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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Larry B. Hyman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CALVIN SOLOMON BARR

APPELLANT

APPELLATE CASE NO 2016-001367

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT (Dated April 19, 2016).....	1
OPENING STATEMENT BY MR. CARAKER	3
OPENING STATEMENT BY MR. AXELROD	7
TESTIMONY	
DWIGHT D. TOMLIN	
Direct Examination by Mr. Caraker.....	13
MOTION FOR MISTRIAL	15
COURT’S RULING	16
TESTIMONY	
DWIGHT D. TOMLIN	
Direct Examination by Mr. Caraker (Continued)	18
Cross Examination by Mr. Axelrod	28
Redirect Examination by Mr. Caraker	33
Recross Examination by Mr. Axelrod	34
ANITA STANLEY	
Direct Examination by Mr. Caraker.....	35
Cross Examination by Mr. Axelrod	39
STEPHEN THACKRAY	
Direct Examination by Mr. Caraker.....	42
Cross Examination by Mr. Axelrod	56
STEPHEN THACKRAY	
Direct Examination by Mr. Caraker.....	60
Cross Examination by Mr. Axelrod	70
Redirect Examination by Mr. Caraker	71
Recross Examination by Mr. Axelrod	73
Redirect Examination by Mr. Caraker	75
Recross Examination by Mr. Axelrod	75

MALINDA SUE SHADOAN	
Direct Examination by Mr. Caraker.....	76
Cross Examination by Mr. Axelrod.....	84
JASON SHUMPERT	
Direct Examination by Mr. Caraker.....	86
Cross Examination by Mr. Axelrod.....	92
JACKIE DAVIS	
Direct Examination by Mr. Caraker.....	94
Cross Examination by Mr. Axelrod.....	98
LAWRENCE ZIVKOVICH	
Direct Examination by Mr. Caraker.....	99
Cross Examination by Mr. Axelrod.....	107
THE STATE RESTS	111
MOTION FOR DIRECTED VERDICT.....	111
TESTIMONY (Continued)	
NICOLE F. BARR	
Direct Examination by Mr. Axelrod	123
Cross Examination by Mr. Caraker	131
Redirect Examination by Mr. Axelrod.....	146
THE DEFENSE RESTS	147
RENEWAL OF PREVIOUS MOTIONS	149
COURT'S RULING	149
TESTIMONY (Continued)	
DWIGHT TOMLIN	
Direct Examination by Mr. Caraker.....	150
Cross Examination by Mr. Axelrod.....	158
STEPHEN THACKRAY	
Direct Examination by Mr. Caraker.....	161
Cross Examination by Mr. Axelrod.....	163
MARK E. LANDI	
Direct Examination by Mr. Caraker.....	165
Cross Examination by Mr. Axelrod.....	169

CHARLES ROBERT GILLIANS	
Direct Examination by Mr. Caraker.....	172
Cross Examination by Mr. Axelrod.....	175
RENEWAL OF PREVIOUS MOTIONS	176
COURT'S RULING	177
CLOSING ARGUMENT BY MR. AXELROD.....	178
CLOSING ARGUMENT BY MR. CARAKER.....	189
JURY CHARGE	200
VERDICT	222
TRIAL TRANSCRIPT (Dated June 13, 2016).....	228
SENTENCING	229
COURT'S EXHIBIT NO. 2 (Jury Note)	231
COURT'S EXHIBIT NO. 3 (Written Response by Judge)	232
INDICTMENTS	233
CERTIFICATE OF COUNSEL	239

1 State of South Carolina) Court of General Sessions
2 County of Horry) 2015-GS-26-03962
3 2015-GS-26-03963
4 2015-GS-26-03964

5 State of South Carolina)
6 vs.) Transcript of Record
7 Calvin S. Barr)

8 ORIGINAL

April 19, 2016
Conway, South Carolina

10
11 BEFORE:

12 Honorable Larry B. Hyman, Judge.

13 APPEARANCES:

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15 Gray Ervin, Esq.
16 Attorney for the State

17 Stuart M. Axelrod, Esq.
18 Jeffrey T. Lucas, II, Esq.
19 Attorney for the Defendant

20
21
22 Teresa J. F. Bautz, RPR
23 Official Court Reporter
24
25

1 THE COURT: When she signs it, she signs it as the
2 issuing judge and has been issued a number, 6840.

3 Here, you can look at that, Mr. --

4 MR. AXELROD: We will, Your Honor, we'll look at
5 that. Should I go forward at this point?

6 THE COURT: Yes, sir.

7 MR. AXELROD: All right.

8 Q How long after the search after the search -- how
9 long after the arrest warrant did you -- when did
10 you -- did you do the search warrant before the arrest
11 warrant?

12 A The search warrant was before the arrest warrants.

13 Q What day was the search warrant?

14 A On the 9th of August.

15 Q Okay. And what time did you execute the search
16 warrant?

17 A I believe it was 5:30-ish in the afternoon. I
18 don't have the exact time right here in front of me.

19 Q After you received it, did you then go and execute
20 it?

21 A Yes.

22 Q Okay. Now, when you went in to see the
23 ministerial issuer, what did you tell Amy?

24 A I told her that Officer Tomlin was there.

25 Q Was he with you?

1 rest. The State and the Defense then have
2 opportunities to make closing remarks where they sum
3 up, tell you what they think they have shown or not
4 shown. Again, that's not evidence. And then finally I
5 will instruct you on the law, and you will be given the
6 case. And that's how it will proceed.

7 Now, before I forget, let me tell you who these
8 ladies are behind me. This right here is Ms. Taylor
9 Pipkin, Ms. Pipkin is my law clerk. I call her smarty
10 pants. Every two years they let me have a new law
11 clerk. She's the smart one. And behind her is Amy
12 Argo. Ms. Argo is a new attorney who is required to
13 observe so many cases before she can actually appear,
14 even though she's been admitted to the bar.

15 And so I like to embarrass the new lawyers and
16 make them sit up here with me if they've got to watch.
17 That way I know they can't sneak out and come up later
18 and want me to sign. You wouldn't do that; would you,
19 Ms. Argo?

20 MS. ARGO: No, sir.

21 THE COURT: I didn't think so. Anyway, they will
22 be helping me during the trial. Now, Mr. Caraker, are
23 you ready to go forward?

24 MR. CARAKER: Yes, sir, Your Honor. Good
25 afternoon. My name is David Caraker, I introduced

1 myself to you earlier. I work for the solicitor's
2 office, we represent the citizens of Horry County, you
3 guys, these folks, in cases that come into criminal
4 court.

5 And they tell us in law school and even practicing
6 law, when you talk to a jury, tell them a story, give
7 them an analogy, give them something to relate to, give
8 them something to hold onto, it's easy for folks to
9 follow a story. I got to tell you, I thought about it
10 in this case, I'm just not that creative. So I'm just
11 going to tell you what happened.

12 Officer Tomlin, who worked for Myrtle Beach Police
13 Department at the time in August of 2014, went to the
14 Defendant's house. He was called there. He was let
15 into the house. When he went into the bedroom, where
16 he found this Defendant, there was some open drawers in
17 there, things placed about in the bedroom, as I'm sure
18 we all have knickknacks all over our bedrooms.

19 During the course of his investigation, he looks
20 over there and he sees scales, a razor blade, little
21 small baggies with skulls on them and a whole pile of
22 money sitting over there.

23 And Officer Tomlin, who has a considerable number
24 of years experience in law enforcement, says to
25 himself, something's going on here, this is not normal.

1 He says, there may be drugs in this house. What I'm
2 seeing here is indicative of drugs and drug sales --

3 MR. AXELROD: Your Honor, may I approach, Your
4 Honor, may we approach.

5 (WHEREUPON, a bench conference was held off the
6 record in the presence of the jury but out of the
7 hearing of the jury.)

8 THE COURT: Go ahead, Mr. Caraker.

9 MR. CARAKER: Thank you, Your Honor.

10 Officer Tomlin says to himself, there's something
11 going on here. He backs out, contacts another officer
12 who specializes in that sort of thing. They get a
13 search warrant, go into the house. And they find what
14 could only be described as a street pharmacy in the
15 house. They find cocaine, they find heroin and they
16 find marijuana. And not only do they find those items,
17 they find more scales and more baggies in the same
18 place as the drugs.

19 A man's home is his castle, ladies and gentlemen.
20 We want it that way. You are responsible, just like
21 everyone in this room, for what goes on in your house,
22 every single one of us. And we want it that way. It's
23 the right thing to do. If you're not responsible for
24 anything else, you got to be responsible for what goes
25 on in your house, plain and simple. That's something,

1 that's a burden that we all bear, and that's a good
2 thing. That protects us in many instances and exposes
3 us to some liability in other instances, such as it
4 does here.

5 And while this is going on, ladies and gentlemen,
6 the judge is going to charge you on the law at the end
7 of the case, because I want you to start thinking about
8 this and putting it in the context with the information
9 that you're going to hear coming from the witness
10 stand. No one is going to get up on the stand and
11 testify that they saw the Defendant sell drugs, not
12 going to happen. No one is going to get up on the
13 witness stand and testify that they saw it in his
14 hands. We'll testify it was in his house.

15 So you're going to hear some stuff about
16 constructive possession and circumstantial evidence.
17 And when the judge talks to you about that, think about
18 this, constructive possession means that you have
19 control over the premises where the drugs were found;
20 his house, his responsibility, his control. That is
21 the right thing to do.

22 So when you go back in the jury room and you think
23 about the things that you've heard and seen over the
24 course of the trial, think about it, as the judge said,
25 through your common sense, what makes sense to you.

1 Does that make sense to you, of course it does. That
2 you're responsible for what goes on in your home,
3 that's one of the basic tenets of American citizenship.

4 And when you come back out, you'll render a
5 verdict of guilty for possession of cocaine, guilty of
6 possession with intent to distribute heroin, and guilty
7 of possession with intent to distribute marijuana,
8 because that is the right thing to do. Thank you.

9 THE COURT: Mr. Axelrod.

10 MR. AXELROD: Thank you, judge, if it please the
11 Court, sir. The right thing to do. The right thing to
12 do. If anybody has decided that Calvin is guilty of
13 possession charges with intent to distribute the drugs
14 they told you about, or if they've -- if you've already
15 made a decision in your mind, then at some point you
16 need to go back into the jury room, tell the foreman
17 and you can come out and we'll get a new juror.

18 Because the judge told you not to deliberate until
19 you hear this case. And if you've formed an opinion,
20 raise your hand and we'll get a new jury. Because it's
21 hard, it is hard, it's hard to be a juror. You got to
22 put all your opinions aside, you got to put everything
23 aside, and you got to hear testimony from this side,
24 maybe testimony from that side. And then you have to
25 decide beyond a reasonable doubt. He says the right

1 thing to do, the right thing.

2 They are not going to be able to prove to you that
3 this was Calvin's drugs. We have -- you know, we have
4 conceptions of what we think housing conditions are and
5 living conditions. But you have to put open to the
6 position that some people have roommates, some people
7 have friends. There was more than one person at that
8 house, and only Calvin got arrested.

9 I expect if they are going to show you some DNA,
10 some hair follicle, some fingerprints, something that
11 ties Calvin to the drugs, and they will not. And you
12 might sit here and you might say after you hear all of
13 this evidence, you know, I really think he was selling
14 drugs. But they didn't prove it beyond a reasonable
15 doubt. They didn't prove it at all.

16 That's what we got today. In theory, what the
17 State is telling you, the State is telling you that you
18 could have a friend come over, a friend could come over
19 to somebody's house, a friend could come over to
20 somebody's house, and say, listen, I'm moving. I want
21 to leave my backpack here for a little while, while I
22 got some stuff to do.

23 And the State's position to you is your house is
24 your castle, dominion and control. So somebody goes
25 over to somebody's house. They take a -- they take a

1 backpack, they take a black backpack, and they say,
2 hey, can you hold this in the laundry room for me. And
3 they leave.

4 And later when the police come into Calvin's
5 house, they see a backpack, you're going to hear about
6 a black backpack. And they are going to say, that must
7 be Calvin's. It doesn't work that way. It might work
8 that way for probable cause to make an arrest,
9 reasonable suspicion to believe there's something going
10 on, probable cause to make an arrest.

11 And after that you got to prove to you beyond a
12 reasonable doubt. That's what they got to do. That's
13 the law, that's the rules, that's the oath you take.
14 If they don't prove it beyond a reasonable doubt, even
15 if I think it, you can't speculate. If you speculate,
16 you did not honor your oath. And it's hard.

17 And how do you prove that the black backpack was
18 Calvin's? Well, we looked in it. Maybe it's got his
19 DNA, maybe it's got his electric bill, maybe it's got
20 something. But you're going to find out that in that
21 black backpack was nothing at all that ties it to
22 Calvin. And if you go back there and you speculate,
23 well, more than likely, that's just the rules, the
24 judge is going to tell you that. You have reasonable
25 suspicion, probable cause, get an arrest, which they

1 did. Got a search warrant, and they find drugs. They
2 are going to need somebody to tell you that it's his
3 drugs.

4 A lot of people have people store stuff in their
5 house for them. Most of our constitutional rights
6 actually, believe it or not, search and seizure, free
7 speech, come from the criminal arena. What the State
8 is basically saying to you today is that based on
9 something being in a house, we can have you arrested
10 even if we can't prove it's yours. Now, that's a sad
11 state of affairs. That's where we're at.

12 If they can definitively prove to you that it was
13 his, then convict him. And listen to it and look at
14 it. Calvin is 39 years old, he's got three children,
15 three, four and five. Grew up in Florence, works at
16 the Aquarius Hotel for three years doing maintenance.
17 And they have to prove to you beyond a reasonable doubt
18 that it was his.

19 Why weren't the other people there arrested that
20 might have been there? You might hear testimony there
21 was other people there, why weren't they arrested. Why
22 was Calvin arrested?

23 His position would be in constructive possession,
24 everybody should be arrested. I guess if the police
25 came into my house and said, hey, I see this black

1 backpack, it's got drugs in it, oh, it ain't mine, it's
2 his. It ain't mine, it's his. That's the case you
3 got. That's the case you got.

4 And are people willing to come forward and tell
5 the truth, I don't know. But you got people might be
6 saying, maybe there's going to be somebody that gets on
7 that stand and tells you that was his backpack. Maybe
8 that puts you over that threshold. Let's ask the
9 solicitors to bring forth the evidence to take it from
10 a suspicion to a reasonable doubt, beyond a reasonable
11 doubt. You're entitled to that.

12 That's why police do investigation. They do all
13 this stuff, you got officers, guns, body cameras,
14 lasers, Tasers, from satellites to summaries, this man
15 can communicate with anybody. And they're supposed to
16 bring in the evidence to you and say, we got his
17 fingerprints on this bag. We checked the baggies, we
18 touched it, we found his hair in the briefcase.

19 If something is yours, you know, people say, well,
20 CSI and all this stuff. But you really want to know
21 something, it really does work. If we take our clothes
22 or we take our backpack, we have follicles, we have
23 skin, we have hair, we have stuff. And it's their job
24 to show that to you. It's your job to tell them we
25 demand to see that.

1 And you're not going to see that in this case, I
2 do not believe. I think when we're all done, you will
3 not be able to prove to yourself or to each juror that
4 he's guilty of this. We have to respect the individual
5 jurors. If ten of you think he's not guilty and two of
6 you think he's guilty, you need to listen to those two
7 that think he's guilty and honor them. Because you
8 all, you have your decisions. And we have to respect
9 each individual juror, we can't bully them.

10 And if it goes the other way that ten of you think
11 he is guilty and two think it's not, you have to
12 respect those jurors. And you have to stay even though
13 you're a jury, you are a juror within a jury. And you
14 are entitled whichever way you go. The State wants it,
15 the Court wants it, I want it, and Calvin deserves it.
16 You stick to what you believe.

17 And that is why it's so hard to be a juror.

18 THE COURT: All right, Mr. Caraker.

19 MR. CARAKER: Thank you, Your Honor. We call
20 Officer Dwight Tomlin to the stand.

21 DWIGHT D. TOMLIN, SR., after being duly sworn,
22 testified as follows:

23 THE CLERK: Please state your full name, and spell
24 your last name.

25 THE WITNESS: Dwight Dwayne Tomlin, Sr.,

DWIGHT D. TOMLIN, SR.-DIRECT BY MR. CARAKER

1 T-O-M-L-I-N.

2 MR. CARAKER: May it please the Court, Your Honor.

3 THE COURT: Yes.

4 MR. CARAKER: Thank you.

5 DIRECT EXAMINATION

6 BY MR. CARAKER:

7 Q Good afternoon, Officer Tomlin.

8 A Good afternoon, sir.

9 Q Where you are you currently employed, sir?

10 A Horry County Police Department, sir.

11 Q And where were you employed in August of 2014?

12 A Myrtle Beach Police Department, sir.

13 Q And in total, how many years of law enforcement
14 experience do you have?

15 A About 24 and a half, sir.

16 Q Was all that with Myrtle Beach and Horry County?

17 A No, sir.

18 Q Where else have you worked?

19 A I've served 21 years in the military. I was a
20 NATO military police officer. I've served in 105
21 different countries on every facet of law enforcement.

22 Q Did you have an occasion in August of 2014 to go
23 to the Defendant's residence?

24 A Yes, sir, I did.

25 Q And where was that located?

1 A It was at Maple Street.

2 Q Is that in the city of Myrtle Beach?

3 A Yes, sir.

4 Q In Horry County?

5 A Yes, sir.

6 Q What brought you there initially that day?

7 A Initially, sir, I received a phone call from my
8 supervisor.

9 MR. AXELROD: Objection, Your Honor. This is
10 going to be hearsay now.

11 THE COURT: I'm admitting it.

12 Q What brought you there initially?

13 A While I was on routine patrol, I received a phone
14 call from my supervisor stating that there was possible
15 narcotics activity at Maple Street. The
16 complainant was some affiliate of the Defendant,
17 whether it was girlfriend, wife, whatever you may want
18 to consider it at the time.

19 So we went to that location. She was not there
20 for whatever reason, she was at another location. So I
21 wound up having to call her to come to me, which she
22 didn't want to come. So I pretty much convinced her
23 there was three officers there, it was safe for her to
24 come back to the residence. Because I told her I was
25 not going to bust the door in or do anything such as

1 that. We had already knocked on the door, the
2 Defendant didn't come to the door. We saw the video
3 camera up there, and based on how the house was set up,
4 there was really no cover or concealment. So we kind
5 of backed out, called her, told her if she wanted us to
6 go in there take care of this complaint that she needed
7 to come and give us access, which she did.

8 Q And just to be clear, did she come to the scene
9 that day, did she come to Maple Street?

10 A Yes, sir, she did.

11 Q And did she let you in that house?

12 A Yes, sir.

13 Q And as far as you know, she lived there; is that
14 correct?

15 A Yes, sir. She claimed to be the resident, she had
16 a key.

17 Q Okay. Did you actually go in the house?

18 A Yes, sir. And just to elaborate on that, we also
19 had -- I was provided a signed outstanding CD warrant,
20 that he's had a warrant, but we were not able to --

21 THE COURT: All right.

22 MR. AXELROD: Your Honor, I object and ask for a
23 mistrial at this point.

24 THE COURT: Let's take the jury out.

25 (WHEREUPON, the jury exited the courtroom at

1 4:05 p.m.)

2 THE COURT: All right.

3 MR. AXELROD: I think it's -- I think that's a
4 mistrial. I think he's bringing in his character on a
5 domestic violence --

6 THE COURT: No. I think what he's going to do is
7 testify that he arrested the Defendant at that point in
8 time on an old domestic violence. He doesn't say he's
9 convicted, but he removes the Defendant.

10 MR. CARAKER: Which is part of the res gestae,
11 Your Honor, why he's there and what happened, what
12 brought him there. I believe the warrant was from the
13 night before.

14 THE WITNESS: If I'm not mistaken, I think it was
15 from the night before. And like I said, I wasn't -- at
16 the time I wasn't sure because I didn't have a name or
17 date of birth, until I could confirm that. That's why
18 once we got him and confirmed his date of birth which
19 is on the recording. That's when we made the arrest,
20 and that's when we backed out. Because at that time,
21 that trumped the complaint.

22 And that's why I backed out and let him do his
23 job. That's not my lane to drill things, so that's
24 when I called him.

25 THE COURT: All right. I'm not going to grant a

DWIGHT D. TOMLIN, SR.-DIRECT BY MR. CARAKER

1 mistrial, but I'm going to give a curative instruction.

2 MR. AXELROD: For the Court's -- I believe -- but
3 I believe that the CDV eventually was dismissed, it was
4 never prosecuted. That's why I'm --

5 THE COURT: That's --

6 MR. AXELROD: I understand, I just wanted the
7 Court to understand that.

8 THE COURT: Certainly ask him about that.

9 (WHEREUPON, the jury came into open court at
10 approximately 4:09 p.m.)

11 THE COURT: All right, ladies and gentlemen, I see
12 we have you all back. A moment ago you heard the
13 officer explain why he went to the residence. I have
14 allowed that. Please understand that we do not know
15 whether or not this Defendant was convicted or
16 acquitted or committed the offense of criminal domestic
17 violence, and it has nothing at all to do with the
18 current charges and should not be considered by you as
19 evidence of his having committed any other offense.

20 It is simply offered to explain, to tell the story
21 of how the police officers got there. But you will not
22 consider it in any way in these cases as raising any
23 inference of guilt on the part of the Defendant.
24 Anything further, Mr. Axelrod?

25 MR. AXELROD: No, sir.

1 THE COURT: Very well. Mr. Caraker, you may
2 proceed.

3 MR. CARAKER: Thank you, Your Honor.

4 Q Officer Tomlin, to kind of bring us back around a
5 little bit, I believe you testified you were initially
6 there on a complaint of a narcotics investigation?

7 A Yes, sir.

8 Q And that you went to the residence on Maple
9 Street?

10 A Affirmative, sir.

11 Q You were allowed in by the Defendant's wife or
12 girlfriend?

13 A Right.

14 Q And that you -- did you eventually wind up putting
15 the Defendant in custody on an unrelated matter?

16 A Yes, sir.

17 Q Okay. While you were there, in which room did you
18 encounter the Defendant?

19 A If I can describe that, when you walk into the
20 residence, you go in through the front door, the small
21 hallway to the right, he was in the back bedroom. We
22 made entry, we called out his name, identified
23 ourselves, no answer.

24 We breached the corner of the hallway, we could
25 see his leg hanging off the bed. So I called him

DWIGHT D. TOMLIN, SR.-DIRECT BY MR. CARAKER

1 again, as we approached and told him to show us his
2 hands. And at that time he complied, and we placed him
3 in custody at that time.

4 Q During the course of that arrest, did you see
5 anything of interest in that room?

6 A Yes, sir.

7 Q And what was that?

8 A Immediately I saw what looked to be scales in the
9 beginning. As we got into the room, it was a scale,
10 some sort of scale, measuring device, razor blade. The
11 drawers were opened, it was a -- there was two
12 different containers, it was a plastic -- some plastic
13 containers with drawers in it, two or three drawers,
14 plastic container.

15 Then it was like a regular modern type dresser
16 type drawers with drawers in it, and it was more than
17 about halfway open. And you could see all -- some
18 baggies and cash right there in plain view without even
19 having to, you know, really look, you could see it.

20 Q Okay. So just to be clear, you didn't open the
21 drawer?

22 A No, sir, it was already open.

23 Q It was in plain view?

24 A Plain view.

25 Q Okay. And you said you've been in law enforcement

1 how long?

2 A About 24 and a half, 25 years. Since the early
3 '90s.

4 Q In your training and experience in law
5 enforcement, what if anything did the baggies and the
6 money and the scales and the razor blade tell you about
7 what may possibly be going on there?

8 A Well, just off the surface, it's not normal
9 practice for basic home living. So some type of
10 extracurricular activity.

11 Q Is that indicative of a particular type of, as you
12 term it, extracurricular activity?

13 A Some type of drug use.

14 MR. CARAKER: May I approach, Your Honor.

15 THE COURT: Yes.

16 (WHEREUPON, State's Exhibit Nos. 5 through 9 were
17 marked for identification only.)

18 Q Officer Tomlin, I'm showing you what has been
19 previously marked as State's-2 and State's-5 through 9
20 for identification.

21 A Yes, sir.

22 Q Will you please take a look at those. Do you
23 recognize those items?

24 A Yes, sir.

25 Q Do those photographs fairly and accurately

DWIGHT D. TOMLIN, SR.-DIRECT BY MR. CARAKER

1 represent the scene as it was that date?

2 A Yes, sir.

3 Q Okay. If I may have you start with what has been
4 marked as Exhibit 5 for identification. Can you
5 describe that, please.

6 A Yes, sir, that's a front porch and a front door.

7 Q Is that the Defendant's residence?

8 A Maple Street.

9 Q Let me have you look at No. 6 for identification.
10 What's that?

11 A It's Maple Street, sir, mailbox and all.

12 Q And No. 7?

13 A Maple Street, front porch area.

14 Q Okay. And No. 8?

15 A This is the front living room as you walk into the
16 front door.

17 Q Can you describe what you see in that photo.

18 A Flat screen TV and some type of after market
19 surveillance system.

20 Q If I show you No. 9, is that a close-up of that
21 same --

22 A Yes, sir.

23 Q -- surveillance system?

24 A Yes, sir.

25 Q And No. 2, what does that depict?

1 A That's the bedroom where the Defendant was
2 apprehended.

3 Q Okay. Let's look at that for just a moment.

4 MR. CARAKER: Court's indulgence for the
5 projector, Your Honor.

6 THE COURT: Certainly. Do you need the screen
7 down?

8 MR. CARAKER: Please.

9 THE COURT: Heather.

10 Q What's up on the video --

11 MR. AXELROD: Your Honor, I don't think these are
12 into evidence yet, I would object. They are just for
13 ID. Now we're showing it to the jury.

14 THE COURT: Have you offered them yet?

15 MR. CARAKER: Very well, Your Honor. May I offer
16 State's-2 as well as State's-5 through 9 into evidence.

17 THE COURT: Mr. Axelrod?

18 MR. AXELROD: Without objection, Your Honor.

19 THE COURT: All right. Without objection, they
20 are admitted.

21 (WHEREUPON, State's Exhibit Nos. 2 and 5 through 9
22 were admitted in evidence.)

23 Q Continuing with State's-2, is that what's up on
24 the screen at this time, Officer Tomlin?

25 A Yes, sir.

DWIGHT D. TOMLIN, SR.-DIRECT BY MR. CARAKER

1 Q Is that the room where you found the Defendant?

2 A Yes, sir.

3 Q Would you please tell the jury where in that room
4 the items that you described earlier were located.

5 A Right below that flat screen TV, that's where
6 everything was on the --

7 Q On that sort of dresser?

8 A Dresser and those drawers right there.

9 Q Drawers?

10 A Yeah, and you can see, they kind of angle out.
11 The one in is more fully and the opposite -- even close
12 to that fan was like angled out, it was like -- it was
13 angled out a little bit, so you could pretty much see
14 it.

