Island, which is
18 off River Road, to a place they call the hill, which is
19 an area right on the corner of Ardwick and Balmoral where
20 we have a lot of activity out there, drugs, and
21 Mr. Robinson was out there, in the common area, sitting
22 on a chair by a shed.

23 Q. Was this daytime or nighttime?

24 A. It was daytime.

25 Q. Do you recall approximately what time?

1 A. Yes, sir. It was about 1:00 in the afternoon.

2 Q. Okay. So are you in your cruiser?

3 A. Yes, sir.

4 Q. Is it marked?

5 A. Yes, it is.

6 Q. Was anyone else with you?

7 A. No, sir. I was alone.

8 Q. Where did you stop your car?

9 A. I stopped my car -- there is a chain link -- chain
10 right there, on Balmoral, and I stopped right there,
11 approximately maybe about -- probably here, a little bit
12 further to that door where the common area is.

13 Q. What kind of road is this, by the way? Is it a
14 dirt road or is it paved?

15 A. It's a dirt road off River Road.

16 Q. And when you stopped your car, when you pulled up,
17 what did you see?

18 A. I saw a man that I know through work named
19 Mr. Rivers, Arthur Lee Rivers, walking down Ardwick
20 towards the hill.

21 Q. Was anyone else there?

22 A. Mr. Robinson was sitting in the back of the chair
23 on the hill, but those were the only two people that were
24 there.

25 Q. So you only saw two people?

1 A. Yes, sir.

2 Q. Did you notice anything about Mr. Arthur Rivers?

3 A. Yes, sir.

4 Q. What did you notice?

5 A. I noticed when I pulled up, he didn't directly see
6 me at the time. He had his head down, on the ground. As
7 soon as I went to park the car and he had looked up and
8 saw me, I could tell that I surprised him, that he wasn't
9 expecting the police to be there at that point in time,
10 and it was from -- then the reaction I got what I would
11 have called was suspicious activity.

12 Q. What kind of suspicious activity are you talking
13 about?

14 A. Something that is not normal, for the normal
15 person to do, which in this case was, as soon as I came
16 into view and contacted Mr. Rivers, when he looked up,
17 you could tell he was surprised, eyes wide open, body
18 language changed, and as soon as he did see me, he made a
19 furtive movement by tossing an item I saw on to the
20 ground and continued to walk.

21 Q. When you say he tossed an item on the ground, was
22 this a big, noticeable action?

23 A. No, sir. It was a small, furtive movement, as he
24 didn't want me to notice it.

25 Q. And when you saw that, what did you do? Did you

1 immediately go up to him?

2 A. No, sir, I did not.

3 Q. Why not?

4 A. Due to the fact that I work there, the times I've
5 come in contact with the individuals on there, I knew at
6 that point that kind of suspicious activity to me aroused
7 my attention of some type of narcotic activity, and I
8 knew the distance between myself and Mr. Rivers, if I
9 would have got out of my car and directly made a
10 proactive movement towards him it would have been a foot
11 chase.

12 Q. So after you saw this, what did you do?

13 A. I continued to Mr. Robinson, which was my first
14 goal there, to arrest for the warrants, and continued my
15 way up towards him and I asked Mr. Rivers, I told him
16 that I noticed him throw down the object.

17 Q. So when you continued toward Mr. Robinson, where
18 was Mr. Rivers?

19 A. He was still walking up a dirt path that leads up
20 to where Mr. Robinson was, and we were just kind of
21 parallel to each other as we walked up towards
22 Mr. Robinson.

23 Q. Did you speak with Mr. Robinson?

24 A. Yes, I did.

25 Q. What kind of interaction did you have with him?

1 A. With Mr. Robinson, I walked up to him, explained
2 the situation to him. I've dealt with him before. We
3 never had any issues with him, explained to him that he
4 was wanted for two bench warrants with the sheriff's
5 office, and at that point I cut put him into custody, for
6 the warrants.

7 Q. Did you put him into handcuffs?

8 A. I did.

9 Q. Where was Mr. Rivers?

10 A. Mr. Rivers was probably about 15 or 20 feet away
11 from us at that time, still approaching us.

12 Q. So after you had Mr. Robinson in handcuffs, did
13 you have any interaction with Mr. Rivers?

14 A. I did.

15 Q. How did that come about?

16 A. When we got -- when I got Mr. Robinson under
17 custody, Mr. Rivers walked up to the area. I've known
18 him, just through work, you know, out there on the hill a
19 couple times, and I conversed with him, explained to him
20 why I was out there, asked if I could have his ID, which
21 he gave to me, just a normal warrants check on his
22 license and everything like that. It came back clear,
23 and at that point I asked him if he had any problems with
24 me patting him down and searching his person for
25 narcotics.

1 Q. Did he give you permission to search him?

2 A. Yes, he did.

3 Q. First of all, why did you want to do that?

4 A. The reason I wanted to do that at that point in
5 time, it was an officer safety issue. I was out there by
6 myself. There were two suspects out there, and, like I
7 said, just one police officer, while I'm waiting on
8 backup or anything like that, I wanted to make sure that
9 there wasn't anything else I needed to be worried about
10 as far as weapons or any other kinds of drugs because
11 when we find drugs, there is usually guns involved.

12 Q. What kind of area is this?

13 A. High crime, high drug area where we get lots of
14 illegal narcotics, wanted persons, stolen cars, anything
15 like that.

16 Q. So he gave you permission to search him?

17 A. He did.

18 Q. What happened next?

19 A. At that point, I went ahead, ran his license, went
20 to pat him down for weapons and conducted a search of his
21 person, and when I did, I went to grab his hand to detain
22 him for the littering of what I noticed from before so I
23 could go ahead and investigate that, at that point.

24 Q. And what happened next?

25 A. At that point, Mr. Rivers yanked his hand away

1 from me, asked me what I was doing. I explained you're
2 not under arrest. You're just being detained at this
3 point in time for the investigation I'm working due to
4 the littering I noticed before was, to my knowledge, at
5 that point through work in that area was contraband or
6 some type of illegal narcotics. And he pulled away from
7 me a second time, and that is when he shoved me in the
8 chest, assaulted police.

9 Q. He shoved you?

10 A. He did.

11 Q. How did you respond to that?

12 A. At that point when he pushed me, as he pushed, he
13 took off running towards the wood line behind the
14 trailers where we were --

15 Q. Did you chase after him?

16 A. I did. At that point I had a pair of handcuffs in
17 one hand, regained balance, and took off and gave chase
18 to Mr. Rivers.

19 Q. How many pairs of handcuffs do you carry on you?

20 A. I carry two.

21 Q. And why is that?

22 A. Whenever you deal with one person, you deal with
23 two people, and if you always deal with one person --

24 Q. Deputy, I need you to slow down --

25 A. Whenever I'm out there, if you deal with one

1 person, you arrest somebody and, obviously, they have
2 your handcuffs, it's always good to have a second set for
3 the unknown. You just don't know how many people you're
4 going to deal with on a daily basis.

5 Q. This was an unknown situation on this day?

6 A. This was definitely unknown.

7 Q. He took off and you gave chase?

8 A. I did.

9 Q. Tell us about the chase.

10 A. At that point, knowing that I was already
11 assaulted, I knew that if I went ahead and put hands on
12 Mr. Rivers' gun, it was either going to be a wrestling
13 match, a fight. It was going to be a struggle, so then
14 at that point I pulled out my Taser. As I gave chase to
15 Mr. Robinson, I pulled the Taser on him. One bar hit,
16 another bar didn't, but if both probes don't make
17 contact, it doesn't work.

18 Q. Let me ask you this, is Mr. -- how big are you,
19 first of all?

20 A. 228 pounds.

21 Q. Pretty big guy?

22 A. Yes, sir.

23 Q. How about Mr. Rivers?

24 A. According to his ID, he's 5'10", 185 pounds.

25 Q. Were you able to catch up with him?

1 A. I was.

2 Q. And how did you do that?

3 A. Once the probes did make contact with him, it
4 knocked him to the ground. At that point, when he fell,
5 I was able to make it to the ground to catch up with him.

6 Q. Did it get pretty physical?

7 A. When I got to him at that point, yes.

8 Q. What kind of things did you have to do to get
9 Mr. Rivers in custody?

10 A. Basically, anything I could do at that point. My
11 Taser was already used, and it obviously was not working
12 at that point in time. So once that wasn't used, the
13 area that we were in and the close contact we were in, it
14 was just personal, as far as hands and knees and things
15 of that.

16 Q. Did you have your other pair of handcuffs with
17 you?

18 A. I did. They were in my hand at that point.

19 Q. Were you able to use them?

20 A. No, I was not.

21 Q. Why not?

22 A. Mr. Rivers, in his attempt to get away and come
23 back towards me, there was not one point in time where I
24 had a calm situation where I could just go ahead and put
25 the handcuffs on him. I was trying to get him under

1 control to get an arm to actually put a handcuff on his
2 wrist.

3 Q. Did you ever try to put a handcuff on his wrist
4 right there?

5 A. Every time I saw a wrist, I tried to slap them on.

6 Q. Did anything happen to those handcuffs?

7 A. They did.

8 Q. What happened to them?

9 A. At one point in time during the struggle when I
10 was trying to gain control of Mr. Rivers, I actually put
11 the handcuffs down on the ground when I was on top of him
12 to grab his arm to pull behind to handcuff him, and
13 Mr. Rivers actually grabbed the handcuffs and threw them
14 into the woods.

15 Q. So you didn't have handcuffs?

16 A. I had no handcuffs at this point.

17 Q. You didn't have a Taser?

18 A. No.

19 Q. And you didn't have another officer on the scene?

20 A. No, sir.

21 Q. So what kind of things did you do to get him into
22 custody?

23 A. I used hard hand control, which is just my
24 personal hands as they are, knees, anything that I could
25 use to try to get Mr. Rivers under control.

1 Q. Were you telling him he was under arrest?

2 A. I was, I was telling him he was under arrest and
3 quit resisting at this point because at this point he was
4 resisting my arrest.

5 Q. Why were you initially going to arrest him?

6 A. I was going to arrest him at this point for
7 assaulting police.

8 Q. And was he resisting at this point?

9 A. He was.

10 Q. How was he resisting?

11 A. By actively taking his arms and his elbows and
12 trying to keep my hands and my arms away from him. Every
13 time I grabbed ahold of his belt, his shirt, his arms, he
14 would combat me as far as punching me or elbowing my back
15 to try to break my grip so he could flee.

16 Q. Was there any video out there?

17 A. No, sir.

18 Q. Did you write down all this stuff in your report?

19 A. Yes, sir.

20 Q. About what it took to get Mr. Rivers under
21 control?

22 A. Yes, sir.

23 Q. And what kind of physical things did you do to get
24 him under control?

25 A. We use what we call brachial stuns. I use a knee

1 toward the groin, anything that I could use to subdue him
2 at that point.

3 Q. Were you able to get him under control?

4 A. I was.

5 Q. And about how far do you think he ran?

6 A. A total distance, as thick as the brush was, it
7 wasn't too far. It probably was from here to the windows
8 outside.

9 Q. Now, this kind of terrain and stuff, what kind of
10 terrain is this?

11 A. Trees, bushes, sticker brush, vines; you name it,
12 it was out there.

13 Q. Did he run through sticker bushes?

14 A. He did.

15 Q. Did you follow him through sticker bushes?

16 A. I sure did.

17 Q. When you got him under control, where was he? Was
18 he on the ground? Was he standing up?

19 A. There was two points I guess where you could say I
20 had control of him. The first point we were standing up
21 in a stalemate, kind of like in a boxing match when both
22 the fighters are just so drained and so worn out, as hot
23 as it was during that day, and with his adrenaline up and
24 my adrenaline up and the way the uniform -- being so
25 drained, there was a point where we both had control.

1 We were just standing there. I was holding on to
2 Mr. Rivers for him not to flee and he was holding on to
3 me. We were just both so worn out. I had no handcuffs
4 to put on him. The only thing I could do was hold him,
5 and the only thing he could do to keep himself up was to
6 hold on to me.

7 Q. And so how were you able to eventually take
8 custody then?

9 A. At that point, we were standing there. Obviously,
10 up on two feet is not a good way to effectively make an
11 arrest, and at that point, with no handcuffs or anything
12 else to subdue him, I knew the only thing to do to hold
13 him there until my partner arrived was to get him to the
14 ground where I could at least lay on top of him or sit on
15 top of him or do something to prevent him from escape.

16 I went to effect a knee strike to the groin area
17 to knock Mr. Rivers to the ground. At that point, when I
18 did, the way he moved, I struck him in the face area with
19 the knee. He fell to the ground, and I then laid on top
20 of him and waited for backup to arrive.

21 Q. What do you mean by groin area? Does that
22 necessarily mean his testicles?

23 A. Yes, sir.

24 Q. Did you call for backup?

25 A. I did not. During the struggle, my microphone in

1 my shirt -- I was wearing a test uniform, which the
2 microphone does not go under the shirt. So during the
3 struggle, the mike was actually ripped off my shirt and
4 was dangling down. I could not reach it, so at a certain
5 point, as I was trying to key up on the radio, we have
6 what call an emergency button. That is a big red button
7 which is easy to hit, which when you hit it, it sends out
8 an emergency tone, which wherever your last known
9 location was, at that point when they know you're in
10 trouble, they'll send everybody that can to you, and I
11 reached back and hit the emergency button during the
12 struggle.

13 Q. So the sheriff's office knew to send backup?

14 A. They knew to send backup.

15 MR. DURANT: Could I get these marked? These
16 are nine photos.

17 (Photographs marked for identification as
18 State's Exhibit Nos. 4-12.)

19 BY MR. DURANT:

20 Q. I've got in my hand what is labeled State's 4, 5,
21 6, and 7 for identification, ask you to take a look at
22 that. Do you recognize those?

23 A. Yes, sir, I do.

24 Q. What are those?

25 A. These are photographs that were taken after the

1 struggle on the day I was out there with Mr. Rivers.

2 Q. What do they depict?

3 A. They depict the marks that I had on myself and the
4 blood that I received to myself and my uniform.

5 Q. Do they fairly and accurately depict your
6 condition after this incident?

7 A. Yes, sir, minus a little winded, out of breath,
8 but yes, sir.

9 Q. Thank you, sir.

10 MR. DURANT: Your Honor, at this time the
11 state moves for admission of 4, 5, 6, and 7.

12 MR. SMILEY: No objection.

13 THE COURT: They're admitted. You can
14 publish.

15 MR. DURANT: Thank you, Your Honor.

16 (State's Exhibit Nos. 4, 5, 6, and 7 were
17 admitted into evidence.)

18 BY MR. DURANT:

19 Q. If you would, behind you, this is State's 4.
20 Could you tell the jury what we're looking at there.

21 A. Yes, sir. That's my right arm, forearm and upper
22 arm with marks from the brush that was out there, as well
23 as some scratch marks from Mr. Rivers.

24 Q. And that's as a result of the struggle to contain
25 Mr. Rivers?

1 A. Yes, sir, it sure is.

2 Q. And State's 7?

3 A. That was my uniform shirt after the struggle that
4 day, which you can see is bloodstained.

5 Q. State's 5?

6 A. That is my face with scratches on the nose and
7 face area.

8 Q. As a result of the incident on the 16th?

9 A. Yes, sir.

10 Q. Thank you, sir. I'm showing you State's 8, 9, 10,
11 11, and 12, ask you to take a look at those. Do you
12 recognize those?

13 A. Yes, sir, I do.

14 Q. And what do they depict?

15 A. Those are the marks and scars also from that day,
16 but this time on Mr. Rivers.

17 Q. And do they fairly and accurately depict
18 Mr. Rivers' condition after this incident?

19 A. Yes, sir.

20 MR. DURANT: Your Honor, at this time the
21 state moves for admission of State's 8, 9, 10, 11, and
22 12.

23 MR. SMILEY: No objection.

24 THE COURT: Admitted. You can publish.

25 (Photographs marked for identification and

1 admitted into evidence as State's Exhibit Nos. 8, 9, 10,
2 11 and 12.)

3 BY MR. DURANT:

4 Q. Start with State's 8. What are we looking at
5 there?

6 A. There is Mr. Rivers' left shoulder area.

7 Q. State's 9?

8 A. That is Mr. Rivers' right shoulder area.

9 Q. State's 11?

10 A. That is the left side of Mr. Rivers' face and neck
11 area.

12 Q. State's 12?

13 A. That is Mr. Rivers.

14 Q. And, again, do all these pictures demonstrate his
15 condition after this incident?

16 A. Yes, sir.

17 Q. When you got him -- when you got control of him
18 and you arrested him, what did you arrest him for that
19 first time?

20 A. For assaulting police and resisting arrest.

21 Q. For assaulting police while resisting arrest?

22 A. Yes, sir.

23 Q. When you arrest somebody, what do you tell them?

24 A. That they're under arrest and Mirandize them.

25 Q. What do you mean by Mirandize them?

1 A. Miranda rule is their rights that they have.

2 Q. Is that standard for you to do when you make an
3 arrest?

4 A. Yes, sir, it is.

5 Q. And how do you do that?

6 A. I read off a card that I carry every day at work
7 that I read verbatim to everybody.

8 Q. Did you do that to Mr. Rivers?

9 A. I did.

10 Q. Do you have that card on you now?

11 A. I do. I wear it every time I have a uniform.

12 Q. Would you take it out? And if you would, just how
13 you did it for Mr. Rivers, would you please read that
14 card.

15 A. You have the right to remain silent. Anything you
16 say can and will be used against you in a court of law.
17 You have the right to talk to a lawyer and have him
18 present with you while you're being questioned. If you
19 cannot afford to hire a lawyer, one would be appointed to
20 represent you before any questioning, if you wish. You
21 can decide at any time to exercise these rights and not
22 answer any questions or make any statements.

23 Do you understand each of these rights as I've
24 explained to you? Having these rights in mind, do you
25 wish to talk to me?

1 Q. Did he indicate to you that he understood his
2 rights?

3 A. Yes, sir, he did.

4 Q. How did he indicate that?

5 A. He gave me a yes when I asked him if he understood
6 his rights, and I explained to him I needed a yes or no
7 answer and he gave me a yes.

8 Q. Did he speak to you at that time?

9 A. No, not the first time.

10 Q. So was he eventually placed in handcuffs?

11 A. He was.

12 Q. And how did that happen?

13 A. When the other officer, Deputy Craver, arrived on
14 the scene and he located me, he gave me a set of
15 handcuffs. We used his handcuffs to go ahead and place
16 Mr. Rivers into custody.

17 Q. Where was he taken?

18 A. He was taken to my patrol cruiser, my assigned
19 cruiser, 4452.

20 Q. And he was placed in the cruiser?

21 A. Placed in the back seat of the cruiser, yes, sir.

22 Q. Was the cruiser on or off?

23 A. It was on.

24 Q. Was the air conditioning on or off?

25 A. Yes, sir. It was on full blast.

1 Q.. It was a hot day?

2 A. Summertime in Charleston, yes, sir.

3 Q. And after he was placed in the cruiser, he was
4 under arrest, you said, for assaulting a police officer
5 while resisting arrest?

6 A. Yes, sir.

7 Q. What did you do?

8 A. At that point I just placed him into the cruiser.
9 I went over, talked with Lieutenant Tague, which was the
10 responding supervisor at that point.

11 Q. He's your supervisor?

12 A. Yes, sir, he is.

13 Q. So there's other officers out on the scene at this
14 point?

15 A. At this point, yes, sir.

16 Q. And so what were y'all doing? What did y'all want
17 to do at this point?

18 A. We were discussing administrative type things with
19 the lieutenant.

20 Q. Were you looking for anything?

21 A. At that point, just sort of looking for the
22 narcotics that Mr. Rivers had thrown down.

23 Q. So where -- how much time had passed between the
24 time that he's taken into custody, or you get him under
25 control, and when you put him in your cruiser?

1 A. Maybe a few minutes, five, ten minutes, at the
2 most.

3 Q. And you say that after he was put in the cruiser,
4 y'all were out there looking for whatever it was that he
5 threw?

6 A. Yes, sir.

7 Q. And what area were you looking in?

8 A. We were looking on the side of the walkway, or the
9 path that Mr. Rivers used to walk up with Mr. Robinson.

10 Q. And why were you looking in that area?

11 A. Because that is the immediate area where I saw him
12 toss the items earlier before when I pulled up to
13 Ardwick.

14 Q. To your knowledge, was anything found in that
15 area?

16 A. Yes, sir, it was.

17 Q. What was found?

18 A. What was found was a pill bottle which contained
19 crack cocaine -- or cocaine base, and a -- which was
20 22 -- I'm sorry, 10.2 grams and then a white clear
21 plastic bag which contained white powder substance which
22 tested presumptive for 22.3 grams of powder cocaine.

23 Q. Where were these items located?

24 A. These items were located right in the immediate
25 area where Mr. Rivers tossed down the items that I saw

1 him when I pulled up in the cruiser.

2 Q. Were you the first person to find the items?

3 A. No, sir. Deputy Summersell, one of my partners
4 that worked that area, found them.

5 Q. Did he bring it to your attention?

6 A. Yes, he did.

7 Q. How soon after Mr. Rivers was placed in the car
8 were these drugs found?

9 A. A few minutes.

10 Q. A few minutes, just like that?

11 A. Uh-huh.

12 Q. Were they hidden anywhere?

13 A. No.

14 Q. Were they under branches or anything?

15 A. No, sir.

16 Q. Were they in a hole in a tree?

17 A. No, sir.

18 Q. Were they just laying out in plain view?

19 A. They were just laying right there where he tossed
20 them.

21 Q. Did you take possession of the drugs at that time?

22 A. I did.

23 Q. What did you do with them?

24 A. I took them and placed them on the front seat of
25 my cruiser on the passenger side.

1 Q. And so they were in your custody at that point?

2 A. At that time they were in my custody.

3 Q. What else did you do with the drugs?

4 A. Once everything was said and done, the drugs were
5 put into a best kit, which is recorded on the best kit
6 itself and on my report and taken to the sheriff's office
7 and placed in the evidence lockers at Pinehaven Drive.

8 Q. Is that standard procedure?

9 A. Yes, sir, it is.

10 Q. All right. I'm showing you what the state has
11 labelled as State's 2 for identification, ask you if you
12 recognize this.

13 A. Yes, sir, I sure do.

14 Q. How do you recognize it?

15 A. I recognize this two ways; one, by obviously my
16 signature and my handwriting that's on the bag, and then,
17 second of all, by the best number that is recorded in my
18 report and recorded here on the best kit.

19 Q. So you were the one who put the drugs into the
20 best kit?

21 A. Yes.

22 Q. Did you seal the best kit?

23 A. Yes.

24 Q. Did you label the best kit?

25 A. Yes.

1 Q. What date did you label the best kit?

2 A. The 16th of June 2008.

3 Q. That is the same day of the incident?

4 A. Same day the incident occurred.

5 Q. You put the drugs in there the same day?

6 A. Same day.

7 Q. And what did you do with the drugs?

8 A. Took the drugs, placed them into the best kit,
9 sealed the best kit, and dropped them off at the
10 sheriff's office evidence lockers at Pinehaven Drive.

11 Q. While the drugs are in your custody, did you do
12 anything to damage, alter, change the evidence in any
13 way?

14 A. No, sir. The only thing that was done was a field
15 test on the scene.

16 Q. What is a field test?

17 A. A field test is little packets that we carry, with
18 usually, three little liquids inside the plastic. You
19 take just a minor amount, usually about a tip of a pocket
20 knife amount, put that into the plastic, seal the
21 plastic, and then you'll break one glass tube at a time,
22 shake it up until you break all three, and there will be
23 an indicator which -- for cocaine is blue, heroin is red,
24 you know, marijuana is green, such as that.

25 And once the contents are shaken up, if it turns

1 the color that it's supposed to be on the kit itself,
2 then whatever substance you have tested presumptive for
3 that kind of drug.

4 Q. Just a presumptive test?

5 A. So we can say, Hey, this is street level
6 narcotics, and, of course, hand them in, take them to
7 SLED so they can actually analyze them at that point.

8 Q. So at the point when you got the drugs --

9 A. Yes, sir.

10 Q. -- you said you put them in your cruiser?

11 A. I did.

12 Q. Where did you put them in the cruiser?

13 A. The front passenger seat.

14 Q. Where was Mr. Rivers?

15 A. In the rear passenger seat.

16 Q. When you went to the cruiser to put the drugs
17 there, did he want to talk or say anything to him?

18 A. No, sir.

19 Q. Did you try to talk or say anything to him?

20 A. No, sir, I did not.

21 Q. So you just put the drugs in the front passenger
22 seat, closed door?

23 A. Locked the door and closed the door.

24 Q. At this point, did you back away from the car?

25 A. I did.

1 Q. Did there come a time that anything drew your
2 attention back to your cruiser?

3 A. Yes, sir, there was.

4 Q. And what was that?

5 A. While I was conversing with Lieutenant Tague about
6 administrative things, Mr. Rivers was trying to get our
7 attention. Either his head or his shoulder, he was
8 banging against the cruiser. A lot of times it's their
9 only way to communicate that they need the door open to,
10 you know, converse with you or whatever. At that point,
11 I opened the door to see what Mr. Rivers wanted.

12 Q. About how many minutes after he had been first
13 placed in this cruiser did he call your attention over?

14 A. Five, ten minutes, maybe.

15 Q. And you said during this incident, you know, you
16 were hot and sweaty?

17 A. Yes, sir.

18 Q. You got your heartbeat up?

19 A. Yes, sir.

20 Q. How about Mr. Rivers?

21 MR. SMILEY: Objection.

22 MR. DURANT: He was there, Your Honor. He
23 has personal knowledge.

24 THE COURT: Is the question was his heartbeat
25 up or how about Mr. Rivers? What does that mean?

1 BY MR. DURANT:

2 Q. How about Mr. Rivers' physical condition? Was he
3 exasperated, breathing heavily?

4 A. Mr. Rivers was pretty much in the same condition I
5 was, except he was sitting in an air conditioned car at
6 the time.

7 Q. And you said approximately five, ten minutes later
8 he's calling your attention back over to the cruiser?

9 A. Give or take, yes, sir.

10 Q. Did you go over there?

11 A. I did.

12 Q. Did anybody go over there with you?

13 A. Lieutenant Tague was right there and my supervisor
14 was with me at the time.

15 Q. What happened when you got to the cruiser?

16 MR. SMILEY: Your Honor, I need to renew my
17 pretrial objection at this point.

18 THE COURT: All right. It's overruled. Go
19 ahead.

20 BY MR. DURANT:

21 Q. Thank you, Your Honor. What happened when you got
22 to the cruiser?

23 A. I opened the passenger side door, unlocked it,
24 then opened the rear passenger door where Mr. Rivers was
25 and asked him what he needed.

1 Q. What did he say?

2 A. He was trying to talk to me about the incident
3 that occurred. I then advised him of his Miranda rights
4 a second time, need a yes or no answer if you want to
5 talk or not. At that point he gave me a yes answer.

6 Q. How did you Mirandize him that time?

7 A. Every time I used the card I carry in my pocket
8 verbatim.

9 Q. Why did you do that?

10 A. Whenever someone wants to talk, give a confession,
11 anything like that, I have to use the Miranda rule to
12 have him waive his rights. Miranda rule is what I need
13 to use for Court purposes as I am today.

14 Q. So you say you Mirandized him again?

15 A. Yes.

16 Q. Did he appear to understand his Miranda rights?

17 A. He did.

18 Q. Did he appear confused in any way?

19 A. No, sir.

20 Q. Was he asking for a doctor?

21 A. No.

22 Q. Did he appear like he needed any medical attention
23 at that point?

24 A. No, sir.

25 Q. Did he appear intoxicated in any way?

1 A. No.

2 Q. Did he say he was?

3 A. No.

4 Q. Was he asking you for a lawyer?

5 A. No.

6 Q. Did you threaten him in any way?

7 A. No, sir.

8 Q. Did you threaten any member of his family?

9 A. No, sir.

10 Q. And you say he understood his rights?

11 A. Yes, sir.

12 Q. And what happened after he said he understood his
13 rights?

14 A. Then he went ahead and talked to me -- he told me,
15 he says, which I have written here in the report, it
16 says, you know, I'm a good person but fucked up today, is
17 what he told me, and from that point, he went ahead and
18 said that the coke is mine, which street term means
19 cocaine, and that the crack, or cocaine base to us, is
20 not mine.

21 Q. And, again, who was with you?

22 A. Lieutenant Tague, my supervisor.

23 Q. After he gave you that, what did you do?

24 A. Went ahead and shut the door and locked the car
25 back up.

1 Q. Did you -- what charges -- based on what you found
2 out there, what --

3 MR. DURANT: I'm going to withdraw that last
4 question.

5 BY MR. DURANT:

6 Q. So after he was in custody and he had given you
7 this statement, what did you do?

8 A. I went ahead locked the cruiser back up and shut
9 the door.

10 Q. Did you do anything else to investigate this case?

11 A. Not after that.

12 Q. Was Mr. Rivers transported anywhere?

13 A. He was.

14 Q. Did you transport him?

15 A. I did.

16 Q. Where did you transport him?

17 A. We transported him from there to our substation on
18 James Island off of Riverland Drive.

19 Q. This incident location near Ardwick and Balmoral,
20 to your knowledge is that in Charleston County?

21 A. It is.

22 Q. Deputy, in your line of work and in your
23 experience, do you know how much a gram of cocaine goes
24 for on the street?

25 A. Usually about \$100 on the street.

1 Q. What about crack cocaine?

2 A. About the same thing.

3 MR. SMILEY: Objection, Your Honor.

4 THE COURT: Overruled.

5 MR. DURANT: Thank you, Your Honor.

6 (Photographs marked for identification as
7 State's Exhibit Nos. 13, 14, and 15.)

8 BY MR. DURANT:

9 Q. I want to show you what has been marked as State's
10 13, 14, and 15 and ask you to take a look at those. Do
11 you recognize those photos?

12 A. Yes, sir, I do.

13 Q. What do they depict?

14 A. That is the area of Ardwick Road where I came in
15 contact with Mr. Rivers, otherwise known as the hill.

16 Q. Does it fairly and accurately depict the area
17 where you saw Mr. Rivers and where this incident took
18 place that day?

19 A. Yes, sir.

20 MR. DURANT: At this point the state moves
21 for admission of State's 13, 14, and 15.

22 MR. SMILEY: May we approach?

23 (Discussion held at sidebar.)

24 THE COURT: All right. They're admitted.

25 You can publish.

1 (State's Exhibits 13, 14, and 15 were marked
2 for identification and admitted into evidence.)

3 BY MR. DURANT:

4 Q. Thank you. To your knowledge, were these pictures
5 taken that day?

6 A. No, sir.

7 Q. They were taken subsequent to that?

8 A. Yes, sir.

9 MR. DURANT: Your Honor, I would ask for this
10 witness to step down at this point so he can view these
11 photos and use a laser.

12 THE COURT: All right.

13 BY MR. DURANT:

14 Q. If you would stand right here, and I'm going to
15 ask you a couple questions based on those pictures, first
16 State's 13. Could you tell the jury what we're looking
17 at here?

18 A. Yes, sir. This is Ardwick Road that runs down
19 here, and this area right here is the hill and this is
20 the common area that I was speaking about with all the
21 benches chairs and swings that everybody hangs out with
22 on Ardwick.

23 Q. Now, does this picture depict the area that
24 Mr. Rivers -- you saw Mr. Rivers throw these drugs?

25 A. No, sir.

1 Q. Does this depict the area that you saw
2 Mr. Robinson?

3 A. Yes, sir. Back here -- you see this chair right
4 there? Back in that area is where Mr. Robinson was
5 sitting when I walked up that day.

6 Q. Where was Mr. Rivers coming from?

7 A. Mr. Rivers was coming from -- it would be a
8 different view.

9 Q. Did he eventually come into --

10 A. He eventually walked up the path that comes right
11 through here up to where Mr. Robinson was.

12 Q. And he did that after you saw him throw the drugs?

13 A. Yes, sir, he did.

14 Q. Did you walk up anywhere in this path?

15 A. I did. The path where I parked, my car was right
16 back here, and I walked straight back up here, just like
17 that, to Mr. Robinson.

18 Q. And does that depict the area you got Mr. Robinson
19 in custody?

20 A. Yes, sir. Mr. Robinson was taken into custody
21 right there.

22 Q. What is this building to the left?

23 A. This building to the left, there's a trailer back
24 here, I believe that's abandoned, and there is two houses
25 over here, I believe, and this house right here is, I

1 guess, the main property owner of the hill.

2 Q. What is behind there?

3 A. There is a church that runs back there off of
4 River Road, and then all of this area back here is just
5 woods.

6 Q. When Mr. Rivers ran, did it start anywhere in this
7 picture?

8 A. It started right there where Mr. Robinson was.

9 Q. Where it did go from there?

10 A. It ran behind here.

11 Q. Is that where the sticker bushes are?

12 A. The sticker bushes are where you see the break in
13 the wood line here, is right where we entered the brush.

14 Q. And you went in that, chasing him?

15 A. I did.

16 Q. Where was he eventually taken into custody?

17 A. He got over here, about -- behind the abandoned
18 trailer.

19 Q. I'm going to show you State's 15. What are we
20 looking at there?

21 A. This is Ardwick Road, right here. Balmoral is
22 down this way, and the picture you just took off where
23 the tables and chairs were comes along here and runs
24 right up to about here where the tables are.

25 Q. On this photo, would you be able to tell where you

1 parked your cruiser?

2 A. It would be about right here (indicating).

3 Q. It would be about right where?

4 A. About right here (indicating).

5 Q. And where did you first see Mr. Rivers?

6 A. The path right here.

7 Q. Where did you see him throw the object?

8 A. In this area right here.

9 Q. And then he continued walking up?

10 A. He continued to walk up toward Mr. Robinson.

11 Q. How about State's 14? What are we looking at
12 here?

13 A. That is just a closer picture of the main section
14 of the hill, right here where the tables and chairs and
15 all are where everybody hangs out.

16 Q. Was there anybody hanging out that day?

17 A. No.

18 Q. In reference to the drugs that were thrown, where
19 would we be looking?

20 A. Right about there, on that other picture.

21 Q. Back on State's 15, do you see your car in this
22 picture?

23 A. No, sir.

24 Q. Do you see any object right here? Maybe it will
25 help if I show you State's 15.

1 A. Reshow that one.

2 Q. Do you see any object in State's 15?

3 A. I actually had this picture backwards. That is my
4 cruiser sitting right there, Ardwick Road running right
5 here, and this right here is the path that Mr. Rivers
6 used to walk up to.

7 Q. So did you park your car about right there when
8 you pulled up that day?

9 A. Right there is the same place I park every time I
10 come to Ardwick if there is not a car there.

11 Q. Okay. Now, when you come down Ardwick, is that
12 curving?

13 A. It curves right here, going up towards River Road.

14 Q. So is there a large line of sight? If you were
15 over here, is there a large line of sight, you see a car
16 coming around this curve?

17 A. There is. That's a straight road from this point
18 here. Ardwick Road runs up that way. It's a road.
19 There is nothing in front of it.

20 Q. Where was Mr. Rivers when you were coming down
21 that road?

22 A. He was walking around here, coming down this path.

23 Q. And so you parked your car right there?

24 A. Right here.

25 Q. And it was when you parked the car that you saw

1 him toss the items?

2 A. When I was pulling up right here, Mr. Rivers had
3 just made this corner here. When he did, he looked up,
4 saw the cruiser right there, and then he tossed the
5 items.

6 Q. And you stated before you didn't chase him
7 immediately.

8 A. No, I did not.

9 Q. You can resume your seat.

10 MR. DURANT: Your Honor, also at this time,
11 the state would move for admission of the drugs, State's
12 2.

13 MR. SMILEY: I object. I don't believe a
14 foundation has been established.

15 THE COURT: Not at this point. I believe you
16 have one more witness, don't you?

17 MR. DURANT: May we approach?

18 THE COURT: Yes.

19 (Discussion held at sidebar.)

20 MR. DURANT: Thank you, Your Honor. State
21 has no further questions.

22 THE COURT: All right. Folks, we're going to
23 take our mid-morning break at this point. If you would,
24 you can go back to the jury room, and if you want to take
25 a smoke break or go downstairs and get some fresh air,

1 we'll take a 15 minute break. Don't begin deliberations
2 or discussions. We'll see you back in about 15 minutes.

3 (Recess taken.)

4 THE COURT: Jim, they just handed me this
5 amended indictment. Do you want to take a look at that
6 time and make sure you're all right with it?

7 MR. SMILEY: Yes, sir.

8 THE COURT: We'll just substitute this in as
9 an amended indictment then. Are you ready to begin your
10 cross?

11 MR. SMILEY: Yes, sir, I am.

12 THE COURT: All right. Bring the jury in.

13 (In open court, jury present.)

14 THE COURT: All right. Be seated. We will
15 now resume with Mr. Smiley's cross of the witness.

16 CROSS-EXAMINATION

17 BY MR. SMILEY:

18 Q. Let me start with some basic stuff. Ardwick Road
19 is off of River Road, right?

20 A. Yes.

21 Q. And so about a quarter of mile is the intersection
22 of Maybank Highway and River Road, and if you're heading
23 out, Maybank Highway, towards, I guess, Wadmalaw, you
24 would take a left on River Road?

25 A. Correct.

1 Q. And about a quarter mile down the road, Ardwick is
2 on your right, correct?

3 A. Give or take, yes, sir.

4 Q. And I'm not looking for exact, but shortly
5 thereafter you take a right.

6 A. Yes.

7 Q. And then from where you turn on that dirt road
8 back to where this incident took place is, what, one
9 minute drive, 45 second drive from where you turned off
10 River Road to Ardwick? It's not real far?

11 A. No, sir.

12 Q. And it goes along a dirt road with some of the
13 older housing of different sorts?

14 A. Correct.

15 Q. On the left and not a whole lot on the right.

16 A. No.

17 Q. Okay. And I believe you testified that this area
18 is a high narcotics area?

19 A. Yes, sir.

20 Q. And that you know the area because you patrol it
21 on a fairly regular basis?

22 A. Correct.

23 Q. And, as a matter of fact, that morning, you were
24 going to arrest Tyrone Robinson on some active warrants
25 that the sheriff's office had for him?

1 A. Yes, sir.

2 Q. And even though the sheriff's office has a
3 warrants department, you were made aware of them, and
4 since you knew that area and knew Tyrone to be there, you
5 were going out to get him, correct?

6 A. Correct.

7 Q. So while it's part of your duties, it's not your
8 specific duty, because there is an actual warrants
9 division to go get those guys, but you have some
10 additional expertise in that area, right?

11 A. Correct.

12 Q. When you come back into that area called the hill,
13 heading back on Ardwick, it's not unusual for the fellows
14 back there to try to get out of your view, I guess?

15 A. Correct.

16 Q. So the guys that are doing bad sort of disappear
17 when you head back there, for the most part?

18 A. Yes, sir, they do.

19 Q. Okay. Fair enough. So when you come back that 45
20 seconds or so to the area that you ended up stopping your
21 cruiser, that is on the left, right?

22 A. Yes, sir.

23 Q. So you came down, and -- I'm going to try to draw.
24 Maybe between the two of us we can kind of lay it out so
25 the jury sees the area. With the Court's permission, may

1 I use this board?

2 THE COURT: You may.

3 BY MR. SMILEY:

4 Q. All right. So this being River Road, this being
5 Ardwick, and, by no means is this exact, but that would
6 be to the left, right, and then you come to this area,
7 and what is the name of the road, that dirt road area?

8 A. Balmoral.

9 Q. So this would be Balmoral in this area here?

10 A. Balmoral is the road that is behind the brush.

11 Q. So it's back. This is Ardwick, and this is the
12 area that you were pulling into, correct?

13 A. Correct.

14 Q. And this is the dirt road that sort of heads back
15 this way, for about --

16 A. The driveway.

17 Q. Driveway, dirt road, and it heads back for
18 maybe -- back to that shed where Mr. Robinson -- couple
19 hundred feet, give or take?