15 And like I said, when we apprehended him off the
16 bed, I mean, it was right there, you could see it. I
17 mean, it's -- it wasn't like, we didn't open anything,
18 we didn't touch anything.

19 Q Kind of tight quarters in there?

20 A Yes, sir.

21 Q Is that correct?

22 A Like I said, being that we was -- it was two of
23 us, there was another officer with me as well, Officer
24 Gillings, so at that point we just wanted to get him
25 apprehended and get him out of there.

1 Q When you went to the scene that day, did you have
2 a body camera?

3 A No, sir. We had not been issued body cameras yet.

4 Q So this was before the body camera?

5 A Yes, sir. We had the audio, no video.

6 Q Was your vehicle equipped with an audio video
7 recording device?

8 A Affirmative, yes, sir.

9 Q And was it working properly that day?

10 A Yes, sir.

11 Q Did you supply a copy of the audio and video to my
12 office?

13 A Yes, sir.

14 MR. CARAKER: May I approach, Your Honor.

15 THE COURT: Yes.

16 (WHEREUPON, State's Exhibit No. 10 was marked for
17 identification only.)

18 Q Showing you what's been previously marked as
19 State's-10 for identification, do you recognize that?

20 A Yes, sir.

21 Q What does that disk contain?

22 A Myrtle Beach Police Department, for law
23 enforcement purposes only, (843) 918-1300. On there is
24 case no. 14-019526, Defendant Calvin Barr, 9/29/2014 is
25 the date it was printed out, and my initials.

DWIGHT D. TOMLIN, SR.-DIRECT BY MR. CARAKER 119

1 Q Okay. And that's this particular case, that's the
2 audio and video from this particular case?

3 A Affirmative, yes, sir.

4 Q And have you watched that?

5 A Yes, sir.

6 Q Okay. And is that evidenced by your initials?

7 A Yes, sir.

8 Q Does this fairly and accurate represent what
9 happened on that day?

10 A Yes, sir.

11 MR. CARAKER: Your Honor, may I move this into
12 evidence?

13 THE COURT: Mr. Axelrod?

14 MR. CARAKER: State's-10 into evidence, the audio
15 and video.

16 MR. AXELROD: No objection, Your Honor.

17 THE COURT: All right.

18 MR. CARAKER: May I publish it to the jury, Your
19 Honor?

20 THE COURT: Yes, you may.

21 MR. AXELROD: Your Honor, I would just caution the
22 solicitor that he properly redact it for all purposes.
23 I'm sure he has. If he hasn't, might be an issue.

24 MR. CARAKER: We're only going to play a couple
25 minutes, Your Honor. We're going to stop it.

1 THE COURT: Not going to play it?

2 MR. CARAKER: We're not going to play the whole
3 thing.

4 (WHEREUPON, the audio was played at 4:21 p.m.)

5 MR. AXELROD: Your Honor, I guess they're making
6 phone calls, and they are eliciting -- hearsay is
7 coming out through the phone calls possibly.

8 THE COURT: You should have listened to it, I
9 don't know.

10 MR. AXELROD: Well, I asked that it be
11 recontacted. That was why I asked that it be redacted.

12 MR. CARAKER: Your Honor, it falls under the same
13 as the reason why he was there. It shows why he's
14 doing what he's doing.

15 THE COURT: All right. Just continue.

16 (WHEREUPON, the audio was played at 4:26 p.m.)

17 Q Officer Tomlin, what did you do when you saw the
18 money, the baggies, the scale and the razor blade in
19 the house?

20 A I backed out, and went back out and followed our
21 department's procedure, which I notified my supervisor,
22 let him know what we had. And he in lieu notified the
23 investigator division, which in lieu notified Officer
24 Thackray, and they came out.

25 Q And did you ever speak to Officer Thackray?

DWIGHT D. TOMLIN, SR.-DIRECT BY MR. CARAKER

1 A Yes, sir, he arrived on the scene.

2 Q Okay.

3 A I let him know what I had. And it's just
4 practice, it's two-part integrity. I took him back so
5 he could articulate because I was not going back to get
6 the search warrant. So I took him back through and
7 showed him what I -- pretty much went back to where we
8 were, point it out, and we came back out. And he went
9 and did what he had to do, and I stayed there until he
10 got back.

11 We never touched anything, never opened any
12 drawers, so he could see it for himself. So when he
13 articulate it to get the warrant signed, he could know
14 what he's talking about. So it just wouldn't be my
15 word. That's common practice for any crime scene.

16 Q Did you handle any evidence in this case?

17 A No, sir.

18 Q You didn't have a chance to manipulate it or alter
19 it in any way?

20 A No, sir. That's not my job.

21 MR. CARAKER: Thank you. I have no further
22 questions. Please answer any questions Mr. Axelrod or
23 the Court may have.

24 THE WITNESS: Yes, sir.

25 THE COURT: All right, Mr. Axelrod.

CROSS-EXAMINATION

1
2 BY MR. AXELROD:

3 Q How are you?

4 A I'm doing great, good to see you.

5 Q Good to see you.

6 A Yes, sir.

7 Q You're looking well.

8 A Thank you. So are you. Nice tie.

9 Q Thank you.

10 (Discussion off the record.)

11 Q You testified that you never opened any drawers?

12 A Correct.

13 Q And who took all these pictures; do you know?

14 A I have no idea, sir. I would assume that was
15 Officer Thackray.

16 Q And I believe we've had sworn testimony earlier
17 that he didn't open the drawers either; correct?

18 A Correct.

19 Q Okay.

20 A He and I was together when we went inside.

21 Q I got you. Now, these are in evidence right here,
22 I'm going to leave those right there.

23 MR. AXELROD: Can I mark these for ID purposes.

24 Oh, these are marked. Oh, these are in, okay. All
25 right.

DWIGHT D. TOMLIN, SR.-CROSS BY MR. AXELROD

- 1 Q Are these the drawers in question?
- 2 A No. The ones up top.
- 3 Q Which drawer?
- 4 A Should be these, the top ones here (indicating).
- 5 Q Okay. Come on down for a second, come on. You're
- 6 making noise up there.
- 7 A All right.
- 8 Q So these are in evidence. So you're saying this
- 9 is the bedroom where Calvin was?
- 10 A Right.
- 11 Q Okay. And you took him off the bed?
- 12 A Yes, sir.
- 13 Q And you were there. Were you there for a domestic
- 14 issue?
- 15 A I was there off a complaint.
- 16 Q For a domestic issue?
- 17 A No. A complaint of him doing drugs in the house.
- 18 Q Okay. What were you doing in Myrtle -- was your
- 19 job in Myrtle Beach at the time?
- 20 A I was a patrol officer at the time, sir.
- 21 Q Patrol?
- 22 A Yes, sir.
- 23 Q But not in narcotics?
- 24 A No.
- 25 Q Then why didn't they send a narcotics officer?

1 A Because we go out and investigate first, and we
2 figure out what it is first, and we tell them.

3 Q I got you, I got you. Now, you said that you
4 didn't open the drawer?

5 A Yes, sir.

6 Q And it was up in this drawer?

7 A Right.

8 Q Okay. And Officer Thackray testified that he
9 didn't open the drawer either?

10 A No.

11 Q Now, were these Calvin's pocketbooks?

12 A I have no idea, I never asked him that question.

13 That wasn't what I was there for.

14 Q Okay. Did you inventory his clothes in this room?

15 A No, I did not.

16 Q Okay. He was in the room?

17 A He was in the room, he was laying on the bed.

18 Q That's all he was doing?

19 A That's all he was doing.

20 Q And you don't know -- the drugs that were found in
21 the backpack, you don't know whether they were his
22 drugs or not?

23 A I don't know nothing about no backpack. I can't
24 answer that.

25 Q Okay, okay. But you did testify you didn't open

1 the drawer?

2 A No.

3 Q But clearly these drawers had been opened. So I
4 want you to look at this picture that you never opened
5 the drawer, take it, you can have it. And then look at
6 these two pictures that you said had never been opened,
7 and you tell me why these drawers are opened farther
8 than those -- that drawer. Just look at them, take a
9 good look. I'm not trying to confuse you.

10 A I'm with you. I'm not -- I'm very -- I understand
11 what you're saying, and I understood what I said.

12 Q Okay. Those drawers are open real far?

13 A Right.

14 Q Okay. But you just testified under oath that you
15 never opened the drawer and --

16 A Yes, I sure did.

17 Q And Thackray never opened the drawer?

18 A And Thackray likewise.

19 Q So there's a problem. And have a seat.

20 A Huh?

21 Q Have a seat.

22 A Okay.

23 Q So we're going to hear all the sworn testimony
24 that neither officer opened the drawers. You can pass
25 this around.

1 MR. AXELROD: I'm going to publish, Your Honor.

2 THE COURT: All right. They are admitted,

3 Mr. Caraker?

4 MR. CARAKER: They are, Your Honor.

5 Q I know when I was growing up and I did something
6 wrong and someone would always say, well, who did that.

7 And I'd say, oh, it was Mr. Nobody. So I guess Mr.
8 Nobody who opened the drawers?

9 A I have no idea. I don't know Mr. Nobody.

10 Q Now, at some point you met the wife; correct?

11 A Yes, sir.

12 Q Tell the jury, did you arrest her?

13 A No, sir.

14 Q Okay. You don't even know if any drugs were found
15 in the house belonged to Calvin?

16 A No. All I can testify to is what I saw, and he
17 was there. That's all I said.

18 Q And I agree with you. I agree with you.

19 MR. AXELROD: I have nothing further of this
20 witness. Court's indulgence, Your Honor, let me ask
21 Mr. Lucas.

22 (Discussion off the record.)

23 Q Did you ever inventory the bedroom for stuff?

24 A I said already no, sir.

25 Q All right. I was just confirming that.

DWIGHT D. TOMLIN, SR.-REDIRECT BY MR. CARAKER

1 A Okay.

2 MR. AXELROD: Nothing further at this point, Your
3 Honor.

4 THE COURT: Mr. Cracker?

5 MR. CARAKER: Just real quickly.

6 REDIRECT EXAMINATION

7 BY MR. CARAKER:

8 Q Officer Tomlin?

9 A Yes, sir.

10 Q Was Nicole Barr in the house when you got there?

11 A No, sir. I had to call her. And like I said, we
12 couldn't finish watching the video, she pulled right up
13 in front of my car. I called her to the residence, and
14 I'm not going to elaborate on that, but I called her
15 there. She was away from the house when she called us
16 for whatever reason.

17 So I had to call her and tell her there was three
18 officers in front of the house and she can come. And
19 she came and unlocked the door, and we went in and took
20 care of business.

21 Q And then she left; correct?

22 A She didn't leave, she was --

23 MR. AXELROD: Your Honor, he's leading the witness
24 at that point. I would just ask that he be careful in
25 leading.

1 Q What did she do after she let you in?

2 A She went back out to her car because her kids were
3 there, and she kind of drove down the street.

4 MR. CARAKER: Thank you. I have no further
5 questions.

6 THE WITNESS: Yes, sir.

7 RECROSS-EXAMINATION

8 BY MR. AXELROD:

9 Q She was in your presence?

10 A Yes, sir. She was in front of my camera. You
11 watched it before.

12 Q And you had communication with her?

13 A Yes, sir. I called her on the telephone.

14 Q And if you -- were you the one that took out the
15 arrest warrant?

16 A No, sir, I was not.

17 Q Okay, okay. But to your knowledge, the only
18 person arrested that day was Calvin?

19 A Correct. He's the only one that had a warrant.

20 Q For an unrelated matter?

21 A Correct.

22 MR. AXELROD: Thank you.

23 MR. CARAKER: Nothing further, Your Honor.

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

25 THE WITNESS: Thank you.

ANITA STANLEY-DIRECT BY MR. CARAKER

1 (Witness excused.)

2 MR. AXELROD: Your Honor, I have no objection if
3 the officer has to go somewhere, we could release him.

4 THE COURT: Mr. Caraker, you need him?

5 MR. CARAKER: Not at this time, Your Honor. May
6 he be excused from the subpoena.

7 THE COURT: He may be excused at this time.

8 MR. CARAKER: Thank you, Your Honor. Your Honor,
9 with the Court's indulgence at this time I would like
10 to call a witness out of order, Ms. Anita Stanley.

11 THE COURT: All right.

12 ANITA STANLEY, after being duly sworn, testified
13 as follows:

14 THE CLERK: Speak into the microphone, state your
15 full name and spell your last name.

16 THE WITNESS: Anita Stanley, S-T-A-N-L-E-Y.

17 DIRECT EXAMINATION

18 BY MR. CARAKER:

19 Q Good afternoon, Ms. Stanley. How are you?

20 A I'm fine, thank you.

21 Q Would you please tell the jury where you're
22 employed.

23 A I'm the general manager with Go Fast Scooters.

24 Q And what type of business is that?

25 A It's dealing with moped rentals, golf cart

1 rentals. We also do sales, service.

2 Q So sometimes you rent them, sometimes you sell
3 them?

4 A Yes.

5 Q Is that right? Did there ever come a time,
6 Ms. Stanley, when you sold a moped or a scooter to the
7 Defendant, Calvin Barr?

8 A Yes.

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

10 THE COURT: Yes.

11 (WHEREUPON, State's Exhibit Nos. 11 and 12 were
12 marked for identification only.)

13 Q Ms. Stanley, I'm showing you what's been marked as
14 State's-11 and 12 for identification. Can you please
15 tell the jury if you recognize that.

16 A Yes. These are our typical forms that we do when
17 we sell a bike. We have our scooter purchase sheet,
18 which we always do, and then we always have a
19 customer's copy of their identification. It has to be
20 a driver's license or a moped license. We keep these
21 on file. We also make copies of the certificate of
22 origin which is considered their titles or -- you know,
23 those pretty much is what gives a VIN number for a
24 bike.

25 Q Okay. And as the general manager, are you

ANITA STANLEY-DIRECT BY MR. CARAKER

131

1 familiar with how that document is generated?

2 A Yes, sir.

3 Q Is it the normal course of business at Go Fast to
4 generate a document like that when you sell a scooter?

5 A Yes, sir.

6 Q Is that kept in the normal course of everyday
7 business?

8 A Yes, sir.

9 Q Okay.

10 MR. CARAKER: Your Honor, we'd move 11 and 12 into
11 evidence.

12 MR. AXELROD: No objections.

13 THE COURT: Without objection.

14 (WHEREUPON, State's Exhibit Nos. 11 and 12 were
15 admitted in evidence.)

16 Q If you look at State's-12, is that basically a
17 bill of sale?

18 A This is not a bill of sale. This is considered
19 the scooter purchase sheet. We have another form that
20 we do use a lot of times when we don't have a
21 certificate of origin. Say, for instance, if it's a
22 bike that we've gotten if somebody comes in and sells a
23 bike, first of all, our main thing is we call to Myrtle
24 Beach police, make sure it's not a stolen bike. Okay,
25 if we don't have a certificate of origin, then we will

1 issue a bill of sale, which we could get that from the
2 motor departments.

3 Q And I know you probably went into this earlier,
4 and I apologize, what type of documentation do you
5 request from a buyer when you sell a scooter?

6 A They have to have a driver's license or a moped
7 license.

8 Q And did the Defendant supply a driver's license to
9 you in that transaction?

10 A Yes.

11 Q And is it attached to that piece of paper?

12 A Yes, it is.

13 Q And what's the address on the driver's license?

14 A On the driver's license, here it is, Maple
15 Street, Myrtle Beach, South Carolina, 29577.

16 Q When was that transaction done?

17 A This one here was done July 18th of 2014.

18 Q Okay.

19 MR. CARAKER: May I publish to the jury, Your
20 Honor?

21 THE COURT: Yes. All right, Mr. Caraker, you can
22 proceed as the jury reviews that.

23 MR. CARAKER: Thank you, Your Honor.

24 Q And State's-11 which is in evidence, could you
25 tell the jury again what that is.

ANITA STANLEY-CROSS BY MR. AXELROD

133

1 A That's a certificate of origin. Pretty much it's
2 considered as a title, okay. It can -- what it has is
3 for the particular bike that we sold, it has its VIN
4 number, it has the horsepower to it, it has the total
5 weight, and it has the type of bike that it is.

6 Q Okay. And according to that document, what is the
7 VIN number?

8 A The VIN number is L9NT as in Tom, E as in Edward,
9 A as in Apple, C as in Charlie, T as in Tom, 9E as in
10 Edward, 1004173. And it's a 2014.

11 Q Thank you.

12 MR. CARAKER: That's all the questions I have.
13 Please answer any questions Mr. Axelrod has.

14 CROSS-EXAMINATION

15 BY MR. AXELROD:

16 Q You take a driver's license or an ID card or
17 something, moped license, you would sell it to them?

18 A It has to be a driver's license or a moped
19 license.

20 Q So if I came in off the street without any license
21 of any type, you wouldn't sell me a vehicle?

22 A No, sir.

23 Q Okay, okay. And have you ever used the licenses
24 to go find people later when you maybe had to repossess
25 it or something?

1 A We've actually get a -- we have their address.
2 The only way that we have to do a repossession is if we
3 do an in-house financing. Then that way if they do an
4 in-house financing, pretty much basically if they miss
5 their payments, that gives us the ability to go and do
6 any repos.

7 Q And have you done that in the past?

8 A Oh, yes, sir.

9 Q And do you use the address provided on the
10 driver's license as an example?

11 A Yes, sir.

12 Q Have you ever had the opportunity when you had an
13 address on a driver's license that it wasn't the actual
14 address where they were living at?

15 A I've come where they've moved, and I've went and
16 we have located the customer. And we have went and
17 secured our property.

18 Q So, in essence, sometimes people could have a
19 driver's license, and they move and they just don't
20 change their address, they might move somewhere else?

21 A Yes.

22 Q So the driver's license, I believe, was issued in
23 April of 2014; does that sound correct to you?

24 A I believe so, yes, sir.

25 Q Okay. And then, so April of 2014, Mr. Barr is

ANITA STANLEY-CROSS BY MR. AXELROD

1 telling DMV that that's where he lived; correct?

2 A Yes, sir.

3 Q Okay. But after that we don't know whether he
4 actually lived there; do we?

5 A Well, like I said, it wasn't a -- it wasn't an
6 in-house financed, so we have just his ID that he
7 provided with us, his driver's license with that
8 address.

9 Q But you have run into situations where people have
10 an address, and maybe they moved and just don't change
11 it?

12 A Yes, sir.

13 Q It's common; isn't it?

14 A I'm not going to say very common. Well, in Myrtle
15 Beach you do have a lot of transients but, you know...

16 Q So you really don't know if Calvin Barr lived at
17 the address on his driver's license?

18 A Calvin Barr has actually been a customer of ours
19 for several times. I do -- that was the one record
20 that I just pulled from the '14, but I do have a
21 current record from this year as well.

22 MR. AXELROD: Okay. Thank you.

23 MR. CARAKER: Nothing further, Your Honor. Please
24 excuse her.

25 THE COURT: All right.

1 MR. AXELROD: No objection.

2 THE COURT: You're released from your subpoena.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 MR. AXELROD: May we approach, Your Honor.

6 (WHEREUPON, a bench conference was held off the
7 record in the presence of the jury but out of the
8 hearing of the jury.)

9 (WHEREUPON, State's Exhibit Nos. 13 to 28 were
10 marked for identification only.)

11 MR. CARAKER: Your Honor, we'd call Officer
12 Thackray to the stand.

13 THE COURT: There you go.

14 STEPHEN THACKRAY, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please state your full name and spell
17 your last name.

18 THE WITNESS: Thackray, T-H-A-C-K-R-A-Y.

19 DIRECT EXAMINATION

20 BY MR. CARAKER:

21 Q Good afternoon, Officer Thackray.

22 A How are you, sir?

23 Q I'm good. How are you?

24 A Good.

25 Q Where are you employed, sir?

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 A City of Myrtle Beach Police Department.

2 Q How long have you been there?

3 A Just over eight years.

4 Q And what is your current duty designation?

5 A My current assignment is assigned to the
6 waterfront division which is Ocean Boulevard,
7 supervisor down there.

8 Q Okay. And in August of 2014, what was your duty
9 designation at that time?

10 A August the 14th I was in the street crimes unit
11 which is a vice unit, deals with drugs, prostitution,
12 armed robberies, things of that nature.

13 Q And when you were in the street crimes unit, did
14 you deal with -- you said, drugs, prostitution -- did
15 you do that on a daily basis?

16 A Yes, sir.

17 Q Did you become familiar through training and
18 experience as to how drugs are bought and sold at
19 street level?

20 A Yes, sir.

21 Q And even beyond --

22 A Yes.

23 Q -- street level? Did you become familiar with how
24 they are packaged?

25 A Yes, sir.

1 Q And how they are stored?

2 A Yes, sir.

3 Q And even with respect to some things, how they are
4 manufactured?

5 A Yes.

6 Q Are there -- in your training and experience, are
7 there differences between what you would expect to find
8 a dealer having as opposed to a user?

9 A Yes.

10 Q Or an addict?

11 A Yes, sir.

12 Q Did there come a time in August of 2014 where you
13 came to be at the Defendant's residence?

14 A Yes, sir.

15 Q Please tell us how you came to be there.

16 A Excuse me. I was called by Officer Tomlin and the
17 supervisor at the time. He explained to me that he was
18 there for an unrelated incident. He had seen things
19 that he believed to be indicative of narcotics. As my
20 job title at the time gave me more experience and more
21 time to investigate things like that, he called me to
22 the scene. He pointed out the drawer that was just
23 below the TV. There was a jar with a sum of currency
24 like this, numerous small plastic baggies that were
25 black with gold skulls on them, and the scale on top of

1 the -- on top of the drawers there.

2 Q All right. And did you actually go to the scene
3 yourself and check these things out?

4 A Yes, sir.

5 Q Okay. Showing you what's been marked as State's-5
6 in evidence --

7 A Yes.

8 Q -- do you recognize that?

9 A Yes, sir. This is the front portion of the front
10 door of the residence. On the upper right-hand corner
11 of the door was a closed circuit camera.

12 Q Okay. And did you obtain a search warrant for the
13 residence?

14 A Yes, I did.

15 Q Did you get that from a judge or someone who's
16 authorized to serve --

17 A Yes, sir.

18 Q To sign a search warrant?

19 A Yes, sir.

20 Q Did you relay this information to that person when
21 you got the search warrant?

22 A Yes, sir.

23 Q All right. In your training --

24 MR. AXELROD: Your Honor, I would just like to
25 renew my objection to the search warrant.

1 THE COURT: All right. Go ahead.

2 Q Officer Thackray, in your training and experience,
3 when you have baggies with gold skulls, money, scales
4 and a closed circuit video camera on the front porch,
5 does that indicate anything to you?

6 A That there's some sort of drug sales in that
7 residence coming from that residence.

8 Q Okay. I'm showing you what's been marked as
9 State's-1, 2, 4, and then 13 through 28 inclusive.
10 Could you please take a look at those and tell me if
11 you recognize them.

12 A Yes, sir.

13 Q And what do those photographs depict?

14 A The bedroom, the back room and items found at the
15 Defendant's residence at Maple.

16 Q Okay. Do they fairly and accurately represent the
17 scene as it was that day?

18 A Yes, sir.

19 MR. CARAKER: Your Honor, may I move these into
20 evidence.

21 MR. AXELROD: No objection, sir.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit Nos. 13 to 28 were
24 admitted in evidence.)

25 MR. CARAKER: May I publish to the jury, Your

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 Honor?

2 THE COURT: Yes.

3 MR. CARAKER: And have the witness step down?

4 THE COURT: Yes, sir.

5 Q Now, we've already seen, Officer Thackray,

6 State's-2.

7 A Yes.

8 Q What does this depict?

9 A The rear bedroom of the residence.

10 Q As far as you know, is that where the Defendant
11 was found?

12 A Yes, sir.

13 Q Is this the condition of the room when you got
14 there initially?

15 A Yes, sir.

16 Q The condition of the dresser drawers when you got
17 there initially?

18 A Yes, sir.

19 Q I'm also showing you what's State's-1 in evidence.
20 What does this depict?

21 A The top drawer of these two white chest of drawers
22 that the pillows were sitting on it.

23 Q Now, I think we might have gotten a little bit of
24 ahead of ourselves earlier, and there was some
25 discussion of somebody lying about opening a drawer.

1 In order to collect evidence, didn't you have to open
2 the drawer?

3 A Yes, sir.

4 Q In order to properly photograph and document that
5 evidence, didn't you have to open the drawer?

6 A Sure did.

7 Q And did you do that before or after you got the
8 search warrant?

9 A That was after the search warrant.

10 Q Okay. And State's-4?

11 A This is just a closer up picture of this drawer
12 open and of the -- the corner of the drawer with the
13 handful of currency there.

14 Q Now, these have gotten a little out of order, and
15 I apologize, in between the two of us. State's-13.

16 A These are bags of marijuana that were seized from
17 the residence.

18 Q And State's-14?

19 A This is a microwave that was in the back room
20 laundry room where the majority of the narcotics were
21 located. This little square here in the middle looks
22 like a wet nap you'd get after dinner when your hands
23 are all dirty. It's a field test kit for cocaine that
24 we used to test this plate that was -- it was inside
25 the microwave.

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 Q And why did you test a plate inside the microwave?

2 A This microwave was separate from the microwave
3 that was -- there was a separate microwave in the
4 kitchen where you would expect to find a microwave.
5 This one was in the rear of the house with a white
6 residue all over it.

7 Often times -- there are several different
8 methods, but if you mix cocaine and baking soda, water,
9 and there might be some other things, and I'm not an
10 expert on making crack cocaine, but you mix those
11 components together. And you cook them down, whether
12 it's in the microwave or on the stove. And the water
13 evaporates, and take the powder cocaine and turn it
14 into crack cocaine.

15 Q And was that found in proximity to the drugs?

16 A Yeah. It was in the same little back room.

17 Q Okay. And State's-15.

18 A This was the inside of a black lockbox that was
19 located in the same back room. There is tin foil and
20 this little baggy here and Jane's -- the little wax
21 papers or little wax bags that contain the heroin.
22 Other with the scissors and the tin foil and the spoon,
23 all these used for proportioning out. The razor blade,
24 they were separating and proportioning the powder.

25 Q And also, is there -- there's some Ziplock baggies

1 in there; is there not?

2 A Yes, sir. These small Ziplock baggies down here,
3 they're inch by an inch, inch by a half inch. And they
4 are marked with -- the black background marked with the
5 gold skull.

6 Q Is that the same type of baggy with the same logo
7 and the same size that you found in the Defendant's
8 bedroom?

9 A In the bedroom on top of the currency.

10 Q Okay.

11 MR. AXELROD: Objection, Your Honor. I don't
12 think we've established that it's this Defendant's
13 bedroom. The Defendant was there.