20 A. Something.

21 Q. Little less, maybe 150 feet?

22 A. About.

23 Q. So there is that area that is about 150 feet, and
24 there was a shed, or a little tiny house, at the back of
25 the property, right? And Mr. Robinson was sitting in a

1 chair in front of that, in about that position?

2 A. Uh-huh.

3 Q. Give or take?

4 A. Yeah.

5 Q. By no means am I trying to be accurate, I just
6 want to make sure you agree that is the general layout,
7 right? And is it true that there is a little white house
8 in close proximity to that shed? And in the pictures
9 that you were shown -- and we'll take a little break
10 here, here they are -- I'm going to show you State's
11 Exhibit 13 that you said was an accurate depiction.
12 Actually, the shed that was back there is no longer
13 there?

14 A. Yes, sir.

15 Q. Completely gone?

16 A. Completely gone.

17 Q. And, actually, you see an abandoned trailer but
18 there was actually two of them at the time, right?

19 A. Yes, sir.

20 Q. And now there only appears to be one, but other
21 than that, you would consider it to be fairly accurate?

22 A. Yes, sir.

23 Q. So the shed -- if I could, the shed in the back
24 where you found Mr. Robinson is no longer there, and one
25 of the trailers is no longer there, correct?

1 A. Correct.

2 Q. Okay. But other than that, it's fairly in the
3 same condition?

4 A. Yes, sir.

5 Q. Okay. Now, that trailer that is still there sort
6 of is in this position, would that be fair to say?

7 A. Yes.

8 Q. Okay. And there's some clothes lines of some sort
9 between the trailer and that little house, right?

10 A. Yes.

11 Q. All right. And now the chairs and stuff under the
12 tree is sort of in that position, give or take?

13 A. Give or take.

14 Q. All right. And the cut that you were talking
15 about, sort of in this position?

16 A. Give or take.

17 Q. It sort of comes along those chairs?

18 A. Right.

19 Q. All right. So you came in, and there's a chain
20 that sort of lays across that road?

21 A. Yes, sir.

22 Q. So you were coming in to get Mr. Robinson?

23 A. Correct.

24 Q. And as you came down, you say you saw Arthur?

25 A. Yes, sir.

1 Q. And you saw Arthur back in this position?

2 A. Yes, sir.

3 Q. You came in and pulled into the driveway, correct?

4 A. I parked on the side of Ardwick Road.

5 Q. You stopped here or here?

6 A. Right by -- back that way. It's out of the
7 picture, where it was depicted before.

8 Q. So you stopped here?

9 A. Give or take right there.

10 Q. Short of the driveway but near it.

11 A. Uh-huh.

12 Q. Because this road actually starts to bend a little
13 bit, doesn't it?

14 A. Little bit.

15 Q. Just past that. All right. Now, again, getting
16 back to the pictures, this picture -- I'm showing you
17 State's Exhibit 15 that appears to have your patrol car
18 in it, is that picture, and I'm going to use my drawing
19 here, that being River Road. Is that picture taken
20 facing away from River Road or toward River Road, can you
21 tell?

22 A. This picture here?

23 Q. Yeah.

24 A. Was taken here. The cruiser is here.

25 Q. So it's taken back from the perspective of looking

1 out towards Ardwick?

2 A. Yes, sir.

3 Q. And your cruiser is roughly -- is your cruiser
4 roughly in the same position?

5 A. It's about the same spot.

6 Q. So your cruiser is about in the same position as
7 it was the day of the incident, and this is from looking
8 back -- the same way Mr. Robinson, I guess --

9 A. The same way Mr. Robinson.

10 Q. He would have been looking in the same direction.
11 All right. Now, just to help the jury understand each of
12 these pictures, because it's sort of hard to get them
13 without the context, I'm going to show you State's
14 Exhibit 14. This picture is taken from Ardwick looking
15 into the property? Can you tell?

16 A. It's taken from here --

17 Q. Looking back?

18 A. Towards Robinson.

19 Q. Towards Robinson, it shows the place where people
20 gather?

21 A. Correct.

22 Q. And that is basically how it appeared that day?

23 A. Yes.

24 Q. Now, using 14 as best we can, Mr. Rivers would
25 have been walking into this picture from over this

1 direction?

2 A. Correct.

3 Q. I know that's hard to describe, but I'm doing my
4 best. He would have entered the picture from the
5 right-hand side?

6 A. Left.

7 Q. Left-hand side. And so he came off the road into
8 the cut that walks back towards this area.

9 A. Correct.

10 Q. All right. And when you say he got those -- he
11 got, like, a deer in the headlights look?

12 A. Yes, sir.

13 Q. You knew you had met Arthur in that area before,
14 right, so you knew Arthur?

15 A. Yes, sir.

16 Q. So when you say deer in the headlights look, what
17 exactly are you describing?

18 A. A look of surprise.

19 Q. He was walking along, minding his own business,
20 and saw you?

21 A. Correct.

22 Q. But he continued to walk the way he was walking;
23 he didn't stop to turn around or anything else?

24 A. No, sir.

25 Q. For the jury, what is exactly is the word -- I

1 have a hard time -- furtive?

2 A. Furtive movement, yes, sir.

3 Q. What does furtive mean?

4 A. Like I said, that little surprise he had would be
5 a small movement, kind of a movement that you would do to
6 not be noticed. It's obviously not a big movement where
7 you would take it and throw it all, hands up in the air,
8 he would just down to the side.

9 Q. So furtive, meaning clandestine, sneaky? I'm just
10 trying to --

11 A. Right.

12 Q. Did he make that with his left hand or his right
13 hand?

14 A. His right hand.

15 Q. And he's walking along, he sees you, and he makes
16 a movement with his right hand.

17 A. Correct.

18 Q. He didn't dig in pockets or anything else before
19 the movement.

20 A. No, sir.

21 Q. All right. So it's not like he had a baseball
22 throw or anything like that; was it underhand, kind of
23 below his waist?

24 A. Just tossed.

25 Q. And you were still in your car at that point,

1 right?

2 A. Yes, sir.

3 Q. And you had stopped short, or right at that
4 driveway, and you saw Arthur -- was he still on the road
5 here or had he already started into the cut?

6 A. He had already started into the cut.

7 Q. So he was in the cut, the bushes right there when
8 you made the movement?

9 A. Correct.

10 Q. So he wasn't facing you directly, he was a little
11 bit side to side, if he is cutting through that cut,
12 right?

13 A. Yes, sir.

14 Q. Okay. Okay. So you stopped your car and got out,
15 right? Before you got out of your car, did you make any
16 calls to dispatch or any other officers?

17 A. No, sir.

18 Q. All right. So you put your car in park, left it
19 running?

20 A. Yes, sir.

21 Q. Okay. And got out, and we change colors at this
22 point, since I got multi colors.

23 And you started walking back down this driveway
24 towards Mr. Robinson, correct?

25 A. Correct.

1 Q. All right. And Mr. Robinson just sat there. He
2 didn't get up and boogie or anything else?

3 A. No, sir.

4 Q. And you didn't see anybody else but Arthur at this
5 point?

6 A. Correct.

7 Q. And Arthur came through the cut and started
8 walking back where you were?

9 A. Correct.

10 Q. So Arthur comes in and he ends up basically in
11 that position in front of the house, give or take?

12 A. Yes.

13 Q. All right. At that point in time, you had a
14 conversation with Mr. Robinson, right?

15 A. Yes, sir.

16 Q. And told him that you had warrants to put him
17 under arrest?

18 A. Correct.

19 Q. You asked Arthur for his ID?

20 A. I did.

21 Q. But you knew who he was?

22 A. Right.

23 Q. But you still asked him for his ID?

24 A. I did.

25 Q. Okay. And at that point, you called in his ID,

1 with your hand held?

2 A. Yes, sir.

3 Q. To run it, to see if there was any warrants on
4 him?

5 A. Correct.

6 Q. Okay. Now, while you were doing that, the
7 conversation now with Mr. Rivers, Mr. Robinson is sitting
8 or standing?

9 A. Sitting in a chair.

10 Q. He's just sitting there, cuffed behind his back?

11 A. Yes, sir.

12 Q. All right. So the ID comes back clean, right?

13 A. Correct.

14 Q. You gave it back to him?

15 A. I can't recall if I gave it back to him. Usually
16 I'll hold on to it.

17 Q. Okay. And you told him to turn around, right?

18 A. No, sir.

19 Q. Well, you pulled out your other cuffs.

20 A. Not at this point.

21 Q. You told him you were going to detain him?

22 A. Not at this point.

23 Q. Okay. You asked him if you could search him?

24 A. Correct.

25 Q. All right. So after he's cuffed, you got his ID,

1 called it in, it's clear. Hey, I think you said it's an
2 officer safety issue, but it just came up at this point,
3 that you wanted to search him for weapons or narcotics,
4 right? That is the point that it came up?

5 A. Well, it's always an issue, but --

6 Q. Sure, sure, but it was after you did the ID that
7 you did the search, right?

8 A. Correct.

9 Q. Okay. So you did an outside of the clothing pat
10 down, correct?

11 A. Yes, sir.

12 Q. It wasn't up against anything, it was just -- did
13 you do it from behind or facing him?

14 A. Both.

15 Q. Okay. So you were in front of him, patted him
16 down, and then had him turn around and then patted him
17 down again?

18 A. Correct.

19 Q. Okay. And then you told him -- then you took out
20 your cuffs?

21 A. Correct.

22 Q. And attempted to reach for his arm?

23 A. I did.

24 Q. And he pulled back, right?

25 A. He did.

1 Q. And when you reached again, he gave you a push?

2 A. He did.

3 Q. All right. And then he ran, correct?

4 A. Yes, sir.

5 Q. Now, the push didn't knock you down, it just made
6 you step back, correct?

7 A. Correct.

8 Q. You're a big, strong fellow, right? I mean, it
9 might have caught you a little off guard, but it by no
10 means was a body slam or anything like that, it was a
11 push?

12 A. Right.

13 Q. Now, Arthur took off running in this direction?

14 A. Straight down.

15 Q. Straight down. Did he go between where the
16 clothes line was or back behind the house?

17 A. In between the shed right here and this house
18 right here, where the wood line is.

19 Q. So there is a wood line back here, running here,
20 so he went towards this wood line?

21 A. Yes, sir.

22 Q. All right. And you, of course, took off after
23 him?

24 A. I did.

25 Q. All right. And you -- as you were running after

1 him, you took out your Taser?

2 A. Correct.

3 Q. Fired at him at his back?

4 A. I did.

5 Q. And you contacted him with the Taser right here at
6 the wood line?

7 A. A little bit right to the side of wood line.

8 Q. He had just gotten to it?

9 A. Correct.

10 Q. Was it a path or just brush?

11 A. It was just brush at that point.

12 Q. So you contacted him, and one of the Tasers went
13 in him, correct?

14 A. One of the probes.

15 Q. There is two, and to get the full effect, you need
16 them both in, correct?

17 A. Correct.

18 Q. But one hit him?

19 A. Yes, sir.

20 Q. And you activated the Taser?

21 A. Correct.

22 Q. And he fell?

23 A. Yes.

24 Q. Face first into the brush here?

25 A. Yes, sir.

1 Q. And it was fairly safe to say there's lots of
2 stickers there?

3 A. There is.

4 Q. I guess maybe briars, stickers, I don't know what
5 they're called, but it wasn't comfortable, right?

6 A. No, sir.

7 Q. And when he went down, you went in on top of him,
8 correct?

9 A. Correct.

10 Q. All right. And that's where I think you described
11 it, the wrestling match, began?

12 A. Yes, sir.

13 Q. Okay. So had you re-holstered your Taser?

14 A. No, sir.

15 Q. So you had the Taser?

16 A. I discarded it.

17 Q. You tossed it down?

18 A. I did.

19 Q. You got your cuffs in one hand?

20 A. Yes, sir.

21 Q. He's on his stomach, you're on top of him, and the
22 struggle begins?

23 A. Yes, sir.

24 Q. Okay. And that struggle in the briars went on
25 for, I think you described it, a while?

1 A. Yes.

2 Q. It really didn't move a whole lot out of that area
3 because there wasn't anywhere to go?

4 A. No, sir.

5 Q. You're stuck in those briars. And whatever length
6 of time you then went to using your hands -- well, you
7 said that you dropped your cuffs and he threw him into
8 the bushes. Were your cuffs ever found?

9 A. Yes, sir.

10 Q. Y'all searched for them?

11 A. We did.

12 Q. So somewhere in that brush you lost your cuffs?

13 A. They're still there.

14 Q. And he threw those when he was on his stomach?

15 A. Yes, sir.

16 Q. So he grabbed them and tossed him?

17 A. Correct.

18 Q. And y'all continued to wrestle, and is it at that
19 point that you used the brachial chops on him?

20 A. It was through the course of the whole time.

21 Q. Okay. Did you hit him with a closed fist?

22 A. A few times, yes, sir.

23 Q. So you popped him, hit him, the whole bit, and
24 finally were able to get him out of the briars?

25 A. Eventually.

1 Q. And once you got him out of the briars, I think
2 your description was y'all were standing, looking at each
3 other like tired fighters?

4 A. We were still in the brush at that point.

5 Q. You were still in the brush when that was going
6 on?

7 A. Yes, sir.

8 Q. And then at that point that you're standing there
9 looking at each other, tired, as tired fighters, you went
10 to execute a knee to his groin, right?

11 A. Correct.

12 Q. Okay. And that knee connected with his face?

13 A. Correct.

14 Q. All right. So you put a knee to his face, and I
15 would assume he went down from that?

16 A. Yes, sir.

17 Q. Was he still in the briars when you did that,
18 right on edge?

19 A. At that point it was a little bit clearer than the
20 briars, but it was still in the brush.

21 Q. Okay. Your injuries that you sustained were from
22 the briars, right?

23 A. Majority of them.

24 Q. Those are scratch marks there from the briars,
25 correct?

1 A. Yes.

2 Q. And, again, looking at State's Exhibit 6, again,
3 scratches from being in those briars?

4 A. Correct.

5 Q. And, again, on your nose appears to be a scratch
6 from the briars?

7 A. Okay.

8 Q. Okay?

9 MR. SMILEY: Could I get this marked as
10 Defense Exhibit 2.

11 (Photograph marked for identification as
12 Defendant's Exhibit No. 2.)

13 BY MR. SMILEY:

14 Q. And I'll show you what is marked as Defense
15 Exhibit 2. Would this be a picture of your right hand?

16 A. Yes, sir.

17 Q. And this shows the injuries that you sustained?

18 A. Correct.

19 Q. All right. And, now, some of those, the injuries
20 to your knuckles were probably from striking him?

21 A. There is no telling what they're from. It could
22 be from the briars; it could be from Mr. Rivers; it could
23 be from anything during that confrontation.

24 Q. But you popped him with your right fist, right?

25 A. Yes, sir.

1 MR. SMILEY: I would move defense Exhibit
2 No. 2 into evidence.

3 MR. DURANT: No objection, Your Honor.

4 THE COURT: Admitted.

5 (Defendant's Exhibit No. 2 was admitted into
6 evidence.)

7 BY MR. SMILEY:

8 Q. All right. When you walked up to Mr. Robinson
9 there in the beginning and Arthur came up to, basically,
10 the same area you were and heading toward -- appeared to
11 be heading toward this small house, right?

12 A. Yes, sir.

13 Q. Okay. You told him that you needed to talk to
14 him, right?

15 A. Correct.

16 Q. And so he stopped and waited on you.

17 A. Yeah.

18 Q. All right. Now, I'm going to show you what is
19 Defense Exhibit 3 and show you -- is this another picture
20 looking from back in the shed area towards Ardwick?

21 A. Yes, sir.

22 Q. And your car is parked looking out the right side
23 of the property or the left side?

24 A. I'm -- my car is looking out -- if I'm looking out
25 my driver's side, looking out toward the left.

1 Q. All right. Okay. This area that is depicted on
2 the left side of the photograph here, is that towards the
3 cut?

4 A. Yes, sir. That's give or take. That is about a
5 45 degree angle or so.

6 Q. But this is the area the cut was in?

7 A. Yes, sir.

8 Q. So the cut that you saw Arthur in when you first
9 arrived would have been on the right side of the
10 photograph, correct, this side?

11 A. Yes, sir.

12 Q. Right side of the photograph. Now, I show you
13 what has been marked State's exhibit -- excuse me,
14 Defendant's Exhibit No. 4, and, again, the viewing angle
15 of that is from that shed, back in that shed area,
16 towards Ardwick, correct?

17 A. Same pictures as before, just a little further
18 back.

19 Q. And this one starts to bring in the area that the
20 people would congregate in?

21 A. Correct.

22 Q. All right. And this little out building that is
23 there, it was there then too, right?

24 A. Yes, sir.

25 Q. So, again, it shows the cuts further down in this

1 picture?

2 A. Yes, sir.

3 Q. And then it shows you coming into the area that
4 people congregate, and then, finally, a picture is taken
5 of an area very close to where you made contact with
6 Mr. Robinson?

7 A. Correct.

8 Q. All right. And, for that matter, contact with
9 Mr. Rivers, correct?

10 A. Yes, sir.

11 Q. Okay. I'll show you Defense Exhibit No. 5. In
12 this picture, would it be fair to say it's from the
13 driveway looking back towards the woods and the common
14 area?

15 A. That would be taken from the picture you just
16 showed looking backwards the church, the very back of the
17 hill.

18 Q. So standing where the shed is, you would have your
19 back to Ardwick. Looking towards the woods, the shed was
20 there at one point, but now it's not?

21 A. It's not now.

22 Q. But that shows you the back of the property?

23 A. Yes, sir.

24 Q. From the shed towards the back. Again, once
25 again, the shed is no longer there when this picture was

1 taken, correct?

2 A. Correct.

3 Q. All right. Now, let me show you what is Defense
4 Exhibit No. 6, and is this the briar area that you and
5 the -- Mr. Rivers ended up in?

6 A. I can't even tell what that chain is, but that is
7 the same type of terrain.

8 Q. This is fair to say if this isn't, it's very
9 similar to where you ended -- where the Taser knocked him
10 to the ground and you ended up having a physical
11 altercation with him?

12 A. Correct.

13 Q. Again, there wasn't a path, it was just sort of
14 like this? There was a wall of thorns and stickers?

15 A. Yes, sir.

16 Q. All right. One last -- two last pictures. I'm
17 going to show you Defense Exhibit No. 8. Is this the
18 picture, the orientation being from the shed towards
19 Ardwick?

20 A. That would be taken from the shed towards Ardwick,
21 yes, sir.

22 Q. And does this show the area to the right of the
23 picture, this side of the picture, where the cut would be
24 located?

25 A. This is the cut right here.

1 Q. The cut is -- so the driveway, this is back there,
2 the driveway would be --

3 A. The driveway is over to the side.

4 Q. Would be on the outside, the left side of the
5 picture?

6 A. That is the cut right there.

7 Q. And that would be the cut that cuts through the
8 corner of the property, back towards the other?

9 A. Yes, sir.

10 Q. Now, one last picture here, and it's Defense
11 Exhibit 7. I just showed you 2. I got them backwards.
12 Tell the jury what this is showing.

13 A. This depicts where the abandoned trailer that we
14 discussed earlier used to rest.

15 Q. Okay. And there is still -- the one that is still
16 there shows up too.

17 A. The one that is in this picture is still there.

18 Q. The other one is gone.

19 A. The other one is gone.

20 Q. And looking at this picture, Ardwick --

21 A. If you're looking from the driveway --

22 Q. Right --

23 A. -- toward going where Mr. Robinson was, the shed,
24 this picture is taken on the left.

25 Q. All right. And you would be taking this picture

1 from Ardwick back towards the shed, correct?

2 A. That picture is taken here --

3 Q. Very good. Thank you. We ought to use that more.

4 All right. Now, you placed -- you sat on Arthur for a
5 period of time until other officers arrived, correct?

6 A. Correct.

7 Q. The first officer that arrived was Deputy Craver,
8 right?

9 A. Correct.

10 Q. After he got out of his vehicle, he came directly
11 to where you were, correct?

12 A. For the most part. He had to find us first.

13 Q. He found you, and he provided you a set of cuffs
14 and you got Arthur up and cuffed him?

15 A. Correct.

16 Q. There was no conversation at that point in time?

17 A. There was a Miranda at that point.

18 Q. So right then and there you Mirandized him?

19 A. After he was placed in cuffs.

20 Q. So he was cuffed right there, he was under arrest
21 for the pushing, the fight, for the altercation?

22 A. For the assault.

23 Q. And you pulled out your card and read it just like
24 you did in court?

25 A. Just like every day, yes, sir.

1 Q. And you took him and placed him in your vehicle?

2 A. Correct.

3 Q. So you walked him out to the roadway, all right?
4 But you hadn't moved your vehicle, correct?

5 A. Correct.

6 Q. Now, this whole time Mr. Robinson is still sitting
7 right there?

8 A. Right there.

9 Q. And then other deputies arrived?

10 A. Correct.

11 Q. So other cars arrived?

12 A. Yes, sir.

13 Q. And one of them then took Mr. Robinson into
14 custody and took him into a car that was out on the road,
15 like by yours, correct?

16 A. Yes, sir.

17 Q. And then at that point, Lieutenant Tague arrived,
18 right?

19 A. Yes, Lieutenant Tague arrived on the scene.

20 Q. Of course, you discharged your Taser, and you
21 found your Taser, right?

22 A. Yes, sir.

23 Q. You had discharged your Taser, so y'all were
24 standing outside of your car in that driveway portion,
25 talking about the administrative part of firing the

1 Taser, correct?

2 A. Correct.

3 Q. And then while that was going on, the other
4 officers, I would assume, were searching for the drugs?

5 A. Yes, sir.

6 Q. All right. And after a period of time, I think
7 you said Deputy Summersell found drugs?

8 A. Summersell found them, yes.

9 Q. Now, when he found them, did he collect them?

10 A. He called me over to them.

11 Q. All right. So he finds drugs in that area and has
12 you come over. All right. Was Lieutenant Tague and you
13 over talking at that time?

14 A. Lieutenant Tague and I were over talking at the
15 cruiser.

16 Q. All right. Lieutenant Tague and you were talking
17 about firing the thing. A period of time goes by, and
18 then finally Deputy Summersell says, I found something?

19 A. Correct.

20 Q. And he calls you over to where the drugs were?

21 A. Right.

22 Q. All right. And there was a prescription bottle?

23 A. There was.

24 Q. That was taped up?

25 A. With duct tape.

1 Q. And there was a loose bag of a white powdery
2 substance?

3 A. There was.

4 Q. Now, who was in charge of that scene?

5 A. Lieutenant Tague at that point.

6 Q. All right. Lieutenant Tague was at that point.
7 When Deputy Summersell saw it and brought you over and
8 you saw the drugs, you collected them?

9 A. I did.

10 Q. Okay. And they were just laying out in the open
11 on the ground?

12 A. Yes, sir.

13 Q. All right. And they were over in that cut
14 portion?

15 A. They were.

16 Q. Okay. And I would assume you found them to the
17 right side of that cut?

18 A. Yes, sir.

19 Q. All right. Were they actually in the cut or
20 started into the bushes, do you remember?

21 A. They were just off to the cut.

22 Q. Okay. On the right-hand side?

23 A. Yes, sir.

24 Q. Okay. Now, from where your car was parked, at the
25 opening of the driveway --

1 A. Yes, sir.

2 Q. -- all right to the cut, from your car to the cut
3 is approximately 50 feet?

4 A. A little bit less than that.

5 Q. 40 to 50 feet?

6 A. About.

7 Q. And, again, just -- in the distance from your car
8 back to Mr. Robinson is about 150 feet, give or take?

9 A. I'm not a good judge of that, but, I mean,
10 further --

11 Q. To help the jury understand --

12 A. It's a good distance, I would say over 200 feet
13 for sure.

14 Q. Okay. Now, you had mentioned you saw him throw an
15 object to the ground, correct?

16 A. Correct.

17 Q. You weren't at the point that he threw it down
18 able to identify the object?

19 A. No, sir.

20 Q. From the time that this incident began until
21 Deputy Craver arrived, the only people on scene were
22 yourself, Mr. Rivers, and Tyrone Robinson?

23 A. Correct.

24 Q. You saw no one else?

25 A. Nobody else.

1 Q. Now, your testimony is that after you collected
2 the drugs, you took them and opened your car there out on
3 Ardwick and put them on your front seat and closed the
4 door?

5 A. The passenger seat, yes.

6 Q. All right. And did Mr. Rivers, once he was put in
7 the back seat until the time he left the scene, did you
8 take him out of the car at all?

9 A. No, sir.

10 Q. No photographs were taken?

11 A. Not at Ardwick.

12 Q. Excuse me?

13 A. Not at Ardwick.

14 Q. No photographs were taken where the drugs were
15 found?

16 A. No, sir.

17 Q. The crime scene wasn't called?

18 A. No, sir.

19 Q. At what point were your clothes collected as
20 evidence?

21 A. I believe that was later that afternoon.
22 Actually, they were brought in the following day to
23 logistics because they had to be destroyed for blood
24 borne pathogens.

25 Q. So you didn't take off your uniform that day; you

1 brought it in the next day?

2 A. Yes, sir.

3 Q. So it really wasn't taken into evidence; it was
4 destroyed?

5 A. Something like that, due to the blood-borne
6 pathogens, it had to be destroyed.

7 Q. What about Mr. River's T-shirt? He was dressed
8 with a white T-shirt on?

9 A. Tank top.

10 Q. Tank top, and during your struggle it was taken
11 off?

12 A. It was.

13 Q. Was it collected as evidence?

14 A. I don't believe so.

15 Q. Okay. Once you had collected the drugs that
16 Deputy Summersell found and put on the front seat, it's
17 your testimony that at that point Arthur started knocking
18 on the window somehow?

19 A. Not at that point.

20 Q. Some time went by?

21 A. Yes, sir.

22 Q. You're still discussing some things with
23 Lieutenant Tague?

24 A. We are.

25 Q. All the deputies gathered at that point?

1 A. They were doing other -- at a scene like that,
2 there is a lot of jobs to be taken under consideration
3 and they were dealing with other things, but they were --

4 Q. They had found the drugs, right?

5 A. Correct.

6 Q. And what else were they doing at the scene?

7 A. Mr. Robinson needs to be taken from his position
8 into custody.

9 Q. Okay. Had he been placed in the car up there?

10 A. Right.

11 Q. Okay. What else?

12 A. Calls were pending at this time. Obviously,
13 everyone that is working that area is there. Once we
14 pretty much have the suspect and the drugs, secured the
15 car, when there's calls pending like that, Lieutenant
16 Tague will tell you that being on the road, being
17 supervised, he'll cut everybody loose that does not need
18 to be there, so they're all starting to disburse.

19 Q. I'm just trying to see what else they were doing
20 at the scene other than taking care of Mr. Robinson and
21 making sure it was secured, but after that, they were
22 done?

23 A. Correct.

24 Q. Okay. So at that point, y'all left the scene?

25 A. A little bit after that.

1 Q. Okay. Did you field test the drugs out on the
2 scene?

3 A. We do.

4 Q. Okay. So you had to field test them there. Did
5 you field test them before or after your testimony about
6 the conversation with Mr. Rivers?

7 A. They were tested after.

8 Q. So you got a -- let me do it this way. The drugs.
9 Thanks. So you had placed this bottle on the front seat,
10 correct?

11 A. Correct.

12 Q. And then this baggy containing powder was on the
13 front seat?

14 A. Correct.

15 Q. All right. So that is what you had put there?

16 A. Correct.

17 Q. Now, you say Mr. Rivers knocked on the window.
18 When he knocked on the window, was it just you and
19 Lieutenant Tague out there, or were other officers there?

20 A. We were right there, just Lieutenant Tague and I.

21 Q. Everybody else had left?

22 A. I believe Mr. Robinson, the guy that was in the
23 car with him, might have still been there, but my
24 attention was on Lieutenant Tague, and when we went to
25 Mr. Rivers, it was just Lieutenant Tague and I.

1 Q. Okay. So Mr. Rivers waited until everybody else
2 had disbursed or gone, for the most part, before he
3 decided he needed to talk to you?

4 A. Correct.

5 Q. So he knocks on the door, and you come up, the two
6 of you, you and Lieutenant Tague, open the door, and
7 before he can talk to you, you read him the Miranda, like
8 you did here in court?

9 A. Correct.

10 Q. And then you said, I need a yes or no answer. Do
11 you want to talk to me?

12 A. I did.

13 Q. And that is when he said he wanted to talk to you?

14 A. Yes, sir.

15 Q. All right. And he told you that the cocaine was
16 his, but not the crack.

17 A. That's correct.

18 Q. All right. And that he was a good person and that
19 he had messed up, fuck -- the F word that day?

20 A. Yes, sir.

21 Q. All right. Then you transported him away, right?

22 A. To our substation.

23 Q. To the substation?

24 A. Yes, sir, on James Island.

25 Q. When you got to the substation on James Island,

1 you took photographs, correct?

2 A. Photographs were taken, yes, sir.

3 Q. Okay. And photographs were taken of Mr. Rivers?

4 A. Correct.

5 Q. And they were taken of yourself?

6 A. They were.

7 Q. All right. Who took those photographs?

8 A. Deputy Delong.

9 Q. And then after that you took him to the jail?

10 A. No, sir.

11 Q. Okay. What happened after the photographs were
12 taken?

13 A. After that, Mr. Rivers and myself, due to EMS and
14 Lieutenant Tague talking, were taken to CCOH, which is
15 our county hospital, where we needed to meet with
16 Sergeant Anderson who is in charge of our blood-borne
17 pathogens and blood exchange, and we had to be tested
18 there on the spot due the fact of our blood --

19 Q. So you went down to the hospital to get some blood
20 drawn to make sure that --

21 A. That we were --

22 Q. Since y'all had mixed blood that everything was
23 okay?

24 A. Yes, sir.

25 Q. All right. And you transported him down there?

1 A. No, sir. I rode with Lieutenant Tague.

2 Q. Okay.

3 A. And I think Deputy Summersell transported Mr.
4 Rivers.

5 Q. So Deputy Summersell wasn't out on calls at that
6 point?

7 A. No, sir. He was with us.

8 Q. All right. Now, let's talk Mr. -- you said EMS.
9 EMS actually came out to this area?

10 A. Yes, sir.

11 Q. Okay. And who called EMS?

12 A. I can't recall.

13 Q. Okay. Did EMS examine you?

14 A. Both of us.

15 Q. And did they examine Mr. Rivers?

16 A. Yes, sir.

17 Q. Was that before or after he wanted to talk to you?

18 A. That was after.

19 Q. After.

20 A. Yes.

21 Q. So the EMS came. When EMS came, it was just you
22 and Lieutenant Tague that were on the scene still?

23 A. Yes, sir. I believe there might have been one
24 with Robinson if they hadn't left yet and Summersell
25 possibly.

1 Q. And then they took a look at both of you and then
2 they left, correct?

3 A. Correct.

4 Q. Did you have a discussion with EMS about Arthur's
5 condition?

6 A. I did not.

7 Q. All right. Now, did you at any point after Arthur
8 made this admission to you put it down in writing? Did
9 you say, Do you want to give a written statement and sign
10 it?

11 A. Not a written statement.

12 Q. You didn't ask him if he wanted to do that.

13 A. No, sir.

14 Q. Okay. And you take written statements in your
15 line of duty, though, right?

16 A. I do.

17 Q. And one of the reasons that you take written
18 statements is to get what someone says down and their
19 signature so they can't change what they're saying later?

20 A. Correct.

21 Q. All right. And in this case, it just wasn't done,
22 though?

23 A. Right.

24 Q. All right. After you got done at the hospital,
25 all right, at that point did you take Mr. Rivers to the

1 jail?

2 A. No, sir.

3 Q. Okay. Where did you go from there?

4 A. Lieutenant Tague took me back to the cruiser, and
5 Deputy Summersell transported Mr. Rivers to jail.

6 Q. So another officer had come back?

7 A. No. He was already transported by Summersell to
8 the hospital at that time.

9 Q. If I actually told you it was Deputy Craver that
10 did it in your report rather than Summersell, that would
11 be just be a mistake?

12 A. Could be.

13 Q. I'm not trying to bust you on it.

14 A. Could be.

15 Q. But let's put it this way: Another officer
16 besides, yourself and Lieutenant Tague, went to the
17 hospital?

18 A. Right. I was not the officer that took Mr. Rivers
19 after that.

20 Q. And no further discussion was attempted about
21 Mr. Rivers?

22 A. No, sir.

23 Q. And a search of Mr. Rivers' person, did you find
24 in money?

25 A. No, sir.

1 Q. Did you find any drug paraphernalia on him?

2 A. No, sir.

3 Q. Did you find any weapons on him?

4 A. No, sir.

5 Q. You said this area is known for drugs and guns,
6 but you didn't find any on him?

7 A. Not that day.

8 Q. So if the crime scene was going to be called to
9 the scene, it would have been done by Lieutenant Tague?
10 He would have been the one to decide --

11 A. He would have made a final decision.

12 Q. Okay. Now, couple more questions and I'm done.
13 When one is struck with just one prong of the Taser --

14 A. Correct.

15 Q. -- it still works; it's just not as effective, is
16 that fair to say?

17 A. Not with the electric charge, but it's fair to say
18 that impact alone could knock somebody to the ground.

19 Q. Okay. And the drugs that were in your car --

20 A. Right.

21 Q. -- you field tested them out at the scene?

22 A. They were field tested at the substation.

23 Q. At the substation, not out at the scene, sorry.

24 At the substation, you field tested them and then you put
25 them in a best kit?

1 A. Yes, sir.

2 Q. And then you took them and put them in the drug
3 drop box?

4 A. To the evidence lockers at the sheriff's office.

5 Q. That is not the same thing as the drug drop box?

6 A. We don't have drug drop box. We have evidence
7 lockers. You can put anything in there.

8 Q. So an evidence locker?

9 A. Right.

10 Q. So once you put it in the evidence locker, you're
11 done with it?

12 A. That's as far as I go.

13 Q. And you filled out the proper paperwork to go with
14 it?

15 A. Yes, sir.

16 Q. And you had made a request for a drug analysis to
17 be done on it?

18 A. Correct.

19 Q. And that is all did you with those drugs, right?

20 A. Yes, sir.

21 MR. SMILEY: Beg the Court's indulgence. We
22 just had some photographs that were just delivered.

23 Sorry, Your Honor. I just got some more
24 photographs that -- just bear with me for a moment, Your
25 Honor.

1 (Photographs marked for identification and
2 admitted into evidence as Defendant's Exhibit Nos. 9
3 through 15.)

4 MR. SMILEY: Before I start with some new
5 pictures, if I could move Defendant's 2 through 9, the
6 pictures that I've used with this officer, into evidence
7 at this time.

8 MR. DURANT: Without objection.

9 THE COURT: Admitted.

10 MR. SMILEY: Actually, 2 through 8.

11 (Defendant's Exhibit Nos. 2 through 8 were
12 admitted into evidence.)

13 BY MR. SMILEY:

14 Q. All right. I'm going to show you some more
15 pictures, okay?

16 A. Yes, sir.

17 Q. I'm going to ask you if you recognize this
18 picture. Is this a picture looking from down Ardwick
19 away from River Road?

20 A. Yes, sir.

21 Q. Okay. And that shows sort of the bend in the road
22 there?

23 A. Correct.

24 Q. All right.

25 MR. SMILEY: If could I move No. 9 into

1 evidence.

2 MR. DURANT: Without objection.

3 (Defendant's Exhibit No. 9 was admitted into
4 evidence.)

5 BY MR. SMILEY:

6 Q. And, again, that is a picture from that driveway
7 facing away from River Road towards the cut.

8 A. Correct.

9 Q. All right. And it shows how Ardwick bends there
10 in the road, right?

11 A. Yes, sir.

12 Q. I show you Defendant's Exhibit No. 10. Is this
13 not a picture from that driveway, facing back towards
14 River Road, correct?

15 A. Correct.

16 Q. And this is looking down Ardwick towards River
17 Road from the driveway, correct?

18 MR. SMILEY: Move No. 10 into evidence.

19 MR. DURANT: Without objection.

20 (Defendant's Exhibit No. 10 was admitted into
21 evidence.)

22 BY MR. SMILEY:

23 Q. No. 11, is this the little white house back where
24 the shed used to be?

25 A. This is the house we talked about right here.

1 Q. Right. Okay. And that is a fair and accurate
2 depiction of the house?

3 A. Yes, sir.

4 MR. SMILEY: Move No. 11 into evidence.

5 MR. DURANT: Without objection.

6 (Defendant's Exhibit No. 10 was admitted into
7 evidence.)

8 BY MR. SMILEY:

9 Q. Did you ever attempt to speak to whoever was in
10 that house?

11 A. That day?

12 Q. Yes.

13 A. No, sir.

14 Q. I show you Defendant's Exhibit No. 12. Is that
15 from the driveway looking back towards the gathering
16 area?

17 A. That is from about right here looking there.

18 Q. Okay. Very good.

19 MR. SMILEY: Move No. 12 into evidence.

20 MR. DURANT: Without objection.

21 THE COURT: Admitted.

22 MR. DURANT: No objection to 11 either.

23 (Defendant's Exhibit Nos. 11 and 12 were
24 admitted into evidence.)

25 BY MR. SMILEY:

1 Q. Okay, No. 11, if I haven't. And that is pretty
2 much the way it looked back then, give or take, chairs
3 being moved; it's that general kind of look, right?

4 A. Yes, sir.

5 Q. All right. I show you what is 13, and this one
6 may be a little bit more difficult to -- does that appear
7 to be looking from the driveway towards the cut? Not out
8 on the road, but in the driveway a little bit?

9 A. It's hard to tell in this picture.

10 Q. But from this area toward the cut, can you tell?
11 If you can't, that's fine.

12 A. This picture looks like it's taken from about
13 right here, where you see this stake is.

14 Q. All right. Very good.

15 MR. SMILEY: I'd like to move No. 13 into
16 evidence.

17 MR. DURANT: Without objection.

18 (Defendant's Exhibit No. 13 was admitted into
19 evidence.)

20 BY MR. SMILEY:

21 Q. So this is from the road, looking into the cut
22 where this stake --

23 A. Right. Right about here.

24 Q. Okay. All right. Just a couple more. 14, again,
25 do you recognize this being the area? And if you could

1 show them where you believe that is taken from.

2 A. This would be about right here, facing the --

3 Q. Okay. So the edge of the driveway, closer?

4 A. About the driveway, the first picture by the
5 house.

6 Q. Right, very good. So the house would sort of be
7 behind you?

8 A. Behind, yes, sir.

9 MR. SMILEY: Again, 14 into evidence.

10 MR. DURANT: Without objection.

11 (Defendant's Exhibit No. 14 was admitted into
12 evidence.)

13 BY MR. SMILEY:

14 Q. Give or take, this is sort of in the general area
15 that you would have come into contact with Mr. Rivers?

16 A. Little bit further back.

17 Q. Towards the house?

18 A. Towards the house.

19 Q. And, lastly, just another picture, I think, that
20 shows the -- well, Defense Exhibit No. 15, this is from
21 that driveway looking back towards the little house where
22 the shed used to be.

23 A. It would be about right about here, looking down
24 this road, like that.

25 Q. All right. Very good.

1 MR. SMILEY: Once again, 15 into evidence.

2 MR. DURANT: Without objection.

3 (Defendant's Exhibit No. 15 was admitted into
4 evidence.)

5 BY MR. SMILEY:

6 Q. Now, just a few more questions and you're done.
7 At the point that you attempted to detain Mr. Rivers, he
8 wasn't under arrest for anything.

9 A. No, sir.

10 Q. And the reason you were detaining him is because
11 you thought -- you believed you saw him throw something
12 down and you wanted to investigate further; is that
13 correct?

14 A. Correct.

15 Q. All right. And he did not -- he cooperated with
16 you up until the point that you tried to --

17 A. Detain him.

18 Q. Detain him and put him in cuffs.

19 A. Correct.

20 Q. All right. Now, at any point after you struck him
21 in the head and he was in the back of the car, did you
22 attempt to see whether he had gotten a concussion or
23 anything?