14 THE COURT: Well, you can ask him about that,
15 Mr. Axelrod.

16 Q Where you found the Defendant?

17 A Where the Defendant was.

18 Q And one more thing. That business card next to
19 the money?

20 A Yes, sir. It's Go Fast Rentals where the witness
21 who just spoke, where she was employed. And it's got
22 the address there, 609 South Kings Highway in Myrtle
23 Beach.

24 Q So that's the business card to the place where the
25 Defendant bought the moped in July?

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

145

1 A Correct.

2 Q Found with the drugs?

3 A Correct.

4 Q And if I can get you to talk about State's-16.

5 A This is a close-up of the wet nap I was -- that I
6 was referring to. And this blue here is the sheets of
7 the white light pink, off-white color, when it comes in
8 touch with the cocaine or cocaine base or the crack
9 cocaine or the powdered cocaine, it turns that bright
10 blue there. And that was off the plate that was inside
11 the microwave.

12 Q And if I can get you to talk about 17 and 18.

13 A These were both found at the location. And this
14 is just an overhead view of -- I know it says the --
15 it's crushed red pepper. You can see it's fully dry,
16 uncooked rice.

17 Often times individuals who are transporting
18 heroin will put it inside rice the same way you'd put
19 rice inside a salt shaker that you keep outside at an
20 outdoor restaurant, because it absorbs the moisture and
21 keeps the salt from caking up. It's the same general
22 idea, it keeps the power heroin from, you know, getting
23 all cakey and absorbs the moisture.

24 Q And getting back to what you testified earlier, is
25 that one of those things that you would expect to find

1 at the dealer's house as opposed to an addict's house?

2 A Yes, sir.

3 MR. AXELROD: Objection, Your Honor. That calls
4 for speculation really.

5 MR. CARAKER: Your Honor, he's relying on this
6 training and experience. This is what he did everyday.

7 THE COURT: I'll allow the question.

8 THE WITNESS: Yes, sir. In my experience, heroin
9 being what it is, most users will, when they get a bag
10 or binge or however they want to call it, they use it,
11 transporting any more than that is usually unheard of.
12 The user gets ahold of it, they want to use it. It's a
13 pretty powerful drug and it's highly addictive, so when
14 they get ahold of it they want to use it.

15 Q Okay. And how many bindles or bags or slips of
16 heroin did you actually find?

17 A I believe 25. I believe 25. I'm sorry, ma'am.

18 Q And is each bindle or bag considered to be a
19 dosage unit?

20 A Yes. One hit or use or...

21 Q So potentially that's enough to get 25 people
22 high?

23 A Correct.

24 Q All right. And if I can get you to talk about
25 State's-19.

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 A This here is the lockbox again. These little
2 folded up, we call them bags of heroin, they're little
3 wax papers that are folded up around the heroin and
4 then blown together. This here, the small black scale,
5 that little wedger. There was two scales about that
6 big for weighing out narcotics. I'm sorry, ma'am.

7 Q And State's-20.

8 A Again, the inside of a lockbox. This bag here
9 with the apple or a cherry, whatever that is on it,
10 contains the bags or the doses of the heroin. You can
11 see them, they are all folded together and packed down
12 in there. This white residue all over, it's that white
13 to show that it was tested positive for the presence of
14 cocaine, whether it was the powdered cocaine or parts
15 of crack cocaine.

16 Q And State's-22, is this a little bit better
17 picture of the bindles of heroin?

18 A Yeah, that's a little bit closer up. The ones
19 that are here in the baggies, and that's a little
20 closer up.

21 Q And State's-23, what is that a picture of?

22 A That is a close-up picture of the small -- with
23 the small plastic baggies that were in the lockbox as
24 well as in that chest of drawers and on the TV in the
25 bedroom.

1 Q Couple more, I promise.

2 A Okay.

3 Q State's-26.

4 A This bag here, the bag of white powder that did
5 test positive for the presence of cocaine.

6 Q And State's-28.

7 A That's the currency laid out on the bed after we
8 pulled it out of the drawer.

9 Q Thank you, Officer Thackray.

10 A Yes, sir.

11 Q Please go on the witness stand, I apologize, yes.
12 I apologize, those were in order on my computer, and
13 they have gotten out of order.

14 A That's all right.

15 Q I apologize for the painstaking going through them
16 one by one. And Officer Thackray, in your training and
17 experience in dealing with drugs every day, are you
18 familiar with the street value of drugs?

19 A For the most part.

20 Q Given what you found at the scene, can you come to
21 a rough guesstimate as to the value of the drugs that
22 you found.

23 MR. AXELROD: Your Honor, he's asking for
24 speculation.

25 THE COURT: I would sustain his objection. That's

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 just speculation. Sometimes I hear people testify as
2 to what drugs are on the street, and I wonder which
3 street it is. You know, it's just subjective. Just
4 don't go there.

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

6 Q Do you know how much money was found?

7 A I left the report in the chair.

8 Q If I get a copy of the report, will that refresh
9 your recollection?

10 A Yes, sir. \$1996.

11 Q And there's been some question earlier by Defense
12 counsel as to whether Nicole Barr was arrested. She
13 was not arrested; correct?

14 A Correct.

15 Q Why not?

16 A She's the one who called us to the scene, she was
17 not --

18 MR. AXELROD: Your Honor, I think he's asking for
19 hearsay now again.

20 MR. CARAKER: As to why he was arrested?

21 THE COURT: He said she called him, I haven't
22 heard anything yet. He just asked him why he didn't
23 arrest her.

24 Q Why wasn't she arrested?

25 A She was not on-scene when officers arrived. They

1 are the ones that called her there, and she came to the
2 scene.

3 Q Okay. She was the original complainant is why?

4 A She was the complainant, as far as I know, yes,
5 sir.

6 Q On some level, with regard to arresting her, as
7 the complainant is she entitled to a little bit of the
8 benefit of the doubt?

9 A Yes, sir. In that case, if we arrested the
10 complainant, then no one would want to call us if there
11 were drugs being sold out of their house. Her calling
12 to me says that she doesn't want it in the house, for
13 us to arrest --

14 MR. AXELROD: Objection, Your Honor, it's calling
15 for speculation once again.

16 THE COURT: That is speculation. Let's just move
17 on, okay.

18 MR. CARAKER: Thank you, Your Honor. Thank you, I
19 have no further questions.

20 THE COURT: All right, Mr. Axelrod.

21 MR. CARAKER: Please answer any questions
22 Mr. Axelrod has.

23 CROSS-EXAMINATION

24 BY MR. AXELROD:

25 Q So what your testimony is today is that if I

STEPHEN THACKRAY-CROSS BY MR. AXELROD

1 commit a murder, and I call the police up and say,
2 Calvin committed the murder, because I called you're
3 not going to arrest me?

4 A I didn't say that.

5 Q Well, you did. You've given her deference, you're
6 given her -- because she called -- whatever the call
7 was, you're saying because she called, therefore, she
8 can't be guilty?

9 A She couldn't be.

10 Q You're a mind reader; right?

11 A No, sir.

12 Q Okay. Have you ever heard of other people selling
13 drugs out of other people's houses?

14 A It could happen.

15 Q Excuse me?

16 A I said yes, it could happen.

17 Q Does it happen?

18 A Yes.

19 Q Okay. That's your training and experience, you
20 can rely on that?

21 A (Nodding.)

22 Q Pictures. Looking at State's-15, why do you wear
23 gloves -- is that your hands?

24 A Yes.

25 Q Why do you wear gloves?

1 A To stop myself from touching either the cocaine or
2 the heroin because it can be absorbed through the skin.

3 Q Or what else? Is it to protect the integrity of
4 the crime scene?

5 A Yes.

6 Q Do they teach you that?

7 A Yes.

8 Q Okay. Did you bring with you the results of the
9 fingerprint tests that you ran?

10 A There were no prints found.

11 Q Did you run prints?

12 A No.

13 Q And this is a metal box?

14 A I believe so. I believe it is, yes.

15 Q So you arrest Calvin because Nicole says -- what
16 happens if Nicole was just mad at Calvin and said, he's
17 selling dope, could she have been lying to you?

18 A She could.

19 Q But you relied on that; didn't you?

20 A Yes.

21 Q And you didn't bother to take any fingerprints,
22 DNA samples?

23 A No.

24 Q Absolutely nothing. In fact, well, could it --
25 could Nicole have been selling the drugs just as much

STEPHEN THACKRAY-CROSS BY MR. AXELROD

1 as Calvin could have been selling the drugs, based on
2 your information other than the phone call she gave
3 you?

4 A Yes.

5 Q Okay. And did you ask Nicole if she had roommates
6 that lived there?

7 A I did not.

8 Q Did you ask her if she had roommates that stayed
9 there?

10 A I did not.

11 Q If she did have roommates that stayed there, could
12 it be possible it might have been their drugs?

13 A Could have been possible.

14 Q When you arrested Calvin, was there any drugs on
15 him?

16 A I didn't arrest Calvin.

17 Q When he was arrested, was there any drugs on him?

18 A I don't believe so.

19 MR. AXELROD: Thank you. That's it.

20 THE COURT: Mr. Caraker, anything further?

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

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

23 (Witness excused.)

24 THE COURT: All right, ladies and gentlemen, it's

25 5:15. I try to stop between five and 5:30 every day, I

1 (WHEREUPON, State's Exhibit Nos. 29 and 30 were
2 marked for identification only.)

3 (WHEREUPON, the jury came into open court at
4 approximately 9:24 a.m.)

5 THE COURT: All right. Looks like we have
6 everyone back in this morning. All right,
7 Mr. Kurlowski, Mr. Ropp have something for you this
8 morning?

9 THE FOREPERSON: Yes. Thank you very much.

10 THE COURT: Everything you needed. Okay, if you
11 need anything else, just let us know. Mr. Caraker?

12 MR. CARAKER: Thank you, Your Honor. We recall
13 Officer Thackray.

14 THE COURT: All right. You remain under oath.

15 THE WITNESS: Yes, sir.

16 STEPHEN THACKRAY, after being previously sworn,
17 testified as follows:

18 MR. CARAKER: Thank you, Your Honor. May it
19 please the Court.

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. CARAKER:

23 Q Good morning, Officer Thackray.

24 A Good morning.

25 Q Just to kind of pick up where we left off

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 yesterday and remind the jury, were you the officer
2 that got the search warrant in this case?

3 A Yes, sir.

4 Q And were you the officer that found the drugs in
5 this case?

6 A Yes, sir.

7 Q Okay. And specifically, let's talk about each
8 one. Did you find the cocaine?

9 A Yes.

10 Q And did you find the heroin?

11 A Yes.

12 Q And did you find the marijuana?

13 A Yes.

14 Q Okay. With regards to the marijuana, let's start
15 with that first, what did you do once you found the
16 marijuana and documented it, what did you do with it?

17 A After I found the marijuana I documented it, I
18 collected it, secured all the drugs at the same time in
19 the patrol car, took them up to the police department
20 and secured them in property and evidence in the
21 locker.

22 Q Okay. Did you fill out any paperwork when you
23 took it to the police department?

24 A For the marijuana it's a voucher that says I
25 dropped it with property and evidence to link the chain

1 of custody from me to them for that. Then we --

2 Q Is that -- I'm sorry, go ahead.

3 A For the heroin and the cocaine, it's filled out in
4 a SLED best packet, the State Law Enforcement Division,
5 has a packet that is filled out for all narcotics. And
6 they're dropped in there and sealed, fill out a
7 voucher, put it in property and evidence, and it's sent
8 to them for analysis.

9 Q Okay. And when you say you put it into property
10 and evidence, is that a secured facility?

11 A Yeah. It's a locker that once it's in there, it's
12 locked, it's secured, and only the property and
13 evidence technicians have access to it.

14 Q And is that at the police department?

15 A Yes, sir.

16 Q It's under lock and key?

17 A Yes, sir.

18 Q And did you do that according to an established
19 set of procedures?

20 A Yes.

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

22 THE COURT: Yes, sir.

23 (WHEREUPON, State's Exhibit No. 31 was marked for
24 identification only.)

25 Q I'm showing you what's been previously marked as

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 State's-31 for identification. Can you tell me what
2 that is.

3 A This is the envelope and the -- of the marijuana
4 that was dropped into property and evidence.

5 Q Okay. And is that in the original packaging where
6 you found it?

7 A No, sir. It was originally found in plastic
8 baggies. And if it remains in the plastic baggies, it
9 is a plant, it will start to grow mold and deteriorate.
10 So it's placed in a paper that will let it breathe.

11 Q Sort of kind of destroys the integrity of it if
12 it's in plastic too long?

13 A Correct. And it will start growing mold spores
14 and break down.

15 Q All right. Thank you.

16 MR. AXELROD: Mr. Caraker, may I look at that bag
17 while you're still going on?

18 MR. CARAKER: Absolutely.

19 MR. AXELROD: I was just looking at it.

20 Q And with regard to the cocaine and heroin, you
21 said you put it in a best kit?

22 A Yes, sir.

23 Q What's the purpose of a best kit?

24 A The best packet is a kit from SLED from the State
25 Law Enforcement Division, secured in that and sent to

1 SLED for analysis to say it is what we suspect it to
2 be.

3 Q All right.

4 (WHEREUPON, State's Exhibit No. 32 was marked for
5 identification only.)

6 Q I'm showing you what's previously marked as
7 State's-32 for identification. Can you tell me if you
8 recognize that.

9 A Yes, sir. This is the best packet here. This
10 envelope within this plastic is the envelope that I
11 filled out and sent to SLED containing the heroin and
12 the cocaine.

13 Q Okay. Does that paperwork bear your signature?

14 A Yes, sir. Right down here (indicating).

15 Q Okay. And these blue stripes, I guess, these blue
16 things on the edging, what's the purpose for those?

17 A If you try to tamper with it, they become
18 distorted. Same general principal on like a bank bag,
19 when they drop the money, it's sealed to where if
20 someone tries to tamper with it, it's quite apparent.

21 Q Okay. All right. And is this the same heroin and
22 cocaine that you seized from the Defendant's residence?

23 A Yes.

24 Q And with regard to the marijuana, I apologize if I
25 didn't ask before, is that the same marijuana that you

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 seized from the Defendant's residence?

2 A Yes.

3 (WHEREUPON, State's Exhibit No. 33 was marked for
4 identification only.)

5 Q All right. Officer Thackray, I'm showing you
6 what's been previously marked as State's-33 for
7 identification. Can you open that up and tell me what
8 that is, please.

9 A This is a bag containing all the smaller baggies
10 with the gold skulls that were located in the
11 residence.

12 Q Okay. Now, this evidence envelope is marked,
13 baggies in drawer, slash, money. Where was -- can you
14 tell the jury where exactly that was located.

15 A As illustrated in the photographs, it was in the
16 bedroom where the Defendant was arrested out of, in the
17 two white drawers that were just below the television.

18 Q Thank you.

19 (WHEREUPON, State's Exhibit No. 34 was marked for
20 identification only.)

21 Q Officer Thackray, I'm showing you what's
22 previously been marked as State's-34 for
23 identification. Can you please open that and tell me
24 what's in there.

25 A This is the lockbox that was containing the same

1 baggies as in the previous evidence, the black digital
2 scale, the container of rice that is used to transport
3 the heroin, little rubber bands that are often used
4 when the heroin is packaged in the wax papers to hold
5 them all together, little rubber bands that almost look
6 like the ones you put on one of your kids' braces, a
7 business card from Go Fast Scooters, some razor blades,
8 tin foil, and some white residue and baggies.

9 Q And what's this item here?

10 A That's a scale.

11 Q That's a scale too. All right. And this item?

12 A Is a scale as well.

13 Q A scale. And just to be clear, that business card
14 is from, you said, Go Fast Scooters?

15 A Yes, sir.

16 Q That's the same scooter company that sold the
17 Defendant a scooter in July just a couple weeks before
18 this incident?

19 A Yes, sir.

20 (WHEREUPON, State's Exhibit No. 35 was marked for
21 identification only.)

22 Q Officer Thackray, I'm showing you what's been
23 previously marked as State's-35 for identification.
24 Can you please open that and tell me what that is.

25 A Yes. This is the glass and fork and spoon that

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 were located -- I believe we showed yesterday in the
2 picture of the microwave that were separate from the
3 microwave in the kitchen. They were all covered in a
4 white residue that did test positive for the presence
5 of cocaine in the bottom of the glass.

6 Q And what if any significance did you assign to
7 those items?

8 A As I said yesterday, the -- in a vessel like this
9 mixing the cocaine and baking soda and water, I believe
10 there's other ways to do it, I've never actually done
11 it myself, hook it down and evaporate the water out,
12 and it turns the powder cocaine into crack cocaine.

13 (WHEREUPON, State's Exhibit No. 36 was marked for
14 identification only.)

15 Q And I show you what's been previously marked as
16 State's-36 for identification. Can you open that and
17 tell me what that is, please.

18 A It's another black digital scale, opens up. This
19 was located in the bedroom. It was still in its box
20 that had been partially torn open. It appears to be
21 almost brand new.

22 Q Okay. Thank you.

23 (WHEREUPON, State's Exhibit No. 37 was marked for
24 identification only.)

25 Q And finally with State's-37 for identification,

1 would you please tell me what that is.

2 A This is all the packaging of the plastic bags that
3 were there. These Ziploc baggies that the marijuana
4 was in that we emptied it out of to preserve it and
5 keep it from growing mold, other plastic baggies that
6 were all used in the packaging of the narcotics.

7 Q All right. Is there anything left over in those
8 bags at all?

9 A Some of them have little flakes of what looks like
10 to be marijuana.

11 Q And all of these items, were these all items
12 seized out of the Defendant's residence?

13 A Yes, sir.

14 Q And did you drop all these items into your secured
15 evidence drop?

16 A Yes, sir.

17 Q While you had them in your possession, did you
18 alter them or tamper with them in any way?

19 A No, sir.

20 Q Did you add anything to them or take anything from
21 them?

22 A Just a small amount to test.

23 Q And you have to do that to test it; right?

24 A Yeah. Do a presumptive test to say what we
25 believe it is.

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 Q I show you what's been marked previously as
2 State's-29 for identification. You can tell me if you
3 recognize that.

4 A Yes, sir.

5 Q What is that?

6 A This is a picture of the other bedroom in the
7 two-bedroom home, set of bunk beds.

8 Q Okay.

9 A Kids clothing and --

10 Q Did you take that photograph?

11 A Yes, sir.

12 Q Does it fairly and accurately represent that room
13 as it was on that day?

14 A Yes, sir.

15 MR. CARAKER: May I move this into evidence, Your
16 Honor?

17 MR. AXELROD: May I see it first. Without
18 objection.

19 MR. CARAKER: May I publish it to the jury, Your
20 Honor.

21 THE COURT: Yes.

22 (WHEREUPON, State's Exhibit No. 29 was admitted in
23 evidence.)

24 Q And you were in the house that day; correct?

25 A Yes, sir.

1 Q And we saw photographs yesterday of the
2 Defendant's bedroom?

3 A Yes.

4 Q Is this the only other bedroom in the house?

5 A Yes, sir.

6 MR. CARAKER: Court's indulgence for a moment,
7 please, Your Honor. I have no further questions.
8 Please answer any questions Mr. Axelrod has.

9 MR. AXELROD: If it please the Court, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. AXELROD:

12 Q Did you find any drugs on Calvin?

13 A I did not.

14 Q Did you find any drugs in the room where Calvin
15 was?

16 A I did not.

17 Q Did you find Calvin's fingerprints on this bag,
18 Exhibit State's-37?

19 A Did not.

20 MR. AXELROD: Everybody was wearing gloves, should
21 I wear gloves?

22 MR. CARAKER: I've got a whole box here if you
23 would like.

24 MR. AXELROD: No.

25 Q Did you find Calvin's fingerprints on this?

STEPHEN THACKRAY-REDIRECT BY MR. CARAKER

1 A No, sir.

2 Q Could you have tested for fingerprints?

3 A Could have.

4 Q Did you find Calvin's fingerprints on this box?

5 A No, sir.

6 Q Could you have tested for fingerprints?

7 A Yes.

8 Q Did you?

9 A That one was tested.

10 Q His fingerprints weren't on it?

11 A Correct.

12 Q Did you test this for fingerprints?

13 A No.

14 Q Could you have?

15 A Yes.

16 Q Is that a yes?

17 A Yes.

18 Q She has to record that.

19 MR. AXELROD: That's all.

20 MR. CARAKER: Briefly.

21 REDIRECT EXAMINATION

22 BY MR. CARAKER:

23 Q Officer Thackray, why not test the empty bags for
24 fingerprints?

25 A They're containing the marijuana or the drugs.

1 The bags themselves are, I've been told, very difficult
2 to get prints from.

3 MR. AXELROD: Your Honor, I did not go into that
4 on cross, I skipped that.

5 THE COURT: No, you didn't. Yes, you did, you
6 talked about the fingerprints. Go ahead, Mr. Caraker.

7 Q Could the bags be described as kind of crinkly?

8 A Yes, sir.

9 Q Can you get fingerprints off of a crinkly surface?

10 A I've never tried, but I've been told it's very
11 difficult.

12 Q With regard to the box?

13 A Yes.

14 Q You said it was tested?

15 A Yes.

16 Q And you didn't find his fingerprints?

17 A Right.

18 Q Find any fingerprints?

19 A I believe there was one found, and nothing came
20 back on it.

21 Q So it doesn't necessarily mean he never touched
22 it, you just couldn't find a viable print?

23 A Correct.

24 Q In your experience, every time you touch something
25 do you leave a perfect fingerprint on it?

STEPHEN THACKRAY-RE CROSS BY MR. AXELROD

1 A No, sir.

2 Q And TV sort of perpetuates that you do --

3 MR. AXELROD: Your Honor, he's leading the
4 witness. I would object.

5 THE COURT: Rephrase your question.

6 MR. CARAKER: Thank you, Your Honor.

7 Q Every time you touch something, do you leave a
8 viable print?

9 A No, sir.

10 Q When you touch things, do your prints get smudged?

11 A Most of the time. It's very difficult. The same
12 way when you are fingerprinted or someone is
13 fingerprinted for any reason, you have to roll the
14 finger over to get the entire fingerprint. Just to
15 touch something and drag your fingers just a little bit
16 will smudge them to where they can't be lifted.

17 Q Not easy; is it?

18 A No, sir.

19 MR. CARAKER: No further questions.

20 RE CROSS-EXAMINATION

21 BY MR. AXELROD:

22 Q When we spoke about the fingerprints, I never
23 asked you about the bags; did I, if you remember? Do
24 you remember?

25 A No. I'm not sure which evidence you asked me

1 about.

2 Q Okay. Now, let's go to the black box. You can
3 still get partial prints; can you not?

4 A I believe so, yes.

5 Q Do you believe so, or have you been trained?

6 A I do not lift fingerprints, no.

7 Q Have you ever been trained in fingerprint anything
8 in your years of experience?

9 A Yes.

10 Q Okay. Can you get partial prints?

11 A Partially, yes.

12 Q And with a partial print, do you have Calvin's
13 prints?

14 A Yes.

15 Q So with a partial print, you could have possibly
16 determined that it was his?

17 A Possibly.

18 Q Okay. And on this, right now I'm holding this;
19 are my fingerprints on this box?

20 A Yes.

21 Q So would it be fair to say that when someone holds
22 this box, they are going to have prints on it?

23 A They could.

24 Q And when you fingerprinted and tested for
25 fingerprints, the only print that came back was

STEPHEN THACKRAY-RE CROSS BY MR. AXELROD

1 somebody else's fingerprint?

2 A Yes.

3 Q Now, glass, is it a good substance to get a print
4 off of?

5 A It can be.

6 Q Why didn't you test it?

7 A I don't know.

8 MR. AXELROD: No further.

9 THE COURT: Anything further?

10 MR. CARAKER: One more.

11 THE COURT: Sure.

12 REDIRECT EXAMINATION

13 BY MR. CARAKER:

14 Q Those items were in his house; correct?

15 A Correct.

16 MR. CARAKER: Thank you.

17 RE CROSS-EXAMINATION

18 BY MR. AXELROD:

19 Q But you didn't test for prints; did you?

20 A Correct.

21 MR. AXELROD: Thank you.

22 THE COURT: All right --

23 MR. AXELROD: I have one further, Your Honor.

24 Q How many people lived in that house?

25 A To my knowledge, it was the Defendant and his

1 girlfriend and some children.

2 Q That's all?

3 A To my knowledge, yes.

4 Q Do you know if he lived there part-time,
5 full-time?

6 A I don't know.

7 MR. AXELROD: Nothing further.

8 THE COURT: You may step down, thank you.

9 THE WITNESS: Thank you, sir.

10 (Witness excused.)

11 THE COURT: Witness.

12 MR. CARAKER: We call Malinda Shadoan from Myrtle
13 Beach Police Department.

14 MALINDA S. SHADOAN, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please state your full name and spell
17 your last name.

18 THE WITNESS: Malinda Sue Shadoan, S-H-A-D-O-A-N.

19 DIRECT EXAMINATION

20 BY MR. CARAKER:

21 Q Good morning.

22 A Good morning.

23 Q How are you doing?

24 A Good, how are you?

25 Q I'm good, thanks. Ms. Shadoan, with whom are you

MALINDA S. SHADOAN-DIRECT BY MR. CARAKER

1 employed?

2 A The City of Myrtle Beach.

3 Q And what do you do there?

4 A I'm the property and evidence technician.

5 Q In your job description as the property and
6 evidence technician, can you sort of elaborate on that
7 and tell the jury what it is exactly that you do.

8 A I process all the evidence and found property that
9 comes in through our city, whether it's by officers or
10 citizens. I put a sticker on that that will manage
11 exactly where it goes in our facility, and then I house
12 it and secure it in a locked building.

13 Q When you say you put a sticker on it, is that a
14 unique sticker?

15 A It is. It has a bar code especially with a little
16 unique number that's associated with each piece of
17 evidence.

18 Q And as part of your job there, does that involve
19 taking in drug evidence and items related to drug
20 evidence?

21 A Yes, sir.

22 Q Were you performing this job in August of 2014?

23 A I was.

24 Q And did you have occasion to take in some evidence
25 related to this case with Calvin Barr?

1 A Yes, sir.

2 Q Okay.

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

4 THE COURT: Yes.

5 Q I'm showing you what's been previously marked as
6 State's-31 for identification. Can you tell me what
7 that is, please.

8 A This would be group three out of this case number.
9 And it's approximately 190.4 grams of marijuana.

10 Q And where did you get that from?

11 A I probably -- let me just see here if I can look.
12 Do you mind me referring to the notes? That was group
13 three. Looks like Corporal Thackray put it into the
14 jail drug drop in which then I picked it up from.

15 Q And is that jail drug drop a secure container?

16 A Yes. It's a one way in, and then I'm the only one
17 that's got the key to that.

18 Q Okay. And what did you do with this when you got
19 it out of the jail drug box?

20 A I made sure that the voucher was correct, put the
21 label on there, and then stored it into the drug vault
22 that I have in my room.

23 Q Okay. If something hadn't been correct, would you
24 have tried to rectify that?

25 A Absolutely.

MALINDA S. SHADOAN-DIRECT BY MR. CARAKER

1 Q I'm showing you what's been marked as State's-32
2 for identification; do you recognize this?

3 A Yes, sir.

4 Q Okay. And what is that?

5 A This is a SLED drug best packet that the officers
6 would put any other form of drug except for marijuana
7 inside.

8 Q Okay. And where did you get that from?

9 A I got this also from the drug drop.

10 Q And does that also have a unique number that you
11 assigned it?

12 A It does.

13 Q And what did you do with this once you got it?

14 A I put the label on there and then housed it around
15 the same area in the drug vault.

16 Q Okay. Now, with regard to this, is there another
17 step in the process besides what you have to do with
18 marijuana?

19 A Yes. It then gets requested for drug testing, and
20 I have to take it to SLED which is located in Columbia,
21 South Carolina.

22 Q Is that something that you personally did?

23 A I did.

24 Q So it didn't go through any other hands, just
25 yours?

1 A Correct.

2 Q I'll show you State's-33 for identification. Can
3 you tell me what that is, please.

4 A This looks like they were the baggies that were in
5 the drawer.

6 Q And does it also have its own unique number?

7 A It does.

8 Q Okay. And where did you get that from?

9 A I got this one, let me see here. Yeah, this one
10 was in a locker that was also secured. The drugs go in
11 a drug drop, and then the other items that are not
12 drugs go into an actual locker that is secured as well.

13 Q Okay. And do the officers have keys to that, or
14 just the evidence custodian?

15 A No. As soon as you lock it, it's locked shut.
16 And then I'm the only one that's got a unique key for
17 it.

18 Q And what did you do with this once you got it?

19 A I went and processed it and put it in a, what's
20 called a banker's box. It's not in the drug vault, but
21 it is still in my secured area.

22 Q Has it remained there since?

23 A Yes.

24 Q I'll show you what's been marked as State's-34 for
25 identification. Tell me what that is, please.

MALINDA S. SHADOAN-DIRECT BY MR. CARAKER

1 A I wouldn't know what would be inside other than
2 what it says. So at this point it said it was the
3 lockbox with the different -- looks like the drug
4 paraphernalia that was inside of it.

5 Q Okay. And where did you get that item from?

6 A That was also in that secured locker.

7 Q And did you assign it a unique number as well?

8 A I did.

9 Q And has that been in storage --

10 A Yes.

11 Q -- in your --

12 A In my custody.

13 Q -- locked evidence locker?

14 A Correct, correct.

15 Q All right. I show you what's been marked as
16 State's-35; do you recognize that?

17 A Yes.

18 Q And what is that?

19 A This would be the glass with the residue, the fork
20 and the sharps container and the spoon with the residue
21 as well.

22 Q And where did you get that?

23 A And that would be grouped for item three. That
24 was along with all of the rest of it.

25 Q Okay. In that same secured --

1 A In that same locker, yes.

2 Q And did you assign it a unique number?

3 A I did.

4 Q And has it been locked in your secured facility
5 since?

6 A Yes. In the same banker box as the other two.

7 Q Okay. And I'll show you State's-36 for
8 identification.

9 A Right.

10 Q What is that?

11 A This would be the scale.

12 Q And where did you get that from?

13 A That was in the same little locker.

14 Q Okay. And did you assign it a unique number?

15 A I did.

16 Q And has it been in your custody in a secured
17 facility since?

18 A It has.

19 Q And I'll show you State's-37 for identification.

20 Can you identify that, please.

21 A Yes. It states it's the empty bags, it was group
22 four, item four.

23 Q And where did you get that from?

24 A Same locker.

25 Q And did you assign it a unique number?

MALINDA S. SHADOAN-DIRECT BY MR. CARAKER

1 A I did.

2 Q And has it been in your care and custody in a
3 controlled, locked environment since?

4 A It has.

5 Q Thank you.

6 A You're welcome.

7 Q Did there come a time when someone signed the
8 marijuana evidence --

9 A Yes.

10 Q -- out?

11 A Yes.

12 Q Who did that?

13 A That would be Officer Jason Shumpert.

14 Q And you have a record of that?

15 A I do. It's our chain of custody. He has to sign
16 it by signature, and he gets it from me. I sign it out
17 and give it to him, and he signs it as well.

18 Q Okay. And with regard to all of those items while
19 they were in your care and custody, did you alter them
20 or tamper with them in any way other than to mark them
21 as evidence?

22 A Absolutely not.

23 Q And was there any evidence that any of those
24 things had been tampered with?

25 A No. We make sure that nothing had been tampered,

1 and it all has the secure evidence tape on it before we
2 even try to process it.

3 Q What would you do if it appeared that someone had
4 tampered with some of that evidence?

5 A We would contact the officer immediately and let
6 him know that that was going on, and more than likely
7 it would have been that officer either had not put that
8 tape on it or had not put it on correctly.

9 Q And all this was in tact; is that correct?

10 A Correct.

11 MR. CARAKER: No further questions. Please answer
12 any questions from Mr. Axelrod.

13 CROSS-EXAMINATION

14 BY MR. AXELROD:

15 Q Good morning, Malinda.

16 A Good morning.

17 Q How are you?

18 A Good, how are you.

19 Q Let me ask you a question.

20 A Sure.

21 Q Why do you wear gloves?

22 A So that none of my DNA or fingerprints get on
23 anything.

24 Q Did you see -- you saw each of these -- did you
25 see any of these items before you took control, or they

MALINDA S. SHADOAN-CROSS BY MR. AXELROD

1 just were already in the bags?

2 A They were already in the bags.

3 Q Okay.

4 A Right.

5 Q Is this the first time you're seeing them?

6 A Yes.

7 Q Why would they put a glass into something like
8 that?

9 A It might have been for fingerprint purposes.

10 Q Okay. And in actuality, you don't know whose
11 drugs these were?

12 A No. I don't know anything about the --

13 Q You just know what it is?

14 A Correct.

15 MR. AXELROD: Nothing further.

16 THE WITNESS: Okay.

17 MR. CARAKER: Nothing further, Your Honor.

18 THE COURT: You may step down, Ms. Shadoan.

19 THE WITNESS: Thank you, Your Honor.

20 (Witness excused.)

21 MR. CARAKER: Your Honor, we call Officer Jason
22 Shumpert.

23 THE COURT: Will you need Ms. Shadoan further?

24 MR. CARAKER: No. If she may be released, we have
25 no objection.

1 MR. AXELROD: No objection, Your Honor.

2 THE COURT: You're released from your subpoena,
3 Ms. Shadoan.

4 MS. SHADOAN: Thank you.

5 JASON SHUMPERT, after being duly sworn, testified
6 as follows:

7 THE CLERK: State your full name and spell your
8 last name.

9 THE WITNESS: Yes, ma'am. My name is Jason
10 Shumpert, and that's S-H-U-M-P-E-R-T.

11 MR. CARAKER: If it please the Court, Your Honor.

12 THE COURT: Yes.

13 DIRECT EXAMINATION

14 BY MR. CARAKER:

15 Q Good morning, Officer Shumpert.

16 A Good morning.

17 Q How are you?

18 A Good.

19 Q With whom are you employed, sir?

20 A I'm with the City of Myrtle Beach Police
21 Department.

22 Q And how long have you been there?

23 A Five years.

24 Q What is your duty designation at this point?

25 A I am assigned to gang task force.

JASON SHUMPERT-DIRECT BY MR. CARAKER

1 Q The what is it?

2 A Gang task force.

3 Q Gang task force. And what are some of your daily
4 duties in that duty assignment?

5 A That entails with keeping up with our documented
6 gang members and our families, relatives, such of that
7 nature.

8 Q Okay. In addition to your normal daily duties,
9 are you also certified as a marijuana analyst?

10 A Yes, sir.

11 Q Do you have to get certified to do that?

12 A Yes, sir. Through SLED.

13 Q Okay. Can you tell the jury how that comes to be,
14 what's the certification process?

15 A The certification process is, it's a two-day
16 course. You go up to SLED, and the first day is they
17 put you in the lab and you test all the marijuana,
18 sample marijuana they have. And the second day you
19 take a written test on what you've learned.

20 Q And do you have to take a test?

21 A Yes, sir. Two forms. The actual testing of the
22 marijuana, and then the testing -- the written test.

23 Q Okay. What do you have to score on that test to
24 be certified?

25 A 90 percent or above.

1 Q All right. And were you so certified in July
2 of 2015?

3 A Yes, sir.

4 MR. CARAKER: Your Honor, I'd move to have Officer
5 Shumpert admitted as a certified marijuana analyst.

6 MR. AXELROD: No objection.

7 THE COURT: Without objection he's admitted. He
8 may give an opinion.

9 Q Did you test some material in relation to this
10 case with Calvin Barr?

11 A Yes, sir, I did.

12 Q What was that material?

13 A It was marijuana.

14 Q I'm showing you what's been previously marked as
15 State's-31 for identification. Can you tell me what
16 that is, please.

17 A Yes, sir. That is the envelope I received from
18 our property and evidence technician, Malinda Shadoan,
19 to be tested.

20 Q Okay. And what sort of test did you perform on
21 that?

22 A I performed a Duquenois-Levine test, which is a
23 chemical test provided through SLED. And if I may look
24 at my notes, it is called a Duquenois reagent. We
25 first add a few drops of that to the sample of

JASON SHUMPERT-DIRECT BY MR. CARAKER

184

1 marijuana we pull from the package I received. We had
2 a few drops of that. Then after a few seconds, just
3 enough to dampen it, I add the concentrated hydraulic
4 acid. And what that does is that will react with -- if
5 there's THC in it, it will react and turn it to a
6 purplish, bluish color.

7 And once that happens, I will add solution C,
8 which is the chloroform, which will make sort of like
9 an eye. It will separate it and make like an actual
10 eye shape to it, which did happen in the testing of
11 this.

12 Also, there's a microscopic test performed. And
13 what you're looking for in that is three types of hairs
14 which is called the cystolithic hair, commonly called
15 bear claw; unicellular hair, simple hairs is what
16 that's commonly called; and multicellular hairs which
17 is a glandular hair. And all three of those were found
18 in this marijuana that was given to me to test.

19 Q And you said it tested positive for THC; what is
20 that exactly?

21 A It's the active ingredient found in marijuana,
22 tetrahydrocannabinol.

23 Q Okay.

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

25 THE COURT: Yes.

1 (WHEREUPON, State's Exhibit No. 38 was marked for
2 identification only.)

3 Q I'm showing you what's been marked as State's-38
4 for identification.

5 A Yes, sir.

6 Q Do you recognize that?

7 A Yes, sir.

8 Q What is that?

9 A That is the findings of my result from testing the
10 marijuana.

11 Q Did you generate that report?

12 A Yes, sir, I did.

13 Q Was that done at or near the time that you tested
14 the marijuana?

15 A Yes, sir, soon as the completion of testing.

16 Q And is it the normal practice of the Myrtle Beach
17 Police Department analyst to produce that report --

18 A Yes, sir.

19 Q -- in reference to a case?

20 A Yes, sir.

21 Q And is that the type of thing that you keep in
22 your normal business activity --

23 A Yes, sir.

24 Q -- as a marijuana analyst?

25 A Yes, sir.

JASON SHUMPERT-DIRECT BY MR. CARAKER

1 Q Thank you.

2 MR. CARAKER: Your Honor, I'd move State's-38 into
3 evidence.

4 MR. AXELROD: No objection.

5 THE COURT: Without objection it's admitted.

6 (WHEREUPON, State's Exhibit No. 38 was admitted in
7 evidence.)

8 Q Would you please tell me the results of your test.

9 A Yes, sir. Items of evidence was a green plant
10 material inside the manila envelope. I found that
11 there was 196.6 grams of marijuana which converts to
12 6.93 ounces. And it tested positive chemically and
13 microscopic test.

14 Q Okay. And you said 6.93 ounces?

15 A Yes, sir.

16 Q In your training and experience, are you familiar
17 with the threshold weight for possession with intent to
18 distribute marijuana?

19 A Yes, sir.

20 MR. AXELROD: Your Honor, I would object to that
21 because I believe --

22 THE COURT: Just ask him what the weight he
23 obtained was.

24 MR. CARAKER: Yes, sir.

25 THE COURT: I think you did, but...

1 MR. CARAKER: Okay.

2 Q Officer Shumpert, was that the extent of your
3 involvement in this matter?

4 A Yes, sir. As soon as I conducted the tests, I
5 returned the evidence back to the property and evidence
6 technician.

7 Q All right.

8 MR. CARAKER: Your Honor, we'd move State's-31
9 into evidence.

10 MR. AXELROD: No objection.

11 THE COURT: Without objection.

12 (WHEREUPON, State's Exhibit No. 31 was admitted in
13 evidence.)

14 Q And when you got that out of evidence from
15 Malinda, did it appear to have been tampered with in
16 any way?

17 A No, sir.

18 Q And what did you do when you finished with it?

19 A Whenever I'm finished testing it, I'll put an
20 evidence strip on, sign and date it and return it.

21 MR. CARAKER: I have no further questions.

22 CROSS-EXAMINATION

23 BY MR. AXELROD:

24 Q Good morning, Jason.

25 A Good morning.

JASON SHUMPERT-CROSS BY MR. AXELROD

1 Q Do you know what the marijuana was found in this
2 case?

3 A No, sir.

4 Q Do you know whose marijuana it was?

5 A Only information I have is who it says it was.

6 Q But you don't know that; do you?

7 A Only information I have is whose it said it is.

8 Q But you yourself have no personal information,
9 knowledge of whose marijuana that was?

10 A No, sir, I do not.

11 Q You're relying on what somebody else said to you?

12 A Yes, sir.

13 MR. AXELROD: Thank you.

14 MR. CARAKER: Nothing further, Your Honor.

15 THE COURT: You may step down.

16 (Witness excused.)

17 THE COURT: Thank you for your testimony. Any
18 further need for this officer?

19 MR. CARAKER: No, sir, he may be excused.

20 MR. AXELROD: No objection, Your Honor.

21 THE COURT: You're released from your subpoena,
22 thank you.

23 MR. CARAKER: Your Honor, we call Jackie Davis
24 from SLED.

25 THE COURT: Okay.

1 JACKIE DAVIS, after being duly sworn, testified as
2 follows:

3 THE CLERK: Please state your full name, and spell
4 your last name.

5 THE WITNESS: My name is Jackie Davis, D-A-V-I-S.

6 MR. CARAKER: May it please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. CARAKER:

10 Q Good morning, Mrs. Davis.

11 A Good morning.

12 Q How are you?

13 A Good. How are you?

14 Q Good. How was your drive up?

15 A It was good.

16 Q A little early this morning?

17 A Yes, it was.

18 Q Okay. How long have you been at SLED?

19 A Since February of 2015.

20 Q And what do you do there?

21 A I am a forensic technician. We package, transfer
22 and log in the evidence for criminal cases.

23 Q Okay. And is that done in accordance with an
24 established set of procedures?

25 A Yes.

JACKIE DAVIS-DIRECT BY MR. CARAKER

190

1 Q And do y'all receive special training on that?

2 A Yes.

3 Q Rather extensive, I imagine?

4 A Yes.

5 Q Did there come a time where you took in some
6 evidence in this matter, State verse Calvin Barr?

7 A Yes.

8 Q I'm showing you what's been previously marked as
9 State's-32 for identification. Can you please tell me
10 if you recognize that.

11 A I do.

12 Q And what is that?

13 A This is what we call a best packet. It contains
14 drugs.

15 Q Okay. And did you intake that into SLED?

16 A I did.

17 Q Okay. Who did you get that from?

18 A I got it from Malinda Shadoan, Shadoan, with the
19 Myrtle Beach Police Department.

20 Q Okay. And when she brought it to you and you took
21 it in from her, can you describe the process, tell us
22 what you did with that.

23 A We get it from her, we open the envelope. We do
24 not open this package, it's sealed. And we look to
25 make sure the number given this best packet matches the

1 envelope it's in so everything coincides. And then we
2 put it back in, seal it, and then we log it in as
3 evidence.

4 We take it on the said to contain basis. So
5 whatever the officer has pre-logged as whatever is in
6 here, that's all I know. We take -- I don't analyze it
7 or anything.

8 Q You're there as sort of a custodial type person?

9 A Correct.

10 Q For that evidence?

11 A Yes.

12 Q Okay. Once you take it in, do you assign any sort
13 of number or anything to it?

14 A We do. We give it a case number throughout SLED,
15 and we put it on the paperwork and give it back to the
16 officer. And then we give it this affixed seal which
17 is on here right now.

18 Q Okay. And is that a unique number?

19 A It is.

20 Q No other piece of evidence has that number?

21 A None.

22 Q And is the number to which you're referring, is it
23 this number --

24 A That is correct.

25 Q -- here that begins L1509963?

JACKIE DAVIS-DIRECT BY MR. CARAKER

1 A Correct.

2 Q Number one?

3 A Number one.

4 Q Okay. And once you assign a number, you got it
5 from Ms. Shadoan you assigned it the number, you made
6 sure everything was in tact; then what happens to it?

7 A Then we put it back into the drug evidence intake.

8 Q Is that a secure facility?

9 A It is.

10 Q Under lock and key?

11 A Lock and key. There's a camera and there's two
12 locks, and then we lock drugs up by themselves.

13 Q When you took that in, and I believe you might
14 have said this earlier, and I apologize, did you check
15 for any evidence of tampering?

16 A When we open it up, we make sure that it has been
17 sealed, and we take it on a said to contain. As long
18 as there's no openings we don't question it.

19 Q And when you had the evidence in your care and
20 custody, did you alter or tamper with it in any way?

21 A No.

22 Q And once you place it into the drug drop there at
23 SLED, do you have anything else to do with it at that
24 point?

25 A No. It's there until the forensic scientist

1 requests it, and then we will pull it and give it to
2 them.

3 Q Okay. So it's stored in a secured area?

4 A It is stored in a secured area. And like I said,
5 drugs are in an area all by themselves, and they are
6 locked as well as the room is locked at night. So they
7 are double locked.

8 Q Okay. And outside of being the evidence custodian
9 for these particular drugs at SLED, was that the sum
10 total of your involvement in this matter?

11 A Yes.

12 Q Okay.

13 MR. CARAKER: I have no further questions.

14 CROSS-EXAMINATION

15 BY MR. AXELROD:

16 Q Do you know if the drugs you took in were
17 Calvin's?

18 A I have no idea.

19 MR. AXELROD: Nothing further.

20 MR. CARAKER: I have nothing further.

21 THE COURT: You may step down. Thank you.

22 (Witness excused.)

23 MR. CARAKER: May she be released from her
24 subpoena, Your Honor?

25 MR. AXELROD: No objection.

LAWRENCE ZIVKOVICH-DIRECT BY MR. CARAKER

1 THE COURT: Without objection, she may be released
2 from her subpoena.

3 MR. CARAKER: Thank you. Your Honor, we call
4 Lawrence Zivkovich to the stand, please.

5 LAWRENCE ZIVKOVICH, after being duly sworn,
6 testified as follows:

7 THE CLERK: Please be seated. State your name and
8 spell your last name.

9 THE WITNESS: Lawrence Zivkovich,
10 Z-I-V-K-O-V-I-C-H.

11 DIRECT EXAMINATION

12 BY MR. CARAKER:

13 Q Good morning, Mr. Zivkovich, how are you?

14 A Pretty good.

15 Q Okay. With whom are you employed, sir?

16 A I'm employed with South Carolina Law Enforcement
17 Division, commonly known as SLED.

18 Q And what do you do there?

19 A I am a forensic scientist, and my specialty is
20 drug analysis.

21 Q Do you have to have some special education and
22 training to do that job?

23 A Yes, sir. It requires a degree in chemistry and a
24 certain amount of hours in the chemistry field. And
25 when you're hired on at SLED, you go through a

1 six-month course that trains you in the analysis of
2 drug identification. And I've also been trained at
3 seminars from the drug enforcement administration.

4 Q Had you undergone all that training?

5 A Yes, sir.

6 Q Have you ever been qualified to testify as an
7 expert before?

8 A I have.

9 Q Do you know about how many times?

10 A Approximately 34.

11 MR. CARAKER: Your Honor, we would move to have
12 Mr. Zivkovich admitted as an expert in the field of
13 forensic drug analysis.

14 MR. AXELROD: No objection.

15 THE COURT: Without objection, he is admitted and
16 may give an opinion.

17 MR. CARAKER: Thank you, Your Honor.

18 Q Were you employed as a forensic drug analyst in
19 August of 2015?

20 A I was.

21 Q Okay. And did you test the material related to
22 this case of State versus Calvin Barr?

23 A I did.

24 MR. CARAKER: May I approach, Your Honor.

25 THE COURT: Yes.

LAWRENCE ZIVKOVICH-DIRECT BY MR. CARAKER

1 Q I'm showing you what's been previously marked as
2 State's-32 for identification. Can you please tell me
3 if you recognize that.

4 A Yes, sir. It's SLED evidence for case L15-09963,
5 that I worked, since my initials and date are on the
6 bottom of the E-seal bag.

7 Q And where did you get that from?

8 A I received it from our evidence log-in area from
9 Jackie Davis.

10 Q Okay. Did you prepare a report, did you do some
11 testing on this material?

12 A I did.

13 Q Did you prepare a report?

14 A Yes, sir.

15 (WHEREUPON, State's Exhibit Nos. 39 and 40 were
16 marked for identification only.)

17 Q Before we get into your report, Mr. Zivkovich, I'm
18 showing you what's been marked as State's-40 for
19 identification. Do you recognize that document?

20 A Yes, sir. It's a SLED internal chain of custody
21 for the case that I have in my hand.

22 Q Are you familiar with how that report is
23 generated?

24 A Yes, sir.

25 Q Is it the regular business practice of SLED to

1 generate that report at or near the time that those
2 events occurred?

3 A It's the items in the report are recorded every
4 time the evidence is transferred electronically. And
5 then upon request, a report like this is generated for
6 whoever is requesting it.

7 Q And is that done in the normal course of business
8 at SLED?

9 A Yes, sir.

10 MR. CARAKER: Your Honor, I would move to admit
11 State's-40 into evidence as a business record.

12 MR. AXELROD: I would object to it, Your Honor. I
13 don't believe he generated that form himself.

14 MR. CARAKER: That's not the rule, Your Honor. He
15 just has to be familiar with how it's generated.

16 THE COURT: He's familiar with it, I'm going to
17 admit it.

18 (WHEREUPON, State's Exhibit No. 40 was admitted in
19 evidence.)

20 Q Could you please recite the internal chain of
21 custody for SLED.

22 A Yes, sir. The evidence was dropped off from the
23 Myrtle Beach Police Department on July 23rd from
24 Malinda Shadoan, I believe the name is, and delivered
25 to Jackie Davis on July 23rd. Jackie Davis then placed

LAWRENCE ZIVKOVICH-DIRECT BY MR. CARAKER

1 the evidence into the intake storage facility. And
2 then on July 24th Jackie picked up the evidence from
3 the drug evidence in storage, and I retrieved the
4 evidence from her.

5 Q Was it at that time that you performed the
6 forensic analysis on the drugs?

7 A I'd have to look at my worksheet to see the date
8 that I actually worked the evidence. I actually worked
9 the evidence on July 28th.

10 Q Okay, all right. I'm showing you what's been
11 previously marked as State's-39 for identification. Do
12 you recognize that?

13 A Yes, sir. It's --

14 MR. AXELROD: Can I see it, please.

15 (Discussion off the record.)

16 Q I apologize for that. Do you recognize that,
17 Mr. Zivkovich?

18 A Yes, sir. This is a report and form A that is
19 contained for -- that I generated for the case
20 L15-09963.

21 Q And you said it's a form A; what is a form A?

22 A It's a legal document generated by SLED that
23 allows the Court to accept the report without the
24 chemist being present if they so wish.

25 Q Unless it's objected to?

1 A That's correct.

2 Q Okay. Can you tell me what kind of analysis you
3 performed on the drugs in that case?

4 A I performed both spot testing and gas spectrometry
5 and mass spectrometry.

6 Q And are the results of that analysis contained in
7 that report?

8 A They are.

9 Q As far as the report goes, could you please tell
10 the Court and the jury what the results of your testing
11 was.

12 A Yes, sir. I found the item -- I found two
13 distinct items in the evidence. The first item, item
14 1.1.1, was a total of 26 glassine bags containing
15 powder substance. I tested 14 of the glassine bags and
16 found them all to contain heroin with a total net
17 weight of 0.22 grams.

18 And then item 1.1.2 was an E-seal bag containing a
19 powder substance, which I found to contain cocaine with
20 a net weight of 0.42 grams.

21 Q Okay. And how many -- did your report state how
22 many grains the heroin was as well?

23 A Yes, sir. The weight of 0.222 grams gives you
24 3.425 grains.

25 Q And that was on 14 of the bags?

LAWRENCE ZIVKOVICH-DIRECT BY MR. CARAKER

1 A Yes, sir.

2 Q Why did you stop at 14?

3 A Our lab policy, we have a limited amount of time.

4 And so if we do find a controlled substance, then we
5 look at the statute and find what the highest charge
6 would be and work up to that, and anything beyond that
7 we don't work.

8 Q Because you've already met that threshold?

9 A That's correct.

10 MR. CARAKER: Your Honor, we would move State's-32
11 into evidence.

12 MR. AXELROD: Your Honor, at this point I don't
13 know if they've established where it's come back from
14 to here at this point. We've established it to SLED.

15 MR. CARAKER: That's all we have to do is get it
16 tested.

17 THE COURT: He's identified it, I'll admit it.

18 MR. CARAKER: Thank you, Your Honor.

19 (WHEREUPON, State's Exhibit No. 32 was admitted in
20 evidence.)

21 MR. CARAKER: Thank you, Your Honor. And Your
22 Honor, we would move State's-39 into evidence, which is
23 the report and the form A.

24 MR. AXELROD: Your Honor, I have a matter of law
25 to take up.

1 MR. CARAKER: Thank you, Your Honor. Your Honor,
2 I believe when we broke I was asking the Court to admit
3 State's-39, the drug report.

4 THE COURT: The drug report?

5 MR. CARAKER: Into evidence.

6 THE COURT: All right. And I think we've
7 discussed that, and that's admitted.

8 (WHEREUPON, State's Exhibit No. 39 was admitted in
9 evidence.)

10 Q Mr. Zivkovich, you have to pardon me, we took a
11 break there, and I just want to make sure that we hit
12 everything before we tried to admit your report.

13 If I can refer you to State's-39 which is in
14 evidence at this point, you performed testing on that
15 material?

16 A That is correct.

17 Q And what did that testing reveal?

18 MR. AXELROD: Your Honor, this has already been
19 asked, fully asked and answered.

20 THE COURT: We took a break. Go ahead,
21 Mr. Caraker.

22 THE WITNESS: I found item 1.1.1 to contain 26
23 glassine bags that contained powder substance. I
24 tested 14 of the bags and found them to contain heroin
25 with a total net weight of 0.222 grams, which is

LAWRENCE ZIVKOVICH-CROSS BY MR. AXELROD

1 equivalent to 3.425 grains.