24 A. No, sir.

25 Q. Okay. And fingerprints in this case were never

1 requested?

2 A. No, sir.

3 Q. No crime scene was asked to come out and take
4 pictures where the drugs were located?

5 A. No reason for them to be there.

6 Q. Crime scene comes out to take pictures and collect
7 evidence to help when a case comes to court, right?

8 A. Sometimes.

9 Q. Because you want to be able to show the jury
10 exactly what you saw, right?

11 A. Correct.

12 Q. All right. And to help identify suspects, right?

13 A. Correct.

14 Q. And help to remove any doubt as to who might have
15 done an incident, correct?

16 A. Correct.

17 Q. In this case, there was no crime scene, however?

18 A. There was no need for one.

19 MR. SMILEY: Nothing further, Your Honor.

20 THE COURT: Redirect?

21 MR. DURANT: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. DURANT:

24 Q. Crime scene is useful sometimes, right?

25 A. They are.

1 Q. I mean, they are help out on a lot of cases?

2 A. A lot of cases.

3 Q. When you had Mr. Rivers back there and you were
4 trying to put the cuffs on him, what were you attempting
5 to do?

6 A. I was attempting to place him under arrest.

7 Q. For what? I'm talking about -- let's go back.

8 A. Okay.

9 Q. Before he shoved you, when you got the cuffs out
10 there --

11 A. Right.

12 Q. -- what were you attempting to do?

13 A. I was attempting to detain him on the fact to
14 perform an investigation for what he threw down, what I
15 saw him litter on the ground before.

16 Q. If you would have gotten the cuffs on him, what
17 would you have done?

18 A. I would have sat him down with Mr. Robinson. I
19 would have waited for my backup to arrive. I would have
20 let whoever responded for backup watch over the two
21 subjects that were there, to have control over them. At
22 that point I would have gone back to where I saw him
23 toss, or discard the items. I would have tried to locate
24 the items, and at that point, being if the items were
25 trash or a bag of Doritos or a brick or whatever, he

1 would have been released, and if it would have been
2 contraband, like we found, he would have been placed
3 under arrest.

4 Q. And what about -- when the contraband was found
5 and you brought it back to your car, did you tell him,
6 did you tell Mr. Rivers what was found?

7 A. No, sir, I did not.

8 Q. The inside of your cruiser, is there a divider
9 between the front and the back?

10 A. There is.

11 Q. Where did you put those drugs?

12 A. I put the drugs on the back -- or the front
13 passenger seat next to me. The one divider that I have,
14 they are split in half. There is a cage divider, which
15 is, like, a chain link fence, almost, that filled up with
16 paperwork and no one can see through, and then the clear
17 plastic side that I have is tinted on the one side.

18 Q. Would it have been possible for him to see the
19 kind of drugs that you put in the car from the back?

20 A. No, sir.

21 Q. Not possible?

22 A. No.

23 Q. So when he said the cocaine is mine and the crack
24 is not, he didn't know what you had recovered?

25 A. No, sir, he did not.

1 MR. SMILEY: Objection. Objection.
2 Speculation.

3 THE COURT: Well, he asked the question, did
4 he know what you recovered, the answer is no, he didn't
5 know what I recovered, so I don't know whether it's
6 speculation. Overruled.

7 MR. SMILEY: May we approach, Your Honor?
8 (Discussion held at sidebar.)

9 BY MR. DURANT:

10 Q. From where Mr. Rivers was in your cruiser, would
11 it have been possible for him to have seen what the drugs
12 were?

13 A. No, sir. There was no way he could see.

14 MR. DURANT: No further questions.

15 THE COURT: Recross?

16 MR. SMILEY: Nothing further.

17 THE COURT: You can step down. All right,
18 folks. We'll break for lunch now. Let's see. Be back
19 in the jury room by 2:00, and we'll get started at 2:00.
20 Don't begin your deliberations or discussions on the
21 case.

22 (Recess taken.)

23 A F T E R N O O N S E S S I O N

24 THE COURT: All right. Let's bring the jury
25 in.

1 (In open court, jury present.)

2 THE COURT: All right. Be seated. We'll
3 resume with the state calling their next witness.

4 MR. DURANT: Thank you, Your Honor. The
5 state calls Lieutenant Robert Tague.

6 ROBERT TAGUE,

7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. DURANT:

11 Q. Good afternoon, Lieutenant Tague.

12 A. Good afternoon.

13 Q. Where are you employed?

14 A. Charleston County sheriff's office.

15 Q. How long have you been employed with Charleston
16 County sheriff's office?

17 A. Thirty-three years.

18 Q. How long have you been employed in law
19 enforcement?

20 A. Thirty-three years.

21 Q. The whole time with the sheriff's office?

22 A. Yes, sir.

23 Q. What is your current position?

24 A. I'm a lieutenant assigned to the uniformed patrol
25 division.

1 Q. Was that your position in June of 2008?

2 A. Yes, sir.

3 Q. What are your duties and responsibilities as a
4 lieutenant in the patrol division?

5 A. Mainly oversight of operations. I'm responsible
6 for about 20 deputies, making sure we have enough
7 personnel to answer calls for service, emergencies,
8 things like that, respond to crime scenes from time to
9 time, and assess it and make a determination what, if
10 any, additional resources we need there.

11 Q. In that capacity, did you have an opportunity to
12 respond to Ardwick and Balmoral on Johns Island on June
13 16, 2008?

14 A. Yes, sir.

15 Q. What was that in regard to?

16 A. Basically, that started out as an emergency-type
17 situation where Deputy Blakeley had checked out an
18 individual on Ardwick Road, and after several minutes of
19 the communications center attempting to contact him over
20 the radio, they had lost radar communication with Deputy
21 Blakeley, which basically constitutes an emergency on our
22 part to try to get to him as quick as possible and
23 determine that everything is okay.

24 Q. You were concerned?

25 A. Yes, sir.

1 Q. Was it you who dispatched other officers at that
2 scene?

3 A. Usually the communications center does that. I
4 would, in addition to the communication center, make
5 additional assignments to make sure we had enough
6 personnel at the scene to make sure everybody was safe.

7 Q. Did you yourself respond to that scene?

8 A. Yes, sir, I did.

9 Q. What did you observe when you arrived?

10 A. When I pulled up on Ardwick Road, Deputy Blakeley
11 and several other deputies were there, observed Deputy
12 Blakeley. He appeared to be sweating, out of breath. He
13 had minor scratches and bruises on both of his forearms,
14 and his nose was bleeding a little bit. He was sweating
15 a lot. His shirt was disheveled, he had some bloodstains
16 on his shirt, and his microphone, radio microphone, had
17 pulled off the epaulet of his shirt and had fallen across
18 his back.

19 Q. Were you aware if anybody was taken into custody
20 at that point?

21 A. Oh, yes, sir, I was.

22 Q. Were you aware of where that person was located
23 while they were in custody?

24 A. When I arrived there, he was already in the back
25 seat of a patrol car.

1 Q. Do you see the man who was in the back seat of the
2 patrol car in court today?

3 A. Yes, sir.

4 Q. Would you point to him, describe what he's
5 wearing?

6 A. Black male sitting at my far left with a buttoned
7 up shirt on, white buttoned up shirt.

8 Q. You are certain this is the person that was in the
9 back of the patrol vehicle?

10 A. Yes, sir.

11 Q. Did anything cause you to pay attention to that
12 vehicle at any time when you were out there? Did
13 anything draw your attention to it?

14 A. Yes, sir. At some point in time after I had been
15 there for a few minutes and was discussing with Deputy
16 Blakeley what had occurred, I heard some banging noises
17 coming from the back seat of the car where the gentleman
18 was located. Usually, based on my experience, that is
19 somebody trying to get our attention to let us know about
20 something.

21 Q. And based on this banging, what did you do?

22 A. Myself and Deputy Blakeley then went over to the
23 car and opened up the back door, and --

24 Q. What happened at this point?

25 A. We inquired what Mr. Rivers wanted.

1 Q. Was anything else said by the officers?

2 A. At that point Deputy Blakeley advised him if he
3 wanted to talk to us further about this particular
4 incident he would have to be advised of his Miranda
5 rights.

6 Q. And was he advised of his Miranda rights?

7 A. Yes, sir, he was. Deputy Blakeley advised him.

8 Q. How did they do that?

9 A. Normally, deputies carry a Miranda rights card in
10 the pocket of their shirt, and when we're advising
11 somebody of their Miranda rights, the deputy just pulls
12 it out of their shirt pocket and reads it verbatim off
13 the card.

14 Q. That what Deputy Blakeley did here?

15 A. Yes, sir.

16 Q. In your capacity as a lieutenant, do you also
17 train officers as well?

18 A. I do from time to time, yes, sir. I have in the
19 past.

20 Q. The Miranda requirement, is that something that
21 you teach your officers?

22 A. Yes, sir.

23 Q. Did Mr. Rivers appear to understand his rights?

24 A. Yes, sir, he did.

25 Q. Did he appear confused in any way?

1 A. No. As a matter of fact, he was quite emphatic
2 when we told him that for this conversation to continue
3 that he would have to understand what he was going to
4 talk to us about, and he said yes.

5 Q. Let's talk about his physical condition. Did you
6 have an opportunity to observe Mr. Rivers' physical
7 condition at that time?

8 A. Yes, sir.

9 Q. Did he appear wounded or hurt?

10 A. He had several scratches and abrasions about his
11 shoulders and arms. When I saw him, all he was wearing
12 was a pair of pants, and based on my experience, where
13 they were struggling at, in the woods, I would assume it
14 would be normal for people to get scratches and
15 abrasions.

16 Q. At any point did he ask for medical attention?

17 A. No, sir.

18 Q. Did he complain of headaches?

19 A. No, sir.

20 Q. Did you observe any physical manifestation of an
21 injury on him requiring medical attention?

22 A. No. Prior to my arrival, EMS was already there,
23 and I had spoken with the paramedics on the scene. Their
24 main concern was that there had been a possible
25 blood-borne exposure between Deputy Blakeley and

1 Mr. Rivers. That was their only medical concern at that
2 time. Other than that, they appeared to be fine.

3 Q. And observing Mr. Rivers and having been
4 Mirandized, did he at that point offer to make a
5 statement?

6 MR. SMILEY: Your Honor, again, I must renew
7 my previous objection for the record.

8 THE COURT: Noted. Overruled.

9 THE WITNESS: Mr. Rivers made the statement
10 that the coke was his, but the crack was not his.

11 BY MR. DURANT:

12 Q. Did he say anything else at that point?

13 A. No, sir.

14 Q. What did you and Deputy Blakeley do after he told
15 you that?

16 A. Well, we moved away from the vehicle, closed the
17 door, moved away from the vehicle, and up to that point,
18 I had not been apprised of what -- I knew there was drugs
19 involved. I didn't know what type of drugs or what
20 specific amount of drugs, and we moved around to the
21 front seat of Deputy Blakeley's vehicle where the drugs
22 were located.

23 Q. Did you do anything else to investigate this case?

24 A. Not from an investigative standpoint. There was
25 some administrative things I had to do, but not from an

1 investigative standpoint, no, sir.

2 MR. DURANT: Thank you, sir. Please answer
3 any questions the defense may have.

4 THE WITNESS: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. SMILEY:

7 Q. Lieutenant Tague, you were the senior officer on
8 the scene?

9 A. That's correct.

10 Q. And therefore you were in charge of the scene?

11 A. Yes, sir.

12 Q. It was your investigation?

13 A. It was my investigation from the standpoint of
14 making sure that proper procedure was followed to the
15 best of our ability.

16 Q. Yes, sir. If crime scene was going to be called
17 to the -- would you be the one to have made that call?

18 A. Yes, sir.

19 Q. All right. And in your 33 years of experience,
20 you, of course, have a lot of training and have learned
21 quite a few things on the job, I would assume.

22 A. I have had adequate training, yes, sir.

23 Q. And you know the importance of taking a written
24 statement, don't you?

25 A. Yes, sir.

1 Q. And a written statement can be more helpful than
2 an oral statement in that what a person says is reduced
3 to paper and then they sign it, correct?

4 A. That is one form of document. Also, it could be
5 documented on the deputy's incident report, which I
6 believe was done in this case.

7 Q. Certainly, but an oral statement, by itself, later
8 the subject, whoever it may be, could say, No, that's not
9 what I said, whereas if it's written and he signed it,
10 then he would have to say, That is not my signature, for
11 instance, correct?

12 A. Well, I guess based on my experience, I would say
13 it could go either way.

14 Q. So you don't think a written statement is any
15 better than an oral statement?

16 A. No, sir. What I'm saying is written statements
17 are contested as much as oral statements are, it's been
18 my experience.

19 Q. Okay. So since they are contested as much as an
20 oral statement, it's not as important to get a written
21 statement?

22 A. Sure, it's important, yes.

23 Q. Okay. Now, when the crime scene is called, one of
24 the things that they could do is take photographs of the
25 scene, correct?

1 A. Yes, sir.

2 Q. Or if evidence is located, they could document
3 exactly where the evidence was found, right?

4 A. Yes, sir.

5 Q. And pictures could be taken of them and removed
6 from the scene, correct?

7 A. Yes, sir.

8 Q. Or if evidence is found, the crime scene could
9 take fingerprints, for instance, correct?

10 A. Yes, sir.

11 Q. To help identify the person that last touched the
12 item, correct?

13 A. Yes, sir.

14 Q. Now, since the crime scene wasn't called, who was
15 in charge of collecting the evidence at the scene?

16 A. That would have been Deputy Blakeley.

17 Q. Did you give him any instructions on what to
18 collect and what not to collect?

19 A. Other than the drugs to be collected, no, sir.

20 Q. Okay. So you did not direct him to collect, for
21 instance, the defendant's torn and bloody shirt?

22 A. No, sir.

23 Q. Or that the officer's uniform should be placed
24 into evidence?

25 A. I believe we photographed the uniform.

1 Q. Okay. So you had a camera. It just wasn't out at
2 the scene to take pictures?

3 A. The camera was available, yes, sir. All our
4 deputies have cameras.

5 Q. Okay. Very good. Now, you said when you arrived
6 at the scene, several other deputies were already there?

7 A. Yes, sir.

8 Q. And when you arrived, you spoke with Deputy
9 Blakeley, and the purpose of that conversation is because
10 a Taser had been fired and there had been an assault and
11 to talk about the administrative part?

12 A. When I arrived, I wanted to find out what
13 happened, what's going on.

14 Q. Other than talking to Deputy Blakeley, did you
15 talk to anyone else about what happened, what went on?

16 A. I spoke with the EMS paramedics about the medical
17 condition of Deputy Blakeley and Mr. Rivers.

18 Q. Okay. Did you ask them if they did any kind of
19 examination of Mr. Rivers to determine if he had had a
20 concussion or been confused in any form or fashion?

21 A. No, sir.

22 Q. Were you involved in searching for any items in
23 this case?

24 A. No, sir.

25 Q. Did you direct any searches for items in this case

1 to be done?

2 A. No, sir.

3 Q. When you arrived at the scene -- do you know what
4 time you arrived at the scene, by any chance?

5 A. I'm not exactly sure right offhand. It was in the
6 afternoon, early afternoon hours.

7 Q. The EMS had already arrived by the time you got
8 there.

9 A. Yes, sir.

10 Q. Were you aware whether the drugs had been found
11 when you arrived or not?

12 A. Yes, sir. They had already been found.

13 Q. Was Mr. Robinson, the other person put in cuffs,
14 was he still on the scene, do you know?

15 A. I believe he was in one of the other vehicles, one
16 of the other sheriff's office vehicles there.

17 Q. All right. Were the other deputies that were
18 involved, Deputy Summersell, Deputy Craver, or any other
19 deputies when the knock on the cruiser took place, were
20 they there with y'all?

21 A. Yes, sir, they were.

22 Q. Was the EMS still there?

23 A. No. I believe they departed by that time.

24 Q. So all the other deputies that had been called to
25 the scene were standing right there with y'all when he

1 knocked on the door?

2 A. Well, we were probably within ten or fifteen feet
3 of the vehicle.

4 Q. Okay. So yourself and Deputy Blakeley approached
5 the car?

6 A. That's correct.

7 Q. And it was yourself and Deputy Blakeley that --
8 well, let me ask you this: Mr. Rivers, did he get out of
9 the car at any point at the scene? This is after he had
10 been put in custody that you remember?

11 A. Usually, if we have somebody, because of the
12 combative nature of this incident, we had him secured in
13 the back of the vehicle. We didn't want him moving
14 around so he remained seated in the vehicle.

15 Q. So he was in the back of vehicle. The two of
16 y'all came, opened the door, he said he wanted to talk,
17 and then at that point, did Deputy Blakeley read him
18 verbatim the card he carries, correct?

19 A. Yes, sir.

20 Q. And then asked him if he wanted to talk, and he
21 said yes.

22 A. Yes, sir.

23 Q. And at that point, he made the admission to Deputy
24 Blakeley that you overheard?

25 A. That's correct.

1 Q. All right. So at that point, the other -- at what
2 point -- did all the other deputies leave? Did y'all
3 leave en masse? How did that happen?

4 A. After it was assessed there was no immediate
5 life-threatening injury to either party, we had recovered
6 the drugs, and, basically, that was the end of the
7 investigation, up to that point, as far as the
8 investigative standpoint -- things went.

9 Q. Mr. Rivers was transported by whom?

10 A. I believe he was transported by Deputy Summersell.

11 Q. Okay. So he would have been taken out of Deputy
12 Blakeley's car at the scene and put in another car?

13 A. Let me correct that. We went from there back to
14 our substation on James Island.

15 Q. All right.

16 A. And he was still in the back of Deputy Blakeley's
17 vehicle. At that point he was transferred in Deputy
18 Blakeley's vehicle to Deputy Summersell's vehicle.

19 Q. So at that substation, the substation, make sure I
20 understand correctly, is like a mini police station,
21 right?

22 A. Yes, sir.

23 Q. And there you can do all your paperwork and what
24 have you and whatever you need to do, in relation to your
25 job, right?

1 A. Yes, sir.

2 Q. Okay. And it's there that you had Mr. Rivers
3 photographed and Deputy Blakeley photographed, correct?

4 A. That's correct.

5 Q. All right. And witness statement forms, they
6 would have been available there at the substation, right?

7 A. Yes, sir.

8 Q. And why did you take him back to the substation
9 rather than straight to jail or anywhere else? What was
10 the purpose?

11 A. Well, because of the blood born -- possible
12 exposure incident, I had to make contact. We have two
13 officers that are specifically assigned to do that
14 blood-borne pathogens thing. I had to made contact with
15 one of them so we could make arrangements to have
16 Mr. Rivers and Deputy Blakeley transported to -- I can't
17 remember -- I just know it by the --

18 Q. To the hospital?

19 A. To the hospital, was to CCOH, Charleston County
20 Occupational Health, or something like that.

21 Q. I got you. Okay. So that was the reason you went
22 to the substation?

23 A. Yes, sir.

24 Q. To make those arrangements?

25 A. Yes, sir.

1 Q. And there Mr. Rivers is transferred from
2 Blakeley's car to Summersell's car to CCOH?

3 A. Yes, sir. All of us went, myself, Deputy
4 Blakeley, Deputy Summersell, and Mr. Rivers.

5 Q. And when you got there to the CCOH, you did what
6 you had to do as far as following that protocol with the
7 blood, and then did you have any more contact with
8 Mr. Rivers at that point?

9 A. No. After that, and after he was cleared to go to
10 the detention center, he was transported to the detention
11 center.

12 Q. Do you remember who transported him to the
13 detention center?

14 A. No, sir. I left shortly after that.

15 Q. The Taser that Deputy Blakeley had, is each
16 officer issued a Taser, sort of like each officer has
17 their own gun? Does each officer have their own Taser?

18 A. That's correct.

19 Q. So one specific serial number is assigned to each
20 officer?

21 A. Yes, sir.

22 Q. And any time the Taser is discharged, there is a
23 record of it?

24 A. Yes, sir.

25 Q. I'm going to show you part of a packet of

1 information I believe you compiled in relation to the
2 discharge of the Taser and see if you recognize
3 specifically the last few pages.

4 A. Yes, sir.

5 Q. Okay. And that is the Taser that is assigned to
6 Deputy Blakeley? It's certainly attached to the packet
7 of the incident.

8 A. Yes, sir.

9 Q. And on the second page of that, it shows June 16,
10 2008 where, in fact, it was discharged in connection with
11 this incident, right?

12 A. Yes, sir.

13 Q. Okay. And it also shows that it was discharged
14 the next day too, doesn't it?

15 A. Yes, sir.

16 MR. DURANT: Objection, Your Honor. I don't
17 think it's relevant if it was discharged the next day.

18 MR. SMILEY: Withdrawn, Your Honor.

19 THE COURT: Okay.

20 THE WITNESS: I could explain that answer --

21 MR. SMILEY: It's withdrawn at this point.

22 Sorry.

23 BY MR. SMILEY:

24 Q. Now, in connection to doing this use of force
25 packet, did you take any statements of anybody other than

1 Deputy Blakeley?

2 A. No, sir.

3 Q. Did you make any photos of any sort in connection
4 with this case, other than this packet?

5 A. No, sir.

6 Q. Okay. No incident reports, supplemental reports,
7 nothing, it was just you, just what you've testified to,
8 you went to the scene, did your thing, and did the
9 protocol afterwards, right?

10 A. That's correct.

11 MR. SMILEY: Beg the Court's indulgence.

12 BY MR. SMILEY:

13 Q. When you arrived at the scene, where was Deputy
14 Blakeley's car parked?

15 A. You pull up on Ardwick Road and there is, for lack
16 of a better word, a clearing on the roadway, off to the
17 left side of the road.

18 Q. Like the driveway into that area?

19 A. Yes, sir. I believe it was a driveway.

20 Q. Let me show you a couple pictures. First, where
21 was it parked, in that driveway or on the road?

22 A. In that driveway.

23 Q. Okay. Beg the Court's indulgence while I track
24 down -- I'm going to show you what is Defendant's Exhibit
25 10, and this is a picture of Ardwick Road looking back

1 out at River Road. Does that look familiar to you?

2 A. Yes, sir.

3 Q. Okay. Using that picture, can you tell me where
4 his car was parked? Was it pulled into that driveway or
5 out on the road?

6 A. It is pulled up in -- I think if you go back in
7 here further, as much as I can recall --

8 Q. Yes?

9 A. -- if you pull back in here further, it was all in
10 this area right here.

11 Q. I got a better picture for you. I'm going to show
12 you State's Exhibit 13, which is looking from Ardwick
13 back towards the house with the shed in there. That is
14 that driveway. Can you tell in that relation?

15 A. It comes in this area, somewhere in here.

16 Q. And if I can show the jury the area at the bottom
17 of the photograph on the left side --

18 A. Yes, sir.

19 Q. And so he was pulled in the driveway, parked in
20 that area, correct?

21 MR. SMILEY: Your Honor, that's all the
22 questions I have.

23 THE COURT: Redirect?

24 MR. DURANT: I have no further questions.

25 THE COURT: You can step down.

1 THE WITNESS: May I be excused?

2 THE COURT: Yes. You don't have any use for
3 this witness?

4 MR. DURANT: No objection, Your Honor.

5 THE COURT: Do you have an objection to him
6 being excused?

7 MR. SMILEY: I do not.

8 THE COURT: Thank you.

9 THE WITNESS: Thank you, sir.

10 THE COURT: All right. Call your next
11 witness.

12 MR. DURANT: The state calls Deputy Will
13 Summersell.

14 WILLIAM HUNTLEY SUMMERSELL

15 having been first duly sworn,

16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. DURANT:

19 Q. Deputy Summersell, where are you employed?

20 A. I'm employed with Charleston County sheriff's
21 office.

22 Q. How long have you been employed there?

23 A. Ten years this week.

24 Q. This week?

25 A. This week, yesterday.

1 Q. What is your current position there?

2 A. Deputy sheriff in the patrol division.

3 Q. Was that your position in June of 2008?

4 A. Yes, sir, it was.

5 Q. And what are your duties and responsibilities as a
6 deputy in the patrol division?

7 A. Just about anything that can come up with the
8 sheriff's office; answering service calls, 911 calls,
9 alarm calls, domestic violence calls, anything.

10 Q. Write tickets, speeding tickets?

11 A. Speeding tickets, accidents, pick up the phone and
12 call sheriff's office when you want us to come.

13 Q. Who is your supervisor?

14 A. Immediate supervisor?

15 Q. Yes, sir.

16 A. Is Sergeant Donald Doolan, and my lieutenant would
17 be Lieutenant Robert Tague.

18 Q. And he's the supervisor as well?

19 A. Yes, sir.

20 Q. In your capacity as deputy sheriff, did you have
21 occasion to respond to the area of Balmoral and Ardwick
22 on Johns Island on June 16, 2008?

23 A. Yes, I did.

24 Q. Why did you respond there?

25 A. I responded there because Deputy Blakeley had

1 checked out there and was out for a couple moments,
2 deactivated his stress button on his radio, and after
3 that, radio communications were lost and the
4 communications center was unable to reach him.

5 Q. Were you the only person to respond?

6 A. No, sir, I was not.

7 Q. Approximately how many other people responded?

8 A. Six, eight.

9 Q. Six to eight. What did you observe when you
10 arrived on the scene?

11 A. When I arrived on the scene, Deputy Blakeley was
12 bringing the defendant out of the woods, back towards his
13 car.

14 Q. You saw what happened at that point?

15 A. I'm sorry?

16 Q. Did you see what happened at that point? He is
17 going towards the car.

18 A. He was coming towards my car. He yelled over to
19 me, He threw or he pitched something that way, and he was
20 walking towards me, so I pointed to my right.

21 Q. Don't tell me what he might have told you, because
22 that will be hearsay, but we'll ask you this: Did you
23 have a conversation with people out there?

24 A. I spoke to him.

25 Q. Just -- did you, yes or no? Did you talk with

1 Deputy Blakeley?

2 A. Sure.

3 Q. Did he tell you what was going on out there?

4 A. Yes, sir.

5 Q. And based on this conversation, what did you do?

6 A. I went over towards the near -- not like a wood
7 line, but not a property line, more like a wood line,
8 went out to it, and started looking through the area to
9 see if there was anything over there.

10 Q. Any more contraband?

11 A. Yes, sir.

12 Q. Did you find any?

13 A. Yes, sir, I did.

14 Q. Where did you find it?

15 A. Looking at the property, off to the right-hand
16 side of what would be -- I guess you would almost
17 consider it the driveway, but not really. Kind of looks
18 like a driveway, but you can't get any cars through it.

19 Q. And kind of looks like a driveway what?

20 A. But there is a chain across it, and it's up
21 sometimes, down sometimes, depending on the traffic
22 sometimes.

23 Q. I think you can characterize it as the cut?

24 MR. SMILEY: Objection. Leading, Your Honor.

25 MR. DURANT: I'll withdraw the question.

1 BY MR. DURANT:

2 Q. But you found contraband?

3 A. Yes, I did.

4 Q. And can you describe what you found.

5 A. I saw a small, clear plastic bag with a white
6 powder in it, and less than six inches away was a pill
7 bottle wrapped in duct tape laying next to that.

8 Q. Did you have to look under anything to find this?

9 A. No, sir.

10 Q. Did you have -- was it in plain view?

11 A. Yes, sir.

12 Q. Just laying out?

13 A. Laying out.

14 Q. Did you notify anybody about what you found?

15 A. I called Deputy Blakeley as soon as I saw it, told
16 him to come here, and look down here. Come take a look
17 at this.

18 Q. What did Deputy Blakeley do when he came over
19 there?

20 A. Went ahead and retrieved it.

21 Q. And he took possession of it at that point?

22 A. He took possession of it and put that in his car.

23 Q. Did you do anything else out there at the scene?

24 A. I kept looking to see if there was anything else.

25 Q. Did you find anything else?

1 A. No, sir.

2 Q. Were you involved in any other way in the
3 investigation of this case?

4 A. No, sir.

5 MR. DURANT: Thank you, sir. Please answer
6 any questions the defense may have.

7 CROSS-EXAMINATION

8 BY MR. SMILEY:

9 Q. Deputy -- is it Summersell?

10 A. Summersell.

11 Q. All right. Thank you. Jim Smiley. What time did
12 you get out there?

13 A. I'm not exactly sure because I had to leave -- I
14 was actually in the magistrate's court in Johns Island
15 preparing for magistrate level criminal and traffic court
16 at the time.

17 Q. And you left from there to come to the scene?

18 A. Yes, sir, I did.

19 Q. All right. Did you make any kind of notes or
20 reports in this case?

21 A. No, sir, I didn't.

22 Q. When you arrived at the scene, what other deputies
23 were there?

24 A. I believe Deputy Craver was already there. I
25 don't know who else was there.

1 Q. But there were other deputies there?

2 A. I don't recall.

3 Q. So you believe you're the second --

4 A. I might have been the second -- I don't -- I don't
5 know, I really --

6 Q. All right. And how many officers were searching
7 for contraband?

8 A. Three.

9 Q. Okay.

10 A. I think. Including myself, three.

11 Q. Okay. And so the three of y'all were directed to
12 search over in that wooded -- that wood line area?

13 A. In the direction of it, not to the wood line.

14 Q. Okay. And after you arrived, and how long was it
15 before that search began?

16 A. I was -- as soon as I arrived, Deputy Blakeley had
17 told me what happened, I went directly over there.

18 Q. Okay. And two other officers joined you?

19 A. Yes, sir.

20 Q. All right. And from other testimony, when I ask
21 you this question, was it fair to say that search took
22 five to ten minutes?

23 A. I located it a lot faster than that --

24 Q. I'm asking from your recollection.

25 A. I don't think it took quite that long. It might

1 have. Seemed like it took me five seconds because the
2 pill bottle stuck out.

3 Q. Now, certainly, a bag, a clear plastic bag, you
4 could see its contents and you could see that it looked
5 like -- it looked like cocaine, of course. The pill
6 bottle, it was wrapped in duct tape, right?

7 A. Right.

8 Q. You couldn't see its contents, though, could you?

9 A. No.

10 Q. Did you pick it up and open it to see what was
11 inside?

12 A. I didn't need to.

13 Q. Did you know what was inside?

14 A. Did I know what was inside?

15 Q. Yeah.

16 A. I had no way of knowing what was inside.

17 Q. You said you didn't need to, so I wondered how you
18 determined that that was contraband.

19 A. I picked up a pill bottle laying next to white
20 powder. I know a pill bottle like that is a fairly
21 common way to transport cocaine.

22 Q. I understand that. So you just saw this bottle
23 and the plastic bag and then had Deputy Blakeley come
24 over?

25 A. Right.

1 Q. And he collected it.

2 A. Yes, sir.

3 Q. Were you present when he opened the bottle?

4 A. I wasn't --

5 Q. Searching for something else?

6 A. Yes.

7 Q. Did you help search for his other pair of
8 handcuffs?

9 A. No, sir.

10 Q. When you first came on the scene, you said you saw
11 Deputy Blakeley walking Mr. Rivers towards his car from
12 the wood line?

13 A. Yes, sir.

14 Q. And Deputy Blakeley's car was parked where?

15 A. I believe it was -- I believe he was parked at the
16 entrance to the property.

17 Q. Okay.

18 MR. SMILEY: Your Honor, may I use the board
19 I used earlier?

20 THE COURT: Sure.

21 MR. SMILEY: I hope it's still got all the
22 writing on it. I'm not much of an artist.

23 This being River Road at the bottom, this
24 being Ardwick, this being the entrance to the property,
25 you got this being the shed and where Mr. Robinson was

1 detained and the little house in the back and this would
2 have been the area in here that you searched.

3 THE WITNESS: Yes, sir.

4 BY MR. SMILEY:

5 Q. Was his car parked in the driveway, up the
6 driveway, or out on the road, do you remember?

7 A. I don't remember, but normally, when we would pull
8 up, it was parked parallel with the road.

9 Q. Parallel?

10 A. I guess.

11 Q. I'm just asking your recollection.

12 A. I don't really remember.

13 Q. All right. Fair enough. Now, once Mr. Rivers was
14 put in the back and you had done your search, did you
15 have any other duties out there?

16 A. There?

17 Q. Yeah.

18 A. No, sir.

19 Q. Okay. Did you -- how long did you remain on the
20 scene?

21 A. I left the same time Deputy Blakeley and
22 Lieutenant Tague left.

23 Q. Had other deputies already come and gone?

24 A. Yes, sir.

25 Q. Were you present when EMS was there?

1 A. Yes, sir.

2 Q. Were you present when they examined Mr. Rivers?

3 A. No, sir.

4 Q. Did you have any contact with the other fellow in
5 custody, Mr. Robinson?

6 A. No, sir.

7 Q. Do you remember what car he was put in?

8 A. I believe he was put in Deputy Craver's, I
9 believe. I'm not positive.

10 Q. And I know you're doing this from memory, and it's
11 been a little while, but since you don't have any reports
12 or anything, we got to go by that memory, all right? So
13 you left when Deputy Blakeley, Lieutenant Tague left.
14 Who was transporting Mr. Rivers?

15 A. I did.

16 Q. You took him from the scene?

17 A. Yes, sir.

18 Q. At what point was Mr. Rivers transferred from
19 Deputy Blakeley's car to your car?

20 A. Right before we left the scene.

21 Q. Okay. So he was taken out and moved over?

22 A. Yes, sir.

23 Q. All right. And y'all went to the substation at
24 that point?

25 A. Yes, sir.

1 Q. And there at the substation photographs were
2 taken?

3 A. Yes, sir.

4 Q. And then you were also part of the entourage that
5 went to CCOH?

6 A. Yes, sir.

7 Q. And I can't say the name either, but CCOH where
8 they got the blood stuff taken care of?

9 A. Correct.

10 Q. And then from there, who transported the defendant
11 to the jail?

12 A. I did.

13 Q. You did? All right. While Mr. Rivers was in your
14 presence, did he make any admissions or statements to
15 you?

16 A. No, sir.

17 Q. When you were at the scene, were you present for
18 any admissions or statements Mr. Rivers made there?

19 A. No.

20 Q. Did you see what Deputy Blakeley did with the
21 contraband when they collected it?

22 A. No, sir. As soon as he threw it in the car, I
23 kept searching there.

24 Q. Okay. Other than that, the search for the
25 contraband, you weren't involved -- did you go to -- let

1 me see if I can ask a better question.

2 Were you pointed or directed to any other pieces
3 of evidence?

4 A. No, sir.

5 Q. So, for instance, the defendant didn't have a
6 shirt on when you got there, right?

7 A. I don't remember if he was wearing a shirt or not.

8 Q. You weren't directed to collect his shirt.

9 A. No, sir.

10 Q. Okay. And where the incident happened in the
11 briar bush with Deputy Blakeley and Mr. Rivers, you never
12 went back to that area.

13 A. I never made it to the house.

14 Q. Okay. That's fine.

15 MR. SMILEY: Beg the Court's indulgence.

16 Last question.

17 BY MR. SMILEY:

18 Q. From the time that you arrived -- from the time
19 you arrived until Mr. Rivers left the scene, were you
20 present because you took him away?

21 A. Yes.

22 Q. You didn't come and go in between then?

23 A. No.

24 Q. Okay. And during the time you were present, you
25 did not witness or see or hear Mr. Rivers make any

1 admissions or confessions?

2 A. No, sir.

3 MR. SMILEY: Okay. Nothing further.

4 THE COURT: Anything further?

5 REDIRECT EXAMINATION

6 BY MR. DURANT:

7 Q. Briefly. Was your testimony that you found these
8 drugs in a matter of seconds after you went to look for
9 them?

10 A. It seemed to me like it was a matter of seconds.
11 I walked right to it. The pill bottle was sticking up,
12 standing up, and it grabbed my attention because it
13 seemed out of place right there.

14 MR. DURANT: Thank you, sir. No further
15 questions.

16 THE COURT: Anything else?

17 MR. SMILEY: No, sir.

18 THE COURT: All right. You can step down.

19 Thank you.

20 MR. DURANT: Your Honor, I ask this witness
21 be excused, if he wants to be.

22 MR. SMILEY: No objection.

23 THE COURT: All right. You're free to go.

24 Thank you. Call your next witness.

25 MR. KIDD: State calls investigator James

1 Milz.

2 JAMES MILZ,

3 having been first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. KIDD:

7 Q. Good afternoon, Mr. Milz. Could you tell the jury
8 who it is you're employed with?

9 A. Charleston County sheriff's office, sir.

10 Q. Can you tell them what your duties are for the
11 sheriff's office?

12 A. I'm a crime scene investigator, sir.

13 Q. Kind of getting right to the point, I'm going to
14 show you what has been marked for identification purposes
15 only as State's -- put all this back in here -- as
16 State's No. 2. Do you recognize that best kit?

17 A. Yes, sir.

18 Q. How do you recognize it?

19 A. Standard issue best kit that our officers turn in
20 for any kind of contraband, specifically drugs, to go up
21 to SLED, sir.

22 Q. Is there a way that you could tell whether you had
23 any involvement with that particular best kit?

24 A. According to my notes, sir, that I transported
25 this best kit up to Columbia, sir, from our evidence

1 compound to SLED headquarters.

2 Q. Do you know when you did that, or how it came into
3 your possession?

4 A. I transported it, sir, to SLED on June 18 at 10:00
5 in the morning.

6 Q. What would be the typical way that you would come
7 into possession of a piece of evidence such as that best
8 kit?

9 A. Typically, sir, the road officers, after procuring
10 something like this, they would fill out a best kit.
11 They would go to our headquarters, which has -- is a
12 secured environment. They would fill out the best kit,
13 seal it, then they would submit it to a locked evidence
14 locker at which time, usually the next morning, I'll go
15 and empty, bring it back to my secure compound, and enter
16 the evidence.

17 Q. Do other officers or other people who have similar
18 duties as you, do they pick up evidence from those
19 lockers as well and bring it back to the compound?

20 A. Yes, sir.

21 Q. And would you take the evidence from that compound
22 up to SLED?

23 A. Yes, sir.

24 Q. Okay. And that is what you did in this case, with
25 that best kit?

1 A. Yes, sir, I did.

2 Q. And your testimony is you did that on June 16 of
3 2008; is that correct?

4 A. June 18, sir.

5 Q. I apologize.

6 A. Yes, sir.

7 Q. All right. June 18th. And what time of the
8 morning was that that you --

9 A. Let's see. They time stamped this June 18th at
10 10:34 in the morning, sir.

11 MR. KIDD: At this time, the state would like
12 to move State's Exhibit No. 2 into evidence.

13 MR. SMILEY: Beg the Court's indulgence.
14 Your Honor, at this time I still don't believe --

15 THE COURT: Folks, I'm going to need to send
16 you out for just a minute while we take up a matter of
17 law. Don't begin your deliberations or discussions.
18 I'll have you back in just a few minutes.

19 (In open court, jury not present.)

20 THE COURT: All right. Go ahead.

21 MR. SMILEY: Your Honor, there's a piece of
22 the chain, I believe, that is still missing that hasn't
23 been established. We have certainly Deputy Blakeley
24 retrieving the contraband and saying he put it in an
25 evidence locker. My understanding of the evidence was

1 that Investigator Kjellman, I believe is her name,
2 testified that she then logged it in, and then the
3 testimony of, at this point, I don't know how -- there
4 has been no testimony on how, maybe I missed it,
5 Investigator Milz came to get control of the substance.
6 We heard what is typically done. We haven't heard how he
7 got the evidence, I guess --

8 THE COURT: All right. Here is what my notes
9 show, all right? Rivers, the defendant, had it, tossed
10 it on the ground; Summersell found it, pointed it out to
11 Blakeley; Blakeley bagged it, put it in the overnight
12 evidence locker at Pine Haven; and I'm going to pronounce
13 this Kjellman said she got it out of the evidence box,
14 overnight evidence box, took it to Charleston County
15 storage evidence vault.

16 He, Officer Milz, then later on in June took
17 it out of the evidence vault, drove it to Columbia, gave
18 it to SLED agent Perry who put it in the SLED evidence
19 vault. SLED agent Yarbrough took it out of the SLED
20 evidence vault and gave it to SLED forensic chemist McCoy
21 who did the analysis. That's what I got.

22 MR. SMILEY: Yes, sir, I don't disagree with
23 everything except -- and maybe I'm splitting hairs with
24 this investigator. He said what was typically done in
25 their office, and that's all that I heard.

1 THE COURT: Once it's in the locker, somebody
2 doesn't have to sit there and check it daily, so it's in
3 the locker, secured. So if we got it going into the
4 locker, then the next thing is out did it get out of the
5 locker? Well, Blakeley put it in the overnight locker,
6 Kjellman took it out and put it in the vault, and it
7 stayed in the vault until Milz drove it to SLED
8 headquarters and handed it off to Perry.

9 MR. SMILEY: Yes, sir. Then I don't have an
10 objection.

11 THE COURT: All right.

12 MR. KIDD: Thank you. --

13 THE COURT: Okay. We'll take a quick break.
14 We'll take ten minutes.

15 MR. SMILEY: Before I do that, we got one
16 little problem coming up, if I could bring it to your
17 attention.

18 THE COURT: What is that?

19 MR. SMILEY: I got a young lady under
20 subpoena who is refusing to come. I had a ride to go
21 pick her up because they served her and said if she
22 doesn't come down and she said, I ain't coming.

23 THE COURT: All right. We need to get
24 somebody.

25 MR. SMILEY: I know where she is.

1 THE COURT: Can you send a sheriff's deputy
2 out there to pick this person up and escort them.

3 (Recess taken.)

4 (In open court, jury present.)

5 THE COURT: All right. You can continue. Go
6 ahead. Well, you had offered it into evidence. Over
7 objection of the defense, it is admitted.

8 (State's Exhibit No. 2 was admitted into
9 evidence.)

10 BY MR. KIDD:

11 Q. Just to kind of clarify things, was that best kit
12 tampered with in any way when you transported it up to
13 SLED?

14 A. No, sir.

15 Q. So the seal was intact?

16 A. It was intact, sir.

17 MR. KIDD: No further questions.

18 THE COURT: Do you have any?

19 CROSS-EXAMINATION

20 BY MR. SMILEY:

21 Q. If it please the Court, now, Investigator Milz, is
22 that how you pronounce it?

23 A. Like M-i-l-l-s.

24 Q. Mills. Thank you very much. Were you involved in
25 collecting -- were you involved in the evidence coming in

1 to Charleston County evidence control or whatever you
2 call the department when it's dropped in the lock box?

3 Were you involved in that, when it came in?

4 A. No, sir.

5 Q. Are you a notary?

6 A. Yes, I am, sir.

7 Q. And when you became a notary, there are some
8 requirements that go along with being a notary, right?

9 A. That's correct, sir.

10 Q. In fact, I think you have to take an oath at some
11 point to get registered and recorded and that sort of
12 thing?

13 A. Yes, sir.

14 Q. Now, are you familiar with a form B, Rule 6?

15 A. Yes, sir.

16 Q. All right. I'm going to show you what is
17 Defendant's Exhibit No. 1. Is that your notary at the
18 bottom?

19 A. It is, sir.

20 Q. Okay. And you notarized a signature on that?

21 A. I did, sir.

22 Q. Okay. And that would have -- you notarized it on
23 the 17th.

24 A. Yes, sir, June 17th.

25 Q. Okay. Was Deputy Blakeley present when he signed

1 that in front of you?

2 A. No, sir, he was not.

3 Q. Okay. Now, isn't it part of the statute that when
4 you swear an oath and you sign, that's his signature,
5 that he does it in your presence?

6 A. Yes, sir.

7 Q. Okay. So, in fact, when you notarized that, you
8 weren't following the statute?

9 A. Yes, sir. Deputy Blakeley probably dropped that
10 off at night, I'm assuming, sir. He's not present for
11 myself to notarize it in his presence.

12 Q. I understand. So you make a habit of notarizing
13 signatures of people that weren't in your presence?

14 A. Yes, sir.

15 Q. Okay. So you knowingly don't follow the law of
16 South Carolina.

17 A. Sir, the way that I was instructed on policies --

18 Q. Uh-huh.

19 A. -- these come in, we collect them.

20 Q. Yes.

21 A. They are supposed to be notarized. The officer is
22 not present, we notarize them, sir.

23 Q. I understand the practicality.

24 A. Yes, sir.

25 Q. The truth is, the statute requires, and you took

1 an oath to it, that you will only notarize a signature
2 made in your presence.

3 A. Yes, sir.

4 Q. So, in fact, you're not following the law of South
5 Carolina when you notarize a signature that's not in your
6 presence.

7 A. Correct, sir.

8 Q. Okay. So while you didn't have anything to do
9 with the evidence coming in, you still notarized that
10 this deputy dropped it off?

11 A. Yes, sir.

12 Q. All right. Now, you're an evidence technician, so
13 you got more than just transporting evidence, right?

14 A. Correct.

15 Q. You collect fingerprints?

16 A. I do.

17 Q. Take photographs?

18 A. I do.

19 Q. Collect any blood evidence for DNA analysis later?

20 A. I do.

21 Q. You're even called to the scene to collect
22 physical evidence, other than contraband at the scene
23 too?

24 A. Yes, sir.

25 Q. Of course you didn't have -- you weren't requested

1 to do any of that in this case?

2 A. No, sir.

3 Q. Your only involvement in this case was to falsely
4 notarize that form B --

5 MR. KIDD: Excuse me. Objection, Your Honor,
6 characterizing it as a false notarization.

7 THE COURT: He's admitting he didn't follow
8 the law. Overruled.

9 MR. SMILEY: Thank you.

10 BY MR. SMILEY:

11 Q. So your only involvement in this case was to
12 falsely notarize the signature coming in, and I
13 understand, you were taught to do it that way. I'm not
14 trying to cast aspersions. I'm just trying to get what
15 actually happened, so the false notary on the way in,
16 right?

17 A. Yes, sir.

18 Q. And then you checked the evidence out on June
19 18th?

20 A. Yes, sir.

21 Q. And evidence was checked out the same place it was
22 checked in?

23 A. Yes, sir.

24 Q. And drove it up to SLED?

25 A. Yes, sir.

1 Q. And checked it -- gave it to the woman there?

2 A. Correct.

3 Q. Okay. And then there -- could I get this marked
4 as Defendant's Exhibit 16.

5 (Document marked for identification as
6 Defendant's Exhibit No. 16.)

7 BY MR. SMILEY:

8 Q. All right. I'll show you what is Defendant's
9 Exhibit No. 16. Do you recognize that?

10 A. Yes, sir.

11 Q. Okay. And that's what's called a form C from Rule
12 6?

13 A. Yes, sir.

14 Q. And that's what you fill out when you get to SLED
15 to demonstrate what you had done with the evidence,
16 correct?

17 A. Correct.

18 Q. All right. And your signature is on that?

19 A. It is.

20 Q. And it's -- it was notarized -- you did that
21 signature in the presence of this lady and she notarized
22 it?

23 A. No, sir. That is another investigator that
24 notarized that, sir.

25 Q. Another investigator in your office?

1 A. Yes, sir.

2 Q. Okay. So you signed this when you got to SLED,
3 correct?

4 A. No, sir. This was filled out pre-trip. This is
5 filled out in Charleston. I filled out all the
6 applicable fields, signed it, and then another
7 investigator, who was a notary --

8 Q. So this was done before you went up to Columbia?

9 A. Yes, sir.

10 Q. Okay. Well, if I could read parts of this to you,
11 it says, the following substance was -- do you have a
12 copy of it so we can go along together?

13 A. Yes, I do.

14 Q. Sort of follow along, and I'll ask you some
15 questions off of it. The following substances or
16 containers were originally seized by Ryan P. Blakeley,
17 correct? It says that in the body?

18 A. Yes, sir.

19 Q. And it described the substance, and it says
20 off-white rock substance, white powder-like substance,
21 total weight 69.8 gross grams?

22 A. Correct.

23 Q. And then it says, On 6/19/2008, I made delivery of
24 the above described substance or container to SLED
25 evidence -- of SLED evidence in substantially the same

1 condition as I received it.

2 Is that what it says?

3 A. Yes, sir.

4 Q. And then you signed it and another investigator
5 from your office notarized it before you went to SLED?

6 A. Yes, sir.

7 Q. All right. So even though you hadn't made the
8 delivery, you got the form all filled out and notarized,
9 correct?

10 A. As per our procedure, yes, sir.

11 Q. You're taught by Charleston to do that before you
12 ever make a delivery?

13 A. Yes, sir.

14 Q. And you're taught by Charleston County to notarize
15 things even though the deputy isn't in your presence?

16 A. Yes, sir?

17 MR. SMILEY: At this time, I would move
18 Defendant's Exhibit 16 into evidence.

19 MR. KIDD: No objection.

20 (Defendant's Exhibit No. 16 was admitted into
21 evidence.)

22 MR. SMILEY: Beg the Court's indulgence.
23 Nothing further.

24 REDIRECT EXAMINATION

25 BY MR. KIDD:

1 Q. Briefly, Investigator Milz, what does that form
2 B signify?

3 A. Form B signifies in plain language that the
4 deputy, in this case Deputy Blakeley, seized on a certain
5 date and time from who pursuant to a lawful arrest.

6 Q. And how did that form B come into your possession?

7 A. It's submitted also with the best kit, Your Honor.

8 Q. Is it put in the evidence lock box?

9 A. Yes, sir.

10 Q. So Deputy Blakeley signs the form B saying, I
11 collected this evidence, and he puts both those in the
12 lock box, and it is taken out and comes into your
13 control?

14 A. Correct, sir.

15 Q. And you notarize it?

16 A. That is correct.

17 Q. Are you familiar with the statute in regard to
18 affirmations?

19 A. Yes, sir.

20 Q. So someone could affirm to you they signed
21 something and you could notarize it without them actually
22 signing it in their presence?

23 A. That is correct.

24 MR. SMILEY: Objection, Your Honor. May we
25 approach?

1 THE COURT: Yes.

2 (Discussion held at sidebar.)

3 BY MR. KIDD:

4 Q. These form Bs and form Cs, what are they attached
5 to the back of?

6 A. They go with the best kit, sir.

7 Q. And then they come back?

8 MR. KIDD: Your Honor, at this time the state
9 would like to move State's Exhibit No. 3 into evidence,
10 the SLED report.

11 MR. SMILEY: Without objection.

12 THE COURT: It's admitted.

13 (State's Exhibit No. 3 was admitted into
14 evidence.)

15 MR. KIDD: No further questions, Your Honor.

16 THE COURT: Any recross?

17 MR. SMILEY: Nothing further.

18 THE COURT: All right. You can step down.

19 All right. Do you have any other witnesses?

20 MR. DURANT: Your Honor, at this time the
21 state rests.

22 THE COURT: All right, folks. I need to send
23 you out for a few minutes while we take up some legal
24 matters. You cannot discuss the case.

25 You can go downstairs if you need. We'll be

1 about ten, fifteen minutes. If you want to take a smoke
2 break, we will be about ten, fifteen minutes. All right?

3 (In open court, jury not present.)

4 THE COURT: Mr. Smiley, what are your
5 motions?

6 MR. SMILEY: My first motion is to renew --
7 first, I want to renew my objection as to the admission
8 of my client's statement on the same grounds that I had
9 previously stated for the record, Your Honor.

10 THE COURT: All right. It's denied.

11 MR. SMILEY: Next, I would make a motion for
12 directed verdict on the charge of resisting arrest --
13 assault while resisting arrest. The case law on this
14 case, and I'm going to rely upon State vs. Brandon and
15 State vs. Lacoste, and I have a copy of Brandon, Your
16 Honor, if you need it. I have one for the state if they
17 need it, I believe.

18 THE COURT: I have Brandon, but I don't have
19 the other one.

20 MR. SMILEY: I don't have the other one.

21 THE COURT: Just go ahead and --

22 MR. SMILEY: Brandon and Lacoste. First, I'm
23 going to use Lacoste that says that it's well established
24 in South Carolina that one may lawfully resist an
25 unlawful arrest and can use up to and including deadly

1 force in order to resist, if necessary, to regain his
2 liberty.

3 So that is the basis -- I'm going to argue
4 that my client was lawfully resisting an unlawful
5 rearrest when he relied on Brandon.

6 THE COURT: What was the unlawful arrest?

7 MR. SMILEY: Well, according to the officer,
8 he wasn't under arrest, but any time one is physically
9 restrained, as stated in Brandon, they are under arrest,
10 when they are being asked or forced to submit to
11 authority.

12 THE COURT: All right.

13 MR. SMILEY: I'll argue that at the point
14 that the officer attempted to cuff Mr. Rivers that he did
15 not have a reason to cuff him. And under Brandon, one is
16 free to flee, free to leave when they're not being placed
17 under a lawful arrest, which is what my client did, in an
18 attempt to regain his liberty, so I think that the
19 officer has admitted that he was detaining him, but, in
20 fact, in our legal concept, placing him under arrest,
21 arrest being when one is being asked to submit to
22 authority and their liberty is being restrained, whether
23 constructively or physically, is he had no probable cause
24 at that point to arrest my client and, truly, didn't have
25 a reasonably articulable suspicion that criminal activity

1 was afoot.

2 He had already run my client's ID, found that
3 he was clear because he had already patted down my client
4 after that and found that he did not have any contraband,
5 which my client consented to, and without informing my
6 client for the reason for the, quote, unquote, detention
7 attempted to cuff him, and my client lawfully resisted an
8 unlawful detention.

9 And so therefore I believe the state has a
10 burden to prove a lawful detention in this case and has
11 not submitted any evidence as such. As a matter of fact,
12 I think their evidence shows that the officer wanted to
13 investigate further and wanted to detain and restrain my
14 client's liberty.

15 I think State v. Brandon coupled with State
16 versus Lacoste, which is 347 S.E. 153, Your Honor, a 2001
17 Court of Appeals, case which reiterates the law that the
18 state has several other times, that one may take what
19 necessary action to regain their liberty when an unlawful
20 arrest is being attempted.

21 I don't believe it can be boot strapped about
22 contraband that was found, from some accounts, from five
23 to ten to fifteen minutes later, so I believe my client
24 had the right to withdraw, try to regain his liberty at
25 that point in time if he had been cooperative until the

1 officer attempted to take his liberty, I think the law --
2 the law of the constitution of the United States and the
3 constitution of South Carolina certainly is backed up by
4 State v. Brandon, and Lacoste certainly gives him the
5 right to resist that unlawful detention.

6 Even looking at the evidence in light most
7 favorable to the state, their own testimony is that they
8 had no reason, besides he wanted to do an investigation,
9 Your Honor, so I think that a directed verdict is
10 required in that case.

11 As to the possession of crack and trafficking
12 of cocaine, Your Honor, they have to show possession on
13 the part of -- it comes down to possession. In this
14 case, certainly constructive possession is the officer
15 says that he saw my client make a furtive movement. He
16 did not say he saw him throw down drugs. He said he
17 didn't know. As a matter of fact, he at one point
18 started talking about littering.

19 And, of course, you can't be arrested for
20 littering on private property. It's not a public
21 roadway, but here nor there, they must show that he
22 constructively possessed those items. I don't believe
23 there is any evidence to show, even looking at the light
24 most favorable to the state, that Mr. Rivers possessed
25 the contraband that was found on the ground in a high

1 drug area by the testimony of the officers that
2 frequently the people with drugs flee when the police
3 come around.

4 I do have a hurdle to get around, and that
5 would be the admission made by my client that the cocaine
6 was his and not the crack. From the pretrial hearing, my
7 client said he did not make that statement. Common sense
8 would dictate that the man who just beat him -- suddenly,
9 my client wants to tell him that it's his drugs for no
10 reason. I would submit that there is not enough evidence
11 in this case, looking in the light most favorable to the
12 state, to submit either of those charges. They have not
13 established constructive possession on either of those
14 charges.

15 That's all I have, Judge.

16 THE COURT: From the state?

17 MR. DURANT: Thank you, Your Honor. In
18 response, first of all, the state would contend that the
19 first meeting here between Deputy Blakeley and the
20 defendant was certainly deputy was interested in a
21 detention. This was based on reasonable suspicion. I'll
22 articulate the reasons for that, as soon as I articulate
23 the reasons of why this was consensual, and that is
24 because Deputy Blakeley asked permission of the defendant
25 if he could search him, so at this point, it was a

1 consensual matter.

2 And when the deputy was in the process of
3 searching the defendant, that's where the assault occurs,
4 first an initial assault. The defendant was not under
5 arrest at that point. Deputy testified that after he was
6 pushed and the defendant ran, he was chasing him to
7 pursue him on that assault charge and he told him, Stop
8 resisting. You're under arrest, and while he was
9 pursuing the defendant, that's when the defendant
10 continually, with his elbows and with his hands, was
11 trying to knock the deputy away from him and still is
12 resisting the deputy's attempt to subdue him and arrest
13 him. That is where the assault on police came from,
14 while resisting arrest.

15 As for the reasonable suspicion to detain the
16 defendant, were he not to have consented to this search,
17 there are several factors to be analyzed under the
18 totality of the circumstances, to determine whether there
19 was a reasonable length of detention, and, first of all,
20 you've got the fact that this is a high drug area. It's
21 a high crime area. In addition to that, when the deputy
22 testified he approached the scene and the defendant, upon
23 seeing the deputy, was startled, surprised, and the
24 deputy saw him throw objects down in a suspicious manner
25 and the deputy testified that this was very suspicious to

1 him and raised his concerns at this point, and he wanted
2 to investigate what was going on here.

3 He also had another situation with a man with
4 warrants, and he said that Mr. Rivers was at such a
5 distance from him that he didn't want to tip Mr. Rivers
6 off to the fact that he saw what was going on, and if
7 Mr. Rivers had decided to run at that point, he might not
8 have been so lucky to have been apprehended, so the
9 officer does the best thing he can do, and he takes care
10 of the situation with Mr. Robinson. Mr. Rivers is
11 closer, and now he's able to investigate this.

12 The Fourth Amendment does not require a
13 policeman to shrug his shoulders and walk away. That is
14 Adams v. Williams and he did. He wanted to investigate
15 those drugs, or at least what was thrown down, over near
16 the cut. At the very least, it was littering.

17 Littering is a misdemeanor. It's punishable
18 by 30 days in jail. There was reasonable suspicion. It
19 wasn't a long length of time, and then the officer was
20 assaulted. And at that point, when the officer was
21 assaulted, that is the charge that the deputy was trying
22 to arrest him for, he testified to that, and then as he's
23 trying to arrest him for that charge, he assaults him
24 again. Now you have assault on police while resisting
25 arrest.

1 If there is any need to go any further here,
2 please let me know.

3 MR. SMILEY: May I respond, Your Honor?

4 THE COURT: I'll do that. Go ahead.

5 MR. SMILEY: I think it's real important to
6 note that the sequence of events, and I asked these
7 questions very carefully to make sure they were
8 articulated; were that my client walks into the general
9 area, was in front of a door of another house, when the
10 officer told him, Hold on, Arthur. I need to talk to
11 you. He asked for his ID, ran his ID, he was clear, gave
12 it back, asked for consent to search his person. He gave
13 consent to search his person.

14 At that point he said he told Arthur to turn
15 around and grab his cuffs and reach for Arthur's hand and
16 Arthur pulled away, reached for it again, and Arthur
17 pulled away and pushed him.

18 So I think it's important to understand that
19 at that point, Mr. Rivers was trying to regain his
20 liberty as it was trying to be detained, and there is no
21 basis for that detention. First of all, littering on a
22 piece of private property, I don't think is going to
23 apply. It wasn't written in the property that was put up
24 on the stand just today, because the officer does not
25 say, I saw him throw down drugs. The officer says I saw

1 him throw down an object in what he describes as a
2 furtive movement.

3 He described the look of surprise. Of course
4 he can't see inside of my client's brain, but I
5 understand what he thought he saw, but there is no
6 reasonable articulable suspicion that criminal activity
7 is afoot and it certainly doesn't arise to detention.

8 Now, Your Honor, if the officer wanted to do
9 further investigation, he already identified my client.
10 He already knew my client. He could have simply walked
11 over there. If he had found the contraband, then he
12 could have gone and arrested Mr. Rivers. He knew who he
13 was. He was out there to arrest Mr. Robinson for an
14 event that took place on another day.

15 So, I mean, the Fourth Amendment, to be free
16 from unreasonable search and seizures is one of the most
17 important rights guaranteed by our constitution, and
18 Mr. Rivers should have that same protection, whether he
19 is walking on Main Street or walking to a house down a
20 dirt driveway. To say, Well, I get -- you have his
21 liberty when you're walking in a high drug area is
22 constitutionally impermissible, Your Honor.

23 I would therefore argue that they have not
24 shown, looking at the light most favorable from the
25 testimony of Deputy Blakeley, he said he didn't have a

1 reason to arrest Mr. Rivers when he went to cuff him,
2 that he wanted to investigate and he attempted to take
3 Mr. Rivers' liberty at that point in time, and under the
4 law, State vs. Lacoste and Brandon, I believe, State vs.
5 Brandon, is my client had the right and the
6 constitutional right behind him to resist, and therefore
7 I would ask for a directed verdict.

8 THE COURT: All right. Well, taking the
9 second one first, I think the circumstances surrounding
10 the drugs are he had somebody who he was familiar with in
11 a known drug area who threw down an object, along with
12 making furtive, secretive, clandestine movements, I think
13 that gave the officer reasonable suspicion to detain the
14 defendant in order to investigate further whether or not
15 a crime had been committed.

16 Obviously, he's got to tell him to stop, and
17 then he's got to go over and do a field test on the
18 drugs, if he can find them, but I think he had the
19 ability to stop him and go over there and do an
20 investigation and detain him briefly in order to do a
21 field investigation.

22 As to the actual directed verdict on the drug
23 charges, you got a corpus delicti, plus the conviction,
24 and so it's going past the directed verdict. If you got
25 drugs and a confession that they're mine, at least the

1 cocaine, he admitted, was his, I think that is enough
2 evidence to direct the verdict against the defendant on
3 the drug charges.

4 Now, the resisting charge, I suppose the best
5 argument I could come up with by him would be if you said
6 he didn't have the right to detain him to further
7 investigate, or, if he did have the right to further
8 detain him and investigate, I think the most he had the
9 right to do at that point was flee, and then you could
10 argue, well, he wasn't resisting arrest, but what his
11 problem is, and I think hooked him in, is one, I think he
12 did have the right to detain him; and, second, he
13 assaulted the officer instead of fleeing.

14 If he would have just fled, maybe you got an
15 argument then, but I don't think -- he should have turned
16 around and ran, if you want me to buy the argument under
17 the Brandon case. He should have run. I think that Dowd
18 case says, Look, you can build a case on post arrest
19 conduct. If the officer had the right to arrest him,
20 then the fact that he didn't articulate it at that time,
21 and didn't even arrest him for assault, he had the right,
22 arguably, to -- he had probable cause when the defendant
23 assaulted Blakeley, pushed him, in other words, and then
24 a fight ensued.

25 But when he pushed him away, instead of

1 fleeing, I think that the officer then had probable cause
2 to arrest him for assault, even though he didn't
3 subsequently arrest him for assault.

4 So I'm denying a motion for directed verdict
5 on that as well.

6 MR. SMILEY: Yes, sir.

7 THE COURT: All right. Now, are you ready to
8 call a witness? Is that lady on the way?

9 MR. SMILEY: Judith is present, yes.

10 THE COURT: That is the one you wanted me to
11 go get? Did you want to call her now -- it's 4:00 now.
12 We'll go till 5:00 or a little bit. As long as she's
13 here, call her. We'll finish up tomorrow.

14 MR. SMILEY: Yes, sir, and I'll just start
15 with her so she can be done.

16 THE COURT: You want a few minutes to talk to
17 her real quick?

18 MR. SMILEY: If you don't mind, yes, sir.

19 THE COURT: We'll take five minutes and then
20 we'll resume.

21 (Recess taken.)

22 THE COURT: All right. Are you ready?

23 MR. SMILEY: Defense is ready, yes, sir.

24 THE COURT: Bring them in -- oh, stop a
25 second. You made a decision on testifying yet?

1 MR. SMILEY: Before we make that decision,
2 Your Honor, we need to determine the admissibility of his
3 prior convictions for impeachment purposes, but he would
4 be last if --

5 MR. DURANT: We're not going to introduce
6 any. There is drug conviction. I don't think they're
7 admissible against his character.

8 MR. SMILEY: Then he is probably going to be
9 testifying.

10 MR. DURANT: I would ask you this: If he
11 wants to challenge his Miranda, I do think the prior
12 convictions, even drug convictions, would have bearing,
13 relevancy, in regard to his understanding of Miranda.

14 MR. SMILEY: We'll probably need to have a
15 hearing in the morning about that then, but he'll be
16 last, Your Honor.

17 THE COURT: All right. Go ahead. Bring them
18 in then.

19 (In open court, jury present.)

20 THE COURT: All right. Be seated. All
21 right, folks. The state has rested, and so the defense
22 will call its first witness.

23 MR. SMILEY: And, Your Honor, the defense
24 decided it would put up some evidence, and at this point
25 in time, we would call Judith Robinson.

1 THE COURT: All right.
2 JUDITH ROBINSON,
3 having been first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SMILEY:

7 Q. Before we get started, a couple things I got to
8 tell you. This lady beside you is going to write down
9 everything you say, so you got to speak loudly and slow
10 enough so she hears it, okay?

11 A. Okay.

12 Q. Will you please spell your last name for the
13 record.

14 A. R-o-b-i-n-s-o-n.

15 Q. That is perfect. If you keep that up, we'll be
16 great. All right. Ms. Robinson, where do you live?

17 A. I live now on Videll Court.

18 Q. And where is that?

19 A. That is off of -- what is it --

20 Q. Is that out Johns Island way?

21 A. Yes.

22 Q. Are you married?

23 A. No.

24 Q. Do you have any children?

25 A. No.

1 Q. Where do you work?

2 A. At Food Lion.

3 Q. And that is the Food Lion there --

4 A. On Johns Island.

5 Q. Yes, ma'am. And I met you there yesterday for the
6 first time?

7 A. Yes, you did.

8 Q. I'm going to turn your attention back to June
9 16th, 2008, okay? Are you familiar with Ardwick, the
10 dirt road, Ardwick Drive?

11 A. Yes.

12 Q. And I'm never going to pronounce it right, but
13 there is a little court called Balmoral; is that right?

14 A. Uh-huh.

15 Q. Are you familiar with what I'm talking about?

16 A. Yes.

17 Q. And that dirt road that -- I'm just going to
18 straight to this little map I'm going to use behind you,
19 all right? This is Ardwick; this is River, okay?

20 A. Uh-huh.

21 Q. Were you staying on this dirt road that comes off
22 of it?

23 A. No, in between that.

24 Q. In between that?

25 A. Uh-huh.

1 Q. If this is that little white house --

2 A. Yes, that is my father's house.

3 Q. That is your father's house, all right? Were you
4 there that day?

5 A. Yes, I was.

6 Q. Okay. Were you inside that small house?

7 A. I was inside.

8 Q. Okay. Do you know Arthur Rivers?

9 A. Yes.

10 Q. How do you know him?

11 A. By growing up in the same area.

12 Q. Okay. Other than growing up in the same area, do
13 you have any special relationship of any sort with him?

14 A. No.

15 Q. Did Arthur come to that white house from time to
16 time?

17 A. Yes. He would come to visit my father before he
18 died.

19 Q. Okay. Now, on June 16th, that day, did you see
20 Arthur?

21 A. Yes.

22 Q. Okay. Can you describe to the jury how Arthur --
23 how you saw him?

24 A. At first?

25 Q. Yes, ma'am, the very first time. Where was he?

1 A. Well, he was standing on the step.

2 Q. What steps?

3 A. On the house steps.

4 Q. Okay. On the little white house?

5 A. Yes.

6 Q. Did you see him walk up?

7 A. No. When I went to the door, he was there.

8 Q. Okay. Do you know a Tyrone Robinson?

9 A. Yes.

10 Q. Is he any relation to you?

11 A. That's my cousin.

12 Q. Your cousin. Did you see him out there that day?

13 A. Yes.

14 Q. All right. And where was he?

15 A. He was further to the side of the house.

16 Q. There was a little shed out there --

17 A. Over that way.

18 Q. He was over in front of that shed?

19 A. Yeah.

20 Q. That shed is gone there now?

21 A. It's still there.

22 Q. Okay.

23 A. One of them.

24 Q. All right. Thanks. That day, did you have an
25 occasion to see Deputy Blakeley?

1 A. Yes, sir.

2 Q. Can you tell the jury what you saw.

3 A. When I heard the commotion outside --

4 Q. Yes, ma'am?

5 A. -- I came to the door, and then Art was there, and
6 this officer was right behind him.

7 Q. Okay. So you came to the door, and you said art,
8 meaning Arthur?

9 A. Arthur.

10 Q. And Deputy Blakeley was right behind him?

11 A. Uh-huh.

12 Q. What was going on?

13 A. I heard some kind of commotion, is what brought me
14 to the door.

15 Q. Okay.

16 A. And then he asked for ID.

17 Q. He asked Arthur for his ID?

18 A. Uh-huh.

19 Q. And then what happened?

20 A. And then I don't know what happened really after
21 that because I was cooking. I went back in, but then I
22 saw him later going to Tyrone.

23 Q. Officer Blakeley, Deputy Blakeley, went over to
24 Tyrone, and what happened with that?

25 A. I think he put him in handcuffs or whatever. He

1 searched him and put him in handcuff.

2 Q. All right. After that happened, can you tell the
3 jury what happened next.

4 A. They was talking over there, and, you know, I
5 couldn't really hear what they were saying.

6 Q. Yes, ma'am.

7 A. And then I saw Arthur ran behind some trailers.

8 Q. Okay. Now, he ran -- I'm going to use my little
9 map --

10 A. Behind the house and then --

11 Q. And so this, being in front of the house that you
12 were in, right?

13 A. Uh-huh.

14 Q. And you say he ran, this being one of the trailers
15 and there was another one that is gone now that was in
16 front of it, so he ran -- if you get up and show the
17 jury, if you don't mind, sort of the path that he took.

18 A. This is the house, went around like that.

19 Q. All right. So he went back towards this wood
20 line?

21 A. Yeah.

22 Q. And you saw him running in that direction?

23 A. Uh-huh.

24 Q. Where was the deputy?

25 A. He was right behind him, and then we heard a shot.

1 Q. You heard a shot, okay. And then did you see what
2 happened next? What's the next thing you saw?

3 A. The next thing I saw is when they came from behind
4 the trailer.

5 Q. When they came from behind the trailer, what did
6 you see?

7 A. He put him in a car, and he was there for a while.

8 Q. Okay. Did any officer or deputy or anybody knock
9 on your door and try to talk to you about what you had
10 seen?

11 A. No. We was right in the trailer.

12 Q. You didn't leave, you were right there watching
13 what was going on?

14 A. Uh-huh.

15 Q. And no one attempted to ask you anything?

16 A. No.

17 Q. All right. Now, while all this was going on,
18 Tyrone, who was cuffed, did you see what he did?

19 A. No.

20 Q. Okay.

21 A. I wasn't paying attention.

22 Q. I understand. I understand. Once they put Arthur
23 in the car, did you ever see him take him out of the car
24 or anything?

25 A. No, I never saw that.

1 MR. SMILEY: Answer any questions that the
2 solicitor might have, all right?

3 THE WITNESS: I will.

4 CROSS-EXAMINATION

5 BY MR. DURANT:

6 Q. Okay, Ms. Robinson. Good afternoon. I think we
7 had the opportunity to talk just briefly a couple minutes
8 ago, right?

9 A. Uh-huh.

10 Q. And I think back in June of 2008 you lived out
11 there in Balmoral and Ardwick, right?

12 A. No. I didn't live there. I had already moved.

13 Q. You were just there cooking?

14 A. Yeah, for my brother.

15 Q. Who is your brother?

16 A. He -- Lamarr.

17 Q. Was he there too?

18 A. Yeah.

19 Q. And this is -- did you say your dad grew up here,
20 in this area?

21 A. Yeah. All of us did.

22 Q. All of y'all did, and you grew up with Mr. Rivers?

23 A. Yeah, he lived there for a while.

24 Q. And Tyrone Robinson is your cousin, so y'all know
25 each other and y'all generally live out there?

1 A. Uh-huh.

2 Q. And it's a good area, though, right?

3 A. Sometimes.

4 Q. Sometimes. It's getting better, right?

5 A. Yeah.

6 Q. There used to be a lot of problems out there?

7 A. Used to be, yeah.

8 Q. A lot of drugs and stuff like that. It's
9 definitely coming around.

10 A. Uh-huh.

11 Q. And you said you heard a shot.

12 A. Yeah, something like that, you know.

13 Q. Did you see anything?

14 A. No.

15 Q. And you saw Art running from the officer?

16 A. Uh-huh.

17 Q. But he was eventually taken into custody?

18 A. Uh-huh.

19 Q. And you saw, I think, an officer -- you say you
20 saw an officer find something or hold something?

21 A. After he put him in the car.

22 Q. And on this diagram up here, I guess you said you
23 were here cooking or back here, right here?

24 A. Right there.

25 Q. Right in there? And the officer who found

1 something was up in here, would you say? Do you know
2 where he was, approximately?

3 A. Right over there somewhere.

4 Q. You can stand up here if you want.

5 A. We have a big trash pile that was over on this
6 side.

7 Q. He was over here?

8 A. Yeah, somewhere over there.

9 Q. Okay. In that area?

10 A. In that area.

11 Q. And you're watching this whole thing go on?

12 A. Yes.

13 MR. DURANT: All right. I have no further
14 questions. Thank you.

15 REDIRECT EXAMINATION

16 BY MR. SMILEY:

17 Q. You said you saw Arthur running from the officer.
18 Did you see him push the officer?

19 A. No. I never saw that.

20 MR. SMILEY: Nothing further.

21 THE COURT: Recross?

22 MR. DURANT: No. I have no more questions.

23 THE COURT: All right. You can step down.

24 Thank you.

25 MR. SMILEY: At this point, Your Honor, I

1 would call Yvonne Rivers. By the way, Your Honor, I
2 release her from subpoena.

3 MR. DURANT: Absolutely.

4 MR. SMILEY: Thank you.

5 YVONNE RIVERS,

6 having been first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SMILEY:

10 Q. All right. Ms. Rivers, I'm going to ask you some
11 questions, and you're doing really good, but if you make
12 sure the jury can hear you and make sure it's a yes or no
13 and it's that kind of an answer, okay?

14 A. Yes.

15 Q. She's got to write down everything you say, all
16 right?

17 A. Okay.

18 Q. Okay. You are Arthur's mother, correct?

19 A. Yes.

20 Q. And I'm going to -- without filling in the
21 background about how many children and all that, we're
22 just going to get straight to the day, okay, because
23 every juror knows all mothers are good mothers, so we
24 don't need to do that, so let's get to June 16, 2008.
25 Are you familiar with Ardwick Drive?

1 A. Yes.

2 Q. And could you describe to the jury what you did
3 with Arthur that day.

4 A. Okay.

5 Q. Okay?

6 A. Okay.

7 Q. I'm going to ask it this way. Did you take him
8 somewhere that day?

9 A. Yes.

10 Q. Okay. Tell the jury where you took him and how.

11 A. I took him on Ardwick where I dropped him off at,
12 I went past there so I could turn around. And when I
13 turned around, I dropped him off right in the front, that
14 road that goes towards --

15 Q. Okay. I'm going to show you some pictures. I've
16 been using my map a whole lot that I drew back here. All
17 right. This being River Road, okay, and this being
18 Ardwick, and this being that driveway, okay?

19 A. Okay.

20 Q. So you drove in, down Ardwick, you said?

21 A. Yes.

22 Q. Past this?

23 A. Yes.

24 Q. And you turned around?

25 A. Yes.

1 Q. And then you came up in front of this driveway?

2 A. That road.

3 Q. Right in front?

4 A. Yes.

5 Q. When you got there, what happened then?

6 A. We got out of the truck and said thank you.

7 Q. Okay. And so you came to a stop. He got out of
8 the passenger side, said thank you, where was he going?

9 A. He was going towards the trailer in the back where
10 Judith Robinson was living.

11 Q. Do you know who he was going to visit?

12 A. Not really. He didn't say.

13 Q. All right.

14 A. I'm not sure.

15 Q. Did you see anybody out there when you dropped him
16 off, any other people?

17 A. I wasn't paying attention.

18 Q. Yes, ma'am.

19 A. I can't remember that.

20 Q. Beg the Court's indulgence, Your Honor. I'm
21 missing a picture, but I'll find it. I apologize, Your
22 Honor. We're missing Defendant's Exhibit No. 10. I'm
23 just looking for it. All right.

24 I'm going to show you what is Defense Exhibit
25 No. 10. That is a picture of Ardwick Road facing out

1 towards River Road?

2 A. Uh-huh.

3 Q. Is that the driveway you dropped him off at?

4 A. Yes.

5 Q. Okay. And you just stayed in the road and he got
6 out from there?

7 A. Uh-huh.

8 Q. Okay. And then how long do you think it takes to
9 go from that driveway back out to River Road?

10 A. About three to four minutes, I guess.

11 Q. Is it that far?

12 A. No --

13 Q. From the driveway down the dirt road back out to
14 River?

15 A. I would say about a minute, minute and a half.

16 Q. It doesn't take long?

17 A. Huh-uh.

18 Q. So you dropped him off and you went out to River
19 Road?

20 A. Uh-huh. Yes, sir.

21 Q. Okay. And later -- well, I can't ask that
22 question.

23 When you dropped him off there at the driveway and
24 you pulled off, did you see where he was heading?

25 A. He was heading towards Judith Robinson's trailer.

1 Q. I got that picture. I'm going to show you that.
2 I'm going to show you what is Defendant's Exhibit No. 15,
3 looking down into that driveway, and I'm going to show
4 you State's 11. Are you familiar with those photographs?

5 A. Yes.

6 Q. Okay. Looking at the picture, looking down in the
7 driveway, was that the direction that he was heading?

8 A. Yes.

9 Q. And the picture of that house, was that the house
10 he was heading to?

11 A. From what I could see, yes.

12 Q. And he was in the driveway, walking that way, when
13 you pulled off?

14 A. Yes.

15 MR. SMILEY: I don't have any further
16 questions. If you'll just answer any questions Mr.
17 DuRant may have for you.

18 CROSS-EXAMINATION

19 BY MR. DURANT:

20 Q. When I dropped your son off that day, did you see
21 any police cars out there?

22 A. No, not when I dropped him off.

23 MR. DURANT: Thank you, ma'am.

24 MR. SMILEY: That's all I have of that
25 witness.

1 THE COURT: All right. You can step down,
2 thank you. Do you have any other short witnesses for
3 this afternoon?

4 MR. SMILEY: I have a lengthier witness and
5 then I have my client.

6 THE COURT: We'll resume then in the morning.
7 We'll go ahead and break for today. Okay, folks. If you
8 could, I'm going to dismiss you for the evening. Again,
9 don't begin any deliberations or discussions about the
10 case. Don't talk about the case, and if you would report
11 back about a quarter to 10 tomorrow morning, we have some
12 stuff we need to take up before that, but I don't want
13 you getting in and waiting, so I would say by 9:45, so
14 we'll see you then. Thank you.

15 (Jury recessed.)

16 THE COURT: You got any law about that
17 showing convictions, I guess showing familiarity with
18 Miranda rights? If you got something, I want to read it
19 tonight because I'm not sure how that is distinguished
20 from normal impeachment, which, as you say, drug cases
21 aren't usually allowed in for impeachment purposes so
22 they don't have to bear on telling the truth, but if you
23 got something, I have an open mind. I would just like to
24 read it before 9:30 tomorrow morning.

25 MR. DURANT: Yes, sir.

1 THE COURT: So you can e-mail it to me if you
2 got it. I can check my e-mail and I can access it from
3 home.

4 MR. SMILEY: Your Honor, I believe my client,
5 based on the pretrial testimony, is not going to be able
6 to say whether he understood Miranda or not, he's going
7 to say he wasn't read Miranda, so in that context also.