2 And item 1.1.2 was an e-sealed bag containing
3 powder substance which I found to be cocaine with a net
4 weight of 0.42 grams, which is equivalent to 6.48
5 grains.

6 Q Thanks. And to perform the testing on that
7 material, was that your sole involvement in this
8 matter?

9 A That's correct.

10 Q Okay.

11 MR. CARAKER: Thank you, I have no further
12 questions.

13 THE COURT: All right, Mr. Axelrod.

14 CROSS-EXAMINATION

15 BY MR. AXELROD:

16 Q Good morning, sir.

17 A Good morning.

18 Q You said that there's about 3.425 grains of
19 heroin?

20 A I would have to look at the report, but that
21 sounds right.

22 MR. AXELROD: Your Honor, may we just -- may we
23 staple that, I think it's all -- can we staple it?
24 Mr. Caraker, I stapled your exhibit.

25 Q 3.425 grains?

1 A Yes, sir. It's 3.425 grains.

2 Q Explain to the jury what 3.425 grains -- what
3 could you compare it that the jury might know
4 something; is it line ten Sweet and Low packs? Can you
5 give the jury some kind of idea what 3.425 grains is.

6 A Well, it really is just a weight, and it really
7 just depends on what type of a substance you're talking
8 about. Some substances are more dense than other
9 substances, so it really would depend. I mean, water
10 is more dense than the powder, and lead is more dense
11 than water.

12 Q Okay. Well, could you compare it to, say, like
13 Sweet and Low or something in a Sweet and Low package?

14 A I'm not familiar. I don't use the dietary Sweet
15 and Low packages, but --

16 Q Is 3.425 grains a lot of substance?

17 A It's substance --

18 MR. CARAKER: Your Honor, I believe he's answered
19 that. He said it depends on the substance.

20 THE COURT: I'll let him answer the question.

21 THE WITNESS: Go ahead.

22 Q 3.425 -- how many grains is in a gram?

23 A 15.432.

24 Q Okay. So this is less than half a gram?

25 A Correct.

LAWRENCE ZIVKOVICH-CROSS BY MR. AXELROD

1 Q Okay. And do you know whose -- you don't know
2 whose drugs these are; do you?

3 A No, sir.

4 Q You don't know where they were found?

5 A No, sir.

6 Q You just tested them?

7 A That's correct.

8 Q According to procedures, protocols and your
9 training?

10 A That's correct.

11 MR. AXELROD: That's all.

12 MR. CARAKER: Nothing further, Your Honor.

13 THE COURT: All right. You may step down, thank
14 you very much.

15 (Witness excused.)

16 MR. CARAKER: May he be excused from his subpoena?

17 MR. AXELROD: No objection.

18 THE COURT: Without objection, you're released
19 from your subpoena.

20 MR. ZIVKOVICH: Thank you, sir.

21 MR. CARAKER: May I approach?

22 THE COURT: Yes.

23 MR. CARAKER: Your Honor, so that's the end of the
24 State's testimony. We would move State's-33, 34, 35,
25 36 and 37 into evidence.

1 MR. AXELROD: No objection.

2 THE COURT: Without objection.

3 (WHEREUPON, State's Exhibit Nos. 33 through 37
4 were admitted in evidence.)

5 MR. CARAKER: Your Honor, we would also move
6 State's-30 for identification, a copy of the bond
7 paperwork when this Defendant was arrested on these
8 charges, into evidence. Pursuant to Rule 902 it's
9 under seal, signed by the Clerk of Court. We talked
10 about this pretrial.

11 THE COURT: All right.

12 MR. AXELROD: This is okay, Your Honor.

13 MR. CARAKER: We move State's-30 into evidence.

14 THE COURT: All right. It's admitted.

15 (WHEREUPON, State's Exhibit No. 30 was admitted in
16 evidence.)

17 MR. CARAKER: Thank you. Your Honor, I'm being
18 told we have not moved State's-29 for identification
19 into evidence. I thought we had done so and published
20 it to the jury, I just want to make sure that we did
21 that.

22 THE COURT: I thought we published it.

23 MR. CARAKER: I thought we had, I just want to
24 make sure we cover our bases there.

25 THE COURT: All right. It's admitted.

1 MR. CARAKER: Thank you, sir. Your Honor, with
2 that, the State rests.

3 THE COURT: All right. Then, Mr. Ropp, I'm going
4 to have to take the jury out for another just a few
5 moments, and then we'll bring them back in.

6 (WHEREUPON, the jury exited the courtroom at
7 10:54 a.m.)

8 THE COURT: All right.

9 MR. LUCAS: Thank you, Your Honor. May it please
10 the Court, we do have -- we are going to move for a
11 directed verdict at this point based on we have some
12 case law. But first as you are aware, Your Honor, the
13 Defendant, Mr. Barr, is entitled to a directed verdict.
14 The State failed --

15 THE COURT: I'm not aware of that.

16 MR. LUCAS: We can -- I can provide the case law.

17 THE COURT: I mean, I'm waiting for you to tell
18 knee why, but I'm not aware of that.

19 MR. LUCAS: Okay. According to case law which we
20 have, Your Honor, the Defendant is entitled to a
21 directed verdict when the State fails to prove an
22 element of a crime charged. And in this case, it is
23 possession with intent to distribute, obviously the
24 element being possession. We have to prove that or the
25 State has to prove that.

1 THE COURT: You would agree that there has been
2 testimony to weights that would entitle the State to an
3 inference from which the jury could determine intent to
4 distribute, okay. So what we're talking about is
5 possession.

6 MR. LUCAS: Possession, Your Honor.

7 THE COURT: Okay.

8 MR. LUCAS: And the case I present to you about
9 this is State v. Heath, which is a South Carolina,
10 Supreme Court case. I'll provide that to Your Honor.

11 Your Honor, essentially what -- along with citing
12 the rule for directed verdict there on page one which,
13 I believe, I've highlighted for you, the Court goes on
14 to say that, on page two, mere presence is insufficient
15 to prove constructive possession. In order to prove
16 constructive possession, the State must show that a
17 Defendant had dominion and control or the right to
18 exercise dominion and control over the illegal
19 substance.

20 Further, the State may establish constructive
21 possession by either circumstantial or direct evidence.
22 The Defendant's knowledge and possession may be
23 inferred if the substance was found on the premises
24 under his control.

25 Your Honor, if you go a little further, the bottom

1 of page two, just under where it says, we hold, in that
2 case, Your Honor, Mr. Heath was -- there was a search
3 warrant for the house, Mr. Heath was witnessed at the
4 house. Subject to the search warrant, they found crack
5 cocaine in the recycling bin next to the back door,
6 okay.

7 Now, the State failed to present evidence that
8 other than being at the house that he had any
9 possession whatsoever to those drugs. Now, the State
10 goes on at the bottom of page two there and says that
11 appellant lived in the home where the crack was found.
12 However, the home was owned by appellant's mother. As
13 a result it is arguable that appellant merely had a
14 right to access the area where the crack was found and
15 not actual dominion and control of the property.

16 That being the case, Your Honor, there has been --
17 there's been no testimony other than Officer Tomlin
18 says that Mr. Barr was present when he arrived in the
19 back bedroom, a room separate from where the drugs were
20 found.

21 THE COURT: But other drug paraphernalia or
22 drug -- the testimony indicates that other materials
23 that were associated with drug distribution were found
24 within, if you look at the photographs, within feet of
25 him and in plain view. Okay. Isn't that

1 circumstantial evidence?

2 MR. LUCAS: That is circumstantial evidence, Your
3 Honor. But we would argue that it's not -- it doesn't
4 rise to the level of him having possession, dominion
5 and control.

6 THE COURT: But isn't the rule whether there is a
7 scintilla, whether there is any evidence which the jury
8 may reasonably even infer --

9 MR. LUCAS: Um-hum.

10 THE COURT: -- that he was in possession and
11 control of the drugs found on the premises.

12 MR. LUCAS: Yes, Your Honor. But other than that,
13 Your Honor, okay, say Officer Tomlin testified that he
14 was in the room. Ms. Stanley testified that Calvin
15 provided her an ID card with Maple Street. But
16 then she further testified that she had seen it and
17 it's somewhat common for these addresses to be wrong,
18 she testified to that.

19 THE COURT: It's possible.

20 MR. LUCAS: It's possible. But more importantly
21 was Officer Thackray's testimony. While Officer
22 Thackray testified that the paperwork to the scooter
23 with a picture of the ID card was found in the lockbox
24 which was not near Mr. Barr in the house, was in a back
25 room, Mr. Thackray testified that the drugs may not

1 have even been Defendant's, he admitted to that.

2 THE COURT: How about the fact that he had,
3 through his actions the prior evening, excluded
4 everyone else from the home.

5 MR. LUCAS: Officer Thackray?

6 THE COURT: No. Mr. Barr.

7 MR. LUCAS: Mr. Barr. Yeah, I don't know what
8 testimony there was to that.

9 THE COURT: The girlfriend, wife, whatever she is,
10 who also reported there was narcotics activity going on
11 there. I haven't heard any testimony about who else
12 would have lived there. But she had been excluded from
13 the home and actually had to get the assistance of law
14 enforcement to come back. How about that?

15 MR. LUCAS: Well, there is a point in Officer
16 Thackray's testimony where he goes on to say that while
17 not only they could have been someone else's --

18 THE COURT: I'm talking about Officer Thompson.

19 MR. LUCAS: Officer Tomlin.

20 THE COURT: Tomlin.

21 MR. LUCAS: So, your argument, Your Honor, is
22 that --

23 THE COURT: I mean, he's the only one in the home.

24 MR. LUCAS: Yes.

25 THE COURT: And apparently he's excluded everyone

1 else. The wife, the children are all gone.

2 MR. LUCAS: But, Your Honor, that still, that's --
3 being merely in the home based on Heath is not enough
4 to say that they were his. And it's -- the State has
5 presented nothing to show that it was his.

6 They've established that it was his home, maybe, I
7 mean, that he provided the information. But Heath goes
8 on to say in that last paragraph that even if the
9 person had the right to access the home, that's not
10 enough to overcome the mere presence idea.

11 THE COURT: Well, you know, under your theory you
12 could never charge anyone with possession where they
13 found it in a home. What we have to look at is the
14 other circumstances, the other evidence that would show
15 that or that could be reasonably inferred that it was
16 his drugs.

17 We have the wife, we have the fact that she was
18 excluded, we have the fact that he's in the room where
19 the drug-related materials are within feet of him.
20 There was no one else at the residence, no one. He by
21 his own acts had excluded everybody.

22 Let me hear from you, Mr. Caraker.

23 MR. CARAKER: Thank you, Your Honor. And you
24 know, it is true, this is constructive possession.
25 We've shown that Mr. Barr lived at the house. Not only

1 did he live there in July just a few weeks before, he
2 also lived there in August when this incident happened.
3 It's on his bond paperwork.

4 THE COURT: Where was this -- where were these
5 drugs found?

6 MR. CARAKER: These drugs were in a room by the
7 kitchen.

8 THE COURT: You know, I noticed in Heath they
9 actually said, found in the trash outside the vehicle.

10 MR. CARAKER: Yes, in Heath they were outside of
11 the house.

12 THE COURT: Outside the house.

13 MR. CARAKER: And if these drugs had been in a
14 bucket outside the house, I would have to agree with
15 defense counsel that maybe those aren't Mr. Barr's
16 drugs. But, Your Honor, he is laid up in the master
17 bedroom of that house on the bed. He wasn't just in
18 the room, he was laying in the bed. There's --

19 THE COURT: With no one else there.

20 MR. CARAKER: With no one else there. There is no
21 more private a place than a man's bed in his bedroom.
22 There is no more private a place. The drawers were
23 open. The bags in the open drawer match the bags in
24 the lockbox, same bags. The scooter was purchased from
25 a place where the business card was in the lockbox with

1 the drugs. And that was purchased three weeks prior to
2 this incident. That was at the end of July, and this
3 happened August the 9th. He gave a driver's license
4 that said he lived there. He put -- it's on his bond
5 paperwork with his signature right beside it.

6 Your Honor, the rule, and I'm not telling you
7 anything you don't know, is in the light most favorable
8 to the State, have we made it. We have drawn numerous
9 connections to this drugs to Mr. Barr. He lived there,
10 we are responsible for what goes on in our house. If
11 we don't have dominion and control over our own house,
12 we don't have dominion and control over anything.

13 THE COURT: Well, I've just heard nothing to
14 suggest that there were any other adults --

15 MR. CARAKER: There's been no testimony.

16 THE COURT: -- living there other than the
17 girlfriend wife who reported it, I've heard, and some
18 children.

19 MR. CARAKER: That's the only other indication of
20 who lives there. I believe Tom -- and I may have the
21 ages wrong, but I believe Officer Tomlin said there's a
22 two, three and four-year-old child live in the house
23 with them. That's it.

24 THE COURT: I don't recall that, but that may have
25 been the testimony. But anyway, there were children, I

1 understand?

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

3 MR. AXELROD: Your Honor?

4 THE COURT: One person argues it, Mr. Axelrod.

5 MR. AXELROD: Oh, okay.

6 MR. LUCAS: Your Honor, one thing that makes
7 Heath, you know, directly analogous to this case is the
8 drugs weren't just found in this bucket. While that
9 was the source of the most -- the large part of the
10 drugs were, and that was the source of the argument in
11 this case, there was also, let's see, beginning on page
12 one on the right-hand side.

13 THE COURT: The case says it was found on a car
14 wash mit and a recycling bin.

15 MR. LUCAS: Yes, Your Honor.

16 THE COURT: Outside the bin outside near the back
17 door. It was like outside the house.

18 MR. LUCAS: Yes, Your Honor. But what gave rise
19 to this, much like this case, is that there were -- the
20 police discovered crack cocaine and approximately
21 \$2,500 in cash in the home. In addition, the officers
22 discovered scales and a small crack rock in the house.
23 Further, officers discovered numerous plastic baggies.

24 THE COURT: Correct. But does it say that they
25 found them within -- if you look at the photographs,

1 these drawers are what, two feet from the bed?

2 MR. CARAKER: It looks about that way.

3 THE COURT: Two or three feet from the bed.

4 MR. LUCAS: But there were no drugs in them, in
5 those bags. There were no drugs anywhere near Mr.
6 Barr. In fact, the drugs were found in the laundry
7 room in a pet carrier in the very back.

8 THE COURT: I see.

9 MR. LUCAS: So I just don't see how this case is
10 any different than this Supreme Court case.

11 THE COURT: Well, I see significant differences in
12 them. I think he's distinguishable. I believe if we
13 take the evidence in the light most favorable to the
14 State, there is sufficient evidence on which the jury
15 could reasonably infer that the Defendant was in
16 constructive possession of these drugs. And the amount
17 is not at issue, it's just that he was in possession.

18 MR. LUCAS: Your Honor --

19 THE COURT: I mean, there is nothing to suggest
20 that anybody else is even there. I mean, at least in
21 Heath you got the mother and Lord knows who else living
22 in the house. But the --

23 MR. CARAKER: Yeah. The house was owned by the
24 mother in Heath.

25 MR. LUCAS: Your Honor, I understand the ruling.

1 And I do take exception to the ruling because I think
2 what we're doing is we're more or less asking the jury
3 to speculate as to whether or not Mr. Barr even knew
4 these drugs were there. There's been no testimony that
5 he knew about them, there's no testimony of anything.
6 And, in fact, the testimony that we have says that they
7 may not have been his, they may have been Nicole Barr's
8 who is his wife.

9 THE COURT: Who's testified that or even suggested
10 that they were Ms. Barr's?

11 MR. LUCAS: Officer Thackray.

12 THE COURT: Officer Thackray testified that they
13 were Ms. Barr's?

14 MR. CARAKER: I don't remember that.

15 THE COURT: I don't recall that either. I think
16 the question was it could have possibly been hers, and
17 he said possibly.

18 MR. LUCAS: That's what he said.

19 MR. CARAKER: And he also said that they're not in
20 the habit of arresting complainants for fear that they
21 won't tell police as to illegal activity. That is the
22 fear there, we want people to be able to feel free to
23 call when they see something.

24 MR. LUCAS: But, Your Honor, I mean, obviously if
25 this goes to the jury, I just -- that's a reasonable

1 doubt by itself. But the officer told them that he had
2 no idea --

3 THE COURT: Well, the reasonable doubt is for the
4 jury to determine.

5 MR. LUCAS: I agree.

6 THE COURT: My only question here is whether or
7 not taking the evidence in the light most favorable to
8 the State, whether there's any evidence upon which the
9 jury could base a conviction. And I think that there
10 is; okay?

11 MR. LUCAS: Thank you, Your Honor.

12 THE COURT: All right, let's bring the jury in.

13 MR. AXELROD: Your Honor?

14 THE COURT: Wait a minute, wait a minute. I need
15 to talk to your client about testifying.

16 MR. AXELROD: Yes, sir, Your Honor. Yes, sir,
17 that's what I would like to do at this time, rather
18 than sending the jury in and sending them back. Your
19 Honor, what I would like if we may first, if we could
20 ask the solicitor to identify what convictions -- you
21 can have a seat -- what convictions at all would be
22 admissible. And then I would like to address the
23 prejudicial effect, if any. And when we establish
24 that, then we can speak to my client. But let's see
25 what could come out.

NICOLE F. BARR-DIRECT BY MR. AXELROD

1 do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right, very well. Bring in the
4 jury.

5 THE DEPUTY: Yes, sir.

6 (WHEREUPON, the jury came into open court at
7 approximately 11:59 a.m.)

8 THE COURT: All right. We have our jurors and our
9 alternates in the courtroom. As you've heard, ladies
10 and gentlemen, the State has rested. Now we'll hear
11 from the Defense. Mr. Axelrod?

12 MR. AXELROD: Thank you, Your Honor. At this time
13 we'd call Nicole Barr.

14 NICOLE F. BARR, after being duly sworn, testified
15 as follows:

16 THE CLERK: Please be seated. If you'll state
17 your full name and spell your last name.

18 THE WITNESS: Full name is Nicole Francis Barr.
19 Last name, Barr, B-A-R-R.

20 DIRECT EXAMINATION

21 BY MR. AXELROD:

22 Q Would you like me to pour you some water, are you
23 okay?

24 A Yeah, I'm fine.

25 Q Okay, okay. I'd say past -- good afternoon.

- 1 A Good afternoon.
- 2 Q Do you know Calvin?
- 3 A Yes.
- 4 Q Tell the jury how you know Calvin.
- 5 A He's my husband.
- 6 Q And how long has he been your husband?
- 7 A We were married March 31st, 2014.
- 8 Q Children with Calvin?
- 9 A Yes.
- 10 Q How many?
- 11 A Two.
- 12 Q Tell the jury the names.
- 13 A Calvin, Jr., and then we have Empress Barr.
- 14 Q Empress?
- 15 A Yes. Beautiful.
- 16 Q And were you having marital problems with Calvin
- 17 at some point?
- 18 A Yes.
- 19 Q I guess they call it domestic violence?
- 20 A Yes, absolutely.
- 21 Q And at some point did you call the police about
- 22 the domestic violence?
- 23 A I never called the police, I went to the police.
- 24 I dropped the kids off at a family member's. I went to
- 25 the police department and I talked to one officer, told

NICOLE F. BARR-DIRECT BY MR. AXELROD

1 them when it started, told them how it started, why it
2 would start. And he jumped on it immediately. He said
3 he would get a warrant and try to get him arrested. I
4 left, and I went back to the aunt's house.

5 Q What were the issues about that day?

6 A Women. He had a -- another child a month before
7 my son was born. I was accusing him or I was believing
8 he was cheating, or he would stay there off and on. We
9 weren't really together.

10 Q When you say he would stay there off and on, is
11 that at Maple?

12 A Yes.

13 Q So he was not a full-time resident?

14 A No, never a full-time resident. He was never
15 really home.

16 Q Okay. Now, did anybody else live in that house
17 besides your children?

18 A Absolutely.

19 Q Who?

20 A I had three other children, so I was a single
21 mother. I had two people live there off and on who
22 basically would pay me 30, 40 bucks just to sleep, lay
23 their head at night. One was a dancer, entertainer
24 they would call her. She rented out the room, probably
25 stayed there for about two months off and on. Another

1 was Mike Rogers, he stayed on -- he slept on the living
2 room pull-out sofa.

3 Q Now --

4 A Sorry, I'm nervous.

5 Q Excuse me?

6 A I'm nervous, I'm sorry.

7 Q That's okay. I believe you have understanding
8 that on August the 9th, 2014, police officers came and
9 found a backpack, I'm not sure if it was in the laundry
10 room, at your house?

11 A I'm not sure either. I wasn't aware until after
12 the fact of what they found.

13 Q Okay.

14 A And then...

15 Q Had you seen that backpack before?

16 A I have, I have. It was a while back, but it was
17 during the time of my roommate. But she had left and I
18 haven't heard from her. And later I found out during
19 all of this that she was incarcerated.

20 Q Do you know what for?

21 A Drugs.

22 Q And whose backpack was that?

23 A It was hers. It was her -- that was hers, it was
24 a dog carrier. She had a small dog. I wasn't allowed
25 to have dogs. I told her she had to get one if she

NICOLE F. BARR-DIRECT BY MR. AXELROD

1 wanted to keep it in the house. And it was also a
2 whole bunch of clothes that needed to be sorted
3 through.

4 Q I want to show you what's in evidence as
5 State's-36. Can you tell the jury what that is, if you
6 know.

7 A That's mine. That's for jewelry.

8 Q That's yours?

9 A Yes.

10 Q Explain to the jury why you have a scale.

11 A I met a Thailand lady, she owned a corporation,
12 Yogurt In Love. I don't know if you guys have heard of
13 it. Very delicious yogurt, they were always in
14 competition with Senor Frogs. She taught me to make
15 beaded jewelry out of gold, silver, and I purchased the
16 scale to weigh the gold, to price exactly how much I
17 paid for it, and to how much to charge, whether it was
18 E-bay, Amazon, Facebook, friends, personal, however.

19 But I needed to weigh them to figure out the
20 price. I also bought little baggies to put the beads
21 in to keep track, the right size, organize. And that's
22 how I made extra money on the side. I was a single
23 mom, it was a hobby, a hobby, job, anything to support
24 my kids. And it was hard. It was hard.

25 Q Now, I believe you've given testimony that the

1 backpack contained the drugs belonged to Basheba?

2 A Yes.

3 Q Now, why didn't you tell the police when they
4 arrested Calvin, why didn't you tell the police whose
5 drugs they actually were?

6 A Everybody asks the same question. It's -- I went
7 to the police for help. And I felt like -- when they
8 got to the house they had arrested him -- and I felt
9 like they didn't have enough to hold him to give me and
10 my kids enough time to leave. So when they said they
11 found drugs, I was shocked but at the same time I
12 didn't know how, I didn't know where. But I was just
13 like, oh, it is not mine, because I didn't want to get
14 in jail and had my kids taken.

15 So of course I just threw my hands up basically
16 and just accused it on him, not even knowing that it
17 was the blue backpack until the next day at bond when
18 they described it was in a blue bag inside the dog
19 carrier. And that's when I knew it was Basheba's.

20 And I didn't admit to it then because I was hurt
21 that he had abused me after he married me, and I wanted
22 him to love me like he promised. And I thought that
23 that would just cause him to be in jail a little longer
24 to give me and my family enough time to run so he
25 wouldn't find us.

NICOLE F. BARR-DIRECT BY MR. AXELROD

1 Q Did you withhold that evidence out of anger?

2 A Yes. Sorry.

3 Q That's okay. Were you scared of DSS?

4 A Terrified of DSS.

5 Q Tell the jury why.

6 A There's a police officer that said if I didn't
7 allow them to search my home, he would call DSS and
8 make it a lot difficult for me. I love my kids. I've
9 always been a single mother, I've never had that much
10 help. I don't have a lot of family here, and the
11 family that I do have have their own problems.

12 So when I married Calvin, and this was an extra
13 issue, I was embarrassed because I've always had his
14 back and I felt like he should have mine. And he
15 didn't. But at the time when they found the backpack,
16 like I said, I wanted to leave, I wanted to grab my
17 kids, I wanted to run. And I wanted him to stay in
18 jail, that's all. Just stay in jail, give me enough
19 time to leave so he can't find me and hurt me and my
20 kids, that's all.

21 Once I realized that it was going to escalate to
22 this and that and these charges and these charges, I
23 realized that it would be wrong to let him go to jail
24 for something that's not his. I'm not a mean person,
25 I'm not heartless. It wasn't his, and I can't sit here

1 and say it's his when I know it's not. So I have to be
2 truthful to you guys, I have to be truthful to the
3 judge, I have to be truthful to him. And he doesn't
4 deserve to be here.

5 I called them on domestic violence and that's it.
6 This other, I don't know where it came from. He had
7 nothing to do with it at all.

8 Q Did you --

9 A I'm so sorry.

10 Q Did you ever go to the solicitor's office and tell
11 them?

12 A Yes, I tried. I tried twice. The first time they
13 act like they didn't know what an affidavit was. Oh,
14 I'm sorry, oh, what, who do you need to speak to. Oh,
15 he's busy, I can't get in contact with him. Oh, you
16 have to be a lawyer or attorney.

17 Then I actually spoke to you, this guy right here
18 in the glasses, and he said, oh, nobody's going to
19 leave that much drugs behind and just not come back for
20 it. And I'm like, sir, I'm trying to help the
21 situation here. I'm trying to be honest, he doesn't
22 deserve these charges. And he turned to me, he says, I
23 suggest you talk to his attorney. And he kind of
24 laughed at me.

25 And I walked out in tears because I was trying to

NICOLE F. BARR-CROSS BY MR. CARAKER

1 help my husband, I was trying to help not only my
2 husband but somebody who battered me, and do the right
3 thing. And it wasn't helpful, nothing was helpful.
4 And I don't know what else to do. I'm sorry.

5 Q The drugs were found in a backpack; was it
6 Calvin's backpack?

7 A No.

8 Q Was it Calvin's drugs?

9 A No.

10 Q Your testimony today is truthful?

11 A It is truthful.

12 MR. AXELROD: Answer any questions the solicitor
13 has for you.

14 THE WITNESS: Absolutely.

15 THE COURT: Mr. Caraker.

16 MR. CARAKER: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. CARAKER:

19 Q Your testimony today is truthful?

20 A My testimony is truthful.

21 Q Today?

22 A Yes. It's always been truthful, it just hasn't
23 been told.

24 Q Are you denying that you called the police to
25 your --

1 A No, I never called the cops.

2 Q Are you denying that you contacted the police --

3 A I went to the police.

4 Q -- that day and said -- and gave them information
5 about a narcotics complaint?

6 A Never.

7 Q You didn't tell them --

8 A No drugs.

9 Q -- that you thought Calvin was selling drugs out
10 of your house?

11 A Nope.

12 Q You deny that?

13 A Deny that.

14 Q Okay. Why did they show up at your house that
15 day?

16 A For a CDV. I had a lump on my head. I don't know
17 if you have the pictures, he took photos. I had a lump
18 on my head, a cut on this side of my face, like deep
19 inside my skull. He called the EMS, they came. They
20 thought I had a concussion, but it was only because I
21 had lack of sleep from crying.