8 THE COURT: All right. So if you have any
9 law on that you would like to send me tonight, please do
10 so; otherwise, I'm going to assume you're winging it and
11 coming up with a new legal theory for being able to use
12 it.

13 See y'all at 9:30 in the morning.

14 MR. DURANT: Just for the record, one thing I
15 believe your client did testify during the pretrial
16 hearing that he was read Miranda.

17 MR. SMILEY: Then I'm wrong. I've got my
18 copy, so I'll look over it. Okay.

19 THE COURT: We'll see what we got.

20 MR. SMILEY: Yes, sir.

21 THE COURT: See you in the morning.

22 MR. SMILEY: Thank you very much, Your Honor.

23 (4:43 p.m. concluded.)

24 (September 17, 2009.)

25 THE COURT: All right. When we left

1 yesterday, Mr. Durant informed us he was going to -- did
2 not intend to use prior convictions for impeachment
3 purposes, except for he wanted to use them for
4 impeachment purposes for Miranda. I've told him I wasn't
5 aware of any distinction in the law for that, but I would
6 entertain his argument this morning.

7 What have you got? Do you have authority,
8 other than Bruce Durant suggesting to you to throw that
9 out?

10 MR. DURANT: Your Honor, actually, Mr. Kidd
11 will be cross-examining the defendant if he does take the
12 stand, and we looked into this a little bit last night to
13 see if there was any case law on the matter. We didn't
14 find any case law.

15 I don't want to abandon the argument. I
16 think it's a good argument. I think it's relevant to
17 show his knowledge of Miranda, what it means in so far as
18 he would say I did not understand my Miranda rights.

19 THE COURT: He denied that he was told them.
20 I looked at the transcript yesterday after court, and he
21 denied that he was given his Miranda rights. He didn't
22 say he didn't understand them. He denied he was given
23 them.

24 MR. DURANT: And, Your Honor, I haven't seen
25 the transcript. I know I've talked to my investigator,

1 co-counsel, deputy. We all seemed to remember on
2 cross-examination, at the pretrial hearing that he
3 admitted to not having his -- he didn't say he was
4 Mirandized in the field, but we seem to remember that he
5 said he was Mirandized when he was in the car when the
6 officers approached him on examining from the state.

7 THE COURT: All right. Well let's stop and
8 look back. The way I read 609, for purposes of attacking
9 the credibility of the witness, if the witness is the
10 accused, evidence of prior convictions that are in excess
11 of one year imprisonment shall be admitted if the Court
12 determines the probative value of admitting this evidence
13 outweighs the prejudicial value to the accused.

14 And we all agree, I believe, that drug
15 convictions are generally conceded by our courts to not
16 have any value for whether or not you're telling the
17 truth.

18 MR. DURANT: Your Honor, I would propose that
19 instead of -- because the state is not concerned with the
20 type of offense this was. Drug offense, we do not
21 contend, bears on his character for the truth. We're
22 strictly just concerned with his testimony, whether he
23 understood his rights, and the fact that --

24 THE COURT: Well, is there any question about
25 that? He said he got it. Mr. Smiley, if he admitted

1 that he got it, I don't know --

2 MR. SMILEY: He's going to admit he was read
3 his Miranda rights when he was in the car and Officer
4 Blakeley was in the car, and he would say outside the car
5 or with Officer Tague, he wasn't read them. It won't be
6 a question of understanding them, it will be a question
7 of whether they were read to him.

8 (Record read back.)

9 THE COURT: In any event, his prior
10 convictions for drugs doesn't come in. You got any other
11 prior convictions? I find that the probative value is
12 outweighed by the prejudice to the defendant because of
13 the similarity of the crime.

14 MR. DURANT: In the alternative, would Your
15 Honor consider allowing the state, should the defendant
16 say that he didn't understand his rights --

17 THE COURT: I'm not going to put words in his
18 mouth. I'm not going to put words in his mouth. You
19 said -- maybe I didn't understand what you just said.
20 Say it again.

21 MR. DURANT: The whole issue the state would
22 be concerned about would be whether the defendant
23 testifies that he understood them once they were given to
24 him or not, and it's that issue that the state would at
25 least like to be able to offer for impeachment, the fact

1 that he's had Miranda rights given to him before, several
2 times.

3 THE COURT: I seriously doubt I will allow
4 it, but I will let you make your argument again depending
5 on what he says on direct if he testifies.

6 MR. DURANT: And not to mention the specific
7 crime itself.

8 THE COURT: I'll consider it highly unlikely,
9 but we'll see how the testimony plays out.

10 MR. DURANT: Thank you, Your Honor.

11 THE COURT: All right. Have you got a
12 witness here this morning?

13 MR. SMILEY: Yes, sir. We're ready to go.

14 THE COURT: All right.

15 (Recess taken.)

16 (In open court, jury present.)

17 THE COURT: All right. Be seated. All
18 right, folks. We're going to start now with the defense
19 calling their next witness.

20 Mr. Smiley?

21 MR. SMILEY: Your Honor, at this time the
22 defense would call Tyrone Robinson.

23 DAVID TYRONE ROBINSON,

24 having been first duly sworn,

25 was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. SMILEY:

3 Q. All right. Tyrone, you're speaking perfect as far
4 the loudness. Speak slowly so this jury can understand
5 what you're saying and so the young lady next to you can
6 take down everything you say. May I approach to open up
7 this board before we start, Your Honor?

8 THE COURT: You may.

9 BY MR. SMILEY:

10 Q. Tyrone, during the course of the trial, we created
11 a little bit of a map that I'm going to ask you to refer
12 to from time to time, okay? I'll explain it as we go
13 along. Tyrone, where do you live?

14 A. Right now?

15 Q. Yes, sir.

16 A.

17 Q. All right. Were you born and raised in
18 Charleston?

19 A. Yes.

20 Q. Are you working?

21 A. Not at the present time.

22 Q. When was your last job?

23 A. My last job was a delivery driver.

24 Q. Before we go any further, have you been convicted
25 of a crime before?

1 A. Yes.

2 Q. And it was a drug crime, correct?

3 A. Yes, sir.

4 Q. Do you know Arthur Rivers?

5 A. Yes.

6 Q. How do you know him?

7 A. Relative, friend.

8 Q. When you say he's a relative, is he a cousin?

9 A. Yes.

10 Q. All right. Let's cut through, it and I'm going to
11 turn the clock back to the day you got arrested, on June
12 the 16th, 2008. All right? Where were you?

13 A. I was approximately standing in the yard by the
14 little shack house.

15 Q. And I'm going to use the map right off the bat,
16 all right? I'm going to show you what everything is.
17 This is River Road down here, okay? This is Ardwick, the
18 dirt road coming back, and I can't pronounce it, but
19 Balmoral Road, and that is that dirt driveway coming in.
20 There used to be two trailers back then, but there is a
21 trailer, clothes line, the white little house, the shed
22 that is not there anymore?

23 A. Right.

24 Q. Okay. In relation to that shed, where were you?

25 A. I was right there on the side of it.

1 Q. Would this be where it's marked Robinson?

2 A. Yeah, uh-huh.

3 Q. Were you standing or sitting?

4 A. Sitting.

5 Q. Okay. When you were sitting, before anything
6 happened, was there anybody else out there?

7 A. No.

8 Q. Okay. Did you have an occasion to see Arthur that
9 day?

10 A. He got dropped off and come towards me in the
11 yard.

12 Q. You say he got dropped off. Where was he dropped
13 off?

14 A. At the gap.

15 Q. Would that be -- when you say the gap, would you
16 show on this map where he -- where -- well, let me ask
17 you, did you see who dropped him off?

18 A. I believe it was his mom.

19 Q. Okay. Where did that car stop? If you'll -- you
20 can stand up. Point to where it stopped.

21 A. This is the gap right here.

22 Q. Okay. So the driveway there?

23 A. Yeah.

24 Q. Okay. Did it stop in the driveway or on the road?

25 A. On the road.

1 Q. Do you remember which way it was facing, whether
2 it was facing back out to River Road or back toward
3 Ardwick?

4 A. Towards River Road.

5 Q. So you would have seen the passenger side of the
6 car then?

7 A. Yeah.

8 Q. All right. And you saw Arthur get out of the car?

9 A. Yes, sir.

10 Q. All right. When Arthur got out of the car, what
11 happened next?

12 A. He came straight in the yard, walking toward the
13 white house.

14 Q. All right. So if you'll stand up once again, and,
15 for the jury, show the path that he walked, from when he
16 got out of the car to where he was headed.

17 A. He got out of the car right here, started walking
18 towards the white house.

19 Q. Okay. Did -- at any point did you see him go
20 anywhere else?

21 A. No, sir.

22 Q. Before the officer arrived?

23 A. No, sir.

24 Q. All right. So he's walking down the driveway.
25 Then what happened?

1 A. As soon as he gets, like, I would say, at least a
2 quarter mile in the yard, less than that, that is when
3 Officer Blakeley just busted in the yard and jump on his
4 car and started bee-lining towards me.

5 Q. Slow down. So the officer, Deputy Blakeley, did
6 he stop out of the road or did he pull into the driveway?

7 A. He pulled directly into the driveway.

8 Q. And he stopped his car?

9 A. Stopped his car, jumped out.

10 Q. And he started walking toward you?

11 A. Yeah.

12 Q. Was Arthur Lee stopped in front of him, behind
13 him, where was Arthur?

14 A. Approximately, like, five or ten yards in front of
15 him.

16 Q. With his back to the car?

17 A. Uh-huh.

18 Q. All right. As you got out -- as the officer got
19 out and started coming towards you, did he pass Arthur?

20 A. Yes. He told him to hold up. As he was going in
21 the house, he told him to hold up.

22 Q. Okay. So hold up?

23 A. Yeah.

24 Q. All right. And about -- if you'll stand up and
25 show on this sketch, this being the white house, this

1 being the shed, about where was it that he said -- on
2 that, where were they when he said, Hold up?

3 A. His car was right about here, Arthur was right
4 about here, but he walked straight past him to me,
5 sitting down, before you go in that house.

6 Q. Before you go in that house. All right. So what
7 did Arthur do?

8 A. Stopped.

9 Q. Okay. Then what did Deputy Blakeley do?

10 A. He told him to put my hands behind my back because
11 you know what I'm here for, to arrest me. He came to
12 arrest me.

13 Q. So what did you do?

14 A. Put my hands behind my back.

15 Q. Did he cuff you at that point?

16 A. Yes.

17 Q. And at that point was Arthur still standing there?

18 A. Yes.

19 Q. Just by way of clarification, when is the first
20 time I met you?

21 A. Yesterday.

22 Q. Yesterday, here at the courthouse, right?

23 A. Yes, sir.

24 Q. And one other question in that regard. Had you
25 and I talked at all before that?

1 A. Never met you before yesterday, never talked to
2 you.

3 Q. All right. Very good. So when Officer Blakeley
4 put you in cuffs --

5 A. Uh-huh.

6 Q. -- then what did he do?

7 A. He asked Mr. Rivers for his ID so he could run his
8 name.

9 Q. Okay. And what did Arthur do?

10 A. Gave him his ID.

11 Q. All right. So you're cuffed. Sitting or
12 standing?

13 A. I'm standing.

14 Q. He's now turned his attention to Arthur?

15 A. Uh-huh.

16 Q. And -- let me ask you this: Did you know Deputy
17 Blakeley?

18 A. Yes.

19 Q. Did you know who he was?

20 A. Yes.

21 Q. So you were familiar with him?

22 A. Yes, sir.

23 Q. And Arthur gave his ID, and what he did do then?

24 A. He called his ID in and came back here.

25 Q. And he did that with his hand mike?

1 A. Yeah.

2 Q. And after it came back clear, what did he do with
3 the ID?

4 A. He gave it back to him and told him to put his
5 hands behind his back.

6 Q. When he did that, what happened?

7 A. Mr. Rivers took off running. He went like this,
8 put his hand behind his back, and took off running, like.

9 Q. So the officer -- did the officer touch Arthur or
10 did Arthur -- explain exactly because it's important for
11 the jury. When Deputy Blakeley said, Put your hands
12 behind your back, what exactly did Deputy Blakeley do at
13 that point?

14 A. When Mr. Rivers was going like this to put his
15 hand behind his back --

16 Q. Uh-huh?

17 A. -- he took off running.

18 Q. Okay. So Deputy Blakeley didn't touch him?

19 A. No.

20 Q. All right. Where did -- using that map, I'm not
21 going to walk up there, if you just stand up and show
22 where Arthur went running to..

23 A. Around the house.

24 Q. Okay. So he went around that little house.

25 A. Right.

1 Q. Was he heading back -- after he got behind that
2 house, was he heading to the back of the property or the
3 front of the property?

4 A. Back.

5 Q. So with your finger, trace the path as best you
6 could see to where it ended up.

7 A. He was running around the white house going back
8 behind there. I couldn't --

9 Q. You lost sight of him?

10 A. Yeah.

11 Q. And what was Deputy Blakeley doing?

12 A. Running behind him.

13 Q. All right. After you lost sight of him, what were
14 you doing?

15 A. Standing in the spot, still right there, didn't
16 move.

17 Q. You weren't moving?

18 A. No.

19 Q. All right. You knew you were under arrest?

20 A. Yeah.

21 Q. And you knew why?

22 A. Right, yeah.

23 Q. All right. When they were out of sight, did you
24 hear anything?

25 A. Did I hear -- as far as -- no. No, a little

1 ruffling in the bush. As far as anything else, no.

2 Q. What did you see?

3 A. I saw him bring Arthur out with scratches on his
4 face and bring him to the car. He was out of breath.

5 Q. Were any other deputies there at that point?

6 A. No.

7 Q. When Arthur was walking down that driveway toward
8 you, did you notice him do anything unusual?

9 A. No, sir.

10 Q. Did you notice him throwing anything?

11 A. No, sir.

12 Q. Did you notice him placing anything?

13 A. No, sir.

14 Q. Okay. From the driveway over to the cut -- you
15 know where the cut is there on the corner of the
16 property?

17 A. Yeah.

18 Q. I'm going to show you some pictures. I'm going to
19 show you what has been entered as State's Exhibit No. 15,
20 and this is a picture, standing back in the property
21 looking out towards Ardwick.

22 A. Uh-huh.

23 Q. Is -- do you recognize that?

24 A. Yes, sir.

25 Q. All right. Do you see the cut on that picture?

1 A. To the side? Yeah.

2 Q. Yeah. Is it where the stakes are?

3 A. Uh-huh.

4 Q. You've been out on that property a pretty good
5 bit, right?

6 A. Uh-huh.

7 Q. From the driveway over to the corner of the cut
8 where it starts at the road --

9 A. Right.

10 Q. -- could you give the jury your best guess as to
11 how far it is?

12 A. Approximately -- it's got to be at least 500 feet
13 or more.

14 Q. 500? Let's ask that again. Football field, is it
15 longer than a football field to the cut?

16 A. I would say half, half of a football field.

17 Q. About 50 yards?

18 A. Yeah. Something like that.

19 Q. It's a good distance?

20 A. Yeah.

21 Q. All right. Thank you. Now, you saw him bringing
22 Arthur back out, and he didn't have his shirt on and he
23 was cuffed.

24 A. Uh-huh.

25 Q. And he, you said -- what did he do with Arthur at

1 that point?

2 A. He had him leaning on the car.

3 Q. All right. What happened next?

4 A. Well, he told -- after that, another cop came.

5 Q. All right. Did you know that officer?

6 A. I believe it was Officer Craver at that time.

7 Q. All right. During that whole time, you were just
8 standing in that one place?

9 A. Standing in that spot.

10 Q. Who came and got you?

11 A. Either Craver or another -- by this time, other
12 police officer, another one came here.

13 Q. All right. And then the officer, what did he do
14 with you?

15 A. Put me in the back seat of the car.

16 Q. And at that point, where was Arthur?

17 A. Still on the hood -- I mean, on the hood of the
18 car, leaning.

19 Q. What did they finally do with Arthur?

20 A. He just let him stay -- as far as I was sitting in
21 the car, they still had him standing there, and the rest
22 just converge around him and just had him outside the
23 car.

24 Q. Did you see him put Arthur in a police car?

25 A. No.

1 Q. All right. Were you in a car -- the car that you
2 were placed in, was it facing out towards Rivers or
3 towards the back on Ardwick?

4 A. It was facing -- it was right behind his car.

5 Q. Okay. All right. So did you have the occasion to
6 watch him search for anything?

7 A. Yeah. I seen them search for something.

8 Q. Since you're familiar with that property, is it
9 known for having -- the hill, in general, is it known for
10 having drugs, people with drugs?

11 A. In the past somewhat, yeah.

12 Q. When the police come on Ardwick, the fellows that
13 are out there selling, what generally happens with them?

14 A. I mean, they -- the police come out there. They
15 start asking questions, I mean, stuff like that.

16 Q. Have you ever heard the term on the hill five-oh?

17 A. Yeah.

18 Q. When you hear five-oh yelled out, what does that
19 mean?

20 A. Police car.

21 Q. When five-oh is yelled out, the fellows with
22 drugs, what do they generally do?

23 A. Run.

24 Q. I don't know if you know the answer to this, but
25 I'll ask you. The white house, do you know who was

1 staying in that white house back then?

2 A. Herman Walker.

3 Q. Excuse me?

4 A. Mr. Herman Walker.

5 Q. An older gentleman?

6 A. Yeah.

7 MR. SMILEY: Beg the Court's indulgence.

8 That's all I have, Mr. Robinson, if you'll answer any
9 questions the prosecutor might have of you.

10 CROSS-EXAMINATION

11 BY MR. DURANT:

12 Q. Thank you, Your Honor, may it please the Court.

13 Mr. Robinson, good morning.

14 A. Good morning.

15 Q. You know a lot of the officers out there, right?

16 A. I know Blakeley and Costanzo because they frequent
17 that road very much. They're always up there.

18 Q. Costanzo?

19 A. Officer Costanzo and Officer Blakeley.

20 Q. And you know Deputy Craver?

21 A. Yeah.

22 Q. That is three deputies?

23 A. Uh-huh.

24 Q. Do you know any other deputies?

25 A. No, sir.

1 Q. How are you so familiar with all these deputies?

2 A. Because I was living up there once upon a time,
3 and I was a drug addict once upon a time, so that is how
4 they know me.

5 Q. You were what?

6 A. A drug addict, once upon a time, not anymore.

7 Q. What were you addicted to?

8 A. Crack cocaine.

9 Q. It's a pretty bad drug, isn't it?

10 A. Yes, it is, very bad drug.

11 Q. What kind of an experience did you have with it?

12 A. What kind of experience did I have with it?

13 MR. SMILEY: Objection, Your Honor.

14 THE COURT: Overruled. Go ahead.

15 THE WITNESS: I mean, that was my drug of
16 choice, and that was it. Over the years I was -- I'm
17 clean now.

18 BY MR. DURANT:

19 Q. Did it affect you in your life at all?

20 A. Yes.

21 Q. Did you enjoy using crack cocaine?

22 A. No one ever really enjoys using drugs.

23 Q. Do you have a family?

24 A. No. As far as immediate family, no.

25 Q. Do you have any children?

1 A. No.

2 Q. You don't have a job right now?

3 A. Not right now. In the process of looking.

4 Q. You got clean?

5 A. Yeah, I'm clean.

6 Q. Good for you.

7 A. Thank you.

8 Q. But you know all these deputies, right?

9 A. Uh-huh.

10 Q. And you've seen Deputy Blakeley before, right?

11 A. Yes, sir.

12 Q. And you know that they patrol out in the area of
13 the hill because there is a problem with drugs out there,
14 right?

15 A. Yeah. I mean, that's any given day. That is
16 their job. That is what they do, they come out and
17 check.

18 Q. And a lot of people out there do have drugs?

19 A. Sometimes they do; sometimes they don't.

20 Q. Had Deputy Blakeley ever arrested you before this
21 day?

22 A. No, huh-uh.

23 Q. Never had?

24 A. No.

25 Q. But you knew him before, right?

1 A. Yeah. Frequently, if I stayed up there, like,
2 always up there, always him and Costanzo, they were
3 always up there, harassing.

4 Q. Always patrolling, always working, doing what they
5 should be doing?

6 A. Basically.

7 Q. And you knew -- well, you didn't want to go to
8 jail that day?

9 A. I knew I was going to jail. I knew had I a
10 failure to appear in court warrant. I knew I was going
11 to jail. That's why I didn't run, didn't go nowhere. I
12 just stand there with my handcuffs.

13 Q. And I think the night before you also talked to
14 some deputies?

15 A. Yeah, yeah, uh-huh. That's why they came the next
16 day, because the deputies I talked to the day before,
17 nobody wants to go to jail, so I gave them a different
18 name because I didn't want to go to jail.

19 Q. You gave the deputy a false name?

20 A. Yes, I did, I sure did.

21 Q. You lied to him?

22 A. Yes, sir. Then he came the next day and came --
23 came straight at me and said, You know you're under
24 arrest.

25 And I said, Well, take me to jail, put my hands

1 behind my back, didn't give him no static, no
2 confrontation, nothing.

3 Q. So you don't always tell the truth, do you?

4 A. I do tell the truth.

5 Q. You don't always tell the truth?

6 A. Like I said, I didn't want to go to jail so I
7 lied, yes, I did.

8 Q. Arthur Rivers is your friend, right?

9 A. Right, and cousin, yes, sir.

10 Q. And you don't want anything bad to happen to him,
11 do you?

12 A. No, but I wouldn't lie for him.

13 Q. But you've lied before?

14 A. Yes, sir.

15 Q. And you saw Deputy Blakeley approach Arthur Rivers
16 that day, right?

17 A. He was walking towards me first. Before he even
18 say anything to him, he come straight towards me.

19 Q. You were already in handcuffs?

20 A. When he came straight toward me, I was sitting
21 down. And he said, You know what I'm here for. And I
22 said yeah, I stand up, and he put the cuffs on me. I
23 stood there the whole time, didn't move.

24 Q. And you were in cuffs when Deputy Blakeley
25 approached Mr. Rivers, right?

1 A. He didn't approach him. He was standing right in
2 front of me. He was standing right in front of me.

3 Q. But you were already in cuffs, right?

4 A. Yes, sir.

5 Q. And then your cousin, Mr. Rivers, ran?

6 A. Uh-huh.

7 Q. He ran fast, didn't he?

8 A. I mean, he just took off running.

9 Q. He took off?

10 A. Whether he ran fast or slow, I mean --

11 Q. He ran, didn't he?

12 A. He ran, yes.

13 Q. And Deputy Blakeley ran after him, didn't his?

14 A. Yes, he did.

15 Q. You stayed right there?

16 A. Stayed right there, didn't move.

17 Q. And you saw your cousin. Did he run back this
18 way?

19 A. Back around toward the house.

20 Q. And this is the tree line over here?

21 A. Yes, sir.

22 Q. And he ran towards the tree line, behind the
23 house?

24 A. Behind the house.

25 Q. Behind the house. And, eventually, he was taken

1 out this way by the deputy, right?

2 A. He came up that way, yeah.

3 Q. And you said they were both huffing and puffing,
4 right?

5 A. Uh-huh.

6 Q. They were both pretty winded?

7 A. He was winded because they had him against the
8 car. They had a stun gun on him. He had scratches on
9 his face and his body.

10 Q. Did you see him stun gun him?

11 A. No, but you can hear it. It goes pop. You can
12 hear all that.

13 Q. And you heard all that, right?

14 MR. DURANT: Thank you, sir.

15 REDIRECT EXAMINATION

16 BY MR. SMILEY:

17 Q. You knew Officer Blakeley. Did you know his
18 reputation?

19 A. As far as -- I mean --

20 Q. When you dealt with Officer Blakeley, did he have
21 a certain reputation?

22 A. I mean, he has a reputation of being, I guess --

23 Q. What you know.

24 A. Yeah. Bad ass cop.

25 Q. Bad ass cop. Try to keep that language clean.

1 A. I'm sorry.

2 Q. So he was known as a tough guy?

3 A. Basically.

4 Q. And you knew you were under arrest because of the
5 incident the night before?

6 A. Yes, sir, uh-huh.

7 Q. Now, that night that you gave him a false name --

8 A. Uh-huh.

9 Q. -- did you put your hand on the Bible?

10 A. Yeah.

11 Q. That night, the night were you talking to the
12 officers, the night before?

13 MR. DURANT: Objection, Your Honor. Putting
14 his hand on the Bible --

15 THE COURT: I think he's trying to rebut the
16 implication that he was lying under oath when he is
17 testifying today as opposed to lying to save his skin
18 outside of court.

19 THE WITNESS: Thank you.

20 BY MR. SMILEY:

21 Q. Today when you came in court, you put your hand on
22 the Bible and swore to tell the truth?

23 A. Yes, sir.

24 Q. And understanding today, if you did not tell the
25 truth, you could look at perjury charges?

1 A. Yes, sir.

2 Q. That night on the street, was there any Bible put
3 in front of you?

4 A. No, sir.

5 Q. Was there anything that told you that if you don't
6 tell me the truth, I'm going to charge you with perjury?

7 A. No, sir.

8 MR. SMILEY: Nothing further.

9 MR. DURANT: I have no questions.

10 THE COURT: You can step down.

11 THE WITNESS: Thank you.

12 MR. SMILEY: And I ask that he be excused. I
13 don't have him under subpoena.

14 THE COURT: All right. You're free to go.

15 THE WITNESS: Thank you.

16 THE COURT: Okay. All right, folks. We need
17 to take up a matter that will cause us to have about a
18 ten-minute break, so we'll go ahead and take a little
19 break right now, and we will begin -- don't begin
20 deliberations or discussions. We'll have you back in a
21 moment.

22 (In open court, jury not present.)

23 THE COURT: All right.

24 MR. SMILEY: If you could advise my client of
25 his right to testify or not testify.

1 THE COURT: All right. Mr. Rivers, we've
2 come to the point in the trial now where I take it you
3 either testify or you rest. All right? You don't have
4 any more witnesses, so you have to make a decision as to
5 whether or not you want to testify.

6 Under the laws of our state and our country,
7 you do not have to testify if you don't want to. You
8 have the right to testify, if you want to. You can get
9 up on the witness stand, you'll be sworn, put under oath,
10 you can tell your side of the story to the jury. That is
11 your right. The state will have the right to
12 cross-examine you, and you are under an obligation to
13 tell the truth.

14 Now, there has been some discussion here
15 about prior convictions, and normally our Courts say that
16 some convictions can come in to impeachment, some cannot
17 come in. I understand that you have some prior
18 convictions for drug offenses, and I have made a
19 preliminary ruling that, basically, I am not going to
20 allow the state to inquire or present evidence to the
21 jury about those prior drug convictions and they asked me
22 to consider, depending on what the outcome of your
23 testimony is, allowing you to be impeached about whether
24 or not you knew your Miranda rights.

25 It is highly unlikely that I will change my

1 mind about my ruling, but I've told them that I will
2 reserve that until you actually testify, depending on
3 what your testimony is going to be, but, again, that is a
4 possibility, that you could be impeached by evidence of
5 your prior convictions coming in.

6 Now, you also have the right to not testify,
7 if you want, and as I told the jury at the beginning of
8 the trial, you heard me tell them, you don't have to
9 prove you're innocent. The state has to prove that you
10 are guilty, and you don't have to put up a defense and
11 you do not have to testify. It is solely your decision
12 as to whether or not you want to testify, and while you
13 have the right to consult with your attorneys and your
14 family and your friends about whether or not you want to
15 testify, ultimately, it comes down to you and your
16 decision as to whether or not you want to testify.

17 All right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Because if you get convicted,
20 you're the one that has got to do the time, not them. Do
21 you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. So if you decide you
24 do not want to testify, I will instruct the jury that
25 they are not to hold that against you while they are

1 deliberating. All right? Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, have you decided whether or
4 not you want to testify?

5 THE DEFENDANT: Could I speak to my lawyer?

6 THE COURT: Sure. You want to speak to him?
7 Go ahead. We'll take a few minutes break and come back
8 and you can tell me what your decision is.

9 MR. SMILEY: Thank you, Your Honor.

10 (Recess taken.)

11 MR. SMILEY: Defense is ready, Your Honor.
12 My client will testify.

13 THE COURT: All right. Mr. Rivers, what did
14 you decide you want to do?

15 THE DEFENDANT: I'm going to testify.

16 THE COURT: All right. Well, then let's go
17 ahead and bring the jury back in. We'll get started.

18 MR. SMILEY: And I'll be resting after this
19 witness, Your Honor.

20 THE COURT: Okay. All right. Be seated.

21 All right, Mr. Smiley.

22 MR. SMILEY: Your Honor, at this time, the
23 defense will call Arthur Rivers.

24 ARTHUR LEE RIVERS,
25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SMILEY:

4 Q. All right, Arthur. How old you?

5 A. Thirty-two.

6 Q. Are you married?

7 A. No, sir.

8 Q. Are you engaged?

9 A. Yes, sir.

10 Q. Do you have any children?

11 A. One daughter.

12 Q. How old is she?

13 A. Eight.

14 Q. Were you born and raised in Charleston?

15 A. Yes, sir.

16 Q. Out in the Johns Island area?

17 A. Yes, sir.

18 Q. Do have you any brothers or sisters?

19 A. Yes, sir.

20 Q. How many?

21 A. Four sisters and one older brother.

22 Q. Okay. Are you working?

23 A. Yes, sir.

24 Q. Where do you work?

25 A. Condustrials, right down to the Catholic church

1 off of Broad.

2 Q. So you're working right here on Broad Street?

3 A. Yes, sir.

4 Q. What do you do there?

5 A. Brick mason.

6 Q. All right. Let's get down to it. Let's go back
7 to June 16, 2008. Did you have an occasion to go to
8 Ardwick and Balmoral Drive?

9 A. Yes, sir.

10 Q. How did you get there?

11 A. My mother dropped me off.

12 Q. Okay. Why were you going there?

13 A. To visit Mr. Herman's house.

14 Q. Mr. Herman's house? Just speak clearly and
15 loudly.

16 A. Mr. Herman's house.

17 Q. All right. Describe how -- did your mother come
18 in from River Road?

19 A. Yes, sir.

20 Q. Okay. Describe how she dropped you off and where.

21 A. We turned in to the road --

22 Q. That's Ardwick?

23 A. Ardwick Road.

24 Q. Uh-huh.

25 A. We went all the way down past the gap, turned

1 around, came back, and I got out at the gap.

2 Q. Okay. When you say the gap, is that what I have
3 been calling the driveway?

4 A. The driveway, yes, sir.

5 Q. So -- may I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. SMILEY:

8 Q. If you'll stand up for me. This being River Road,
9 of course, and this being the back of the property and
10 this being Ardwick, which direction was your mother's car
11 facing when she dropped you off?

12 A. All the way downs toward River Road.

13 Q. So facing towards River Road. Okay. If you will
14 point out on this rough sketch where her car stopped to
15 drop you off.

16 A. Right there.

17 Q. In front of the gap, the driveway?

18 A. The gap, to go to Herman's house.

19 Q. All right. Have a seat. So -- and roughly, what
20 time of day was it?

21 A. Morning, about -- 10:00, maybe, something like
22 that.

23 Q. Did you have a watch on?

24 A. No, sir.

25 Q. If I told you it was after lunch, would that seem

1 right to you?

2 A. Yeah.

3 Q. Okay. So you get dropped off there at the
4 driveway. And your mama went on?

5 A. Yes.

6 Q. When you got out of the car, where did you walk?
7 And you can stand up and show them, if you want to.
8 Stand up and show them on the diagram from where you were
9 dropped off where you started walking.

10 A. I was dropped off right here. I started walking
11 towards the white house in here.

12 Q. And if you'll point to them what you're describing
13 as the white house.

14 A. The white house is that -- where you have the
15 white house drawn at -- is this the white house?

16 Q. Yeah.

17 A. That is the white house. That is where we were
18 walking towards.

19 Q. As you were walking, what happened next?

20 A. I would say about couple seconds after I got right
21 in this area, officer's car was coming in the driveway.

22 Q. Since you're standing up, I need you to speak
23 loudly. When you were about halfway down the drive, you
24 said what? Say it again.

25 A. Officer car pulled up in the driveway.

1 Q. Okay. And it stopped behind you?

2 A. Yes, sir.

3 Q. All right. Then what -- sit back down so we can
4 use that microphone. After he stopped, what did the
5 officer do? Did you see?

6 A. After I see him, when he pulled in, I actually
7 kept walking, but he jumped out of the car and he catch
8 up with me walking and walked past me and went straight
9 to the other fellow.

10 Q. And the other fellow was who?

11 A. Tyrone.

12 Q. And where was Tyrone?

13 A. Sitting in the back by the little shed.

14 Q. All right. As the officer walked past you towards
15 Tyrone, what happened next?

16 A. Well, he asked for -- he tell me to stop right
17 there before I went in the house.

18 Q. Okay.

19 A. Asked me for my ID.

20 Q. Okay. Did he ask for your ID before or after he
21 cuffed Tyrone?

22 A. Before.

23 Q. So what did you do?

24 A. I gave him my ID.

25 Q. So you stopped.

1 A. Yes, sir.

2 Q. And you stopped sort of right in front of that
3 white house?

4 A. Yes, sir.

5 Q. So you were in fairly close proximity to the
6 deputy and Mr. Robinson?

7 A. Yes, sir. We were all in the same little area.

8 Q. Right there together. Okay. Did you know why he
9 wanted your ID?

10 A. No, sir.

11 Q. But you gave it to him.

12 A. Yes, sir.

13 Q. What did he do after he gave you -- you gave him
14 the ID. Then what did he do?

15 A. He ran it in, while he had Tyrone in cuffs right
16 there.

17 Q. Uh-huh. And when you say he ran it in, he called
18 it through the radio?

19 A. Yes, sir.

20 Q. And was it the radio in his car or the one on his
21 person?

22 A. The one on his person.

23 Q. Okay. And while he did that, you just stood
24 there?

25 A. Yes, sir.

1 Q. He didn't explain to you why he was calling it in?

2 A. No, sir.

3 Q. All right. Then what happened?

4 A. It came back clear, and he wanted to pat me down
5 on top of that.

6 Q. Let me ask you about that. When he said he wanted
7 to pat you down, did he ask if he could search you?

8 A. Yes.

9 Q. And what did you tell him?

10 A. I said yes, sir.

11 Q. So what did he do when you gave him permission to
12 search you?

13 A. He pat me down, search everything on me.

14 Q. Okay. When you say pat you down, did he go inside
15 your clothes or outside your clothes?

16 A. Both.

17 Q. All right.

18 A. Inside my pockets.

19 Q. He went inside your pockets and then he patted you
20 down. Did he find anything? Did he take anything from
21 you?

22 A. No, sir.

23 Q. Okay. After he's done that, okay, what happened
24 next?

25 A. Well, he gave me my ID and he was about to give

1 me -- I think Tyrone had, like, \$10 in his pocket. He
2 was going to give me Tyrone's money, and I told him I
3 didn't want it.

4 Q. All right. What happened next?

5 A. He told me to turn around.

6 Q. Okay. And do you know why he was asking you to
7 turn around?

8 A. No, no, sir.

9 Q. Okay. Then what happened?

10 A. When I asked him for what, he told me I just
11 better turn around.

12 Q. All right. Then what happened?

13 A. So I act like I -- I turned around, since he
14 didn't tell me, I turned around slow, like this,
15 approaching to give him my hand like this right here, and
16 I took off running.

17 Q. Why did you run?

18 A. Because he wouldn't give me an explanation why he
19 was locking me up.

20 Q. And did you know of Detective Blakeley?

21 A. Yes, sir.

22 Q. Did you know of his reputation?

23 A. Yes, sir.

24 Q. And what was that? What was his reputation?

25 A. For being aggressive, bad type of cop.

1 Q. Okay. So when you ran, how were you feeling?

2 A. What do you mean, when I ran, like --

3 Q. Well, tell the jury what was going on that made
4 you take off to run.

5 A. Actually, I just wanted to get away because he
6 didn't tell me why I was getting locked up. I was
7 scared, so I ran, and I ran around the house --

8 Q. Okay. Slow down. So you started taking off.

9 A. Yes, sir.

10 Q. All right. And stand up and show the jury, to the
11 best of your recollection, from where you where to where
12 you went.

13 A. Well, we was like in this area.

14 Q. Uh-huh?

15 A. Say this is Tyrone, Blakeley, and I was standing
16 in front of him.

17 Q. So for the record, you're pointing to the area
18 that is, what, in front of the white house; is that
19 right?

20 A. Yes, sir.

21 Q. All right. So where did you go?

22 A. I ran around on the side of the white house,
23 through the trailer and the bushes.

24 Q. Okay. As you ran through the trailer and the
25 bushes -- you can sit back down for me -- as you ran by

1 the trailer and the bushes, what happened next?

2 A. Before I even get -- it's like a big sticky bush,
3 bunch of briars. I was going to run straight through it,
4 and all I know is I dropped down in it.

5 Q. Okay. Why did you drop down in it?

6 A. Well, he Tased me.

7 Q. When you say he Tased you, he shot you with a
8 Taser?

9 A. Yes, sir.

10 Q. Where did it hit you?

11 A. I really don't know. I got weak in my legs, and I
12 fell straight down.

13 Q. Did you fall on your back or your stomach?

14 A. My stomach.

15 Q. Did you fall in the field, or where did you fall?

16 A. Exactly in the sticky briars.

17 Q. Okay. When you dropped in the briars, what
18 happened next?

19 A. I was real weak, but I looked back to see where he
20 was at, and he was actually full speed with his -- about
21 to jump right on me, which he did jump on me with his
22 knee first.

23 Q. So you are on your stomach and he jumped knee
24 first into your back?

25 A. Yes, sir.

1 Q. All right. So at the point that he engaged you,
2 and while you're laying on your stomach, what happened?

3 A. Well, I couldn't do -- I was so weak. He was on
4 top of me. He hit me up a couple times.

5 Q. When you say he hit you a couple times, what do
6 you mean? Describe to the jury, because they weren't
7 there, what you mean by that.

8 A. Once I looked back like this right here he was
9 coming full speed. His knee came on the back of me while
10 I was on the ground, in the sticky bush. He hit me with
11 his hand couple times in the head.

12 Q. Okay.

13 A. And he kneed me in my groin and one time in my
14 head with his knee.

15 Q. Okay.

16 A. This whole time I was still was laying --

17 Q. On your stomach?

18 A. Yes, like this, in the sticky bush, moving like
19 this.

20 Q. Okay. All right. Now, he's on top of you.

21 A. Yes, sir.

22 Q. Are you fighting to get away from him?

23 A. Basically trying to stop the hits from --

24 Q. All right.

25 A. I didn't never try to fight him back.

1 Q. How long did this -- I know it's hard to tell time
2 when something like this is going on. To the best of
3 your recollection, how long do you think y'all were
4 struggling in the briars?

5 A. About -- five minutes or something like that.

6 Q. Pretty long struggle?

7 A. Yes.

8 Q. You didn't want to be cuffed, did you?

9 A. No, sir.

10 Q. Speaking of that, did you throw his cuffs
11 anywhere?

12 A. No, sir.

13 Q. Did you see his cuffs when you were in the briars?

14 A. Yes, sir.

15 Q. He had them -- where did he have them?

16 A. In his hand.

17 Q. Okay. Did he have it in his right hand or his
18 left hand, do you remember?

19 A. I want to say the right hand.

20 Q. Do you remember which hand he was beating you
21 with --

22 A. Well, both.

23 Q. All right. How did you get out of the briars?
24 How did that come about?

25 A. He grabbed me by the back of my pants and lift me

1 up, had me and twist my pants tight like this here and
2 walked me out the bush.

3 Q. All right. Let's talk about how you were dressed
4 since you talk about your pants. That day when you got
5 there, do you remember what you were wearing? Like, did
6 you have a shirt on?

7 A. Yes.

8 Q. Do you remember what kind of shirt it was?

9 A. I think it was a tank top.

10 Q. Okay. What color was it, do you remember?

11 A. No.

12 Q. Did you have long pants or short pants on?

13 A. Long pants.

14 Q. What kind much shoes, if any, did you have on,
15 tennis shoes, dress shoes? I'm just asking.

16 A. Tennis shoes.

17 Q. No, Deputy Blakeley, he was in full uniform,
18 right?

19 A. Yes, sir.

20 Q. All right. So he pulls you out of the briars, and
21 what happened next?

22 A. Like I say, he twist the back of my belt and he's
23 holding me up like this and walked me out of the bush.

24 Q. You're going to have to speak slower and louder
25 because everybody has got to hear you. So he pulled you

1 by the pants out, and then what happened?

2 A. He walked me out from around the bush, in front by
3 the deputy.

4 Q. At that point did you have a shirt on?

5 A. No, sir.

6 Q. Your shirt had come off?

7 A. Yes, sir.

8 Q. All right. So he pulls you out, and he walks you
9 where?

10 A. Back to his squad car.

11 Q. Toward the squad car. Where was his squad car?

12 A. Like, in the middle of the yard.

13 Q. Was it in the driveway or the road?

14 A. Driveway, further up in the driveway.

15 Q. So he walked you towards his car?

16 A. Yes, sir.

17 Q. When you were walking, did you see anybody else
18 out there?

19 A. No, sir.

20 Q. All right. Had any other deputies arrived yet?

21 A. Not until we got to his car, and two other
22 deputies pull up in the yard behind his car.

23 Q. Okay. When you were first pulled out of the
24 briars, did y'all have any conversation?

25 A. No, sir.

1 Q. Did he strike you some more when he pulled you out
2 of the briars?

3 A. No.

4 Q. Okay. At any point -- you said he put a knee in
5 your back. He hit you with a fist. Did he hit you any
6 other way?

7 A. No. He just hit me in my head, like, two or three
8 times and kneed me, like, two or three times.

9 Q. Okay. He kneed you, you said?

10 A. Yes.

11 Q. Okay. Now, he took you to the car. The other
12 deputies arrived. Before you got there, when you were
13 over in the field, did y'all have any conversation?

14 A. No, sir.

15 Q. Did he attempt to at that point read you any
16 rights?

17 A. No, sir.

18 Q. He just dragged you back to the car.

19 A. Yes, sir.

20 Q. Once you got to the car and other deputies
21 arrived, did you have any clue what you were being
22 arrested for?

23 A. No, sir.

24 Q. But is it fair to say you certainly felt like you
25 were under arrest, right?

1 A. Yes, sir.

2 Q. All right. After you got back to the car, tell
3 the jury what happened next.

4 A. The other officers pulled up, and he put me in the
5 squad car.

6 Q. Okay. Who is he?

7 A. Officer Blakeley.

8 Q. He put you in the squad car, his car?

9 A. Uh-huh.

10 Q. Okay. When you were in that car, was there anyone
11 else in the car with you?

12 A. No, sir.

13 Q. You were there by yourself?

14 A. Yes, sir.

15 Q. Now, sitting in the back of the squad car for --
16 can you -- I know it's hard with time. To the best of
17 your ability, how long do you think you were sitting in
18 the back of the car before it moved or had any other
19 contact with anybody?

20 A. About 15, 20 minutes, maybe.

21 Q. Did you have any contact with any medical
22 personnel?

23 A. Not at that time.

24 Q. Were you able to see if any medical personnel came
25 to the scene or not?

1 A. Yes, sir.

2 Q. Okay. Were they there for you?

3 A. No, not at first.

4 Q. Okay. Now, while you're sitting in the back of
5 the car, tell the jury what happened next.

6 A. We were sitting in the back of the car, and a lot
7 of officers came up. He went up -- he said something to
8 the other officers, and they went over in the bush line
9 area.

10 Q. Okay.

11 A. And they was over there for, like, maybe ten
12 minutes.

13 Q. All right. And if you'll stand up and show on
14 that drawing the general area that the officers went to
15 search.

16 A. This is the gap --

17 Q. The driveway?

18 A. The driveway.

19 Q. Okay.

20 A. This was, like, in the driveway, right here, where
21 he had me at, and then the side line that goes straight
22 across right here.

23 Q. Right.

24 A. Where there is bushes and trash.

25 Q. And that is where they went?

1 A. That's where they went.

2 Q. All right. And you say, to the best of your
3 recollection, they were over there for how long?

4 A. Maybe about ten minutes or so, probably.

5 Q. Okay. You can sit back down. What happened next?

6 What happened after they went over there and started
7 looking for ten minutes? You're sitting in the back of
8 the car. What do you remember happening next?

9 A. One of the officers coming to the car.

10 Q. Do you remember which officer?

11 A. No, sir.

12 Q. Okay. And what happened?

13 A. He came up to Blakeley and gave him what they
14 found in the woods.

15 Q. Did you know what they found in the woods?

16 A. No, sir.

17 Q. And then what happened?

18 A. That's when if, I'm not mistaken, he read me the
19 rights inside the car.

20 Q. When you say he read the rights inside the car,
21 was he outside or inside the car?

22 A. Inside.

23 Q. Okay. Was there any other officers?

24 A. No, sir.

25 Q. Okay. Were the doors to the car open or closed?

1 A. Closed.

2 Q. And you said he read you your rights, okay. After
3 he read you your rights, what did you do, anything?

4 A. No, sir.

5 Q. Did you tell him -- make any statements to him
6 about anything?

7 A. No, sir. I never said nothing.

8 Q. Okay. So you didn't make -- I'm trying to get
9 clear on this -- after he read you your rights, did he
10 ask you if you wanted to make a statement?

11 A. No, sir.

12 Q. Did you indicate that you wanted to talk to him?

13 A. No, sir.

14 Q. Okay. How were you feeling towards Deputy
15 Blakeley at that point in time?

16 A. Not real good.

17 Q. Why is that?

18 A. I mean, 'cause I did what he asked me to do, and
19 he didn't -- simple as that, asking him after all I did
20 for him, when he asked for my ID and everything, just
21 tell me why you want me to turn around, why you going to
22 lock me up? So after -- and I ran and he Tased me and
23 beat me, so, you know, I wasn't feeling too good in the
24 car, so I ain't never said nothing to him.

25 Q. All right. At any point, all right, during the

1 fight in the field, in the car, or later, did you ever
2 make a statement about the ownership of the drugs?

3 A. No, sir.

4 Q. Now, from the driveway to over to that wood line
5 of the cut, in your best guess of distances, about how
6 far do you think it would be, to the corner there?

7 A. From the driveway to the bushes.

8 Q. Well, let me demonstrate the distance. I'm asking
9 you, from the driveway here, at the front of the
10 driveway, to where the cut goes from the road into the
11 property, right, what is your best guess of how far that
12 is?

13 A. I would say about 40, 50 feet, maybe, something
14 like that.

15 Q. Okay. Now, at some point in time, you were taken
16 away from Ardwick?

17 A. Yes, sir.

18 Q. Okay. And who drove you out of there? Was it
19 Deputy Blakeley or some other officer? Did they switch
20 cars, I guess -- let me withdraw all those questions, and
21 I'll ask it a different way.

22 The car you were in was Deputy Blakeley's?

23 A. Right.

24 Q. Did you leave in that car or did you leave in
25 another car?

1 A. I don't really -- I think it was his car. I don't
2 remember.

3 Q. Okay. Did they take you to the jail at that
4 point?

5 A. No, sir.

6 Q. All right. Where did they take you, do you know?

7 A. I guess it was some type of medical place. I
8 don't know what it was called.

9 Q. Okay.

10 A. But it just was us and --

11 Q. And that is the first place you went after you
12 left?

13 A. Yes, sir.

14 Q. All right. At any point in time, did they give
15 you medical attention?

16 A. No, sir. Well, they draw blood. The place we
17 went to, they wanted to draw blood.

18 Q. Okay. All right.

19 MR. SMILEY: Beg the Court's indulgence.

20 BY MR. SMILEY:

21 Q. One last question, Arthur. When you were on that
22 driveway that day, did you ever go over to that cut
23 section of the property?

24 A. No, sir.

25 Q. Did you throw anything on that property?

1 A. No, sir.

2 MR. SMILEY: That's all I have. Answer any
3 questions the prosecutor might have.

4 THE COURT: Mr. Kidd?

5 CROSS-EXAMINATION

6 BY MR. KIDD:

7 Q. May it please the Court. Good morning, Mr.
8 Rivers.

9 A. Good morning.

10 Q. Had you had interactions with Deputy Blakeley
11 before? Had you met him before?

12 A. Yeah.

13 Q. Approximately how many times?

14 A. Probably a couple times -- meet, as in talk to?

15 Q. How many times have you seen him out there at
16 Ardwick?

17 A. I have seen him a couple times out there.

18 Q. You talked to him a few of those times, or he
19 talked to you a few of those times?

20 A. Yeah.

21 Q. Had he ever arrested you before?

22 MR. SMILEY: Objection, Your Honor. May we
23 approach?

24 (Discussion held at sidebar.)

25 THE COURT: Let me send the jury out for just

1 a second please.

2 (In open court, jury not present.)

3 THE COURT: Is there some part of this whole
4 court trial you have not been paying attention to? Why
5 did you just ask him that?

6 MR. KIDD: It goes to why he ran. He's never
7 had any problems with Blakeley before. He's never been
8 arrested by Blakeley before.

9 THE COURT: I specifically said we're not
10 going to bring up prior bad acts, prior arrests, prior
11 convictions, and you just asked him that.

12 MR. KIDD: Knowing the answer was no. I
13 apologize if I went too far. I think the answer is no,
14 he never has been arrested by Officer Blakeley before.
15 That is what I expected the answer to be. I'm not trying
16 to get into prior bad acts, I'm trying to show that he's
17 never had any problems with Officer Blakeley before.

18 THE COURT: Have you ever been arrested by
19 Officer Blakeley before?

20 THE WITNESS: No, but he did -- I got pulled
21 over by him one time, and he took the car and made me
22 walk back for no reason.

23 MR. SMILEY: They've had -- my concern is
24 that it suggests that my client has other arrests, and
25 just not with Blakeley.

1 MR. DURANT: Well, why don't you lead the
2 question, perhaps, Deputy Blakeley has never arrested you
3 before?

4 MR. SMILEY: It's out of the bag.

5 MR. KIDD: He's never been arrested by
6 Blakeley before, and that was my question, and the answer
7 is no.

8 THE COURT: Do you want to be heard?

9 MR. SMILEY: Your Honor, I think asking him,
10 have you ever been arrested by Deputy Blakeley before,
11 after asking have you met him before, have you seen him
12 before, starts to indicate that my client has some
13 regular interaction with the police, and it suggests, you
14 know, you've been arrested before, but it wasn't by this
15 deputy. I didn't know the answer to the question.

16 THE COURT: I didn't either, and I'll tell
17 you what: For future reference, don't ever ask that
18 question again without getting permission after you've
19 been instructed not to question a witness about prior bad
20 acts.

21 I didn't know what the answer was, and his
22 defense lawyer didn't know what the answer was. I'm
23 going to let him answer the question, which you said is
24 no. That is the question you're answering. If you want
25 to recross, want to bring that up about if he had ever --

1 what was his answer going to be?

2 I got pulled over by him one time and he took
3 the car and made me walk back for no reason, I'll let you
4 decide if you want to get there.

5 MR. KIDD: I apologize, Your Honor. I never
6 meant to get into prior bad acts. I only asked the
7 question because I knew the answer was no.

8 THE COURT: Well, I didn't know.

9 MR. SMILEY: Your Honor, I would ask that, of
10 course, the instruction be struck and a curative
11 instruction be given that -- well, that just brings more
12 light to it. I'm trying to think of what --

13 THE COURT: If you would rather have it
14 struck, I'll strike it, but the answer is no, so --

15 MR. SMILEY: I'd ask that he answer the
16 question and we'll just move on.

17 THE COURT: All right.

18 MR. SMILEY: And the answer will be no, and
19 we'll move on.

20 THE COURT: All right. Bring the jury back.
21 I will just tell him to answer the question, has he ever
22 been arrested by Blakeley.

23 (In open court, jury present.)

24 THE COURT: All right. Be seated. All
25 right, folks. The question to the witness was, have you

1 ever been arrested by Officer Blakeley before, and the
2 answer, sir, is?

3 THE WITNESS: No.

4 THE COURT: All right. Next question.

5 BY MR. KIDD:

6 Q. Thank you, Your Honor. I'm going to get a little
7 bit to the scene, if I may approach the witness, Your
8 Honor.

9 THE COURT: You may.

10 BY MR. KIDD:

11 Q. What is further down Ardwick Road? What is -- if
12 you go past Balmoral -- I can't pronounce it either --
13 what is further down Ardwick Road?

14 A. More houses.

15 Q. More houses. All right. And tell me if I'm
16 wrong. There is a kind of a little -- not a turn around,
17 but a little place off the side of the road right here,
18 past the gap, as you call it. There is kind of a little
19 kind of drive, where cars can get pulled over to the side
20 right there, is there not?

21 A. What do you mean, pulled over to the side?

22 Q. Well, this is a dirt road.

23 A. Right.

24 Q. There is not a lot of room on the side of the dirt
25 road, right?

1 A. Right.

2 Q. But right past what you call the gap, I mean, I
3 was out there a couple months ago. There is, like, a
4 little -- not a drive in, but it's like some area off to
5 the side of the road, just kind of sandy and dusty; is
6 that correct?

7 A. Yeah. You can pull off, but you would still be in
8 the road.

9 Q. It's almost part of the road, but just a little
10 pull-off on the side right there, right? When your mom
11 dropped you off that day, where did she turn around?

12 A. We went all the way around.

13 Q. You went all the way around where?

14 A. To the end of -- there is, like, a four-way to the
15 end of this dirt road, going all the way up.

16 Q. I guess that is what I was getting at before.
17 What is up this?

18 A. More houses.

19 Q. So where did y'all turn around at?

20 A. There is a trailer right on the right-hand side,
21 and that is the first you see the trailer, and you can
22 turn around there, and there is more houses to the back
23 and a turn around to the left and more houses.

24 Q. So she's coming down this way when she drops you
25 off, right?

1 A. Right.

2 Q. And she dropped you off, and you were walking
3 over to -- whose house is that, the white house?

4 A. Herman.

5 Q. Herman. How do you know Herman?

6 A. I know him for a long time, close friends with my
7 father, and, you know --

8 Q. Do you know how old he is?

9 A. Like, 80, maybe, 70 something.

10 Q. So he's an older gentleman.

11 A. Yeah.

12 Q. Lot of people hang out at his house?

13 A. Yeah, family wise.

14 Q. Are you related to him?

15 A. No.

16 Q. But you hang out at his house?

17 A. Yes, sir.

18 Q. Do other people who aren't related to him hang out
19 at his house?

20 A. Yes, sir.

21 Q. So is it fair to say there is people coming and
22 going from his house?

23 A. Yes, sir.

24 Q. When you said you're walking down towards Herman's
25 house --

1 A. Right.

2 Q. -- and Officer Blakeley shows up, and you said you
3 testified you turned back to look at him, were you
4 surprised to see him?

5 A. Yeah.

6 Q. But you've seen him there before multiple times,
7 right?

8 A. Not surprised like that, but the way he pulled in
9 the driveway behind me, I looked back, like -- not
10 surprised as to run or like I did something wrong or
11 something.

12 Q. And you kept walking?

13 A. Yeah.

14 Q. He locks up Tyrone --

15 A. He jumps out, catch up with me walking straight,
16 walking past, and scraped the tire, told me to hold up at
17 the same time.

18 Q. Why did you run from him?

19 A. Because he wouldn't give me the information -- I
20 mean, after I asked him, he run my ID in, it came back
21 straight. He pat me down, searched me. I had nothing.
22 Then just out of the blue he going to tell me, Turn
23 around, so I asked him why? He wouldn't give me a
24 reason. He told me I just better turn around so I act
25 like I was turning around for him to cuff me and I just

1 took off running.

2 Q. About how far did you get before he caught up with
3 you?

4 A. About 25 feet, something like that, right around
5 the house to the bush.

6 Q. Why did your mom have to go all the way down
7 Ardwick if she was just dropping you off at Balmoral?
8 Why didn't she turn into that driveway?

9 A. She went and turned where she always do that.

10 Q. Does she know someone that lives up there?

11 A. Yeah.

12 Q. Do you know someone that lives up there?

13 A. Yes, sir.

14 Q. Do you go see the person who lives up there
15 sometimes?

16 A. Yes, sir.

17 Q. So has she ever dropped you off further up the
18 street before?

19 A. It ain't like she dropped me off all the time, you
20 know.

21 Q. Has she ever dropped you off further up Ardwick
22 before?

23 A. No.

24 Q. Never in the past, but you've visited the house
25 further up Ardwick before, correct?

1 A. Yeah.

2 Q. And you've walked from that house to Herman's
3 house before, correct?

4 A. No, sir.

5 Q. Never before?

6 A. No.

7 Q. How far is it -- I mean, is Ardwick a very long
8 road?

9 A. Pretty much.

10 Q. Pretty long? How far is those houses further up
11 Ardwick Herman's house?

12 A. About a football field and a half, maybe.

13 Q. About 100 yards 150 yards?

14 A. Somewhere like that.

15 Q. You've been up there, and you just testified you
16 go to Herman's house a lot, but you've never walked
17 between them before?

18 A. I walked between them before, but --

19 Q. So you have walked between them before?

20 A. From Herman's house to the back?

21 Q. From Herman's house to the house further up
22 Ardwick.

23 A. Well, I got an aunt that live up there. That's
24 the house I always go to, but I never got dropped off and
25 walked back there.

1 Q. Okay. But you've walked between the two places
2 before.

3 A. Yeah.

4 Q. Okay. And when you walked to them before, do you
5 take -- walk down Balmoral and then take a 90 degree turn
6 up Ardwick, or do you cut through that little path right
7 there?

8 A. For one, I never walked through there and cut
9 through there like that. It's not like a cut. There is
10 bushes and trees and everything.

11 Q. We have pictures of it.

12 A. All right.

13 Q. I'm going to show you what has been marked as
14 State's Exhibit 15. Is that not a path right there?

15 A. If you want to call it that. It ain't really
16 no -- path was right here like that, trees and that.

17 Q. But if you were going to walk from Herman's house
18 to somewhere further up Ardwick, would you walk down
19 Balmoral and then just hang a left on Ardwick or would
20 you go in a straight line?

21 A. Say that again? If I what?

22 Q. Hypothetically speaking --

23 MR. SMILEY: Objection, Your Honor.

24 THE COURT: Overruled. Cross-examination.

25 Go ahead.

1 BY MR. KIDD:

2 Q. If you were going to walk between Herman's house
3 and a house further up Ardwick, would you walk down
4 Balmoral and take a left on Ardwick, or do you walk in a
5 straight line down that path to cut off that corner?

6 A. You could do either one.

7 Q. I understand you could do either one. I'm asking
8 you which one you would do, or which one have you done
9 before.

10 MR. SMILEY: Objection.

11 THE COURT: Overruled.

12 BY MR. KIDD:

13 Q. You testified a minute ago you walked between
14 those two places before, and I asked you when you have
15 done that in the past, do you cut off that corner?

16 A. I walk in the road before from the back all the
17 way up to the front like that.

18 Q. So even though you have this path that is beaten
19 down by a lot of foot traffic, you don't take it; you
20 just take the road and make that corner and walk further
21 than you need to, that's what you're telling the jury.

22 A. If I'm not going there --

23 THE COURT: Let the witness answer the
24 question before you ask the next one. Don't argue with
25 him. Do you need to finish your answer or explain your

1 answer?

2 THE WITNESS: No, sir.

3 BY MR. KIDD:

4 Q. When Blakeley asked you to turn around, right
5 before you ran, you pushed him, didn't you, before you
6 took off?

7 A. No.

8 Q. You didn't?

9 A. No.

10 MR. KIDD: Court's indulgence.

11 BY MR. KIDD:

12 Q. You were struggling with Deputy Blakeley for,
13 what, about ten minutes?

14 A. Somewhere in there.

15 Q. And this is June in Charleston. It's pretty hot
16 outside?

17 A. Uh-huh.

18 Q. And ten minutes is a pretty long time to be
19 struggling. Were you pretty winded and tired?

20 A. Uh-huh.

21 Q. And Officer Blakeley was as well?

22 A. Uh-huh.

23 Q. You testified earlier Deputy Blakeley read you
24 your Miranda rights?

25 A. In the car.

1 Q. You understand those rights?

2 A. No, not at first. He didn't explain nothing to
3 me.

4 Q. He didn't explain it to you, but he read them to
5 you but he didn't explain them to you. Do you know what
6 it means you have the right to remain silent?

7 A. To be silent.

8 Q. So you understand that right.

9 A. Yeah.

10 Q. Do you know what it means to have the right to an
11 attorney, like Mr. Smiley here?

12 A. Yes.

13 Q. So you understood that right.

14 A. Yes.

15 Q. Do you understand it means that the things you say
16 can be used against you in a court proceeding, just like
17 this one?

18 A. I understand it the way you're breaking it down to
19 me.

20 Q. Okay. Did you tell Officer Blakeley that the coke
21 was yours but the crack wasn't?

22 A. Never said that.

23 Q. You never said that?

24 A. I said not one word to him.

25 Q. What word did you say to him?

1 A. I said not one word to him.

2 Q. I'm sorry. I misunderstood you. Where were you
3 when they took pictures of your -- when they took
4 pictures of you, where were you when they took pictures
5 of you to show your injuries and how you looked after the
6 struggle?

7 A. I think at the place where we went to get the
8 blood test at, if I'm not mistaken. We might have took
9 one up there too.

10 Q. So at that little occupational health center.

11 MR. KIDD: Court's indulgence.

12 BY MR. KIDD:

13 Q. And you testified on direct with Mr. Smiley that
14 Deputy Blakeley was an aggressive police officer.

15 A. Right.

16 Q. So knowing he's an aggressive police officer, you
17 knew if you ran he was going to chase you, right?

18 A. Not really.

19 Q. Did you think he was just going to let you run
20 away?

21 A. Being that he had another suspect right here.

22 Q. But you had -- you met Blakeley before?

23 A. Right.

24 Q. So he knew your name, so he was going to be able
25 to find you, eventually?

1 A. He still didn't know that, that's why he asked me
2 for ID. He didn't call me by name or anything.

3 Q. He had already called in your ID before you ran?

4 A. Right.

5 Q. So he knew who you were?

6 A. Yes, sir.

7 Q. He had called in your ID. Your identity wasn't a
8 mystery to him before you ran.

9 A. Right.

10 Q. So by running, you knew he was going to be able to
11 catch you -- if you had gotten away that day, he still
12 knows who you are.

13 A. Yeah.

14 Q. But you had a good reason to run, didn't you?

15 A. Because he didn't explain to me why he wanted to
16 lock me up.

17 Q. That is a pretty good reason to run?

18 A. Yes, after I cooperate with him and just out of
19 the blue he want to cuff me and not explain to me why.

20 Q. You call running from the police cooperating?

21 A. No. I mean, when you cooperating with him, you
22 expect some type of cooperation back, and all I did was
23 ask him, Why are you cuffing me? And all he did was tell
24 me turn around, aggressively like that.

25 Q. But you weren't running just to get away. You

1 were running to avoid a drug charge, weren't you?

2 A. No I was just running to get away from him. I
3 didn't want to get locked up.

4 MR. KIDD: No further questions.

5 REDIRECT EXAMINATION

6 BY MR. SMILEY:

7 Q. What's your girlfriend's name?

8 A. Tanya Walker.

9 Q. What is her relation to Herman Walker?

10 A. Granddaughter.

11 Q. Okay. So Tanya Walker's grandfather is Herman
12 Walker?

13 A. Yes, sir.

14 Q. So why do you go see Herman? What is your purpose
15 of a visit?

16 A. Just to see how he's doing and, you know, to spend
17 some time with him, spend some time with the family.

18 Q. Now, that area that we've been talking about, did
19 you used to live back there?

20 A. Yes, sir.

21 Q. Did you grow up in that area?

22 A. Yes.

23 Q. So you're real familiar with that area?

24 A. Yes, sir.

25 Q. Now, Mr. Kidd, he was asking you part of those

1 Mirandas today in Court, that is not how Officer Blakeley
2 read them to you, was it?

3 A. No, sir.

4 Q. You had the opportunity to sit here in court and
5 watch him read them in court. Is that more the way he
6 read them to you?

7 A. Well, like the lawyer did?

8 Q. No, not the way the lawyer did. Earlier in this
9 case, you saw Deputy Blakeley read them in court?

10 A. Oh, yes.

11 Q. Is that more like the way he read them to you out
12 there?

13 A. Yes, sir.

14 Q. Would it be fair to say that you were running from
15 Deputy Blakeley because you were scared?

16 A. Yes, sir.

17 MR. SMILEY: Nothing further.

18 MR. KIDD: No further questions, Your Honor.

19 THE COURT: Okay. You can step down. Any
20 further witnesses? Mr. Smiley?

21 MR. SMILEY: The defense rests, Your Honor.

22 THE COURT: All right. Anything in reply
23 from the state?

24 MR. DURANT: Nothing in reply, Your Honor.

25 THE COURT: All right. Folks, I'm going to

1 send you out now, and we're going to get ready and have
2 the closing arguments and the charge on the law for you
3 in a few minutes. It will take us about 15 minutes to
4 get ready, so if you need to use the rest room or go down
5 and take a smoke break you can do that.

6 Do not begin deliberations or discussions.
7 Although you have heard all the evidence now that you
8 will hear, it is still improper for you to begin
9 discussions or deliberations about the case, so we'll see
10 you back in about 15 minutes.

11 (Recess taken.)

12 (In open court, jury not present.)

13 THE COURT: Did y'all have the opportunity to
14 look at those charges?

15 MR. DURANT: We did, Your Honor.

16 THE COURT: I had a little change in them.
17 We dropped out, of course, the reference to the defendant
18 having a criminal record on that, and beyond that, I
19 think that is the only change.

20 MR. SMILEY: I have an additional charge, I
21 gave the solicitor a copy, and I would ask you to
22 consider.

23 Your Honor, there is the case that
24 accompanies that. That is State vs. Lacoste.

25 THE COURT: Well, I don't know that it

1 doesn't just essentially repeat what I have to say. And,
2 of course, if you read Lacoste, it says the judge didn't
3 err by not giving this charge, but I don't mind. Do you
4 have anything you want to add?

5 MR. DURANT: Well, Your Honor, I think that
6 your charge covers this pretty clearly on the assault of
7 a police officer while resisting arrest. Reasonable
8 force may be used to defend against a police officer's
9 excessive force, even when incident to a lawful arrest.
10 If the evidence clearly shows that the accused complied
11 fully with all requirements placed upon the citizen
12 subject to a lawful arrest and resisted only to the
13 extent necessary to protect himself from serious physical
14 harm, this does not mean anyone is entitled to resist a
15 lawful arrest or that the arrest becomes unlawful for
16 purposes of prosecuting the underlying offense.

17 I think that covers everything that we need
18 to cover here.

19 THE COURT: I understand. I'm going to go
20 ahead -- I'll charge it in addition to what I have.

21 MR. SMILEY: Thank you.

22 THE COURT: Do you have anything you want me
23 to consider charging?

24 MR. DURANT: Well, in response to this, I
25 would like to have a little time to get some case law

1 that suggests this was a -- first of all, this wasn't
2 even an arrest. This was a detention.

3 THE COURT: You'd better hope it was an
4 arrest. That's what you charged him with, assaulting
5 while resisting arrest.

6 MR. DURANT: At the point that he ran, he
7 wasn't under --

8 THE COURT: I'm not giving you any time to do
9 any research. We're getting ready to charge in about ten
10 minutes. Do you have any charges you want me to add?

11 MR. DURANT: No, Your Honor.

12 THE COURT: You're okay with the other
13 charges?

14 MR. DURANT: Well, I'm not really okay with
15 the unlawful arrest because I think at the point he ran
16 he wasn't under arrest, and I don't want to have to try
17 to argue to the jury that he's under arrest when he's
18 just being detained.

19 THE COURT: All right. Anything else?

20 MR. DURANT: No, Your Honor.

21 THE COURT: All right. Anything further?

22 MR. SMILEY: No, Your Honor.

23 THE COURT: All right. Well, just for the
24 record, I need to make sure that I'm going to -- I had
25 Mr. Durant prepare the amended indictment. I'm going to

1 have the court reporter mark as the Court's exhibit the
2 one I scratched out so it's there. Just make that
3 Court's Exhibit 1.

4 (Indictment marked for identification as
5 Court's Exhibit No. 1.)

6 (Recess taken.)

7 MR. DURANT: Your Honor, I'm going to waive
8 opening on the law.

9 THE COURT: Okay. All right. Everybody
10 ready? Bring the jury in.

11 (In open court, jury present.)

12 (The following discussion was held at
13 sidebar:)

14 THE COURT: Mr. Smiley has renewed his
15 motions for a directed verdict, and I've denied them.

16 (End of sidebar.)

17 THE COURT: Folks, we are now going to have
18 the attorneys do their closing arguments, and then I will
19 charge you on the law that you are to apply to the facts
20 as you find them.

21 Now, as you'll remember, I explained to you
22 at the beginning of the trial, the lawyers talking are --
23 they are arguing. They are not witnesses, so what they
24 say is not to be considered by you as evidence. They are
25 reviewing the evidence, and we'll be giving you a little

1 preview of the law as I charge you, and then they will be
2 attempting to persuade you to render a verdict on their
3 client's behalf, so it is important for you to remember
4 they again are not testifying now. You have heard all of
5 the evidence. They will simply be reviewing the
6 evidence.

7 Now, the state has the burden of proof, so
8 they will actually get to close last. The defense you
9 will hear from first, and then you will hear from the
10 solicitor after the defense. After they have both
11 completed their closing arguments, I will then charge you
12 on the law, and then you will retire to deliberate and
13 come up with your verdict.

14 So, Mr. Smiley, if you're ready, you may
15 begin.

16 MR. SMILEY: May it please the Court: It was
17 a short trial, but a whole lot went on in this courtroom
18 in the last two and a half days, and I appreciate the
19 attention you've paid to it. I, as a defense lawyer,
20 tried to show you and paint as clear a picture of what
21 was going on out there as possible so that you, as the
22 finders of fact, can sift through the testimony and come
23 up with a true verdict.

24 The first words of out of my mouth in opening
25 were it is lawful to resist an unlawful arrest. The

1 judge is going to charge you on that law, so we're going
2 to start there. By the testimony of the deputy himself,
3 when he went to cuff Mr. Rivers, he wasn't under arrest.
4 The charge that you're going to be given is called
5 assault, okay, while resisting arrest. All right?

6 They're going to say that they were placing
7 him under arrest for the push, all right? Officer had
8 already attempted to cuff him but told you that he wasn't
9 under arrest. It's not -- the assault has to take place
10 during the resisting. He wasn't ever charged with simple
11 assault, touching the officer. He was charged with
12 assault while resisting arrest.

13 Now, in opening arguments, statements, I
14 guess they could be called arguments by some, is Mr. Kidd
15 asked you, why would he run? Why would he run? I'm
16 going to suggest to you the facts show you the following,
17 that they have an officer up there that has a reputation
18 for being a tough officer who is not leaving my client
19 alone when my client hasn't done anything.

20 He's complied, he's given him an ID, he's let
21 him pat him down, and he's getting ready to get cuffed
22 and nobody could tell him why. I would suggest to you
23 the why is he was scared, so he ran.

24 The law, running in and of itself is not
25 resisting arrest, and if there is not a lawful arrest

1 taking place, the law is very clear: You can do whatever
2 is necessary to secure your liberty. The law is clear.
3 There has been cases that say you can use up to and
4 including deadly force if that's what it took to secure
5 your liberty. We don't have that in this case. We have
6 Mr. Rivers running, running to get away.

7 It wasn't about whether he knew him or not.
8 He didn't want to get cuffed in that back corner because
9 he was scared. Now, Mr. Robinson, by the other
10 circumstance, he stood there. He sat there. He knew why
11 he was getting arrested. He complied. He didn't move,
12 but Arthur didn't have anything to do with that. He was
13 coming to pay respects to his girlfriend's grandfather.
14 His mother had dropped him off. He was there -- to
15 follow the state's theory in this case, they're saying
16 his mother came in here, took an oath, and lied to you.

17 They're saying he walked up from that cut
18 down there. You have the opportunity to see Ms. Yvonne
19 Rivers testify, and you got to see her demeanor and what
20 she said. She said she turned around, calmly in that
21 neighborhood, as Arthur told you, she pulled up in front
22 of the driveway, and let him out.

23 Tyrone, he ain't got a dog in this fight.
24 He's cousins with Arthur, friends with Arthur, but, you
25 know, he knows that Deputy Blakeley is out in that area

1 and a tough cop, and he came in here and took an oath and
2 told the truth.

3 Now, taking an oath and telling the truth is
4 an important thing. It carries some import so that y'all
5 will know what is being spoken and you can judge it.
6 Now, they made a big deal that Tyrone, the night before,
7 had given false information. He wasn't under oath then,
8 and there is a difference. Even though the police
9 testified that they're taught to give false sworn
10 statements and break the law, it's not okay, because
11 taking an oath from this stand means something.

12 They do it because it makes it easier. They
13 sign those notaries when nobody is around, even though
14 the law says you can't do that, because it makes it
15 easier. It doesn't make it right.

16 Taking that oath is important, and you heard
17 Ms. Rivers testify to what -- she came down, turned
18 around, dropped him off in that driveway, and pulled
19 away. To say otherwise would be to call her a liar and
20 that she lied under oath. You have Tyrone, who tells you
21 that the officer pulled up behind Arthur as Arthur is
22 walking down that driveway, away from his mother's car,
23 or car, he didn't know for sure it was his mother. The
24 officer got out and quickly walked towards Tyrone.
25 Tyrone knew he was there. He didn't run. He was getting

1 arrested for the thing the night before. Arthur didn't
2 run. Arthur didn't have any reason to run.

3 Arthur walked along, going to that house, and
4 the officer told him to wait before he went in the house.
5 Arthur waited. If he really had some reason to run, he
6 would have ran then, I believe. You're the judges of the
7 facts. Don't you think he would have taken off earlier?

8 Now, he gave him his ID. He complied. He
9 ran, and he was getting ready to be cuffed and he hadn't
10 done anything wrong. He didn't know where that was going
11 to lead. He was scared. I want you to get that. I
12 mean, this area, I've tried to show you pictures. It's
13 kind of sets back on the road in a rural setting in this
14 county.

15 I'm not telling you that Arthur shouldn't
16 have stood there, but he was scared. He did what he had
17 the right to do. You can lawfully resist an unlawful
18 arrest. Ask yourself, what was he under arrest for when
19 that deputy reached to grab his arm, when he told him to
20 put his arms behind him? He wasn't arrest, by that
21 officer's own testimony.

22 That is the law in our state, and the State
23 of South Carolina has the burden to prove it was a lawful
24 arrest. We don't have to show it was unlawful. They got
25 to show it was lawful, and by their own testimony, by

1 their own testimony, he wasn't under arrest when he was
2 going to be cuffed. So there is only one verdict, as far
3 as that goes, and that is not guilty.

4 Now, what were the officer's motives to say
5 things that don't match what Arthur says? Why would they
6 do that? I've done a lot of pondering in preparing for
7 this case about why would they do that. I tried to show
8 you evidence of what was going on out there and what the
9 motivation would have been.

10 Now, we know, from the testimony, that this
11 is a high drug area, and Officer Blakeley testified that
12 it's not uncommon when he drives back there for the
13 fellows selling drugs to scatter. I asked Tyrone if he
14 was familiar with the term being yelled back there
15 five-oh and what that means. It means a policeman is
16 coming, and the drug dealers scatter.

17 Now, I'm suggesting to you, that is probably
18 where the drugs came from. Don't know, don't have to
19 prove it, but probably where they came from, and the
20 logical thing to do is why would a drug dealer abandon
21 several thousand dollars' worth of drugs there? They
22 weren't abandoned. They thought they would come back
23 when the police left, but why would you have to put it on
24 Arthur? It's a tough question.

25 This is what I do know: A man who was not

1 under arrest was shot in the back with a Taser, which
2 requires the other officers to look at the use of force
3 and come up with an explanation why that Taser was
4 discharged at a man in the back running away who wasn't
5 under arrest. Because we know that was a concern from
6 the deputy's testimony. It's the thing that he was
7 talking to his lieutenant about. It wasn't the case.
8 They weren't talking about drugs and they weren't talking
9 about how it all put together. They were talking about
10 administrative things. They were talking about firing a
11 Taser at a man who wasn't under arrest. They had to
12 explain that.

13 Now, Deputy Blakeley said that as he was
14 coming down this road, he saw Arthur walking along this
15 road and heading into the cut. All right? I asked him
16 and he specifically said he had already stepped off the
17 road into the cut and that he made a motion with his
18 right hand, a furtive motion with his right hand, and
19 that he saw an object being thrown.

20 I want you to look at three pictures:
21 Defendants 9, 10, and 13, and I don't use those gizmos,
22 so I'm just going to hold them up. This the picture
23 looking down River Road toward Ardwick, down the back,
24 and if you can see this, it's pretty high growth there at
25 the corner, as it starts to make the turn where I would

1 suggest to you the evidence shows there is the cut. It's
2 not like it's an open place. It's full of shrubs and
3 bushes and what have you.

4 I show you what has been entered as 13, which
5 shows you a picture of the cut from that direction of the
6 driveway. It isn't a wide open space, by any means. And
7 I'm going to show you a picture, State's Exhibit No. 10,
8 which is looking back out toward River Road from that
9 driveway, and you can see it's more back in that
10 direction.

11 I'm going to suggest to you, the evidence
12 from Deputy Blakeley, it's not possible, or very
13 unlikely, that an officer driving in there, seeing a
14 gentleman walking into a cut, could see something being
15 thrown on the opposite side of his body with everything
16 that is going on there. The other thing is, I asked
17 Deputy Blakeley, did he see him go in his pockets first?
18 So he wants you to believe that he was carrying those
19 drugs in his hand beforehand, because, you know, he had a
20 startled deer in the headlights look, that he didn't do
21 anything but throw it down, so he was already carrying it
22 with him the whole time out in the open, carrying drugs
23 with him. I suggest to you common sense tells you that
24 is just not likely and very improbable.

25 Now, the deputy also said something else that

1 ought to give you concern. It wasn't necessary. It
2 wasn't necessary, and that was in response to asking him
3 about photographing where they found the items. Just
4 wasn't necessary because he had already, in his mind,
5 decided that was going to go on Arthur. But if they had
6 taken pictures where they found it, and I got from
7 Lieutenant Tague they all had cameras, so it's not like
8 they didn't have a camera out there. They could have
9 taken a picture of where this contraband was found so
10 that you, as jurors, could look at it and it would remove
11 doubt as to where the drugs were and how they were
12 located so you could see if it was possible for them to
13 be located there. They didn't do it because it wasn't
14 necessary because they had already determined what they
15 were doing with those charges.

16 The other thing I asked the crime scene tech
17 is did they go out to the scenes and collect
18 fingerprints? The response from the deputies was it
19 wasn't necessary, but it sure would be helpful for this
20 jury if they would have fingerprinted. Maybe that
21 surface is hard to get it, but you don't know unless you
22 try. The problem is if it had come back and not been
23 Arthur's, that would have hurt their case, so they didn't
24 do it.

25 It wasn't necessary. It wasn't like it was

1 something out of the ordinary to do, something that is
2 done regularly. It could have been done in this case.
3 Because I asked them, did you do that? At the crime
4 scene, do you come out and take photographs? Do you come
5 out and do fingerprints? Yes. They didn't even collect
6 the shirt that was torn off, or the clothes for you to
7 examine to help determine how the struggle went off.
8 Wasn't necessary. They just want to say their little
9 piece and be done with it.