22 I called, oh, God, so many domestic violence
23 agencies, and all they could tell me was, I'm full or
24 we have to separate the kids from the adults and the
25 women from the children and this and that. And I just

NICOLE F. BARR-CROSS BY MR. CARAKER

1 couldn't find other options besides calling -- not
2 calling, I'm sorry, contacting the police. And I
3 was -- I didn't want to do that because he's my
4 husband, and who wants to call the police on their
5 husband.

6 Q You finally wound up having to do it?

7 A Yes.

8 Q Some.

9 A Yes.

10 Q But not for drugs?

11 A Not for drugs.

12 Q Not for drugs, all right. So they made that up?

13 A Apparently. Because I didn't call them for drugs.

14 Q Okay. You testified earlier that he just kind of
15 stayed there off and on?

16 A He stayed there off and on, yes.

17 Q Off and on. And you had roommates?

18 A I had roommates, yes.

19 Q One was a dancer?

20 A One was a dancer, her name was Basheba Worrell.

21 Q Does that mean stripper?

22 A Entertainer, stripper, whatever you would like to
23 call her.

24 Q Okay.

25 A That's whatever she does, that's not me.

1 Q Okay. And a guy named Mike Rogers?

2 A Mike Rogers. He is now deceased.

3 Q Were your kids living with you during this period
4 of time?

5 A Absolutely.

6 Q So you just kind of let strippers and other folks
7 stay at your house around your children?

8 A No. Those are people I know. These are people I
9 know. I know these people. I know Sheba because I
10 used to work --

11 Q You'll do anything to support your children?

12 A I'm sorry?

13 Q You'll do anything to support your children?

14 A No.

15 Q That's what you said earlier, you'll do anything
16 to support your children.

17 A Legally. As far as work, side jobs, hobbies,
18 anything that I possibly can legally to support my
19 kids, yes.

20 Q Okay. And I believe you testified earlier that
21 you weren't aware the drugs were found until after the
22 fact?

23 A Yes. They didn't show me, they didn't say, hey,
24 this is what we found.

25 Q And then, a little while later, you said, I

1 couldn't believe it when they said they found drugs?

2 A After they drove off with whatever they had found,
3 one officer says, we found a little bit of marijuana.
4 That's what was told to me.

5 Q That was it, a little bit of --

6 A And I was -- that was the why I was like, wow,
7 that was it. Later you can Google on -- not Google but
8 on P2 Myrtle Beach website, you can look up a person's
9 charges, what they are being held for. That's when I
10 found out it was this and that and this and that. And
11 then at court, I'm just like, oh, crap, they are going
12 to take my kids.

13 So of course I'm even more, wow, like this is --
14 I'm scared, I'm freaking out. You got one cop saying
15 that they are going to call DSS, you got all this --
16 these drugs that's in this backpack. I'm just going to
17 keep my mouth shut. That's what I chose to do. And it
18 was wrong.

19 Q Which officer was going to call DSS on you?

20 A Was a black guy, a really big black guy, bald
21 head. I do not remember his name, it was a while, it
22 was a while back.

23 Q Was it at the scene that day?

24 A It was as I was walking from my -- I had my son.
25 I don't know if I had my son in my arms or I was

1 talking to my daughter or something, and we were
2 walking back and forth waiting for them to come out of
3 the house, and searching.

4 Q Okay.

5 A And one officer was in the car, and there was
6 another officer standing, walking, pacing back and
7 forth waiting as well. And he was also come, he'll say
8 some things to me, he'll walk back to the house, say
9 some things to me. It was just small chat.

10 Q And that's the officer, the larger guy, bald
11 head --

12 A Yes.

13 Q --, that threatened to take your children away?

14 A Yes. Not threatened to take my kids.

15 Q Threatened to call DSS?

16 A Threatened to call DSS, yes.

17 Q The same officer you let in the house with your
18 key?

19 A Yes.

20 Q Okay. When he got there?

21 A Yes. For a CDV.

22 Q Because he had a CDV warrant?

23 A Yes. That's the only thing he went in my house
24 for. I allowed him to go in my house to apprehend my
25 husband who battered me.

NICOLE F. BARR-CROSS BY MR. CARAKER

1 Q Okay.

2 A And that was it.

3 Q And were you still on-scene when plain clothes
4 guys showed up?

5 A Yeah. That was after -- yes, that was after the
6 fact.

7 Q Did you talk to any one of them?

8 A No.

9 Q You didn't say a word to any of them?

10 A I don't remember, no.

11 Q You don't remember, or you didn't talk to them?

12 A I don't remember talking to anybody but the black
13 guy.

14 Q Okay. Was it the big guy with the bald head?

15 A The big guy with the bald head, that was the guy
16 that I was comfortable talking to.

17 Q And answer me this. You were content to let
18 Calvin sit in jail for CDV for a little while; is that
19 correct?

20 A Yes.

21 Q That's what you testified to earlier.

22 A Yes.

23 Q But now, you see what's going on around you here
24 today, now you want to step up and tell the truth?

25 A I've been trying to step up and tell the truth.

1 Nobody would listen, you wouldn't listen to me.

2 Q Did you --

3 A You laughed at me, you laughed in my face when I
4 was trying --

5 Q I laughed?

6 A Yes, you did, you snookered.

7 Q Okay.

8 A That same look you just did, you snookered at me
9 and I tried to fix it. Now you're trying to send an
10 innocent man to jail. It's not right, and I can't
11 allow that. I have to say something.

12 Q Are you done?

13 MR. AXELROD: Your Honor, if he would allow her to
14 finish.

15 THE WITNESS: You're being mean --

16 THE COURT: I think he's trying to allow her to
17 finish, Mr. Axelrod.

18 THE WITNESS: -- for no reason.

19 MR. CARAKER: As long as she needs to.

20 THE COURT: He asked if she was done.

21 THE WITNESS: I'm sorry, Calvin, I'm sorry.

22 Q So just so I can be clear, that day on the scene,
23 about how many officers were around?

24 A I want to say four, five.

25 Q Okay.

NICOLE F. BARR-CROSS BY MR. CARAKER

1 A Six, I don't know. I don't remember, I was
2 focused on three kids, too.

3 Q And then, you didn't know they found anything?

4 A I didn't know they found anything until I --

5 Q You didn't call in there for a narcotics
6 complaint?

7 A No.

8 Q And at what point did you find out, exactly when
9 did you find out that they found a bunch of dope in
10 that house?

11 A Calvin had been gone, they had searched. We had
12 came in, started to straighten up the house. The kids
13 started playing the game, they had to rehook it up.
14 And I looked online, and they had took a couple hours
15 to update the website. And that's when I seen all the
16 charges that were listed.

17 Q And they were false; correct?

18 A They weren't his. The backpack was not his. I
19 didn't know they were in the backpack at the time until
20 at the bond hearing.

21 Q So at that point --

22 A That's when I should have spoke up.

23 Q -- I imagine you ran to the police department, and
24 you said, no, no, no --

25 A That's not what happened.

1 Q -- that is not the Defendant's drugs?

2 A No, I didn't do that.

3 Q You didn't do that; did you?

4 A No, I didn't.

5 Q You didn't contact Officer Dwight Tomlin to tell
6 him that; did you?

7 A No.

8 Q And you didn't contact Stephen Thackray to tell
9 him that; did you?

10 A No.

11 Q And you didn't contact Mark Landi?

12 A I don't know those people.

13 Q And you didn't contact Rob Gillians?

14 A I don't know those people.

15 Q Okay. Did you file a complaint on any of the
16 officers with the police department for unjustly
17 incarcerating Mr. Barr?

18 A No. I went to you for help, because you were the
19 solicitor prosecuting.

20 Q Right.

21 A So I figured that's where I needed to start was
22 with you.

23 Q And we're not an investigative agency.

24 A Okay. I don't know the law, sir. I don't know
25 who to contact, I don't know. I'm 30 years old, I have

NICOLE F. BARR-CROSS BY MR. CARAKER

1 kids. I don't have a college degree, I've been in
2 trouble maybe once in my life. I don't know what and
3 what not to do. I just got scared. I wanted to do the
4 right thing, I tried to do the right thing. Now I'm
5 doing the right thing.

6 I did not admit to it at the bond or before now as
7 far as going up there, trying to -- except for with
8 you, because I wanted him in jail longer than a day for
9 domestic violence to give me and my family time to pack
10 up and go. That's all I needed was a week or something
11 to find another place to live for me and three children
12 to go. That's all I needed.

13 And I felt like he had bond, he had 500 and
14 something dollars to get out for CDV. He was going to
15 beat me then. Soon as he got out he was going to come
16 back and do the same thing. I was scared. So I didn't
17 admit to nothing.

18 But now I'm telling the truth, and he does not
19 deserve to be here at all. I'm begging you to please
20 at least hear what I'm saying now.

21 Q And when did you come to my office?

22 A I came to you, I don't remember the exact date,
23 but I came twice and talked to your secretary. They
24 said you weren't in, and there's -- you can -- no --
25 you're not allowed to sign an affidavit at the Clerk of

1 Court here at all for some reason. I don't know if
2 that's true or not. I don't know if she just told me
3 that because she was new or she didn't know.

4 But I've done that before, I've signed an
5 affidavit here before. I don't remember why, but I did
6 sign an affidavit here before. And then the second
7 time you actually came out, and you pretty much laughed
8 at me.

9 Q I thought you said I did laugh at you?

10 A You did laugh at me. Pretty much, you did. I'm
11 nervous, I'm sorry. What do you want me to be perfect,
12 I'm not perfect, I'm human.

13 Q You testified a minute ago you been in trouble
14 before?

15 A I been in trouble a couple times in my lifetime,
16 yeah, I'm human.

17 Q For what?

18 A Numerous --

19 MR. AXELROD: Your Honor, may we approach for a
20 minute.

21 THE WITNESS: Is that irrelevant, my...

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

25 THE COURT: Send the jury out a minute, Mr. Ropp.

1 Q That's it?

2 A Oh, shoplifting. It was baby clothes what I was,
3 I think I was 17, 18. It was baby clothes. I was with
4 the girl that was shoplifting. I was supposed to be
5 paying her money to get my son clothes. And she was
6 caught and I -- because I was older than she was, I
7 took the fall.

8 Q Okay.

9 MR. CARAKER: I believe that's it, Your Honor.

10 THE COURT: All right, very well.

11 MR. AXELROD: Your Honor, I would submit to the
12 Court, I think, based on new case law that the
13 shoplifting could not come in. And I don't think
14 neither can the possession of marijuana.

15 MR. CARAKER: I'd have to agree with that.

16 THE COURT: All right. Bring them in.

17 (WHEREUPON, the jury came into open court at
18 approximately 12:28 p.m.)

19 THE COURT: All right, proceed.

20 MR. CARAKER: Thank you, Your Honor.

21 Q So I just need to make sure I have the gist of
22 your testimony. You did not call or contact law
23 enforcement on August the 9th, 2014 and tell them
24 Calvin was selling dope out of your house?

25 A No.

1 Q You deny that?

2 A No, I did not do it. I'm not denying it, I did
3 not do it.

4 Q Okay.

5 A That's a fact.

6 Q Okay. And you're saying that, I believe your
7 testimony earlier was police said you had to let them
8 search or they would call DSS?

9 A That's not what I said they said.

10 Q What did you mean?

11 A They said either you're going to do this our way,
12 or you can make this a lot difficult by getting DSS
13 involved. That's what they said.

14 Q What is our way, what does that mean?

15 A I guess getting more police officers and searching
16 the house, which I had no problem with them doing. So
17 I let them. I wasn't about to get DSS come in and take
18 my kids for what reason. As far as I'm concerned,
19 there's nothing in the house.

20 I wasn't scared. I mean, they use that to scare
21 any mother with kids. They always bring up DSS because
22 they know now the law is so messed up, DSS will take
23 your kids for any reason. You can't even whip them
24 anymore, you can't even spank your own children. They
25 take your kids.

1 So they use that tactic, they use it for
2 everything now. Oh, we'll call DSS, we'll call DSS.
3 We'll call DSS. So no need to call DSS, go ahead,
4 search the house, there's nothing there.

5 Q And you were content to let the Defendant sit in
6 jail for a little while because you said you wanted to
7 get away?

8 A That's it.

9 Q Right? But now you're here to right the wrong?

10 A Yes. I tried before, but it didn't work, so I'm
11 here in court testifying.

12 Q Okay. And do you know where the Myrtle Beach
13 Police Department is?

14 A I do. I went there.

15 Q Okay.

16 A To -- for the CDV.

17 Q Okay. But you didn't try to find Officer Tomlin
18 to say that those drugs were not Calvin's?

19 A No, I did not. You keep repeating yourself. You
20 don't need to repeat yourself.

21 Q I'm just trying to make sure I have it straight in
22 my head, that's all.

23 A Right.

24 Q I get confused.

25 A I'm not slow, I'm not stupid, and neither are the

1 jury.

2 Q No. I get confused.

3 A They can understand. I did not contact them at
4 the time because I wanted to get away.

5 MR. CARAKER: I have no further questions, Your
6 Honor.

7 REDIRECT EXAMINATION

8 BY MR. AXELROD:

9 Q On a scale of one to ten, one being the least and
10 ten being the most, how angry were you at Calvin?

11 A I was furious, ten. 22. That's how mad I was.

12 Q The house you lived in, did you own it or did you
13 rent it?

14 A I rented it.

15 Q Did you rent it?

16 A I rented it, yes.

17 Q Did Calvin rent it with you, or did you rent it?

18 A No. His name is nowhere on no bill, no lease, no
19 water, no electricity, no cable, no nothing.

20 Q You pay the bills?

21 A I pay all my bills.

22 Q If these drugs were Calvin's, would you be here
23 today?

24 A No. He would have to do the time. He wanted to
25 do drugs, he would do the time.

1 Q Did you see Calvin at your house with drugs?

2 A Never.

3 Q You tried to tell the solicitor that?

4 A I tried to tell him.

5 Q Was the bookbag Calvin's? And if the drugs were
6 found in the bookbag, were they Calvin's?

7 A No, they were not. I swear on my kids they were
8 not.

9 Q And you had two roommates that lived there, Mike
10 Rogers and Basheba?

11 A Yes.

12 MR. AXELROD: Nothing further.

13 MR. CARAKER: No redirect.

14 THE COURT: You may step down.

15 (Witness excused.)

16 THE COURT: Do you need her any further, Mr.
17 Axelrod?

18 MR. AXELROD: Court's indulgence one second here.
19 Just have a seat right there.

20 (Discussion off the record.)

21 MR. AXELROD: Your Honor, at this time we would
22 rest.

23 THE COURT: Very well.

24 MR. CARAKER: Your Honor, we have four rebuttal
25 witnesses based on Ms. Barr's testimony.

1 THE COURT: Very well. Mr. Ropp, I'm going to let
2 the jury go to lunch now until about 2 o'clock. Would
3 you make sure --

4 THE BAILIFF: What time?

5 THE COURT: Two. Give them an hour and a half,
6 and I can take care of these matters while they're
7 gone; okay?

8 THE BAILIFF: All right.

9 THE COURT: Thank you.

10 (WHEREUPON, the jury exited the courtroom at
11 12:33 p.m.)

12 THE COURT: All right. The Defense has rested.
13 Do we need to do anything?

14 MR. CARAKER: Oh, Your Honor.

15 MR. AXELROD: I have some bookkeeping.

16 MR. CARAKER: Oh, we're going to take care of that
17 first.

18 MR. AXELROD: Your Honor, I would like to renew my
19 motions. I would ask once again that they --

20 THE COURT: Wouldn't you wait until after he's
21 done the rebuttal?

22 MR. AXELROD: I've rested at the State level. I
23 just wanted to --

24 THE COURT: Well, he's already told you he's going,
25 to call rebuttals.

1 MR. AXELROD: But at the end of my case in chief,
2 I have now rested. I would just like to renew them for
3 the record.

4 THE COURT: Okay, all right.

5 MR. AXELROD: Your Honor, I would ask the Court
6 once again to direct a verdict in favor of Calvin
7 that -- what we are asking the jury to do, the Court in
8 its first rationale in speaking on the directed verdict
9 at the end of the State's case is the Court said, and
10 I'm not going to quote, but I'll paraphrase to the
11 degree that you hadn't heard that anybody else had
12 lived in that house or anybody else --

13 THE COURT: Well, I have. And Mr. Axelrod, I've
14 heard every -- I know where you're going with this.
15 Now, we've got some evidence that somebody else has
16 lived in the house. I haven't heard when anybody else
17 lived in the house. I look at the evidence in the
18 light most favorable to the State, as I am required to
19 do. And I think that there is -- it certainly meets
20 the threshold to allow the case to go to the jury.

21 MR. AXELROD: Yes, sir. I would take exception.
22 Also, Your Honor, I would like to renew the motion on
23 the search warrant that I --

24 THE COURT: Very well.

25 MR. AXELROD: -- think it was proper on its face,

1 MR. CARAKER: Thank you, Your Honor. We would
2 recall officer Calvin Barr. I'm sorry. Officer Dwight
3 Tomlin. Sorry, I said that name a lot this week.

4 DWIGHT TOMLIN, after being previously sworn,
5 testified as follows:

6 THE WITNESS: Good afternoon, Your Honor.

7 THE COURT: You remain under oath, sir.

8 THE WITNESS: Yes, sir.

9 MR. CARAKER: If it please the Court, Your Honor.

10 THE COURT: Yes.

11 DIRECT EXAMINATION

12 BY MR. CARAKER:

13 Q Good afternoon, Officer Tomlin. Didn't mean to
14 call you by the wrong name.

15 A You're all right.

16 Q Yesterday when we were talking, you were the
17 initial officer on the scene at Maple Street that
18 day in August; is that correct?

19 A Affirmative, yes, sir.

20 Q Okay. Why did you go there that day?

21 A I received a phone call from the duty sergeant
22 that we had a complaint of drugs being sold from that
23 residence.

24 Q And did you go to the residence?

25 A Yes, sir.

DWIGHT TOMLIN-DIRECT BY MR. CARAKER

1 Q To investigate that complaint?

2 A Yes, sir.

3 Q When you got to the residence, was anyone there?

4 A No, sir.

5 Q At some point --

6 A No one was outside, I didn't see anybody outside.

7 Q At some point did Ms. Barr pull up?

8 A After I called her.

9 Q Okay. And when she pulled up, did she let you in
10 the house?

11 A Yes, sir.

12 Q Did you threaten to take her kids?

13 A That would be negative, no, sir.

14 Q Did you threaten to sick DSS on her if she didn't
15 let you in the house?

16 A No, sir. I wasn't there for it.

17 Q Did she let you in the house willingly?

18 A Yes, sir.

19 Q With a key?

20 A With a key. I told her that was the only way we
21 were going in the house. Because when I called her,
22 she didn't want to come. So if you look at my video,
23 it tells you, I explained to her, there's three
24 officers out here, it's okay for you to come. And she
25 pulls right in front of my video, gets out, walks

1 across the video and comes back to the car.

2 Q Okay. And in mentioning your video, we saw part
3 of the video yesterday.

4 A Yes, sir.

5 Q And that was not a body worn camera; correct?

6 A No, sir, that was not.

7 Q That was before then; right?

8 A Yes, sir.

9 Q And the body camera, just to be clear, is what you
10 have on your lapel; is that correct?

11 A The body camera now which provides audio and
12 video.

13 Q Okay. Back then you still had the in-car video;
14 right?

15 A The in-car video only.

16 Q And a microphone that you carry?

17 A Only a microphone, yes, sir.

18 Q Was that audio and video working during the
19 entirety of this encounter with Ms. Barr?

20 A Yes, sir. I was there from the beginning till...

21 Q I'm showing you what's been marked as State's-10
22 in evidence.

23 A Yes, sir.

24 Q Do you know what that is?

25 A Yes, sir.

DWIGHT TOMLIN-DIRECT BY MR. CARAKER

1 Q What is that?

2 A That's my in-car video recorder, my video.

3 Q Okay. And is this fairly and accurately
4 represented?

5 A Yes, sir.

6 Q Your initials on there?

7 A My initials.

8 MR. CARAKER: Your Honor, may we publish?

9 THE COURT: Yes, you may.

10 MR. CARAKER: The video.

11 THE COURT: Yes, you may. It's in evidence.

12 MR. CARAKER: Court's indulgence for a moment
13 while I fire up my projector.

14 THE COURT: Yes, you may.

15 (WHEREUPON, the video was played at 2:15 p.m.)

16 MR. AXELROD: I would ask the relevance at this
17 point. I would ask the relevance at this point.

18 THE COURT: Can you stop it a moment. I had
19 trouble hearing. Mr. Caraker, what are you...

20 MR. CARAKER: This is a continuation of the video.
21 This stuff is already in evidence. We know he got
22 arrested for domestic violence that day. This is just
23 the process.

24 THE COURT: Is it to show that she had no further
25 contact or...

1 MR. CARAKER: Yes. In addition to we're getting
2 to that. She does come back to the scene and has
3 conversations with these officers.

4 THE COURT: Well, I think those conversations are
5 what we want. Just keep going, I'm going to allow it.

6 MR. CARAKER: Yes. It will take just a second.

7 (WHEREUPON, the video was played at 2:28 p.m.)

8 MR. CARAKER: Thank you.

9 Q Officer Tomlin, I got to ask you, what was that
10 submarine sound on the tape there, ping, ping sound?

11 A Lets me know whenever -- just to elaborate,
12 whenever I go on a scene like that and it's high risk,
13 I saw that camera right there, I automatically call
14 back and get radio silence, so I have control of the
15 radio if anything goes bad. And once that updates,
16 when I'm not there to press the button, it's going to
17 keep doing that until I go back to the car.

18 Q Okay.

19 A Anytime anything changes in the car.

20 Q And at the point where we stopped the video, does
21 it just continue forth until you left the scene?

22 A Right. Well, that's when she -- she walked up to
23 the car that was in front of me, and that's where
24 Officer Gillings was standing at, and they were
25 conversating. And I think I may have talked to her a

DWIGHT TOMLIN-DIRECT BY MR. CARAKER

1 few times. And pretty much we were there until the
2 street crime guys got there.

3 Q And prior to us stopping the video, have you
4 already gained entry into the house?

5 A Yes, sir.

6 Q She let you in with a key, if I remember
7 correctly?

8 A Yes.

9 Q Did you hear a threat to send her kids to DSS on
10 that video?

11 A No, I never did. I didn't, I never talked to her
12 about that.

13 Q And it's clear --

14 MR. AXELROD: Your Honor, he's leading the
15 witness.

16 Q Is it your testimony that you were there on a
17 narcotics complaint on this Defendant?

18 A Affirmative. On a related charge, yeah. I gained
19 some unrelated charge once we confirmed that's who he
20 was, and that's when we made the arrest.

21 Q And it came from Nicole Barr?

22 A Yes, sir. That's the reason we went there, she
23 called the supervisor and the supervisor called me.
24 And that's why a rat got me, I mean, it was right there
25 on the watch. I wasn't definitely out looking for

1 anything.

2 Q Did there come a time while you were there that
3 the street crimes guys got there and obtained a search
4 warrant?

5 A While I was there?

6 Q Yes.

7 A Yes, sir. Once they got on the scene, like I
8 said, I took them in, showed them the layout of the
9 house, what I had seen at the time. And we backed out
10 and I waited, secured -- kept the house secure until he
11 got the search warrant and came back.

12 Q And were you there when they executed the search
13 warrant?

14 A Yes, sir.

15 Q And were you there when they found the drugs?

16 A Yes, sir.

17 Q Was Ms. Barr there when they found the drugs?

18 A If I'm not mistaken, she was there the whole time,
19 yeah.

20 Q At any point while you were there, did she ever
21 tell you that those were not the Defendant's drugs?

22 A No, sir. We communicated very well. Like I said,
23 she's on the video. I told her once she opened the
24 door, she didn't want to be there when he came out,
25 I told her to go circle the block and come back when we

DWIGHT TOMLIN-DIRECT BY MR. CARAKER

1 got him out of there. And that's when she came back.

2 Q At any point while you were there, did she tell
3 you that the baggies in the bedroom were not Calvin's?

4 A No, sir. Because I never really discussed that
5 point. I let those guys, that was there lane, I let
6 them deal with that.

7 Q And there was a question on the video, you asked
8 about, you said, is this the drug money?

9 A Right.

10 Q Who were you talking to when you said that?

11 A I was talking to her. Because like I said,
12 unrelated to that, she claimed there was a gun in the
13 house. And like I said, search incident to arrest,
14 once I put braces on him, fair game in that room is
15 mine. So like I said, at that point there was no
16 indication that there was no gun, so we pretty much
17 backed out and did what we did, you know.

18 Q And the tape was a little jumbled, a little
19 inaudible when you asked her, is this the drug money,
20 what was the response?

21 A She said, yes. She didn't say no.

22 MR. CARAKER: Thank you, I have no further
23 questions.

24 THE WITNESS: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. AXELROD:

2 Q Is that on that tape, what you just said, that she
3 said it was drug money, is that on that tape, did we
4 just hear that?

5 A I don't know if you heard it or not. Like I said,
6 I can't confirm or deny it. I asked her and she never
7 told me no. She didn't say no.

8 Q I understand. She didn't say anything; did she?

9 A I don't remember if she said anything. I'm not
10 going to sit here and tell you that, I don't remember
11 that, it was two years ago.

12 Q I understand.

13 A Okay.

14 Q Did you ask her if anybody else lived in the
15 house?

16 A I asked Mr. Barr. And I'm pretty -- I think I
17 asked her at one point, I don't remember correctly, I
18 asked one of them. Because I know I asked him when I
19 came in, was anybody else there. But from my
20 recollection, it was her and him that actually
21 resided or cohabitated in the house together.

22 Q Let me ask you this, if she said it was her drugs,
23 what would you have done?

24 A Then there would have been an issue. She's
25 admitting to a crime. She would have been in the same

DWIGHT TOMLIN-CROSS BY MR. AXELROD

1 predicament he was. Just like any other thing else,
2 anybody admitting to a crime, it's my job to do it or
3 make an arrest, if I got probable cause. If you tell
4 me you got something that's wrong with the law, I'm
5 going to arrest you, too. That's my job.

6 Q I understand. So if somebody doesn't want to be
7 charged with something -- let me ask you this question.
8 Let's say she had said to you that there were drugs in
9 the house?

10 A Yes, sir.

11 Q We don't have that.

12 A Correct.

13 Q Would you have called DSS at that point?

14 A Depends on the circumstances.

15 Q Well, let's say they are the circumstances, she's
16 got children, and now she's admitted to a crime; would
17 you have called DSS?