10 Same thing with taking a written statement.
11 If we had a written statement in this case, if an attempt
12 was made on a written statement, there wouldn't be any
13 argument. It would be signed by my client. Well, if you
14 said that word, let me write that down for you and let
15 you sign it, and then you would have seen his signature,
16 and it would have been a lot harder to say, That ain't
17 mine. I didn't say that. He would have signed it.

18 Now, common sense, common sense, you've just
19 been bludgeoned by a police officer, Tasered, kneed in
20 the face, bronchial blows to the head and neck, knees to
21 the back and knees to the fists until there are scrapes
22 on his fists. You are put into a police car and you wait
23 until all the other officers go away and then you want to
24 talk to your attacker, to admit that the drugs were
25 yours. Why would you want to do that? That doesn't make

1 sense whatsoever, and I would suggest to you it didn't
2 happen.

3 Now, we've got this thing that I hold in real
4 high regard. It's called the constitution. It's why I
5 do what I do. I'm asked sometimes how can I represent
6 the people that I represent, and I tell them I represent
7 the constitution. It's my job to make sure the officers
8 do their job, that the prosecutors do their job, the
9 judges do their job, and that y'all follow the oath that
10 y'all took to make sure the constitution works. There is
11 no shortcuts taken, no break in the law with something as
12 simple as signing a notary and swearing an affirmation
13 when the person is not there. It makes a difference. We
14 can't just disregard that.

15 As Mr. Kidd said in the beginning that drugs
16 are not a victimless crime, that the community pays, and
17 that people need to be held accountable. And I'm going
18 to suggest to you, Arthur Rivers is a citizen of our
19 county, a young man who was protected by the same
20 constitution that protects me and protects you. He has a
21 right for the police to be held accountable, not to be a
22 victim. The worst thing that could happen in this case,
23 the very worst thing, is that an innocent man, that his
24 liberty is taken away. That is the very worst thing that
25 could happen. That is why we have reasonable doubt.

1 His burden is not to prove anything. He is
2 innocent and he stays innocent only if they overcome
3 their burden, only if. When y'all walk back into that
4 jury room, he's still innocent, because y'all cannot
5 judge the evidence until you sit there as a group and
6 talk about it. And at the end of it, if the state hasn't
7 overcome their burden, he walks out an innocent man.

8 Just as the community is a victim of drugs,
9 the community is a victim of the officers, and the police
10 department doesn't think it's necessary. They don't do
11 the things that bring a case to court to help this jury
12 reach a conclusion that speaks the truth.

13 I told you in the beginning, an officer's job
14 is to enforce the laws and make arrests. Mr. Durant and
15 Mr. Kidd's job is to do justice. My job is to zealously
16 represent my client to make sure this process works.

17 Now, he's charged with trafficking in
18 cocaine. They have to show he possessed that, that he
19 had this cocaine. The only thing that puts that cocaine
20 in my client's hand is the testimony of Deputy Blakeley.
21 There is no other evidence. There is no fingerprints.
22 There is no photographs to show where it was located in
23 close proximity.

24 Being in that yard where drugs are found is
25 not possession. Mere presence, the judge will tell you,

1 you've got to know beyond a reasonable doubt that he
2 possessed it. We have evidence that shows, testimonial
3 evidence, from people that have nothing to gain, that
4 Arthur got out of that car and walked down that driveway
5 and that he didn't throw anything, and that if he had
6 thrown something, he wouldn't have thrown it over 50
7 feet, or Tyrone, 500 yards, but I hope you'll see he
8 might have misspoke.

9 You heard from the young lady, Ms. Robinson,
10 who was in the doorway of the white house. Nobody talked
11 to her, by the way. It wasn't necessary. She certainly
12 was there. One could have asked her what she saw. She
13 had a view from that front door, looking towards that
14 cut. She didn't see Arthur come out of that cut.

15 She also testified she didn't really see him
16 coming down the driveway because that driveway is further
17 to the right, but then she did see him in front of the
18 house in close proximity to Tyrone, and what she
19 testified to pretty much matches up to what Mr. Robinson
20 pretty much testified to and what Arthur testified to,
21 about how the altercation began.

22 Now, the truth, when you hear the story from
23 several different people, if it's the truth, it's never
24 perfect. It doesn't fit perfect, because everybody's
25 perspectives are a little bit different. I have found

1 the testimony from the stand, when it matches up
2 perfectly, there's something that stinks. Something that
3 smells. It's been rehearsed. But y'all are the judges
4 of the demeanor and what comes out of each person's mouth
5 and how it's said.

6 I've given you as many pictures as possible
7 so we can get as clear a layout of how everything was,
8 because while this has been a short trial, it's been
9 packed with a lot of information about how everything is
10 laid out and how things happen to help you see the truth.
11 I hope you'll take the time to look at the photographs,
12 to analyze what the state is actually proving beyond a
13 reasonable doubt, and what they haven't.

14 Your job as the judges of the facts is not to
15 fill in the blanks for them. You will violate your oath
16 if you jump to those conclusions. You are to take the
17 evidence in front of you and apply it to the law, and if
18 they hadn't done the things that needed to be done to
19 prove their case, or Mr. Rivers is innocent, there is
20 only one verdict: Not guilty.

21 Now, I'm sure I missed a lot of things.
22 Y'all were here. Y'all's 12 collective minds are
23 certainly sharper than mine, so if I have missed
24 something, it doesn't mean it's not important, it just
25 means I missed it and I tried to summarize it and argue

1 where I believe this evidence leads you. Y'all have a
2 very difficult and important job to do, and I know y'all
3 will discharge it in the manner that is required by law.

4 There is only one verdict, not guilty. Thank
5 you.

6 THE COURT: Mr. DuRant?

7 MR. DURANT: Thank you, Your Honor. May it
8 please the Court. Ladies and gentlemen: Right up front,
9 I agree totally with the defense. The absolute worst
10 thing that could ever happen in a court of law, in a
11 criminal court, is an innocent man is found guilty. This
12 is not an innocent man. This is a guilty man, and I've
13 proven it to you.

14 And I always find it interesting, every time
15 I go to trial with a criminal defense attorney, how they
16 can argue the evidence to you with such a straight face
17 and tell you about how the officers are less than
18 ethical, they're less than truthful, because they have
19 to. They have to tell you that the officers, that Deputy
20 Blakeley, planted this evidence, found it somewhere else.
21 In this picture, I think the picture the defense attorney
22 wants to talk to you about, could they have had the
23 picture of the drugs sitting out there where they say
24 they found it? They told you where they said they found
25 them. If they really wanted to just plant it right there

1 and they had their cameras out there, couldn't they have
2 just put those drugs down there and taken a picture and
3 we would have it here? That is not what they did. They
4 didn't take a picture because they simply didn't, but
5 they told you where they found the drugs.

6 Okay? Now, this case is an easy case. There
7 is a good reason to run. \$3,000 worth of crack cocaine
8 and cocaine is an absolutely great reason to get the heck
9 out of there. It doesn't take that much more than that.
10 Crack cocaine, cocaine, you'll have it back there with
11 you in the jury room. It looks like this. It's
12 dangerous and it's illegal. It smells awful, and I'm not
13 going to leave it up there for you to smell.

14 This case comes down to three things: First
15 of all, the defendant ran. We'll talk about that in a
16 minute. That will tell you something. Second of all,
17 the drugs, where they were found. Why is that important?
18 And, third, the defendant's own words.

19 And before we talk about all that, the
20 defense attorney has covered that you are the judge of
21 the characters of these witnesses who take the stand.
22 You've all had the opportunity to look at them, size them
23 up, use your common sense. Do I believe this person? Is
24 there something that tells me that maybe I don't want to
25 believe them? There may be. You decide.

1 Deputy Blakeley took the stand and he was
2 wide open. I submit to you he couldn't wait to get that
3 stuff just out of his mouth. He had to slow down. You
4 decide that. Did it look like he was lying? Did it look
5 like he was trying to cover something up? I don't think
6 it did.

7 We should be skeptical of everything. That
8 is your job. I have to prove beyond a reasonable doubt.
9 That is my burden. I'm a prosecutor. I prosecute cases
10 under that standard. Must be done. Beyond a reasonable
11 doubt does not mean every doubt, does not mean with
12 absolute certainty, because there are few things in life
13 that you know with absolute certainty, and if any one of
14 you knew with absolute certainty what happened on June
15 the 16, 2008 at Ardwick and Balmoral, you would not be
16 sitting where you are sitting now. You would have taken
17 this stand, and you would have told the jury what you
18 knew.

19 I mention this as well. We have to prove a
20 chain of custody for these drugs. We have to demonstrate
21 to you that anyone who touched these drugs on the way up
22 to the chemist didn't tamper with them, didn't do
23 anything to alter or damage them. I know it's boring
24 testimony, but it's necessary, and we have to do that and
25 we have done that here. And it took some time, but the

1 chain of custody went like this: Deputy Blakeley
2 collected these drugs at the scene. He brought them to
3 the evidence compound where Kathy Kjellman logged them in
4 and Sergeant Milz took them up to SLED where they were
5 handled by Nikki Perry to Doris Yarbrough who the chemist
6 who tested them. And the chemist came here and told you
7 that there was approximately 20 grams of cocaine and
8 there was just under ten grams total of crack. You'll
9 have his report. It's right over here somewhere. You'll
10 have it.

11 We have to prove, in order to prove
12 Mr. Rivers guilty of trafficking in cocaine, that he at
13 least ten grams or more of cocaine. There is almost 20
14 grams. To prove possession of crack, we have to prove to
15 you just the smallest amount. He had close to ten grams
16 but just under, and these drugs on the street go for
17 about \$3,000.

18 Now, how do we get here? Deputy Blakeley was
19 out there on the 16th. He wasn't looking for Mr. Rivers.
20 He had no business with Mr. Rivers. He was there to
21 serve warrants on Mr. Robinson, because Mr. Robinson had
22 lied to Deputy Brennan the night before and had given him
23 a false name and he had warrants out there, and Deputy
24 Blakeley knew where he was so he went out there. And
25 when he got out there, he told you that he saw Arthur

1 Rivers coming from around this cut area. He wasn't
2 expecting Deputy Blakeley. Deputy Blakeley said he saw a
3 furtive movement. He was asked by the defense, what is a
4 furtive movement? What did you see? Well, it looked
5 suspicious. He moved his hand like this. It wasn't a
6 big flailing movement. If you are throwing drugs, you
7 might want to do it so that nobody would see it.

8 Did Arthur Rivers know if the deputy had seen
9 it? Probably not, and he kept walking and the deputy
10 didn't give him any indication that he had seen it, so
11 the deputy kept walking to Mr. Robinson, but the deputy
12 knew he's in a high drug area and he just saw something
13 very suspicious. He said deer in the head lights. What
14 else is he going to describe? He's telling you the
15 truth.

16 He wanted to know what was going on with it,
17 and so when he confronted him, he had Mr. Robinson in
18 handcuffs, and Mr. Rivers comes by. He's checking his
19 ID. He's doing exactly what he's been taught to do.
20 There's only one person out there, and he knows there's
21 something very suspicious, just right up the driveway,
22 and so he wants to detain Mr. Rivers to find out what's
23 going on. I asked him if he hadn't run from you at that
24 point, what would you have done? He said I would have
25 detained him, I would have gone up there, if it hadn't

1 have been anything, I would have let him go. That is it.
2 That is not what happened.

3 When I went a little further, when the heat
4 started to get on him just a little bit more, as in I
5 need you to stay here while I go up here and check this
6 out, it was a fight or flight situation.

7 MR. SMILEY: Your Honor, I'm going to argue
8 those are facts not in evidence.

9 THE COURT: All right, Mr. Durant. Just keep
10 your argument confined to the facts that are in the
11 evidence.

12 MR. DURANT: I'm a little confused on what is
13 not in evidence here.

14 THE COURT: Go ahead.

15 MR. DURANT: Thank you, Your Honor. As I was
16 saying, we are in a situation now where the heat is on.
17 Mr. Rivers is probably thinking more in terms of there is
18 something up there, I am being detained, and it is a
19 fight or flight situation.

20 There are \$3,000 worth of drugs up the road.
21 If there is ever a time to think that the deputy did see
22 him throw something down up there, it would probably be
23 right there, and it's survival. What can you do? He did
24 what he knew he had to do if he wanted to get away. He
25 ran, and he ran hard, and we should be glad that Deputy

1 Blakeley ran after him.

2 I don't know of many officers who would have,
3 in a high drug area, by himself, with no backup, with
4 another person in handcuffs, through sticker bushes and a
5 huge struggle. This wasn't just a simple run: I got
6 you. You're done. This was a struggle. This was a, I
7 have really got to get out of here. Look at these
8 pictures.

9 I mean, was he trying to get away or what?
10 Look at them. This was a big struggle. What does that
11 tell you? There was a big reason to get out of there,
12 not just a, I don't want to be detained, or maybe I could
13 go to jail. This was \$3,000 worth of cocaine and crack
14 right up the road, and it is significant, because it is
15 the most logical and reasonable explanation for running.

16 He is guilty. When he got back to the car,
17 and the other officers had responded because it's now an
18 emergency situation, they lost contact with Deputy
19 Blakeley. They don't know what's going on. They respond
20 and they come out there, and Deputy Blakeley is informing
21 the officers, you know, where he saw an object tossed,
22 and it was up there in this cut here. And Deputy
23 Summersell came in here because Deputy Summersell was the
24 one that discovered the drugs. And where did he discover
25 these drugs? First of all, he discovered it within

1 seconds of being told to look over here, just seconds, or
2 possibly a minute or two. It was a very short amount of
3 time, and they weren't hidden up under some pine straw or
4 buried in the ground or in a hole in a tree. They were
5 right there out in the open. They didn't require a drug
6 dog to come and sniff the ground and find where it was.

7 It was right there, out in the open for
8 anybody to see, totally exposed, as if somebody had just
9 dropped it. Nobody here ever testified that Deputy
10 Blakeley ever planted anything on anybody before or
11 unlawfully detained them, arrested them before. There
12 was no testimony to that regard, but you bet it was
13 challenged. You bet it was. That's what you have to do
14 if you're a defense attorney.

15 This case is simple: There is a confession,
16 an awkward confession, given after he is Mirandized. You
17 had two officers that respond to a car. They're telling
18 you this. You're judging their character. Are they
19 telling you the truth, that they responded to the car
20 when their attention is got from banging on the car? So
21 they go over there to see what is going on, and
22 Mr. Rivers says, I want to talk to you.

23 And they say wait and Mirandized him and
24 said, If you want to say anything, you can say it now,
25 and both of them told you that. You are the judges of

1 the character. I submit they are telling you the
2 absolute truth, and there's an awkward confession, all
3 right, at this point, and he says, The cocaine is mine
4 but the crack is not. The cocaine is mine but the crack
5 is not.

6 What sense does that make? What sense would
7 it make for these officers to make that up? If they're
8 planting all this stuff, and they're out, there is a big
9 conspiracy to put everything on Arthur Rivers, why would
10 they say that? Why wouldn't they say, Yeah, he confessed
11 to them both. He confessed to the drugs.

12 Wouldn't that be a lot easier? Of course it
13 would, but that is not what happened, and that is not
14 what they told you, because they told you the truth and
15 they told you what Mr. Rivers told them.

16 THE COURT: Hold on. Do you need to go to
17 the rest room?

18 A PROSPECTIVE JUROR: I just need some water.

19 THE COURT: Go ahead.

20 MR. DURANT: Thank you, Your Honor.

21 Ladies and gentlemen: Y'all took an oath at
22 the beginning of this case. You raised your right hand.
23 You took an oath to find the truth. Where is the truth
24 here? The truth is simple: Arthur Rivers is guilty of
25 trafficking in cocaine, almost 20 grams, possession of

1 crack, and of assault on a police officer while resisting
2 arrest.

3 This last charge, you will be charged, that
4 you do have the right to resist an unlawful arrest. You
5 do, and that's good. This was a lawful arrest for this
6 reason: When the officer saw what he saw and detained
7 Mr. Rivers, he's allowed to do that to investigate. If
8 nothing comes up, he'd let him go, let him go. But he's
9 in a high drug area with suspicious activity, and he's
10 seen this object thrown out.

11 He is allowed to investigate at this point,
12 and that is not an arrest at that point, but when
13 Mr. Rivers shoved the officer, that is an assault. You
14 can't do that. And he ran, and he kept resisting, and
15 the officer told you that he was -- and you can see the
16 pictures. I think they verify this very clear. There
17 was a struggle.

18 Mr. Rivers, according to the officer, was
19 doing everything he could at this point not to be taken
20 into custody. He was hitting the officer's hands. That
21 is an assault. He was resisting the arrest for the
22 assault, the initial push, assault on a police officer
23 while resisting arrest. And it's after he is arrested
24 and put in this cruiser that it is confirmed that what
25 was thrown down right where the deputy saw him throw it

1 down was drugs, a significant amount of drugs.

2 The truth is that Mr. Rivers is guilty, and I
3 ask that you find him so. Thank you.

4 THE COURT: Mr. Durant, would you mind
5 putting that podium back for me?

6 All right, folks. It's now my duty to charge
7 you on the law and apply it to the facts as you find them
8 as the jury. This is the law that you are duty bound
9 under the oath that you took at the beginning of the
10 trial to apply to the facts as you find them. It's not
11 the law as you think it is, or as you wish it may be, or
12 as you hoped it might be, you are duty bound to disregard
13 any of the misconceptions that you might have, and you
14 are duty bound to apply the law as I now charge it to
15 you.

16 Now, some of the things I will repeat, or
17 you've heard me talk to you about during the trial, and
18 these will be repeats, but they're important concepts, so
19 bear with me, if I repeat something.

20 As I told you at the beginning of the trial,
21 you are the finders of the facts, and I'm not permitted
22 to indicate to you how I might feel about the facts. If
23 I have done or said anything to you during the trial that
24 would indicate to you that I have an opinion about the
25 facts of this case, I want you to disregard that. You

1 are the finders of the facts, and you must independently
2 weigh the evidence presented at the trial and you must
3 render a verdict based solely on the evidence that you
4 have heard and not as to any misconception that you might
5 have as about how I feel about the evidence.

6 Now, there have been, as I told you, multiple
7 indictments in this trial. Mr. Rivers was charged with
8 three indictments indictment 2008 GS-10-7795 is for
9 possession of crack cocaine, also known as possession of
10 cocaine base; indictment 2008 GS-10-7788 charges him with
11 trafficking cocaine, also known as powder cocaine; and
12 indictment 2008 GS-10-7796 is for assaulting -- or
13 assault on a police officer while resisting arrest.

14 Each of these indictments is a separate and a
15 distinct offense, and you must decide as to each
16 indictment separately, on the evidence, and the law
17 applicable to it, uninfluenced by your decision as to any
18 of the other indictments. The defendant may be convicted
19 or acquitted on any or all of the offenses charged, and
20 you will be asked to write out a separate verdict of
21 guilty or not guilty on each indictment.

22 I will now, again, remind you that the fact
23 that the defendant was arrested, charged, and indicted in
24 this case is not evidence in this case and cannot be
25 considered by you as evidence of guilt in this case, nor

1 does it create any presumption or inference of guilt.
2 These documents are simply the formal, written
3 instruments by which the charges are made known to the
4 defendant, and it is the formal documents by which this
5 case is brought to this court.

6 Again, the defendant has pled not guilty to
7 each of these indictments, and that plea, therefore,
8 casts the burden on the state to prove the defendant is
9 guilty beyond a reasonable doubt. A person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove himself innocent. This is an important
12 rule of law in this country, that the defendant in a
13 criminal trial will always be presumed innocent of a
14 crime for which he is indicted unless and until his guilt
15 has been proven by evidence satisfying you of that guilt
16 beyond a reasonable doubt. The presumption of innocence
17 is not merely a legal theory. It's not just a legal
18 phrase, it is a substantial constitutional right to which
19 every defendant is entitled, and this presumption of
20 innocence accompanies the defendant from the time he is
21 charged, throughout this trial, until you reach a verdict
22 of guilt based upon evidence satisfying you of that guilt
23 beyond a reasonable doubt.

24 The state has the burden of proving the
25 defendant is guilty beyond a reasonable doubt, and as I

1 told you at the beginning of the trial, some of you may
2 have served as jurors in a civil case, and there you were
3 told it was only necessary to prove that a fact is more
4 likely true than not true, such as by a greater weight or
5 a preponderance of the evidence.

6 In criminal cases, however, the state's proof
7 must be more powerful than that. It must be beyond a
8 reasonable doubt. Proof beyond a reasonable doubt is
9 proof that leaves you firmly convinced of the defendant's
10 guilt. There are very few things in this world that we
11 know with absolute certainty, and in criminal cases the
12 law does not require proof that overcomes every possible
13 doubt.

14 If, based on your consideration of the
15 evidence, you are firmly convinced the defendant is
16 guilty of the crime charged, you must find the defendant
17 guilty. If, on the other hand, you think there is a real
18 possibility that the defendant is not guilty, you must
19 give the defendant the benefit of the doubt and find the
20 defendant not guilty.

21 Now, I'm going to talk to you a little bit
22 about evidence, and we have two types of evidence
23 presented in a trial: There is direct evidence and there
24 is circumstantial evidence. Direct evidence is testimony
25 of a person who claims to have actual knowledge of a

1 fact, such as an eyewitness. It is evidence which
2 immediately establishes the main fact to be proved.
3 Circumstantial evidence, on the other hand, is proof of a
4 chain of facts and circumstances which indicate the
5 existence of a fact. It is evidence which immediately
6 establishes collateral facts from which the main fact may
7 be inferred. Circumstantial evidence is based on
8 inference and is not based on personal knowledge or
9 observation.

10 Now, the law makes absolutely no distinction
11 between the weight or value to be given either direct or
12 circumstantial evidence, nor is a greater degree of
13 certainty required of circumstantial evidence than of
14 direct evidence. You should weigh all of the evidence in
15 this case, and after weighing all of the evidence if you
16 are not firmly convinced of the guilt of the defendant
17 beyond a reasonable doubt, you must find the defendant
18 not guilty.

19 As finders of the fact, you must determine
20 the credibility of witnesses who have testified in this
21 case. Credibility simply means believability, and it is
22 your duty as jurors to analyze and evaluate the evidence
23 and determine what evidence convinces you of its truth.
24 In determining the believability of the witnesses who
25 have testified in this case, you may believe one witness

1 over several witnesses or several witnesses over one
2 witness. You may believe a part of the testimony of a
3 witness and reject the remaining part of the testimony of
4 that same witness.

5 You may believe the testimony of a witness in
6 its entirety, or can you reject the testimony of a
7 witness in its entirety, and you may consider whether any
8 witness has exhibited to you any interest, bias,
9 prejudice, or other motive in this case. You may also
10 consider the appearance and manner of the witness while
11 on the witness stand.

12 I also talked to you during the trial about
13 expert witnesses and told you at that time we normally
14 don't let people give opinion testimony. They're simply
15 allowed to testify about what they saw, they heard, they
16 touched, they felt, they smelt, that sort of thing;
17 however, we do have an exception when a certain is
18 qualified because of education or experience, we allow
19 them to give their opinion in certain areas if they're
20 qualified as an expert. An expert witness in this case
21 was qualified in the area of drug analysis to give
22 opinion testimony in that area. That does not mean you
23 must accept the opinion, but it is evidence for you to
24 use in any way that you see fit.

25 Now, as I told you, there are three

1 indictments in this case, and I'll go over the indictment
2 for trafficking cocaine with you first. All right?

3 Section 44-53-370(e)2 of the South Carolina code of laws
4 under subsection (e) states a person who knowingly sells,
5 manufactures, cultivates, delivers, purchases, or brings
6 into this state, or who provides financial assistance or
7 otherwise aids, abets, attempts, or conspires to sell,
8 manufacture, cultivate, deliver, purchase, or bring into
9 this state or who is knowingly in actual or constructive
10 possession or who knowingly attempts to become in actual
11 or constructive possession of ten grams or more of
12 cocaine, or any mixtures containing cocaine, as provided
13 in 44-53-210(b)4 is guilty of a felony known as
14 trafficking in cocaine.

15 Now, there are three elements to this offense
16 that the state must prove to you beyond a reasonable
17 doubt. First: That the substance was, in fact, cocaine;
18 second, that the defendant had possession of that
19 cocaine, either actual possession or constructive
20 possession; and, three, that there were, in fact, ten
21 grams or more of cocaine involved.

22 Now, section 44-53-210(b)4 of our code of
23 laws provide that cocaine in any form is a controlled
24 substance under the laws of the state. The substance
25 must be cocaine. The defendant must have actual or

1 constructive possession of the cocaine, and the amount
2 involved must be ten grams or more of cocaine. So the
3 state must prove that the substance involved is, in fact,
4 cocaine.

5 Now, I also said the state must further prove
6 that the defendant had actual or constructive possession
7 of cocaine. What does possession of cocaine mean under
8 the law? Well, the law says cocaine in any form is a
9 controlled substance. Possession means more than simply
10 having a controlled substance in one's possession. There
11 must be knowing possession. The state must prove
12 possession of the cocaine by the defendant and further
13 fact that the defendant knew he had the cocaine in his
14 possession.

15 By way of illustration, something may be
16 found in the possession of a person and if that person
17 did not know he had possession of the item and had not
18 exercised any affirmative act to get possession of the
19 item but by some accident it came into his possession
20 without his knowledge, there wouldn't be a violation of
21 the law.

22 However, if he knowingly had in his
23 possession a controlled substance, then he is unlawfully
24 in possession of that item. The state must prove beyond
25 a reasonable doubt that the defendant was in possession

1 of the cocaine, that he knew he had it in his possession,
2 and that he knew the item was a controlled substance
3 under the laws of the state.

4 The state is not required to show the purpose
5 for which the defendant may have had the possession of
6 the cocaine. That is not part of the state's required
7 degree of proof. The state must show beyond a reasonable
8 doubt that there was possession of the cocaine and that
9 the defendant knew he had the cocaine in his possession.

10 There are two types of possessions recognized
11 under the law of this state: There is actual possession,
12 and there is constructive possession. Actual possession
13 occurs when the controlled substance is found to be in
14 the actual physical custody of the person, charged with
15 the possession. Constructive possession is when the
16 person has dominion or control or the right to exercise
17 dominion or control over either the object or the
18 premises upon which the object is located.

19 Possession may be inferred from
20 circumstances. It may be imputed to anyone who has the
21 power and intent to control the disposition and use of
22 the object. In other words, possession of an object or
23 premises gives rise to an inference that the person
24 charged has both the power and the intent to control the
25 use and disposition of the object. Actual knowledge of

1 the presence of a controlled substance is strong evidence
2 of intent to control its disposition or use.

3 Mere presence of a person in an area where
4 the object is found is not enough, in it of itself, to
5 give rise to the necessary inference. Proof of
6 possession requires more than proof of mere presence at
7 the place where the controlled substance is found. The
8 state must prove the defendant had both, one, the power,
9 that is, actual or constructive control; and, two, the
10 intent to control its disposition and use, or use.

11 Actual control occurs when the controlled
12 substance is found to be in the actual physical custody
13 of the person charged. Constructive control occurs when
14 the person charged with possession has dominion and
15 control over the controlled substance or the premises
16 upon which the controlled substance is found.
17 Constructive control means the defendant's knowledge and
18 possession, again, may be inferred if the controlled
19 substance was found on the premises, under the
20 defendant's control.

21 This is permissive inference. The jury is
22 free to accept or reject this permissive inference of
23 knowledge and possession, depending on your view of the
24 evidence. Constructive control may be established by
25 circumstantial evidence as well as direct evidence, and

1 constructive control may be jointly shared by two or more
2 individuals.

3 Because actual knowledge of the presence of a
4 controlled substance is such strong evidence of intent to
5 control its disposition or use, the knowledge may be
6 equated or substituted for the intent element; however,
7 actual knowledge of the presence of controlled substance
8 is not the only circumstance under which this intent or
9 control -- in which this intent to control the
10 disposition or use of a controlled substance can be
11 inferred.

12 The mere presence of a defendant where the
13 controlled substance is found or the mere association of
14 a defendant with people who possess the controlled
15 substance is insufficient to prove that the defendant
16 himself possessed a controlled substance. Possession
17 requires more than mere presence.

18 Evidence that an individual is present at the
19 time a controlled substance is found or located is not in
20 and of itself sufficient proof that the individual had
21 actual or constructive possession of the controlled
22 substance. Proof of a constructive possession by the
23 defendant requires the state prove, or show, beyond a
24 reasonable doubt that the defendant had dominion or
25 control over this controlled substance or had the right

1 to exercise dominion or control over the controlled
2 substance.

3 Stated in other terms, the state must prove
4 beyond a reasonable doubt that the defendant had both the
5 power and intent to control the disposition or use of the
6 controlled substance. If you find from the evidence or
7 lack of evidence that the defendant was merely present at
8 the scene where the cocaine was found or merely
9 associated with persons who possessed cocaine and do not
10 find beyond a reasonable doubt that the defendant had
11 dominion or control or the right to exercise dominion or
12 control over the cocaine, then the defendant would be not
13 guilty.

14 In summary, you can find the defendant guilty
15 of trafficking in cocaine -- or before you can find the
16 defendant guilty of trafficking in cocaine, the state
17 must prove the following elements beyond a reasonable
18 doubt: One, the substance was, in fact, cocaine, a
19 controlled substance under the laws of this state; two,
20 the defendant had possession of the controlled substance;
21 and, three, the amount of the controlled substance was
22 ten grams or more of cocaine.

23 Now, the defendant was also indicted for the
24 charge of possession of crack cocaine in section
25 44-53-375(a) of the South Carolina code of laws provides

1 that a person possessing or attempting to possess less
2 than one gram of cocaine base as defined in section
3 44-53-110 is guilty of possession of crack cocaine.

4 Now, there are two elements to the possession
5 of crack cocaine that the state must prove beyond a
6 reasonable doubt: One, that the substance was, in fact,
7 crack cocaine; and, two, that the defendant had
8 possession of that crack cocaine, either actual
9 possession or constructive possession.

10 Section 44-53-210(b)4 of our South Carolina
11 code of laws provides that cocaine in any form again is a
12 controlled substance under the laws of this state;
13 44-53-110 states cocaine base means an alkaloidal cocaine
14 or freebase form of cocaine, which is the end product of
15 a chemical alteration whereby the cocaine in salt form is
16 converted to a form suitable for smoking.

17 Cocaine base is commonly referred to as rock
18 or crack cocaine. The substance must be crack cocaine,
19 and the defendant must have actual or constructive
20 possession of the crack cocaine. The state must prove
21 that the substance involved is, in fact, crack cocaine.

22 Now, the same law that I just charged you
23 about involving actual or constructive possession of
24 powder cocaine is exactly the same for actual -- or
25 constructive possession of powder cocaine. So I'm not

1 going to reread that entire portion, but the same law
2 that defines actual possession and the same law that
3 defines constructive possession of powder cocaine applies
4 to actual or constructive possession of crack cocaine.

5 So, in summary, to prove the defendant is
6 guilty of possession of crack cocaine, the state must
7 prove the following elements beyond a reasonable doubt:
8 One, that the substance was, in fact, crack cocaine, a
9 controlled substance under the laws of this state; and,
10 two, that the defendant had possession of crack cocaine,
11 either actual or constructive.

12 Now, the third indictment charges the
13 defendant with having violated South Carolina code
14 section 16-9-320(b), and I'm going to read to you that
15 code section. It is unlawful for a person to knowingly
16 and willfully assault, beat, or wound a law enforcement
17 officer engaged in serving, executing, or attempting to
18 serve or execute a legal writ or process or to assault,
19 beat, or wound an officer when the person is resisting an
20 arrest being made by one whom the person knows or
21 reasonably should know is a law enforcement officer,
22 whether under process or not.

23 An officer has a right to use whatever force
24 is reasonably necessary to effect a lawful arrest. A
25 person has the right to resist an illegal arrest to the

1 point of deadly force, but only if necessary, and he may
2 not use force disproportional to the injury threatened.

3 Reasonable force may be used to defend
4 against a police officer's excessive force, even when
5 incident to a lawful arrest. If the evidence clearly
6 shows the accused complied fully with all requirements
7 placed on citizens subject to a lawful arrest and
8 resisted only to the extent necessary to protect himself
9 from serious physical harm. This does not mean anyone is
10 entitled to resist a lawful arrest or that the arrest
11 becomes unlawful for the purpose of prosecuting the
12 underlying offense.

13 Separate and distinct from the law of
14 self-defense is the right of any citizen to resist an
15 unlawful arrest, and under the laws of this state, a
16 person has the right to resist an unlawful arrest by
17 force if such be necessary. In doing so, he may use such
18 force as is apparently necessary to regain his liberty if
19 such be necessary.

20 In order to justify the use of force in
21 resisting an unlawful arrest, it is not necessary for the
22 defendant to show that he had no opportunity to resist or
23 escape. He may stand his ground and use such force as
24 may be apparently necessary to repel an unlawful arrest
25 or detention or inference with his person provided such

1 force is reasonable in degree and kind.

2 The state has the burden to prove beyond a
3 reasonable doubt that the arrest was lawful. No person
4 is required to submit to an illegal arrest and may use
5 reasonable force in resisting an illegal arrest.

6 Now, folks, you have also heard evidence of a
7 confession by the defendant. While the Court generally
8 determines the admissibility of evidence as regards any
9 alleged oral or written statement or confession by the
10 defendant, you, the jury, make the ultimate determination
11 of whether the defendant made the alleged statement and,
12 if he made the statement, whether it was made voluntarily
13 by the defendant of his own free will and accord, and
14 what weight, if any, should be given to the alleged
15 statement of the defendant.

16 You must determine if the alleged statement
17 or confession was the product of an essentially free and
18 unconstrained choice by its maker. If you determine that
19 it was and the burden of proof is upon the state to prove
20 this fact beyond a reasonable doubt, then you may give
21 the statement such further consideration as you deem
22 proper.

23 If you determine the alleged statement or
24 confession was not the free and voluntarily expressed
25 will of the defendant, then you should not consider it at

1 all. In determining whether or not the defendant's will
2 was overcome in obtaining a statement or confession, you
3 should consider both the characteristics of the defendant
4 and the details of the interrogation, which is referred
5 to in the law as the totality of the circumstances.

6 Some of the factors you may, should, or may
7 consider are the age and youth of the defendant, the
8 mental ability or capacity of the defendant, his
9 education or lack thereof, his IQ or intelligence, his
10 background and his environment, the evidence, lack
11 thereof, to the defendant of his knowledge of his
12 constitutional rights, including but not limited to the
13 procedural safeguards known as Miranda warnings
14 concerning the right to remain silent, that any statement
15 could be used against him in a court of law, the right to
16 have a lawyer present, and if he is indigent, that a
17 lawyer would be appointed to represent him without cost
18 and that he could stop making a statement at any time.

19 You can consider the length and the place of
20 detention and the nature of the questioning. You, the
21 jury, must carefully scrutinize all of the surrounding
22 circumstances. Before you give any weight to the alleged
23 statement or confession, you must be satisfied beyond a
24 reasonable doubt that the defendant, uninfluenced by
25 promise of reward, threat of injury, or diminution of his

1 constitutional rights. You may not consider any
2 statement or confession unless you find, beyond a
3 reasonable doubt, that the statement or confession was
4 freely and voluntarily given.

5 Now, again, Madame Foreman, this is where you
6 get to earn your pay. I'm going to send these three
7 indictments back with you. Again, these indictments are
8 not to be considered by you as evidence. They are simply
9 sent to you for the purpose of, on the back form, there
10 is a place down here where it says verdict, and you,
11 Madame Foreman, write the jury's unanimous verdict,
12 either guilty or not guilty.

13 The verdict of the jury must be unanimous;
14 that is, all 12 jurors must agree on what the verdict is
15 for a particular indictment. So after the jury reaches a
16 unanimous verdict on each of the indictments, you write
17 down what that verdict is, and that would be either
18 guilty or not guilty.

19 You, Madame Foreman, sign it, date it, and
20 when you've reached a verdict on all three, you let the
21 bailiffs know. All right? Now, I am going to send you
22 back now. Do not begin deliberations just yet. I have
23 to give the lawyers the opportunity to let me know if I
24 misspoke or didn't charge something I was going to
25 promise to charge or surprised them with something. It's

1 a formality we have to go through. We get the evidence
2 together, and I'll send the evidence back in just a
3 couple of minutes with the bailiffs with my instructions
4 to begin deliberations.

5 Now, we ordered lunch for you a little bit
6 ago, and it should be getting here shortly. If it's not
7 here, it should be here shortly. You can eat your lunch
8 while you're deliberating, and you can take a break, if
9 you need to, while you're deliberating, but you must
10 cease deliberations if you need to take a break. All 12
11 of you must be in the room at the same time whenever
12 you're doing deliberations.

13 So I'll send you back with the bailiffs now.
14 Don't begin deliberations until I sent word back with the
15 bailiffs.

16 (In open court, jury not present.)

17 THE COURT: Anything from the state?

18 MR. DURANT: Nothing from the state.

19 THE COURT: From the defense?

20 MR. SMILEY: Yes. Based on the closing
21 argument, the state, where they were vouching for the
22 officer's truth, I would ask for a charge that a police
23 officer's testimony should be given no greater or lesser
24 weight than the testimony of any other witness.

25 THE COURT: Well, I don't believe he vouched

1 for it.

2 MR. SMILEY: Well, regardless, I would ask
3 that a charge be given that a police officer's testimony
4 should not be given any greater nor lesser weight than
5 the testimony of any other witness, and that is Bush vs.
6 US 375 Ed. 2d 602.

7 THE COURT: All right. Next time remember to
8 give me that before.

9 MR. SMILEY: Yes, sir.

10 THE COURT: All right. I'll tell them a
11 police officer's testimony is not to be given any greater
12 weight than any other witness simply because he is a
13 police officer. All right? Bring them back. Anything
14 else?

15 MR. DURANT: If you could charge just in
16 conjunction with that, just your standard charge on the
17 believability of all witnesses.

18 THE COURT: Well, I think I gave them my
19 standard charge on the believability.

20 MR. DURANT: Exactly. You did. I didn't
21 want to highlight the specific part about the police
22 officers.

23 THE COURT: I'm not going to redo that whole
24 thing. All right. Go ahead. Bring them in.

25 (In open court, jury present.)

1 THE COURT: Folks, one I did neglect to give
2 to you, and I'm not drawing any attention to this simply
3 because I'm giving you this one, but I need to tell you
4 that you did hear testimony of a police officer. A
5 police officer's testimony does not necessarily have to
6 be given any greater weight than any other witness'
7 simply because he's a police officer. Same thing is the
8 charge on experts. You decide how much weight to give
9 the testimony of all of the witnesses, based on all of
10 the testimony that you hear throughout the trial. All
11 right?

12 Now, I'm going to send you on back. You can
13 begin deliberations as soon as I get these indictments
14 and the evidence back to you. All right? Thank you for
15 your patience.

16 (At 1:06 p.m. the jury retired to
17 deliberate.)

18 THE COURT: I have segregated and discharged
19 the alternate.

20 (In open court, jury present.)

21 (Jury question.)

22 (4:24 p.m. question from the jury.)

23 THE COURT: I have two notes from the jury:
24 The first one said we are at 11 to 1 and having a hard
25 time making up our mind. Could you please send us the

1 proper wording of the law, which I don't really know what
2 that means, so I'm going to bring them in and ask them
3 that.

4 Then the second one is could we have the
5 transcripts, Yvonne Rivers and Arthur Rivers, so I'm
6 going to bring them in and ask them what they want. When
7 they want the proper wording of the law, if there is some
8 recharge they want me to do? Would anybody have a
9 problem with me sending back a copy of the charge?

10 MR. SMILEY: I don't, if it has the itemized
11 parts taken out of it. What we were given was some
12 itemized portions.

13 THE COURT: That is just a repeat of actual
14 and constructive, and then I would have her -- actually,
15 what I ended up doing, I meant to bring it to your
16 attention. The part where I did resisting, I ended up
17 reading the B section, because that is the statute we had
18 quoted in the charge. That was A and B, and rather
19 than -- when I noticed it during the arguments, rather
20 than, you know, stop everybody and do that, I just ended
21 up reading the statute to B, because A is resisting. B
22 was assault while resisting.

23 So I ended up just reading in the
24 B subsection, so -- pull the charge up. All right.
25 Bring the jury in.

1 (4:27 p.m., in open court, jury present.)

2 THE COURT: Okay. Be seated. All right,
3 folks. You sent me back two notes, and you said you're
4 having a hard time making up your minds and you want me
5 to send you the proper wording of the law. What exactly
6 do you mean by that? Do you want me to send you a copy
7 of my jury instructions?

8 THE FOREPERSON: We would like to see what
9 actual possession is registered as in the law.

10 THE COURT: So you want me to give you
11 back -- do you want me to just recharge you on that
12 section of the law?

13 THE FOREPERSON: That will be great.

14 THE COURT: I will do that. I was going to
15 offer to send you back the whole charge, but if that the
16 only thing you need, I will just recharge you on actual
17 possession.

18 THE FOREPERSON: They say if you want to send
19 the whole charge, that's fine.

20 THE COURT: Makes no difference. The other
21 thing is you asked is could we have the transcripts of
22 Yvonne Rivers and Arthur Rivers. We don't have the
23 transcripts available. What we do is if you want to
24 rehear their testimony, I'll send the court reporter back
25 into the jury room with you, and she'll play the

1 recording back of those folks. Now, she'll set there,
2 and she'll play back as much or as little of it as you
3 want. When all 12 say we've heard enough, she'll stop;
4 otherwise, she'll play from the beginning of that
5 witness's testimony through cross, through redirect,
6 through recross. All right, and then go on to the next
7 one.

8 She's not allowed to answer any questions.
9 You don't ask her any questions. If you say replay
10 something, she'll replay it, but the audio portion is
11 just playing out of a speaker. It has kind of a little
12 computer thing, so you folks on the end probably wouldn't
13 be able to hear it very well, so that is why I'll send
14 her back there. You have a little bit better ability to
15 hear that.

16 THE FOREPERSON: That will be great.

17 THE COURT: You go back there. She'll be
18 back in a few minutes to set that up and I'll send back a
19 copy of the jury instructions okay?

20 (Jury retires to deliberate at 4:30 p.m.)

21 (Jury notes marked for identification as
22 Court's Exhibit Nos. 2 and 3.)

23 MR. SMILEY: Your Honor, I just want to make
24 sure -- we had a discussion at the bench during
25 Mr. Rivers testimony.

1 THE COURT: Anything else?

2 MR. SMILEY: First of all, both my charges
3 will go back with your charge that I submitted, Your
4 Honor?

5 THE COURT: Both your charges?

6 MR. SMILEY: The first one was about the law
7 that I submitted from Lacoste, and then I asked for the
8 instruction about -- oh, the police officer thing, and
9 the second thing. They can't deliberate while she's in
10 fact in the room. They can just listen and I don't
11 believe --

12 THE COURT: I'll remind them I'll tell them
13 you cannot deliberate or discuss. Thank you for bringing
14 that to my attention. I should have said that.

15 Is this a direct quote out of that cost?

16 MS. HENSLEY: Sort of. There was some stuff
17 in between --

18 MR. SMILEY: She did the charge for me last
19 night.

20 THE COURT: I'm just trying to figure out if
21 she cut and pasted it.

22 (Recess taken.)

23 THE COURT: All right. They tell me we got a
24 verdict, so, let's see, defendant is here. Bring the
25 jury in.

1 (5:24 p.m. in open court, jury present.)

2 THE COURT: All right. You may be seated.

3 All right, Madame Foreman: I understand the jury has
4 reached a verdict; is that correct?

5 THE FOREMAN: Yes, we have, Your Honor.

6 THE COURT: Is that to each of the
7 indictments?

8 THE FOREPERSON: We have.

9 THE COURT: Is that a unanimous verdict as to
10 each indictment?

11 THE FOREMAN: Yes.

12 THE COURT: Would you hand them to the
13 bailiff, please. All right. Clerk will publish.

14 THE CLERK: Verdict forms in the case of 2008
15 GS-10-7795, State versus Arthur Lee Rivers, indictment
16 for possession of cocaine base, the verdict of the jury
17 is guilty, signed by the foreperson of the jury on 17
18 September 2009.

19 Ladies and gentlemen of the jury, if this was
20 your verdict, please raise your right hand.

21 THE COURT: Let the record reflect all the
22 jurors have raised their right hand.

23 THE CLERK: As to case number 2008-GS-10-7796
24 in the matter of the State versus Arthur Lee Rivers,
25 indictment for assault on a police officer while

1 resisting arrest, the verdict of the jury is guilty,
2 signed the foreperson of the jury on 17 September 2009.
3 Ladies and gentlemen: If this was your verdict, please
4 raise your right hand.

5 THE COURT: Again, let the record reflect all
6 the jurors have raised their right hand.

7 THE CLERK: As to case number
8 2008-GS-10-7788, in the matter of the state versus Arthur
9 Lee Rivers, indictment for trafficking cocaine, the
10 verdict of the jury is guilty, signed by the foreperson
11 of the jury on 17 September 2009. Ladies and gentlemen
12 of the jury: If this was your verdict, please raise your
13 right hand.

14 THE COURT: All right. Again, let the record
15 reflect all the jurors have raised their right hand.

16 All right. Is there any need to poll the
17 jury?

18 MR. SMILEY: I would ask they individually be
19 polled.

20 THE COURT: All right. Poll the jury,
21 Mr. Clerk.

22 THE CLERK: What we're going to now is called
23 polling of the jury. When I call your juror number, if
24 you'll please raise your hand, I'll then acknowledge you.
25 You can put your hand down. I'll then ask you two

1 questions. Please reply back to me answering these
2 questions verbally.

3 Juror number 301: Were those your verdicts?

4 THE JUROR: Yes.

5 THE CLERK: Are they still your verdicts?

6 THE JUROR: Yes.

7 (Whereupon, the remainder of the jury was
8 polled and all the remaining jurors indicated the answers
9 to the two questions were yes.)

10 THE CLERK: Was there any juror whose number
11 I did not call in please raise your right hand? Your
12 Honor, the verdict stands.

13 THE COURT: Thank you for your attention.
14 You've sat and listened to a trial now for a full two and
15 a half days. A lot of folks don't get to set on a jury
16 and they just get to set down the hall, they come close
17 to getting picked, and at the end of week they feel,
18 well, I really didn't get to do anything, but you folks
19 got to sit on a jury. That is something.

20 Showing up to me is something because a lot
21 of times, you know, it takes a jury getting here to make
22 things happen sometimes. So even if you never get
23 picked, you really can't quite understand and appreciate
24 just how much your showing up does to aid us to move
25 things along.

1 But you folks got to serve on a jury, and
2 that is pretty special. You know, a lot of times we look
3 at jury service as a burden or -- it is a responsibility
4 and a duty of citizenship, but it's also a privilege to
5 serve on a jury.

6 You know, there are people all over the world
7 that wish they had the right to be on a jury. They wish
8 they had the right to be judged by a jury when they're
9 accused of a crime or in case of a civil wrong they
10 dispute it, and we bring in folks every week, and we ask
11 them to do exactly what you do: Sit there, listen to the
12 witness, go back, review it thoroughly, argue about it to
13 your heart's content, and when you all 12 agree, you come
14 back with a verdict.

15 And so we take it for granted because we do
16 it week in and week out, but it is very, very special
17 what you do. So I hope you won't take it for granted,
18 and I hope you'll feel good about your service this week.

19 You are now finished with jury service for
20 the week. We will not need you to come back tomorrow.
21 You don't have to call the telephone number after 6
22 o'clock anymore. You're finished for the week, and if
23 you need an excuse or anything for work, the clerk's
24 office can help you get one. They'll be mailing you one
25 of those big fat checks here next week, and, you know,

1 probably won't even hardly cover the cost of your lunch
2 for any day, but, again, it is a sacrifice that you make,
3 and I very much appreciate what you've done.

4 So I want to thank you on behalf of the State
5 of South Carolina and the citizens of Charleston County
6 for your service, and you are free to go now. Sometimes
7 people, the lawyers, for instance, like to call you
8 afterwards and ask you if you could talk with them about
9 your verdict, because it helps them for their next trial,
10 and you are certainly free to talk to them, if you want
11 to. You are also free to not talk to them, so if you get
12 contacted by somebody and you don't want to talk to them,
13 tell them you don't want to talk, and if they persist,
14 you let me know.

15 I assure you, you won't have a problem from
16 the lawyers, but if you don't want to talk to them, you
17 don't have to, but if you do want to talk to anybody,
18 including family members or friends or whoever now, you
19 are free to do so from this point.

20 So, again, thank you for your service, and
21 you're free to go and they'll escort you out. Thank you
22 for your service.

23 (Jury recessed at 5:31 p.m.)

24 THE COURT: Okay. Anything the state wants
25 to tell me before I impose sentence?

1 MR. SMILEY: Your Honor, there is a couple
2 things I need to clear up for the record. It was right
3 before closing arguments, and --

4 THE COURT: About your directed verdict,
5 renewing your directed verdict? I mentioned it to the
6 court reporter, and we did put it on the record.

7 MR. SMILEY: And, for the record, my motion
8 would be the same that I made at the close of the state's
9 evidence. There wouldn't be a different substance, but I
10 think, to make sure that is complete, I noted it to you,
11 Your Honor. I know you noted it to the court reporter at
12 the time we had renewed those motions and that you were
13 going to let me expound on it on the record. I don't
14 know that I need to --

15 THE COURT: If you don't have any new ground,
16 you can just simply incorporate the record that you made
17 on your directed verdict motion after closing.

18 MR. SMILEY: At the close of the one I made
19 at the close of the state's case, I would renew the
20 Jackson v. Denno and my directed verdict motions and my
21 objection to the statements again at that point in time,
22 Your Honor, and I also have to renew them at this point
23 in time and would do so, again ask you to set aside the
24 verdict for the same grounds that I had asked previously.
25 And just for recordkeeping purposes, I think I am now

1 covered.

2 THE COURT: All right. Let the record
3 reflect those motions are denied.

4 MR. SMILEY: Yes, sir.

5 THE COURT: Anything else that you want to
6 put on the record? All right. Anything the state wants
7 to bring to my attention on sentencing?

8 MR. DURANT: Your Honor, the sentencing
9 sheets are on their way. Mr. Kidd went to go get them,
10 to give you his record, at the appropriate time.

11 THE COURT: Well, it's the appropriate time.

12 MR. DURANT: The defendant has previous
13 convictions for PWID cocaine in 1997. He was convicted
14 in '98 for the 1997 offense of PWID cocaine. He was
15 convicted also in 1998 of a 1998 PWID cocaine offense.

16 THE COURT: So he had two prior possession
17 with intent to distribute cocaine?

18 MR. DURANT: That's correct, Your Honor.

19 THE COURT: All right.

20 MR. DURANT: He has an unlawful carrying of a
21 weapon from 1998.

22 MR. SMILEY: That's not your charge? All
23 right. Did you do Shock? You did do Shock
24 incarceration? Okay. There are two Arthur Rivers, and
25 we're trying to make sure we got the right record.

1 That's why I'm asking him questions when this is going
2 on.

3 MR. DURANT: I'm trying to make sure I have
4 the right Arthur Rivers here as well. I believe that's
5 it, Your Honor.

6 THE COURT: Okay. Well, Mr. Smiley, what
7 would you like to tell me? We got a mandatory minimum of
8 25 years and a \$50,000 fine on the trafficking.

9 MR. SMILEY: Yes, sir, we sure do. Your
10 Honor, my client, I was his attorney back in 1998, and at
11 that one adjudication he pled to, it appears two
12 different offense dates on that one adjudication, and I
13 do believe they count as two because of the time they
14 were spread apart. They weren't like they happened days
15 apart, and he received a three-year sentence, credit for
16 the ten days that was ordered for his Shock incarceration
17 at that point in time.

18 Since he's been released, he has no record.
19 I know that you are bound by the law to give him a
20 mandatory minimum of 25 years, and I would ask you to run
21 the other sentences concurrent and give him the minimum,
22 Your Honor. That is an awfully large number, but they
23 understood that. We put that on the record before we
24 began the case, Your Honor.

25 That's all I have. Of course he's got his

1 family here in the courtroom. His father has been
2 present during the entire case. His mother has been here
3 also and you heard her testify, so he has good family
4 support.

5 And I know it doesn't change what you can do
6 with your sentence, but I will tell you that I've known
7 Arthur over that period of time, and I can tell you that
8 Arthur is quite a different man than the one I knew in
9 1998.

10 And I have a true belief in Arthur, and I
11 believe that he had turned his life in a very positive
12 way. We respect the jury verdict, but he maintained his
13 position in the case throughout.

14 THE COURT: All right. Mr. Rivers, you want
15 to stand up? You got anything you want to say?

16 THE DEFENDANT: I would like to apologize to
17 the officers. I made some mistakes in my life, but in
18 the last year and a half, I really turned my life around,
19 gave my life to God. I've been working since then. I've
20 been in the church every Sunday and Wednesday, and I got
21 closer with my daughter and my fiancée. We was about to
22 get married in November.

23 I really apologize. I did some wrong, and I
24 know that, but I have moved on with my life since then
25 when that happened. I was working, church, and doing the

1 right thing.

2 MR. SMILEY: I believe members of his
3 family --

4 THE COURT: Your name, sir?

5 THE WITNESS: My name is Bishop David Hunter.

6 MR. SMILEY: I apologize for that.

7 THE WITNESS: My name is Bishop David Hunter,
8 and I'm the pastor of United Church Covenant
9 International and pastor and the founder of this church,
10 and I understand that Arthur have made some mistakes in
11 the past, but the mistakes he made to his self, he didn't
12 do anything to try to hurt anybody. But I watched this
13 young man, and he came into the church and into our life,
14 and he have really changed his life.

15 Arthur is not a bad person. He's a very good
16 person, and I have worked with Arthur ever since and ever
17 since Arthur came into the church. Arthur served on the
18 board as an usher. He has worked in the past and also
19 has brought many young mens off the street into the
20 ministry here and helped change a lot of people's lives.
21 He is a great asset to the ministry, and I'm asking you
22 and the Court to have mercy to give him a chance, give me
23 a chance to work with him and to say to Arthur that a few
24 years ago, this is a totally different young man and that
25 is why I'm his pastor. I'm here for him because he's

1 doing wonderful, and this young lady that is his fiancée,
2 and they're about to get married. They have a wonderful
3 daughter. They have purchased a place and his
4 grandmother just passed away, his uncle just passed away,
5 through all that, his father passed away, and through all
6 that Arthur was good for the family and he is doing
7 wonderful, Your Honor.

8 And that is why we're here, and Mr. Wine is
9 my assistant minister and the young man who came in
10 earlier today, it was Arthur that helped those young men,
11 brought them off the street and he got them a job. Many
12 young mens here brought Arthur off the street, so he is a
13 great asset to the community and I understand the verdict
14 of the jury.

15 I'm asking you, sir, just to have mercy and
16 give him a chance, and he will continue to do the good
17 things he's doing that he can stay with his family and
18 his mother. That's why she left to go home today. That
19 is her only son. I'm just asking you, sir, and I
20 appreciate that, sir.

21 MR. SMILEY: And, Your Honor, I apologize
22 when I say -- I always see him as a father figure because
23 he's been very close with Arthur. That is all we have,
24 Your Honor.

25 THE COURT: All right. Well, Mr. Rivers,

1 unfortunately for you, those two prior convictions -- do
2 you have something?

3 MR. DURANT: I have the sentencing sheets.

4 THE COURT: Those two prior convictions
5 really come back to haunt you, because the law says that
6 I have to treat those, that trafficking offense and the
7 possession of crack cocaine offense as third offenses,
8 and under the laws of the South Carolina, the trafficking
9 10 plus grams, third offense, is a minimum 25 years.

10 The maximum I could give you is 30, and a
11 \$50,000 fine, so there is a very small little range, but
12 I can't go below 25 years and a \$50,000 fine.

13 Unfortunately for you, that is also a no parole offense,
14 so you'll have to do at least 85 percent of that, so I'll
15 give you 25 years on that and a \$50,000 fine.

16 The possession of crack is 15 years. The
17 assault while resisting is 10 years. I'll allow each of
18 those to run concurrent, and you'll get credit for any
19 time served.

20 Good luck to you. You also have a very
21 limited time in which to appeal, so if you want to
22 appeal, you need to let Mr. Smiley know right away.

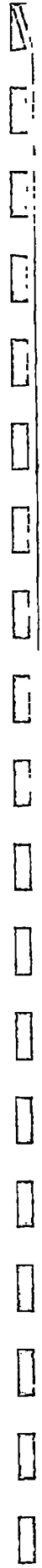
23 MR. SMILEY: We have already spoken about it.
24 Thank you, Your Honor.

25

- - -

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

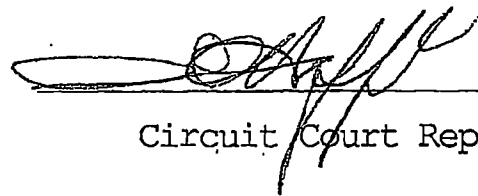
(Whereupon, at 5:42 p.m. the proceedings were concluded.)



I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 15-17 of September 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 20, 2010



Circuit Court Reporter

**IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM CHARLESTON COUNTY

The Honorable Roger M. Young

Case No. 2008-GS-10-7788, 7795, 7796

STATE OF SOUTH CAROLINA,

RESPONDENT

vs.

ARTHUR LEE RIVERS,

APPELLANT.

FINAL BRIEF OF APPELLANT

**TARA DAWN SHURLING
Attorney and Counselor at Law**

**3614 Landmark Drive, Suite D
Columbia, SC 29204
(803) 738-8622
(803) 738-1600 FAX
tdslaw@shurlinglaw.com**

ATTORNEY FOR APPELLANT.

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE	4
STATEMENT OF FACTS	5
ARGUMENT.....	7
Issue I: Resisting Arrest	7
Issues II & III: Fourth Amendment Violation	11
CONCLUSION.....	14
CERTIFICATE OF COUNSEL	15

TABLE OF AUTHORITIES

CASES

Brown v. Illinois, 422 U.S. 590 (1975)13

Katz v. United States, 389 U.S. 347 (1967).....12

Minnesota v. Dickerson, 508 U.S. 366 (1993)12

Miranda v. Arizona, 384 U.S. 436 (1966)13

Sibron v. New York, 392 U.S. 40 (1968)12

State v. Brannon, 379 S.C. 487, 666 S.E.2d 272 (Ct. App. 2008)..... 7, 8, 9, 10, 12

State v. Cherry, 361 S.C. 558, 606 S.E.2d 475 (2004).....7

State v. McGowan, 347 S.C. 618, 557 S.E.2d 657 (2001)10

State v. Muquit, 381 S.C. 114, 671 S.E.2d 643 (Ct. App. 2009).....11

State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006).....7

State v. Williams, 367 S.C. 192, 624 S.E.2d 443 (Ct. App. 2005).....10

Terry v. Ohio, 392 U.S. 1 (1968).....8, 9, 10, 12

Wong Sun v. United States, 371 U.S. 471 (1963)12

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. IV1, 12

STATUTES

S.C. Code Ann. §16-9-3208

STATEMENT OF ISSUES ON APPEAL

I.

Whether the lower court improperly denied the Appellant's motion for a directed verdict on the resisting arrest charge?

II.

Whether the lower court improperly denied the Appellant's motion to suppress the statement he made to the arresting officer following his unconstitutional arrest?

III.

Whether the lower court improperly failed to grant a directed verdict on the Appellant's drug charges? ∞

STATEMENT OF THE CASE

The Appellant was charged with Trafficking Powder Cocaine, 10-28 Grams, Third Offense, Possession of Crack Cocaine, Third Offense, and Assaulting a Police Officer while Resisting Arrest in Charleston County. On September 15-17, 2009, the Appellant proceeded to trial by jury. The Honorable Roger M. Young, Sr. presided over this proceeding. The Appellant was found guilty as charged. Judge Young sentenced the Appellant to twenty-five years imprisonment on the trafficking charge, fifteen years imprisonment on the possession charge, and ten years on the resisting arrest charge, with the sentences to run concurrently.

On September 23, 2009, the Appellant timely served his Notice of Appeal, announcing his intent to appeal his convictions and sentences. The Notice was filed with this Court on September 30, 2009.

Notice of appeal was timely served and filed. The Appellant now appeals his convictions and sentences.

STATEMENT OF FACTS

On June 16, 2008, Deputy Ryan Blakeley with the Charleston County Sheriff's Office was serving an outstanding warrant on an individual named David Tyrone Robinson ("Robinson") on Johns Island in Charleston County. See ROA p. 112, line 25-p. 113, line 22. When Deputy Blakeley pulled up to the area where Robinson was sitting, he noticed the Appellant walking towards Robinson's location. See ROA p. 114, lines 16-24. According to Deputy Blakeley, when the Appellant saw him, the Appellant "made a furtive movement by tossing an item I saw onto the ground." ROA p. 115, lines 2-20. Deputy Blakeley then proceeded to walk to Robinson's location and place him under arrest. See ROA p. 116, line 12-p. 117, line 6.

After Deputy Blakeley handcuffed Robinson, the Appellant walked up to them and was stopped by Deputy Blakeley. Deputy Blakeley asked the Appellant for his ID, which the Appellant freely gave, to run an outstanding warrants check on the Appellant. See ROA p. 117, lines 15-22. After the warrants check came back clear, Deputy Blakeley asked to pat down the Appellant and check him for drugs. See ROA p. 117, lines 22-25. The Appellant again gave his consent and Deputy Blakeley did not discover any drugs or weapons on the Appellant's person. See ROA p. 118, lines 1-17.

Following the warrants check and the pat-down, Deputy Blakeley "went to grab [the Appellant's] hand to detain him for the littering of what I noticed from before so I could go ahead and investigate that." ROA p. 118, lines 18-23. The Appellant yanked his hand back, prompting Deputy Blakeley to try and place him in handcuffs again. See ROA p. 118, line 24-p. 119, line 6. When Deputy Blakeley tried to handcuff the Appellant a second time, the Appellant shoved him and took off running. See ROA p. 119, lines 6-8.

Deputy Blakeley chased after the Appellant and tried to use his taser to stop the Appellant. See ROA p. 120, lines 7-17. After the taser probes knocked the Appellant to the ground, Deputy Blakeley got on top of the Appellant and a struggle ensued. See ROA p. 120, line 25-p. 187, line 15. After a few minutes, Deputy Blakeley was able to subdue the Appellant and he placed the Appellant under arrest. See ROA p. 131, lines 10-19.

A pill bottle containing powder cocaine and crack cocaine was located near the area where Deputy Blakeley reported seeing the Appellant making a "furtive movement." See ROA p. 133, line 14-p. 200, line 1. Deputy Blakeley testified that shortly after the pill bottle was found, the Appellant told him that "the coke is mine ... and that the crack ... is not mine." ROA p. 141, lines 12-20.¹

¹ The Appellant presents this Statement of Facts in the light most favorable to the State, given the standard of review applicable to the issues he raises below. However, the Appellant would note that he presented a substantial defense by presenting several witnesses who were present at the scene that day, including Robinson, see ROA p. 260-302, and that the Appellant vehemently denied making any statement to Deputy Blakeley or possessing the drugs in his own testimony. See ROA pp. 303-341.

ARGUMENT

- I. The lower court erred in refusing to grant the Appellant a directed verdict on the resisting arrest charge because the Appellant was illegally detained by Deputy Blakeley.**

A. How the Issue Arose Below

Following the conclusion of the State's presentation of evidence, the Appellant moved for a directed verdict on the resisting arrest charge. In particular, the Appellant argued that he "was lawfully resisting an unlawful rearrest" because he was "free to leave" when Deputy Blakely attempted to handcuff him. ROA p. 248, lines 4-5; 16. The trial court denied this motion because

[W]hen [the Appellant] pushed him away, instead of fleeing, I think that the officer then had probable cause to arrest him for assault, even though he didn't subsequently arrest him for assault.

So I'm denying a motion for a directed verdict on that as well.

ROA p. 258, line 25-p. 258, line 5.² The Appellant now contends that this ruling was in error.

B. Discussion

When ruling on a motion for a directed verdict, the trial court is concerned solely with the existence or nonexistence of evidence and not with the weight of the evidence. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). A criminal defendant is entitled to a directed verdict when the State fails to produce any evidence of the offense charged. State v. Cherry, 361 S.C. 558, 606 S.E.2d 475 (2004).

On appeal from the denial of a directed verdict motion, an appellate court views evidence and all reasonable inferences in the light most favorable to the State. State v. Brannon, 379 S.C.

² The Appellant renewed this motion at the close of his case, and the trial court denied the motion again. See ROA p. 342, line 1-p. 343, line 3.

487, 666 S.E.2d 272 (Ct. App. 2008), certiorari granted July 10, 2009. This Court may reverse the trial court's denial of a directed verdict motion only if there is no evidence to support the trial court's ruling. Id.

The Appellant was convicted of violating S.C. Code Ann. §16-9-320(B), which reads in relevant part:

It is unlawful for a person to knowingly and wilfully assault, beat, or wound a law enforcement officer engaged in serving, executing, or attempting to serve or execute a legal writ or process or to assault, beat, or wound an officer when the person is resisting an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not.

In interpreting §16-9-320(A), which criminalizes resisting arrest,³ this Court has held that “there must be an arrest before there can be a conviction of resisting arrest.” Brannon at 519, 666 S.E.2d at 288 (Ct. App. 2008). “The [resisting arrest] statute does not extend to investigatory stops or detentions.” Id. at 519, 666 S.E.2d at 289. In other words, “[t]he [resisting arrest] statute does not criminalize fleeing from officers attempting to conduct a Terry[⁴] stop.” Id. at 510, 666 S.E.2d at 284.

According to the testimony given by Deputy Blakeley the following sequence of events occurred. Deputy Blakeley wanted to handcuff the Appellant in order to temporarily detain him while he investigated the item he saw the Appellant throw on the ground. Deputy Blakeley made very certain to tell the Appellant that he was not under arrest at that time. See ROA p. 119, lines 1-2. It was at that point that the Appellant shook off Deputy Blakeley's attempt to handcuff him and fled. Deputy Blakeley then used his taser to knock the Appellant to the ground and began

³ The only significant difference in the text of subsection (A) as compared to subsection (B) is that subsection (B) requires that the defendant “assault, beat, or wound” a law enforcement officer whereas subsection (A) only requires a defendant to “oppose or resist” a law enforcement officer's arrest.

⁴ Terry v. Ohio, 392 U.S. 1 (1968).

struggling with him. While he was struggling with the Appellant, Deputy Blakeley told the Appellant that he was under arrest for resisting arrest.

The Appellant respectfully contends that a criminal defendant cannot be convicted of a resisting arrest offense when there is no predicate arrest. There must be an attempted arrest that the defendant is resisting before the defendant can be convicted of resisting arrest. In other words, a resisting arrest charge cannot stand independently; there must be some reason why the police officer was attempting to arrest a defendant, other than for resisting arrest, in order for a defendant to commit the offense of resisting arrest.

This Court's opinion in Brannon makes this point clear. In that case, the criminal defendant was suspected of breaking into vehicles in Gaffney, South Carolina. 379 S.C. at 492, 666 S.E.2d at 274. The police arrived and told the defendant to stop. Id. However, the defendant took off running and was not placed under arrest until he was apprehended by the police. Id. This Court held that the defendant had not committed the offense of resisting arrest by fleeing the police because

[T]here must an arrest before there can be a conviction of resisting arrest. The videlicet of the statutory offense of resisting arrest is the existence of a lawful arrest. Prefatorily, a prosecution for resisting arrest fails if there is no arrest of the offender.

...

The statute does not extend to investigatory stops or detentions, and such inclusions cannot be implied by this court.

Id. at 519, 666 S.E.2d at 288-289 (emphasis added).

Similarly, in this case, the Appellant's act of resistance was to resist against an admitted investigative Terry stop. Since the resisting arrest statute does not criminalize resisting against "investigatory stops or detentions," the Appellant could not be convicted of resisting Deputy

Blakeley's attempted Terry stop. Brannon, *supra*, at 519, 666 S.E.2d at 289.⁵ Accordingly, the lower court erred in refusing to grant the Appellant's motion for a directed verdict on this ground.

⁵ Additionally, the Appellant could not have been arrested for an assault against Deputy Blakeley, independent of any resisting arrest charge, because the law of this State is clear that an individual may legally resist an unlawful arrest, even to the point of killing the officer if necessary. See generally State v. McGowan, 347 S.C. 618, 557 S.E.2d 657 (2001); State v. Williams, 367 S.C. 192, 624 S.E.2d 443 (Ct. App. 2005).

- II. The lower court erred in refusing to suppress the Appellant's statements to Deputy Blakeley.
- III. The lower court erred in refusing to grant the Appellant's motion for a directed verdict on the drug charges.

A. How the Issues Arose Below

At the outset of the trial, the Appellant moved to exclude evidence of any statements that he made to Deputy Blakeley. See ROA p. 2, lines 19-21; p. 57, line 18-p. 59, line 4. The trial court denied this motion. See ROA p. 60, line 21-p. 61, line 10. The Appellant renewed this objection at every opportunity when the evidence of the Appellant's statement was admitted; each objection was overruled by the trial court. See ROA p. 139, lines 15-17; p. 207, lines 6-8; p. 247, lines 6-10. Due to the trial court's rulings, the jury heard two police officers—Deputy Blakeley and Investigator Robert Tague—testify that the Appellant claimed possession of the cocaine but not the crack cocaine. See ROA p. 141; lines 12-20; p. 207, lines 3-10.

At the close of the State's evidence, the Appellant moved for a directed verdict on the two drug charges against him. See ROA p. 250, line 11-p. 251, line 14. This motion was denied by the trial court. See ROA p. 256, line 8-p. 257, line 3. The motion was renewed at the close of the case and was denied again by the trial court. See ROA p. 342, line 1-p. 343, line 3. The Appellant now contends that these rulings were in error.

B. Discussion

In criminal cases, this Court sits to review errors of law only. State v. Muquit, 381 S.C. 114, 671 S.E.2d 643 (Ct. App. 2009). "Our review in Fourth Amendment search and seizure cases is limited to determining whether any evidence supports the trial court's finding." Id. at 118, 671 S.E.2d at 645.

On appeal from the denial of a directed verdict motion, an appellate court views evidence and all reasonable inferences in the light most favorable to the State. State v. Brannon, *supra*. This Court may reverse the trial court's denial of a directed verdict motion only if there is no evidence to support the trial court's ruling. Id.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. Amend. IV. Searches and seizures "conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967). Evidence seized as a result of an illegal arrest or illegal search should be suppressed as the fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963).

In the present case, the Appellant contends that his initial detention by Deputy Blakeley violated his Fourth Amendment right to be free from unreasonable searches and seizures, and that the evidence that was the product of that unreasonable detention—the statement made by the Appellant and the drugs that were found at the scene—should have been suppressed. Accordingly, the Appellant contends that the lower court erred in denying his motions to suppress his statement to the police and for a directed verdict on the drug charges.

Pursuant to Terry v. Ohio, *supra*, a police officer may make "reasonable inquiries" aimed at confirming or dispelling his suspicions that criminal activity is afoot. Minnesota v. Dickerson, 508 U.S. 366, 373 (1993) (quoting Terry at 30). If the Terry stop and search "goes beyond what is necessary" to determine if there has been criminal activity, then the stop and search are "no longer valid under Terry and [the] fruits [of the stop and search] will be suppressed." Dickerson at 373 (citing Sibron v. New York, 392 U.S. 40, 65-66 (1968)). The

fruits of an illegal arrest include statements made by a criminal defendant, even if they were given voluntarily after receiving Miranda⁶ warnings. Brown v. Illinois, 422 U.S. 590 (1975).

Prior to attempting to place the Appellant in handcuffs, Deputy Blakeley ran an outstanding warrants check on the Appellant and conducted a pat-down of the Appellant's person. The Appellant respectfully submits that at the time the pat-down was concluded, any reasonable suspicion that may have existed to stop and search him, assuming that reasonable suspicion had ever existed, had ended. By further attempting to handcuff the Appellant, Deputy Blakeley unconstitutionally extended the Terry stop. At that point, any further action taken by Deputy Blakeley was tainted by the unconstitutional detention. Consequently, the Appellant respectfully submits that the drugs and his statement should have been suppressed by the lower court as the fruit of the unconstitutional detention. Accordingly, the Appellant argues that his convictions should be reversed.

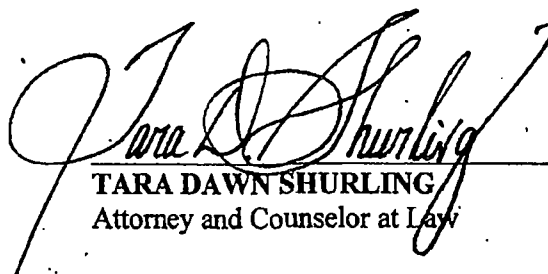
Assuming, *arguendo*, that the seizure of the drugs was not tainted by this unconstitutional detention, there can be no question that the Appellant's statements to the police were the fruit of the poisonous tree. The error in admitting these statements was prejudicial. As stated above, the Appellant put forward an extensive defense, which included his vociferous testimony that he did not possess the drugs. Furthermore, since Deputy Blakeley testified that these events occurred in a very high drug area, see ROA p. 113, lines 14-22, the discovery of drugs in the area does not necessarily mean that these drugs belonged to the Appellant. Improperly presenting testimony that he admitted to possessing at least some of the drugs is unquestionably prejudicial and this error warrants a new trial.

⁶ Miranda v. Arizona, 384 U.S. 436 (1966).

CONCLUSION

The Appellant's convictions should be reversed. Alternatively, the Appellant's convictions should be reversed and this case should be remanded for a new trial.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law

Law Office of Tara Dawn Shurling, PA
3614 Landmark Dr., Suite D
Columbia, SC 29204
803-738-8622
803-738-1600 Fax
E-mail: tdslaw@shurlinglaw.com

ATTORNEY FOR THE APPELLANT

This 2nd day of November, 2010.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
The Honorable Roger M. Young, Circuit Court Judge

Case No. 2008-GS-10-7788, 7795, 7796

STATE OF SOUTH CAROLINA,

RESPONDENT.

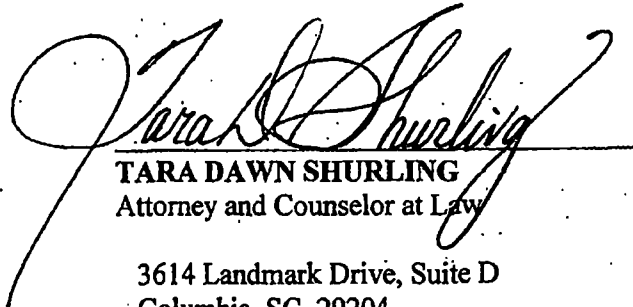
v.

ARTHUR LEE RIVERS,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that certificate that this Final Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents.



TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite D
Columbia, SC 29204
(803) 738-8622
(803) 738-1600 FAX

ATTORNEY FOR APPELLANT.

This 2nd day of November, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

THE STATE,

Respondent,

vs.

ARTHUR LEE RIVERS,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DAVID SPENCER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLET A. WILSON
Solicitor, Ninth Judicial Circuit

101 Meeting Street, Suite 400
Charleston, S. C. 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
ARGUMENT.	5
I. The trial court did not err in denying Appellant's motion for directed verdict where Appellant resisted arrest for assaulting a police officer.	5
II. Appellant was not entitled to have Appellant's voluntary statement which he initiated, or the cocaine and crack cocaine which he abandoned upon seeing a police car, suppressed as fruit of the poisonous tree	17
III. The trial court did not err in denying the directed verdict on the drug charges	20
CONCLUSION	21

TABLE OF AUTHORITIES

Cases:

<u>Adams v. Williams</u> , 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972) . . .	8, 9, 10, 11
<u>California v. Hodari D.</u> , 499 U.S. 621, 111 S.Ct. 1547 (1991)	17
<u>Graham v. Connor</u> , 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)	9
<u>Hester v. United States</u> , 265 U.S. 57, 44 S.Ct. 445, 68 L.Ed. 898 (1924).	17
<u>Hitachi Data Sys. Corp., v. Leatherman</u> , 309 S.C. 174, 420 S.E.2d 843 (1992)	14
<u>Illinois v. Wardlow</u> , 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000)	8
<u>Key Corporate Capital, Inc. v. County of Beaufort</u> , 373 S.C. 55, 644 S.E.2d 675 (2006).	14
<u>Kraup v. Texas</u> , 538 U.S. 626, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003)	18
<u>Michigan v. Summers</u> , 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981) . . .	8, 12, 13
<u>Miller v. State</u> , 462 P.2d 421 (Alaska 1969)	15, 16
<u>Miranda v. Arizona</u> , 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)	18
<u>Muehler v. Mena</u> , 544 U.S. 93, 125 S.Ct. 1465, 161 L.Ed.2d 299 (2005)	9
<u>State v. Adams</u> , 332 S.C. 139, 504 S.E.2d 124 (Ct. App. 1998)	6
<u>State v. Brannon</u> , 379 S.C. 487, 666 S.E.2d 272 (Ct. App. 2008).	6, 7
<u>State v. Brannon</u> , 388 S.C. 498, 697 S.E.2d 593 (2010)	6, 7
<u>State v. Creech</u> , 314 S.C. 76, 441 S.E.2d 635 (Ct. App. 1994)	20
<u>State v. Hudgins</u> , 319 S.C. 233, 460 S.E.2d 388 (1995)	18
<u>State v. Irvin</u> , 270 S.C. 539, 243 S.E.2d 44 (1982)	20
<u>State v. McGowan</u> , 347 S.C. 618, 557 S.E.2d 657 (2001)	6, 14
<u>State v. Nelson</u> , 336 S.C. 186, 519 S.E.2d 786 (1999)	18, 19

<u>State v. Schrock</u> , 283 S.C. 129, 322 S.E.2d 450 (1984)	20
<u>State v. Smith</u> , 337 S.C. 27, 522 S.E.2d 598, 601 (1999).....	17
<u>State v. Spann</u> , 279 S.C. 399, 308 S.E.2d 518 (1983)	20
<u>State v. Walker</u> , 349 S.C. 49, 562 S.E.2d 313 (2002)	5
<u>State v. Williams</u> , 237 S.C. 252, 116 S.E.2d 858 (1960)	6
<u>State v. Williams</u> , 367 S.C. 192, 624 S.E.2d 443 (Ct. App. 2005)	14
<u>Terry v. Ohio</u> , 392 U.S. 1, 88 S.Ct. 1868, 1873, 20 L.Ed.2d 889 (1968)	7, 8, 9, 11
<u>United States v. Lee</u> , 372 F.Supp. 591 (W.D. Penn. 1974)	9, 10, 14
<u>United States v. Lego</u> , 855 F.2d 542 (8 th Cir. 1988)	11, 14
<u>United States v. Lender</u> , 985 F.2d 151 (4 th Cir. 1993)	8
<u>United States v. Purry</u> , 545 F.2d 217 (D.C. Cir. 1976)	10, 11
<u>Wong Sun v. United States</u> , 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)	18
<u>Statutes and Acts:</u>	
S.C. Code Ann. § 16-9-320(B) (Supp. 2009)	5, 14, 16
S.C. Code Ann. § 16-3-625	14
1980 Act No. 511, § 3 ..	14
1990 Act No. 598 § 2	14
<u>Other Authorities:</u>	
3 W.LaFave, Search and Seizure § 9.2, pp. 36-37 (1978)	8
5 Am. Jur. 2d Arrest § 89	15

STATEMENT OF ISSUES ON APPEAL

I.

The trial court did not err in denying Appellant's motion for directed verdict where Appellant resisted arrest for assaulting a police officer.

II.

Appellant was not entitled to have Appellant's voluntary statement which he initiated, or the cocaine and crack cocaine which he abandoned upon seeing a police car, suppressed as fruit of the poisonous tree.

III.

The trial court did not err in denying the directed verdict on the drug charges.