18 A Yes, sir.

19 Q And you were the one that actually said it was
20 dope money; didn't you? I think you said 20 -- did you
21 say \$20,000?

22 A I said it could have been that much. I didn't
23 count it, I just from what I looked at, it was large in
24 number there was money. I didn't see completely, but
25 based on the wad, it looked like it was a lot of money

1 to me. That was an estimated guess.

2 Q But actually it turned out to be under \$2,000;
3 didn't it?

4 A Correct.

5 Q Okay. But never once did you ask her if anyone
6 else lived there, stayed there?

7 A I don't remember if I asked her that or not.

8 Q That wasn't why you were there?

9 A No.

10 MR. AXELROD: Nothing further.

11 MR. CARAKER: Nothing further.

12 THE COURT: You may step down. Thank you.

13 THE WITNESS: Thank you, sir.

14 (Witness excused.)

15 MR. CARAKER: We call Officer Thackray to the
16 stand. May Officer Tomlin be released from his
17 subpoena?

18 MR. AXELROD: No objection.

19 THE COURT: He's released from his subpoena.

20 Officer Thackray, you remain under oath.

21 THE WITNESS: Yes, sir.

22 STEPHEN THACKRAY, after being previously sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. CARAKER:

STEPHEN THACKRAY-DIRECT BY MR. CARAKER

1 Q Officer Thackray, did there come a time when you
2 served a search warrant at Maple Street in Myrtle
3 Beach?

4 A Yes, sir.

5 Q And prior to serving that search warrant, did you
6 go to the scene to see the probable cause for the
7 search warrant?

8 A Yes, sir.

9 Q Okay. And you went and got a search warrant, you
10 came back, and you served that search warrant on the
11 house?

12 A Correct.

13 Q Was Ms. Barr there?

14 A Yes.

15 Q Did you have to kick in the door?

16 A No.

17 Q The door was open; was it not?

18 A It was.

19 Q Do you know about how long you were there? I know
20 that's hard, a year and a half ago, but just an
21 estimation.

22 A 30 minutes, 45 minutes.

23 Q Is that the entirety of the time it took you to
24 serve the search warrant --

25 A I believe so.

1 Q -- and collect the evidence. And was she there
2 the entire time?

3 A I believe so. She was not in the house while we
4 searched, but she was on the scene.

5 Q She was outside the house?

6 A Yes, sir.

7 Q And was that so the residence could be secured and
8 remain in tact until the service of the search warrant?

9 A Yes, sir.

10 Q Who was she with outside, if you remember?

11 A I believe it was Officer Tomlin or Gillians, or
12 one of the other...

13 Q During the entire time that you were there and she
14 was there, did she ever tell you those drugs weren't
15 Calvin's?

16 A No.

17 Q Did she ever tell you anything you find in that
18 house belongs to my roommate, the dancer?

19 A No.

20 Q Did she ever tell you anything you find in that
21 house belongs to Mike Rogers?

22 A No.

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

24 THE COURT: Mr. Axelrod?

25 CROSS-EXAMINATION

STEPHEN THACKRAY-CROSS BY MR. AXELROD

1 BY MR. AXELROD:

2 Q She didn't know what drugs you found that day; did
3 she?

4 A I don't believe so.

5 Q And did she tell you the roommates' names?

6 A No.

7 Q Did you ever go back and ask her?

8 A No.

9 Q In fact, the first time you found out about the
10 roommates is right now?

11 A Yes.

12 Q And one of the roommates' names was Basheba
13 Worrell; correct?

14 A If you say so.

15 Q Have you heard that, were you in the room for
16 that?

17 A No, sir.

18 Q Has the solicitor ever told you what the
19 roommates' names were?

20 A I've heard the name before.

21 Q Basheba Worrell?

22 A Yes.

23 Q And tell the jury why you've heard that name
24 before.

25 A In -- from something else, I don't know where

1 else, but I know I've heard. It's not a common name,
2 I've heard it.

3 Q Doesn't she have outstanding warrants at this
4 point?

5 A She may, I don't know.

6 MR. AXELROD: Your Honor, I'll ask for the
7 relevance --

8 THE COURT: I'll let him ask it.

9 MR. CARAKER: -- if Ms. Worrell has outstanding
10 warrants.

11 THE COURT: If the officer knows, fine.

12 THE WITNESS: I have no idea. I wouldn't know her
13 if she walked in this room. I've heard the name.

14 (WHEREUPON, a bench conference was held off the
15 record in the presence of the jury but out of the
16 hearing of the jury.)

17 MR. AXELROD: Thank you.

18 MR. CARAKER: Nothing further, Your Honor.

19 THE COURT: You may step down, thank you.

20 (Witness excused.)

21 MR. CARAKER: Your Honor, I'll call Officer Mark
22 Landi.

23 THE COURT: Okay.

24 MR. CARAKER: May Officer Thackray be released
25 from his subpoena?

MARK E. LANDI-DIRECT BY MR. CARAKER

1 MR. AXELROD: No objection, Your Honor.

2 THE COURT: Without objection. I don't believe
3 this witness has been sworn.

4 MR. CARAKER: He has not yet, Your Honor.

5 THE COURT: Very well.

6 MARK E. LANDI, after being duly sworn, testified
7 as follows:

8 THE CLERK: Please be seated.

9 THE WITNESS: Thank you.

10 THE CLERK: Please state your full name and spell
11 your last name.

12 THE WITNESS: My name is Mark Edward Landi, or I'm
13 Mark Edward Landi, L-A-N-D-I.

14 MR. CARAKER: If it please the Court, Your Honor.

15 THE COURT: Yes.

16 DIRECT EXAMINATION

17 BY MR. CARAKER:

18 Q Good afternoon, Officer Landi.

19 A Good afternoon.

20 Q With whom are you employed, sir?

21 A I'm employed with the City of Myrtle Beach Police
22 Department.

23 Q And what is your current duty designation?

24 A I'm a corporal assigned to daytime patrol, which
25 is your patrol areas.

1 Q And were you employed with the Myrtle Beach Police
2 Department in August of 2014?

3 A Yes, I was.

4 Q And what was your duty designation at that time?

5 A At that time I was working as a patrolman first
6 class field training officer in the street crimes unit,
7 which we work a lot of street level crimes that patrol
8 officers don't have the time or ability to work.

9 Q And in your capacity as a street crimes officer in
10 August of 2014, did you have an occasion to be at
11 Maple Street on August the 9th, 2014?

12 A Yes, I did.

13 Q Okay. What brought you there that day?

14 A We -- I was working actually overtime that day, it
15 was an assigned day of work, and working overtime
16 because of the call volume during the summer. And I
17 was working with the other bracket and responded there
18 as a request from one of the officers because of the --
19 what he believed to be drugs in the -- or possible
20 drugs in the residence.

21 Q And when you got there, was Officer Thackray
22 already there?

23 A I believe I arrived just a short time after he
24 did, just a matter of less than a minute, 30 seconds,
25 something along those lines.

MARK E. LANDI-DIRECT BY MR. CARAKER

1 Q And if you remember, and I know it's been a long
2 time ago, can you estimate how long you were there that
3 day. Don't need an exact, just a ballpark on that.

4 A From the time I arrived until the time?

5 Q Until the time you cleared.

6 A We cleared?

7 Q Yes, sir.

8 A Without looking at the call log, I can't say
9 precisely, but I'm going to guess --

10 MR. AXELROD: Your Honor, I would object. Rather
11 than he guess, we ask him if he doesn't know, he
12 doesn't know.

13 THE COURT: I will let him testify as to an
14 estimated time. He has made it clear to the jury he
15 can't be positive, but he can give an estimate of what
16 he thinks.

17 THE WITNESS: Thank you, Your Honor. An hour,
18 over an hour.

19 Q Okay. Was Ms. Barr there the entire time you were
20 there?

21 A I know she was present, but I don't recall if she
22 was there the entire time.

23 Q Fair enough. During the entire time that you were
24 there, did Officer Thackray execute a search warrant?

25 A Yes. Yes, he did.

1 Q And do you know what if anything he found as a
2 result of that search warrant?

3 A Yes. I assisted him in the searching the
4 residence, around the residence. And I know that he
5 had found a green leafy substance which later tested
6 positive to be marijuana THC. Also a tan powder
7 substance and also a white powder substance, and I
8 believe both of those tested positive for heroin being
9 the tan powder and cocaine for the white powder.

10 Q Okay. Did Officer Thackray remove these items
11 from the house while you were present?

12 A Standard procedure would be to secure the evidence
13 and document where you -- where a person located them,
14 document it with photos, write some notes or write
15 something on the envelope that you put the stuff in,
16 the evidence in, when you secure it.

17 Q And was Ms. Barr present during the service of the
18 search warrant, that you recall?

19 A I can't say definitively.

20 Q The entire time that you were there, did Ms. Barr
21 ever tell you the drugs found in the house did not
22 belong to this Defendant?

23 A Did she ever -- I'm sorry.

24 Q The entire time that you were there --

25 A Yes.

MARK E. LANDI-CROSS BY MR. AXELROD

1 Q -- did Ms. Barr ever tell you that the drugs that
2 were found in the house were not this Defendant's?

3 A No. That was never said to me.

4 Q Did she ever tell you that the drugs in the house
5 belonged to one of her roommates?

6 A No, I've never heard that before either.

7 Q Or to a fellow named Mike Rogers?

8 A No, I've never heard that name, either.

9 MR. CARAKER: No further questions. Please answer
10 any questions Mr. Axelrod has.

11 THE WITNESS: Sure.

12 CROSS-EXAMINATION

13 BY MR. AXELROD:

14 Q Hi.

15 A How are you?

16 Q I'm well. You look dapper today.

17 A As do you.

18 Q Thank you. You never told Nicole that drugs were
19 found in the house; did you?

20 A I don't recall having that -- I don't recall
21 having a conversation with her really.

22 Q And we've had testimony from Thackray that he
23 never told her there were drugs in the house?

24 A I don't know. I don't know what was said.

25 Q So if nobody told her there was drugs in the

1 house, how could she tell anybody that they weren't her
2 drugs or they were his drugs or whose drugs, if she had
3 no knowledge?

4 A Are you asking me a question?

5 Q Yeah, I'm asking you. If you never told her there
6 was any drugs in the house, how could she tell you that
7 they weren't Calvin's drugs? That's the question. You
8 never told her there was any drugs in the house,
9 Thackray testified there was no drugs in the house. So
10 how can she tell somebody --

11 A Thackray testified there weren't any drugs in the
12 house?

13 Q That he never told her there were drugs in the
14 house.

15 A Oh, okay.

16 Q I'm sorry, I misspoke.

17 A Okay.

18 Q And we've had sworn testimony from Ms. Barr that
19 she found out about the drugs the next day. Now, so if
20 she didn't know about the drugs until the next day of
21 what was found, she wouldn't be able to tell anybody
22 that they weren't Calvin's drugs at the scene; could
23 she?

24 A I don't know, I wasn't privy to those
25 conversations, I can't -- I'd be only -- I'd be

1 speculating, and I can't do that.

2 Q Well, you speculated already on timeframe. I'm
3 asking you that if she never knew what was found at the
4 scene, then she couldn't say that they weren't
5 Calvin's. If she didn't know -- if she was never told
6 what was found, she could not say that they weren't his
7 if she didn't know what was found; correct?

8 A I mean, that makes sense to me.

9 Q That's all I'm asking, thank you.

10 A Okay.

11 MR. AXELROD: Nothing further.

12 MR. CARAKER: Nothing further, Your Honor.

13 THE COURT: You may step down, Mr. Landi. Thank
14 you.

15 (Witness excused.)

16 MR. CARAKER: Can Officer Landi be released from
17 his subpoena, Your Honor?

18 MR. AXELROD: No objection, sir.

19 THE COURT: You're released from your subpoena.

20 MR. LANDI: Thank you, Your Honor.

21 MR. CARAKER: We would call Officer Rob Gillians.

22 CHARLES ROBERT GILLIANS, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you, please be seated. State
25 your full name and spell your last name.

1 THE WITNESS: Okay. Charles Robert Gillians,
2 G-I-L-L-I-A-N-S.

3 DIRECT EXAMINATION

4 BY MR. CARAKER:

5 Q Good afternoon, Officer Gillians. How are you?

6 A I'm doing well, doing well. How about yourself,
7 sir?

8 Q Good, doing good. How's that shoulder?

9 A Little painful, but I'm surviving.

10 Q All right. With whom are you employed, sir?

11 A The City of Myrtle Beach Police Department.

12 Q And what's your current duty designation?

13 A I'm a patrol officer for the City of Myrtle Beach.

14 Q Were you so employed August 9th, 2014?

15 A Yes, sir.

16 Q And did you have an occasion to go to Maple
17 Street in the city of Myrtle Beach on that day?

18 A Yes, I did, sir.

19 Q What brought you there that day?

20 A I arrived to back up Officer Tomlin on a wanted
21 person call. We had a warrant to serve and pick up an
22 individual.

23 Q Okay. And did you, in fact, do that?

24 A Yes, we did.

25 Q Did you have an occasion that day to speak to

CHARLES R. GILLIANS-DIRECT BY MR. CARAKER

1 Nicole Barr?

2 A Yes.

3 Q Was that -- well, let me back up a minute. At
4 some point while you were there that day, did another
5 officer execute a search warrant on that residence?

6 A Yes, sir.

7 Q And was that Officer Thackray?

8 A A search warrant --

9 Q Yes.

10 A -- or arrest warrant?

11 Q The search warrant.

12 A Yes, Officer Thackray, yes.

13 Q All right. And do you know about how long you
14 were there that day?

15 A It was near the end of shift. I think we got the
16 call somewhere around 5:30 that day. So the hours I
17 was there till well after 6 o'clock, we were there for
18 a while.

19 Q Okay. And when you cleared the scene that day,
20 had all the activity around that house already ceased?

21 A I actually left before it all finished.

22 Q Was Ms. Barr still there the whole time?

23 A She was there. I spoke with her -- I was speaking
24 with her for quite some time, so she was there a good
25 bit of the time. But I couldn't tell you, you know, if

1 she was there after I left.

2 Q Was she there during the service of the search
3 warrant?

4 A Yes.

5 Q And at some point did Officer Thackray bring items
6 out of the house?

7 A I didn't see that.

8 Q You know he's charged with drugs, they had to come
9 out of the house; is that --

10 MR. AXELROD: Your Honor, he's leading him now.
11 The --

12 THE COURT: I understand, Mr. Axelrod. Don't
13 lead.

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

15 Q Do you know if any evidence was recovered as a
16 result of that search warrant?

17 A I later did find out that there was evidence
18 recovered.

19 Q Okay. In your conversations with Ms. Barr, did
20 she ever tell you that the items found in that house
21 did not belong to this Defendant?

22 A No, sir.

23 Q Did she ever tell you they belonged to someone
24 else?

25 A No, sir.

CHARLES R. GILLIANS-CROSS BY MR. AXELROD

1 Q Did you hear an officer threaten Ms. Barr in order
2 to gain entry into the house?

3 A No, sir.

4 Q And you were there for the service of the arrest
5 warrant --

6 A Yes.

7 Q -- on Mr. Barr; correct?

8 A Yes.

9 Q So were you there when she let y'all in the house?

10 A As a matter of fact, she did let us in the house.

11 Q Not pursuant to any threat?

12 A No, no threats.

13 MR. CARAKER: No further questions.

14 MR. AXELROD: Thank you.

15 CROSS-EXAMINATION

16 BY MR. AXELROD:

17 Q Did you leave before Thackray?

18 A Yes.

19 Q So Thackray was still in there with the stuff?

20 A Yes.

21 Q Whatever you found. And did you ever tell Ms.
22 Barr what was found?

23 A No.

24 MR. AXELROD: Thank you. No further.

25 MR. CARAKER: Nothing further, Your Honor.

1 THE COURT: You may step down, thank you.

2 THE WITNESS: Thank you, Your Honor.

3 (Witness excused.)

4 MR. CARAKER: That concludes the rebuttal
5 testimony.

6 THE COURT: All right. Thank you very much.
7 Ladies and gentlemen, that concludes the evidence in
8 this case. I'm going to give you a quick break, and
9 we'll bring you back in in just a moment. If you
10 would, Bobby, bring them to the jury room and let them
11 refresh themselves. We'll be back in about 15 minutes.
12 Thank you.

13 (WHEREUPON, the jury exited the courtroom at
14 3:06 p.m.)

15 THE COURT: All right. Gentlemen, motions?

16 MR. CARAKER: None from the State, Your Honor.

17 MR. AXELROD: I'm not going to belabor it, Your
18 Honor.

19 THE COURT: You just want to renew your motions?

20 MR. AXELROD: Directed verdict, the search warrant
21 and the suppression of the evidence. I would say,
22 again, I'm not going to belabor that. I would just ask
23 the Court that, for the record, that you will allow my
24 prior colloquies on my directed verdict motions to
25 stand for this one.

1 THE COURT: They are incorporated, and my rulings
2 are the same. Thank you.

3 MR. AXELROD: I would take exception. Thank you,
4 sir.

5 THE COURT: All right. Let's let the jury have a
6 restroom break. Ten minutes, gentlemen. We'll do
7 summations and charge.

8 (WHEREUPON, a brief recess was taken at 3:07 p.m.)

9 THE COURT: Thank you, please be seated. All
10 right. We're ready.

11 (WHEREUPON, the jury came into open court at
12 approximately 3:20 p.m.)

13 THE COURT: All right, ladies and gentlemen, we
14 have heard all of the evidence in this case. And it's
15 now, as I told you at the beginning of this trial in my
16 preliminary instructions, the point of the trial where
17 we will receive or you will receive closing arguments
18 or summations.

19 Again, what these attorneys say is not evidence,
20 and certainly not the law. I guess I misquoted. You
21 will rely on the law as I give it to you. They are
22 certainly entitled to comment on the law and comment on
23 the evidence that's been presented from the witness
24 stand. Please understand that anything that they say
25 that you did not hear from the witness stand is not

1 evidence. You can only consider the evidence that you
2 heard from the witness stand, and you must be guided by
3 the law as I give it to you in your deliberations.

4 I do something that I don't think any other judge
5 does. I've been doing it for about nine years now.
6 And that is I make a transcript of my charge for the
7 jury, and I provide it for your use during your
8 deliberations. I never thought it was fair to bring
9 lay persons into the courtroom and give a half hour or
10 45-minute charge to the jury and expect you to absorb
11 it all and understand it at all. It's not something
12 that you're familiar with.

13 So for that reason I make a copy of it and provide
14 it for you. That doesn't mean you can't listen to what
15 I say. Please, pay attention to what I instruct you on
16 the law. But after the summations, I will charge you
17 on the law, and then you will deliberate. Gentlemen,
18 Mr. Axelrod?

19 MR. AXELROD: May it please the Court. All right.
20 I think our justice system is going off kilter. My
21 client comes into this courtroom, and the judge will
22 tell you, with what's known as a cloak of
23 righteousness, a cloak of innocence. And the State has
24 to prove him guilty beyond a reasonable doubt before
25 you can convict him.

1 In our system for this trial, I get to speak to
2 you in the closing argument first. Mr. Caraker, the
3 assistant solicitor in the Fifteenth Judicial Circuit
4 located in this building, will speak to you last.
5 That's our rules. Psychiatrists, psychologists, they
6 say that you remember what you hear first, and you
7 remember what you hear last.

8 Mr. Caraker gets to speak first in the beginning
9 of the trial. Mr. Caraker gets to speak last at the
10 end of the trial. I don't get to respond to whatever
11 Mr. Caraker says to you in his closing argument. He,
12 on the other hand, will be able to address each and
13 every item that I speak to you on, because that's our
14 system. But you would think that when my client's
15 liberty is at stake, that I would be entitled to speak
16 last to you, but I'm not.

17 But what I do ask you to do in this case is to say
18 to yourself, after Mr. Caraker speaks and does his
19 argument, say to yourself, what would Mr. Axelrod have
20 said to that. Because that's what you're going to
21 deliberate about. I'm not allowed to talk to you
22 again. The system's tilted.

23 In a criminal trial, the State sits here, they
24 want you to see them, buddy up to them. And my client
25 sits as far away from you as possible. They want to

1 distance you, the jury, from Calvin.

2 Why? They say, the psychiatrists and
3 psychologists say that when things are close to you,
4 you like them, when things are far away from you, you
5 don't. I don't like the system, I think it's tilted, I
6 think it's jaded. But it's the system.

7 And in another light, it's the best system that we
8 have devised in this world. But there's still room for
9 improvement. But our society says no, we want the jury
10 to think that they are guilty, and they must prove them
11 self innocent. And it's what we've become. Just a
12 little social commentary.

13 Reasonable doubt. Reasonable doubt is a doubt
14 that causes a reasonable person to hesitate. It's a
15 nuance. If you're back in the room at the end of all
16 this and you say, I really don't know if they were
17 Calvin's drugs, I don't know if I should believe Nicole
18 or believe the police or believe the solicitor. Not
19 really believe him, because he is part of this case
20 when Nicole says she went to him. You have to come
21 back not guilty.

22 What is beyond a reasonable doubt? It's baseball
23 season. We're at the Pelican park on 21st and Grissom
24 Avenue. Left field borders 21st Avenue. In a civil
25 trial, auto accident, stuff like that, not on the scale

1 of justice but in a trial, in a civil trial you have to
2 just be more likely than not, just one little iota over
3 50 percent. Maybe to draw it to baseball, maybe you
4 have to hit a single, or do something, hit a single.

5 On the second floor we have family court, and
6 there's no jury's in family court. In family court the
7 standard that the judge will use is clear and
8 convincing evidence. Hit a double. But here, when
9 liberty is at stake, you have to prove Calvin guilty
10 beyond a reasonable doubt. You have to hit a home run.
11 Beyond a reasonable doubt. They say to you, not beyond
12 all doubt. All reasonable doubt, you have to hit a
13 home run. Beyond all doubt, you hit the ball out of
14 the ball park. You don't have to do that. You have to
15 be firmly convinced.

16 The judge is going to tell you, if based on the
17 consideration of the evidence you are firmly convinced,
18 each and every individual one of you, that Calvin is
19 guilty of the crime, you must find Calvin guilty. The
20 judge is also going to tell you, and you'll have the
21 charge back there with you, if on the other hand you
22 think there's a real possibility the Defendant is not
23 guilty, a real possibility, not firmly convinced, if
24 you go back there and you say, I'm not sure, that's a
25 real possibility.

1 If you go back there and say, maybe it wasn't his
2 drugs, maybe Ms. Barr was telling the truth. Because
3 you're going to judge the credibility of the witnesses,
4 that's for you to do. On the other hand, if you think
5 that there is a real possibility that Calvin is not
6 guilty, you, the jury, must give Calvin the benefit of
7 the doubt and find him not guilty. That's your oath,
8 whether you like it or not. And it's hard. It's hard.

9 You know, they taught us in law school about
10 smoking mirrors, and they always say, well, you know,
11 defense attorneys throw this up on the wall and defense
12 attorneys throw that up on the wall and they just make
13 smoking mirrors. Testimony is that she went to see
14 Mr. Caraker. He laughed at her, he laughed at her,
15 didn't want to hear what she said, didn't care, didn't
16 have to.

17 And then what I really found interesting with the
18 rebuttal witnesses, we brought all the police officers
19 back, and they are still here, some of them, what I
20 really found interesting was the solicitor tried to
21 imply that Nicole Barr never told the police that those
22 drugs weren't Calvin's. I understand that, those drugs
23 were not Calvin's.

24 But we had testimony from Officer Tomlin, he never
25 told her there were drugs found, or there was drugs

1 found. Nicole Barr told you that she didn't find that
2 out until the bond hearing the next day. That gives
3 credibility to that. The solicitor is trying to imply
4 to you that she didn't tell them that they weren't
5 Calvin's drugs and they were the roommate's. But she
6 didn't know what was found in the backpack, Officer
7 Tomlin said. And then when she went to tell the
8 solicitor, he snookered at her.

9 Officer Thackray never told her what was found at
10 the scene that day, he just testified to that in
11 rebuttal. He told the truth. I believe everybody in
12 this trial spoke the truth. And what I believe does
13 not matter. But I have been in trials where I do not
14 believe everybody speaks the truth. In fact, I told
15 them that today, I respected that, Thackray told you he
16 never told her.

17 And then the solicitor went with Officer Gillians,
18 Rob Gillians, and tried to infer to you through him
19 that Nicole Barr never said they weren't Calvin's
20 drugs. Gillians testified that he left before
21 Thackray. Thackray was in the house, in the house
22 where the drugs are found in the backpack, and Nicole
23 Barr told you it belonged to Basheba Worrell. Nobody
24 wanted to listen to her then, nobody asked her. And he
25 said he never told her either there were drugs found in

1 the house.

2 So the smoke in the mirror, the solicitor wants
3 you to think that she should tell you that they're not
4 Calvin's drugs, and she didn't know drugs were found in
5 the house. That resonates with me, it just resonates.
6 They didn't have a statement from Nicole Barr. Did she
7 write out a statement, she could have written out a
8 statement. They are so great at taking statements,
9 video, audio, everything. Did they show you a
10 statement of Nicole saying afterwards, they are
11 Calvin's drugs, no. Did they take a statement from her
12 at the scene, no.

13 Thackray testified that the fingerprints or
14 whatever he tested for were not Calvin's. That's the
15 truth. That's heavy. He didn't have to bring it up.
16 Calvin's fingerprints are not on this. And the
17 fingerprint that's on it or partial print, and I submit
18 to you that if you have -- if you have a partial print
19 that you maybe can't put it into AFIS and actually find
20 out whose print it is because it might not find, but if
21 you had Calvin's prints right there and you could take
22 Calvin's prints, I submit to you that there are people
23 in law enforcement that can take a partial print and
24 match that to a print of somebody. That's for you to
25 think about.

1 Every print is different. Every piece of a print
2 is different. Calvin was not on this box. Nicole says
3 to you Basheba Worrell, an entertainer, was hers. The
4 solicitor wants to try to diminish who she is, so he
5 says to you, oh, she's a stripper, because they don't
6 want you to feel good about Basheba Worrell.

7 But I submit to you that in the world of
8 strippers, drugs are prolific. So by saying what he
9 says about her, he bolsters the position that, yes,
10 that could have been her drugs. It looks like from the
11 time they did the arrest, they arrest Calvin, they did
12 a search warrant, conduct a search warrant probably
13 within 30 minutes and maybe within an hour, executed
14 it, an hour and a half. So I would say almost within a
15 two-hour period these people efficiently and
16 effectively did everything they did.

17 And the only thing they did after that time was
18 Officer Thackray tested this box for fingerprints.
19 Didn't do anything else. They are supposed to do more,
20 they are supposed to investigate. They have put the
21 reasonable doubt into this case. They could have taken
22 the reasonable doubt out of this case, but they chose
23 not to. Now they want you to say doesn't matter,
24 convict him.

25 We had -- it was interesting -- we had Malinda

1 Shadoan, I believe out of Myrtle Beach, I think it was,
2 I asked, why do you seal a glass. If you all remember,
3 she said to not mess up the fingerprints. Wouldn't it
4 be easier for you if they came in here and said, on
5 this glass we found Calvin Barr's fingerprints, six of
6 them. Whether we like it or not, when his prints did
7 not come up on this box, nothing else was printed.

8 Think about it. Does that create the reasonable
9 doubt, does that create that you don't know what is on
10 this glass? Heck, they wear gloves, blue ones, tan
11 ones, all kinds of covered gloves. Put it in this
12 thing and seal it, so later on they can test it. And
13 we're all smart people, we bring our common sense to
14 this trial. You can get fingerprints off of glass.
15 Heck, sometimes you can't get the fingerprints off the
16 glass. At your house and your glasses or the mirror in
17 the bathroom or whatever it is, you got to wipe real
18 hard, you got to wipe again, heck. The oil of the
19 fingerprint's still there.

20 Now, let's just say that this glass was found 13
21 years later than the charge. The State will stand up
22 and say to you later, there's no reason to test for
23 fingerprints because the oil dried up and you won't be
24 able to get anything, and that's why we didn't do it.
25 And I would agree with them that that's probably a

1 distinct possibility.

2 But this glass was taken that day, that day. And
3 if Calvin had touched this glass, as they said, this
4 glass was used to do whatever they said was done, his
5 fingerprints would be on that glass. Nicole said the
6 scale that was found in the room was hers, they implied
7 to you that scale was used for drugs. She said it was
8 hers.

9 We can't condone domestic violence, and it's a bad
10 thing. Why didn't the State call Ms. Barr, why didn't
11 the State speak to Ms. Barr? Why didn't the State ask
12 Ms. Barr, was there other roommates that lived there?
13 You know, Ms. Barr testified that Calvin stayed there
14 off and on. I want you to look at the inventory taken
15 out of that house, and I want you to identify each and
16 every piece of clothing that Calvin had at that house.

17 There was none. It's interesting. Lot of
18 handbags, lot of this, lot of that. If you want to
19 establish he lived there and he had dominion and
20 control of that house, show me that he lived there.
21 Show me one scintilla of evidence, one piece of
22 evidence with fingerprints, with DNA. They had a
23 bookbag, they find a backpack maybe, backpack, bookbag.
24 In it they find all those drugs, they find this, they
25 find all this stuff, got all this stuff nicely done.

1 But I want you to look carefully at the DNA report
2 that they submitted to you in this trial. That's
3 right, there is none. They want you to believe that
4 not one piece of evidence that -- you saw the look of
5 the house, you saw the look of the apartment, not the
6 cleanest structure, not the cleanest apartment.

7 But it's their position that, I guess, when it's
8 concerning Calvin allegedly, that he took every piece
9 of everything that was there on every given day,
10 everyday, all the time, 24 hours a day, and took every
11 one of his fingerprints, DNA, follicles, hair, this,
12 that, off of it. They did not even give you one
13 follicle of hair where the backpack was found. Nothing
14 in it.

15 We lose -- we lose skin, we lose everything. We
16 lose so much stuff each day in cells it's unbelievable.
17 Unless you look, if you have a medical background and
18 you look in a textbook and we're losing scales
19 everyday. Wouldn't you like to hear, well, we found
20 his DNA in this box?

21 I want you to go back there when you deliberate,
22 have your opinions, and when you deliberate, you find
23 one piece of evidence that links Calvin to those drugs.
24 There is none. The judge is going to charge you mere
25 presence at the scene where the drugs were found is not

1 enough to prove possession.

2 The solicitor said in the beginning that the State
3 must prove it was Calvin's drugs beyond a reasonable
4 doubt. And if their case does not rise to that level,
5 you have an oath and an obligation to find Calvin not
6 guilty.

7 I would submit to you, if you tested this box and
8 the stuff inside this box, my fingerprints are now on
9 it. And I submit to you, if they had tested this
10 glass, Calvin's prints would not have been on there.
11 The right thing in this case is not guilty. They do
12 not reach their burden. That's all.

13 THE COURT: Mr. Caraker?

14 MR. CARAKER: Thank you, Your Honor. May it
15 please the Court.

16 THE COURT: Yes, sir.

17 MR. CARAKER: Good afternoon, y'all. I almost
18 don't know where to start. That was a lot. I'm a
19 little tired after hearing that. I do want to address
20 a couple things. Let's not forget how this whole thing
21 got started. This thing got started when Nicole Barr
22 contacted the Myrtle Beach Police Department and said,
23 Calvin Barr is selling drugs in the house. You heard
24 that.

25 MR. AXELROD: Your Honor, I would object. It's

1 closing argument, but I don't believe there's any
2 testimony to that.

3 MR. CARAKER: I believe there was, Your Honor.

4 THE COURT: There was, Mr. Axelrod. This is
5 closing. Mr. Caraker, proceed.

6 MR. CARAKER: Thank you, Your Honor. Number one
7 thing linking the Defendant to that house and those
8 drugs, right off the bat before the police even get
9 there. When they get there they figure out that he's
10 wanted on an unrelated matter, we know now it was a
11 domestic violence issue. He's arrested for that, taken
12 away.

13 She said on the stand that she was mad at him for
14 what he did. And that resonates, I think, with
15 everybody, it's sort of a visceral response with
16 something like that. And she was really mad at him. I
17 think she described it as 22 out of 10 at one point.
18 She's the one that got this ball rolling with the
19 complaint.

20 She was mad. Maybe she didn't think it would go
21 that far. Maybe she didn't think it would wind up
22 here. And now she is trying to get him out of it.
23 What was her testimony? She testified she never said
24 he was selling dope out of the house. We know that's
25 not true.

1 She also testified that the police threatened to
2 take her kids or threatened to report her to DSS and
3 have something going on with the kids in order for them
4 to get inside the house. You saw the video, you heard
5 the audio. Officer Tomlin was nothing but nice to her,
6 encouraging her, yes, it's safe, ma'am, yes, you can
7 come on back to the house. We have three officers
8 here, please come on. Produced her key, let him in the
9 house. Not a single threat, not one.

10 She said he lived there part-time. When you go
11 back to the jury room, you'll see in evidence
12 State's-30, some bond paperwork from the jail. Calvin
13 Barr's signature, Maple Street, Myrtle Beach, from
14 that day. You saw and heard testimony from the moped
15 rental place operator, just a couple of weeks before
16 this happened he bought a moped, gave his ID, had a
17 color picture of it, Maple Street, Myrtle Beach.
18 Right there, just a couple weeks before.

19 She said she had roommates. You didn't hear from
20 them, not a word. I will submit to you, ladies and
21 gentlemen, that the roommates that actually lived in
22 that house lived in this room, the children's bedroom.
23 That's their bedroom, the only other bedroom in the
24 house.

25 How do you know it was a kid's bedroom? First of

1 all, they are bunk beds. Second of all, it's messy
2 just like mine was when I was a child. Parents had to
3 get on me all the time. Children's books, baby
4 bottles, all in this bedroom, it's the only other
5 bedroom.

6 When the police got there that day, Defendant was
7 the only one home. Middle of the day, nobody else
8 there. And he's laying in the bed of the master
9 bedroom. If that's somebody else's bed, how is a man
10 going to go lay up on another man's bed. Doesn't make
11 any sense.

12 And she said she came to my office and spoke to
13 me, and I laughed at her. She came to my office. I
14 can't say strongly enough, I didn't laugh at her.
15 That's beyond unprofessional. I don't know what else
16 to say about that.

17 Mr. Axelrod made a lot of hay about what the
18 police did not do, they didn't do this, they didn't do
19 that. They didn't get a statement from her. Why not?
20 She's the one that called there in the first place,
21 what do you need a statement for. She said, hey,
22 police, come, and they came, and they did their job.
23 It's what we pay them to do everyday. Why you need a
24 statement, you already have why you're there.

25 And he wants you to look at the inventory of

1 clothing taken from the house. If the police started
2 seizing all people's worldly possessions every time
3 they got arrested, there would be such civil rights
4 uproar that it would never, ever, ever calm down, and
5 rightfully so. You can't go in someone's house just
6 because they've been arrested and take all their stuff.
7 You can't do that; you know that. They certainly know
8 that, I promise you.

9 And then there's a lot of hay being made about
10 there's no DNA and there's no hair fiber, and there's
11 no hair analysis or fiber analysis or fingerprints. I
12 suppose that if somehow the police didn't believe her
13 that he was in there selling drugs and didn't believe,
14 despite all the evidence to the contrary, that he
15 didn't live there, that they could have, I don't know,
16 brought a team in from somewhere or spent ungodly
17 amounts of taxpayer money to run DNA tests and hair
18 analysis and microscopic fiber comparisons.

19 But at some point, ladies and gentlemen, if you
20 have the evidence to say that someone lives in a house,
21 you got to believe your evidence. Since when is a
22 driver's license not enough? Yeah, people move. He
23 gave it to somebody three weeks before this happened.
24 He's laid up in the bed in the house. It's his house.

25 So we know that all of the narcotics were found.

1 What do they see in the room? Officer Tomlin testified
2 in his 20 some odd years of experience in law
3 enforcement, in plain view in the room where he was
4 laying in the bed, plastic baggies with skulls, small
5 plastic baggies with skulls, razor blade, scales, and a
6 large amount of money.

7 You heard him on the video. He was kind of
8 excited about it. He goes, hey, boss, I think we got
9 like 20 grand in here. Of course we know it wasn't 20
10 grand, but that must have look looked like a lot of
11 money to him when he first saw it. I think we need to
12 get somebody down here to take a look at this. In his
13 mind, and he testified to it, and you heard it on the
14 video, they even got a drug house. That's what he
15 said. He was right.

16 And you heard Officer Thackray when he went to the
17 scene, he's the one that got the search warrant. He
18 saw all of that. In addition to what Officer Tomlin
19 said, he also saw that video monitoring system up on
20 the front porch. Now, I'm not going to stand in front
21 of you and tell you every single person that has a
22 video camera on their front porch is a drug dealer.

23 However, when you take everything that you know
24 about this situation and why they were there and what
25 they found, that only can lead you to one conclusion.

1 In their training and experience, that's a drug house.
2 They need to be able to see what's going on on the
3 outside. Maybe there was no fingerprints on there
4 because he saw them coming. Maybe it's not in the room
5 with him because he saw them coming. Who knows?

6 On the search warrant, they found cocaine, 26
7 slips of heroin, seven ounces of marijuana in that room
8 off the kitchen. The same baggies that were in the
9 Defendant's room, the little ones with the skulls, were
10 in the lockbox and in with the drugs, same baggies.
11 There were sets of scales, I believe two in that
12 lockbox there, and some implements that you heard
13 testimony used to cook powdered cocaine into cocaine
14 base or what's commonly known on the street as crack
15 cocaine.

16 But what they did not find is just as important as
17 what they found. Because we're not only talking about
18 possession of the drugs, but he's also charged with
19 intent to distribute the heroin and intent to
20 distribute the marijuana. So how do we know. We got
21 to look inside his head a little bit. Because as I
22 told you before, you weren't going to hear a lick of
23 testimony that said, I saw Calvin sell drugs. And you
24 didn't hear that.

25 How do we know? 26 slips of heroin, that's enough

1 to get 26 people high. You have to think to yourself,
2 is that personal use. That's probably enough to get
3 everybody in this courtroom high one time, not
4 counting. It meets the threshold weight. In fact, the
5 chemist stopped testing when he got to threshold weight
6 for possession with intent. Said, oh, got enough,
7 don't even need to test the rest, I made my weight.

8 With regard to the marijuana, it's almost seven
9 ounces, I believe it was 6.93, 6.96 ounces, with one
10 ounce being the threshold weight for possession with
11 intent, seven times, almost seven times the amount.

12 What did you not find? You didn't find anything
13 to use the drugs with, further evidence of a seller.
14 You didn't see any needles, filters, screens, cotton
15 balls, burnt metal spoons to cook the heroin. You
16 didn't see any rolling papers, bongs, pipes. You
17 didn't see any of that. Those drugs aren't being used,
18 those drugs are being sold, plain and simple.

19 Ladies and gentlemen, if you find that he
20 possessed them, you must also find he intended to
21 distribute the heroin, and you must find that he
22 intended to distribute the marijuana. There's no other
23 explanation for it.

24 Now, I know the judge is going to give you some
25 jury charges. He's going to tell them to you, and he's

1 going to give you a copy of it, because it's a lot, and
2 it's a lot to remember. And a couple of those things
3 in there are going to talk about constructive
4 possession and circumstantial evidence.

5 Two types of possession, and the law doesn't
6 recognize a distinction between the two. Actual
7 possession, I got this stack of cups in my hand.
8 Constructive possession is me to that computer. I
9 don't have it in my hand, still mine. I have the right
10 to take this computer somewhere to prevent someone from
11 taking it from me. I have the right of something
12 that's in my house right now, the TV on my wall, if
13 somebody takes my TV, they took it from me. It's still
14 mine, I'm not holding it, still mine.

15 Constructive possession means that you have
16 dominion and control over either the drugs themselves
17 or the property upon which they are found. It is the
18 Defendant's house, period. Therefore, those drugs
19 belong to him. How do you know, all those reasons I
20 went into when I first started this. Don't forget,
21 that's why they were called there in the first place.

22 The judge will also tell you about direct and
23 circumstantial evidence. Direct evidence is, I saw A
24 shoot B, saw it with my own two eyes, bam, saw him do
25 it. That's direct evidence. Circumstantial evidence

1 is just as compelling, and there's no legal distinction
2 between the two. Circumstantial evidence is something
3 that you know from a chain of inferences.

4 I'll give you an example. The judge told you we
5 like to do that. Give you an example. I don't know if
6 you guys have kids or grand kids, young ones. Say it's
7 just you and your little grand or your little child at
8 home, and y'all are playing in the den. He says,
9 mommy, daddy, I want a cookie. No, Junior, it's too
10 close to dinner, you'll spoil your dinner, you can't
11 have a cookie.

12 Well, so you continue to play and the doorbell
13 rings. You leave little Junior in the den, you go over
14 there and it's your neighbor, y'all start talking. How
15 you been, what's going on. Neighbor leaves, you come
16 back in. Junior has got cookie crumbs on his hands and
17 his face. You walk in the kitchen, chair is pulled
18 over to the counter, cookie jar slid to the edge, top
19 off of it, crumbs laying around.

20 Now, you didn't see Junior take that cookie, but
21 you know he did. And how do you know he did. All of
22 the crumbs poured over. That's circumstantial evidence
23 that Junior took the cookie. That's what we have here.
24 His house, he has dominion and control, they are there
25 for a narcotic sale complaint. The baggies in the room

1 match the baggies with the dope.

2 Let's not forget the business card from the moped
3 sales place is in with the dope, and he bought that
4 moped from that place on the card three weeks before.
5 That is direct connection of this Defendant to that
6 dope. Make no mistake about it. It can't be anyone
7 else's but his.

8 One more thing, and I promise I'll go. I need to
9 address reasonable doubt. There are two ways to look
10 at it, just as Mr. Axelrod said. One is that that
11 which would cause a reasonable person hesitate to act.
12 That's a little bit amorphous, it's kind of hard. Even
13 lawyers have arguments about what that really means.

14 Another way to think of it is proof beyond a
15 reasonable doubt is that proof which leaves you firmly
16 convinced of the Defendant's guilt. And we have to
17 realize, y'all, nothing is a hundred percent. There's
18 not a hundred percent that the sun is going to come up
19 tomorrow. You know it beyond a reasonable doubt
20 because of the things that have been shown to you, came
21 up yesterday, came up the day before, the weather
22 forecast says it's going to come up tomorrow.

23 And when you have all this evidence, all the
24 photographs, all the exhibits that we had to so
25 painstakingly enter into evidence -- and thank you for

1 your patience in that whole painstaking process, but it
2 is a process -- when you take the photographs and the
3 evidence that you're allowed to take back into the room
4 and you think about what you heard and saw over the
5 last couple of days, and you make your determination of
6 who you should believe from the testimony that came
7 from this witness stand, who has motivation to tell you
8 the truth, and who has motivation to twist it around.
9 Your common sense, and the judge will tell you to use
10 it, who you believe, and that's that.

11 Ladies and gentlemen, we have showed you it's his
12 house, we've showed you they were there on a narcotics
13 sales complaint. And he had narcotics in the house,
14 had distribution weight with money, bags, scales, the
15 whole nine, and nothing to use the dope with.

16 When you go back in your jury deliberation room,
17 we've given you the tools that you can use to find him
18 guilty beyond a reasonable doubt of possession of
19 cocaine, possession with intent to distribute heroin
20 and possession with intent to distribute marijuana. I
21 thank you for your time.

22 JURY CHARGE

23 THE COURT: All right. Ladies and gentlemen of
24 the jury, I am about to give you a charge on the law.
25 And as I promised you, I will give you a copy of my

1 charge. And the Supreme Court has approved that
2 process, but I have to read it to you.

3 Before I begin, let me tell you that you should
4 not just focus on any one part of the charge. You
5 should consider the charge as a whole, for all parts of
6 the charge are important. You should look at it as a
7 whole document rather than just focusing on one
8 sentence or one paragraph.

9 I remind you that during this trial I have certain
10 duties to perform. As trial judge, it's my
11 responsibility to preside over the trial of the case,
12 and also I have the duty to rule on the admissibility
13 of the evidence offered during this trial. You are to
14 consider only the evidence and testimony before you.
15 If there was any testimony ordered stricken from the
16 record in this case during the trial, you must
17 disregard that testimony. You are to consider only the
18 testimony which has been presented to you from this
19 witness stand, any exhibits which have been made a part
20 of the record in this case and any stipulations or
21 agreements of counsel.

22 I have the additional duty to charge you the law
23 applicable to the case. As the presiding judge, I am
24 the sole judge of the law of the case, and it's your
25 duty as jurors to accept and apply the law as I now

1 state it to you. If you already have an idea as to
2 what the law is or what the law ought to be and it does
3 not agree with what I now tell you the law is, you must
4 abandon this idea because you were sworn to accept and
5 apply the law exactly as I state it to you.

6 In every case tried in this court before a jury,
7 the jury becomes the sole and exclusive judge of the
8 facts in a case. A trial judge cannot intimate, state,
9 comment on or make any statement to a trial jury about
10 the facts in the case. Since you, the jury, are the
11 sole judge of the facts in the case, you are not to
12 infer from anything I have said during the progress of
13 this trial or during my rulings on the admissibility of
14 evidence or otherwise or anything that I say now during
15 the course of this instruction to you, that I have any
16 opinion about the facts in this case.

17 The law does not allow me to have an opinion about
18 the facts in this case. This is a matter solely for
19 you, the jury, to determine. And as jurors it is your
20 duty to determine the effect, value, weight and truth
21 of the evidence presented during this trial.

22 Now, the indictments charge the Defendant with
23 possession of powder cocaine, possession with intent to
24 distribute heroin and possession with intent to
25 distribute marijuana. I remind you that the fact that

1 the Defendant was arrested, charged and indicted in
2 this case is not evidence in this case and cannot be
3 considered by you as evidence of guilt in this case,
4 nor does it create any presumption or inference of
5 guilt. These documents are simply the formal written
6 instruments which contain the charges made against the
7 Defendant. They are the formal documents by which the
8 case is brought into this Court.

9 The indictments in this case allege three
10 different offenses against the Defendant. The charges,
11 as I said, are on Indictment 2015-26-3962, possession
12 of marijuana with intent to distribute; 3963,
13 possession with intent to distribute heroin; and 3964,
14 possession of powder cocaine. Each indictment charges
15 a separate distinct offense. You must decide each
16 indictment separately on the evidence and the law
17 applicable to it uninfluenced by your decision as to
18 any other indictment.

19 The Defendant may be convicted or acquitted on any
20 or all of the offenses charged. You will be asked to
21 write a separate verdict of guilty or not guilty on
22 each indictment.

23 Now, the Defendant has pled not guilty to these
24 indictments, and that puts the burden on the State to
25 prove the Defendant guilty. A person charged with

1 committing a criminal offense in South Carolina is
2 never required to prove himself innocent. I charge you
3 that it is an important rule of the law that the
4 Defendant in a criminal trial, no matter what the
5 seriousness of the charge may be, will always be
6 presumed to be innocent of the crime for which the
7 indictment was issued unless guilt has been proved by
8 evidence satisfying you of that guilt beyond a
9 reasonable doubt.

10 The presumption of innocence does not end when you
11 begin your deliberations, but it accompanies the
12 Defendant throughout the trial until you reach a
13 verdict of guilty beyond a reasonable doubt, based on
14 the evidence satisfying you of that guilt. The
15 presumption of innocence is like a robe of
16 righteousness placed about the shoulders of the
17 Defendant which remains with the Defendant until it has
18 been stripped from the Defendant by evidence satisfying
19 you of the Defendant's guilt beyond a reasonable doubt.

20 The presumption of innocence is not mere legal
21 theory, it's not just a legal phrase, it is a
22 substantial right which every Defendant is entitled to
23 unless you, the jury, are satisfied from the evidence,
24 as I said, of his guilt beyond a reasonable doubt.

25 I instruct you and emphasize that the fact that

1 the Defendant did not testify is not a factor to be
2 considered by you in any way in your deliberations and
3 in your consideration of the question of guilt or the
4 innocence of the Defendant. It must not be considered
5 by you in any manner whatsoever. A Defendant has the
6 constitutional right to remain silent, and the
7 assertion of this right must not be considered by you
8 in your deliberations.

9 I'll repeat. Under your oath you are to draw no
10 conclusion whatsoever from the fact that the Defendant
11 in this case did not testify. The fact that the
12 Defendant did not testify should not even be discussed
13 in the jury room. The burden of proof, as I have said
14 and stated to you, is on the State. The Defendant is
15 not required to prove his innocence. The burden of
16 proof remains on the State to prove guilt beyond a
17 reasonable doubt.

18 As I said, the State has the burden of proving the
19 Defendant guilty beyond a reasonable doubt. And some
20 of you may have served as jurors in a civil case where
21 you were told that it's only necessary to prove that a
22 fact is more likely true than not true, such as by a
23 preponderance of the evidence or greater weight of the
24 evidence.

25 In criminal cases, the State's proof must be more

1 powerful than that. It must be beyond a reasonable
2 doubt. Proof beyond a reasonable doubt is proof that
3 leaves you firmly convinced of the Defendant's guilt.
4 There are very few things in this world that we know
5 with absolute certainty, and in criminal cases the law
6 does not require proof that overcomes every possible
7 doubt.

8 If, based on your consideration of the evidence,
9 you are firmly convinced that the Defendant is guilty
10 of the crime charged, you must find the Defendant
11 guilty. If, on the other hand, you think there is a
12 real possibility that the Defendant is not guilty, you
13 must give the Defendant the benefit of that doubt and
14 find him not guilty. What is a reasonable doubt? A
15 reasonable doubt is the kind of doubt that would cause
16 a reasonable person to hesitate to act.

17 Now, there are two types of evidence which are
18 generally presented during a trial, direct evidence and
19 circumstantial evidence. Direct evidence is the
20 testimony of a person who claims to have actual
21 knowledge of a fact, such as an eye witness. It's
22 evidence which immediately establishes the main fact to
23 be proved.

24 Circumstantial evidence is proof of a chain of
25 facts and circumstances indicating the existence of a

1 fact. It is evidence which immediately establishes
2 collateral facts from which the main fact may be
3 inferred. Circumstantial evidence is based on
4 inference, not on personal knowledge or observation.
5 And the law makes absolutely no distinction between the
6 weight or value to be given either direct or
7 circumstantial evidence, nor is a greater degree of
8 certainty required of circumstantial evidence than of
9 direct evidence.

10 You should weigh all of the evidence in the case.
11 And after weighing all of the evidence, if you're not
12 convinced of the guilt of the Defendant beyond a
13 reasonable doubt, you must find him not guilty.

14 Necessarily, you must determine the credibility of
15 witnesses who have testified in this case. Credibility
16 simply means believability. It becomes your duty as
17 jurors to analyze and to evaluate the evidence and
18 determine which evidence convinces you of its truth.
19 In determining the believability of witnesses who have
20 testified in this case you may believe one witness over
21 several witnesses or several over one. You may believe
22 a part of the testimony of a witness and reject the
23 remaining part of the testimony of that same witness.

24 You may believe the testimony of a witness in its
25 entirety or reject the testimony of a witness in its

1 entirety. You may consider whether a witness has
2 exhibited to you any interest, bias, prejudice, or
3 other motive in this case. You can also consider the
4 appearance and manner of a witness while on the witness
5 stand.

6 Now, the rules of evidence ordinarily do not
7 permit a witness to testify to opinions or conclusions.
8 An exception to this rule exists for witnesses we call
9 expert witnesses. A witness who by education and
10 experience has become an expert in some art, science,
11 profession or calling, may state an opinion as to
12 relevant and material matter in which the witness
13 claims to be an expert and may also state the reasons
14 for the opinion.

15 You should consider any expert opinion received in
16 evidence in this case and, like any other evidence,
17 give it the weight you think it deserves. If you
18 decide that the opinion of an expert witness is not
19 based on sufficient education and experience, or if you
20 conclude that the reasons given in support of the
21 opinion are not sound or that the opinion is outweighed
22 by other evidence, you may disregard the opinion
23 entirely.

24 An expert's testimony is to be given no greater
25 weight than that of other witnesses simply because the

1 witness is an expert. Further, you are not required to
2 accept an expert's opinion even though it is not
3 contradicted.

4 Now, the Defendant is charged with possession with
5 intent to distribute heroin. The State must prove
6 beyond a reasonable doubt that the Defendant possessed
7 heroin with the intent to distribute it. To prove
8 possession the State must prove beyond a reasonable
9 doubt that the Defendant had both the power and the
10 intent to control the disposition or use of the heroin.

11 Possession may be either actual or constructive.
12 Actual possession means that the heroin was in the
13 actual, physical custody of the Defendant.
14 Constructive possession means that the Defendant had
15 dominion and control or the right to exercise dominion
16 or control over either the heroin itself or the
17 property on which the heroin was found.

18 Mere presence at the scene where the drugs were
19 found is not enough to prove possession. The
20 Defendant's knowledge and possession may be inferred
21 when a substance is found on the property under the
22 Defendant's control. However, this inference is simply
23 an evidentiary fact to be taken into consideration by
24 you and along with the other evidence in the case is to
25 be given the weight you decide it should have.

1 Two or more persons may have joint possession of a
2 drug. The State also must prove beyond a reasonable
3 doubt that the Defendant intended to distribute the
4 heroin. Distribution means -- or distribute, excuse
5 me, means to deliver other than by administration or
6 dispensing a drug. Intent may be shown by acts and
7 conduct of the Defendant and other circumstances from
8 which you may naturally and reasonably infer intent.

9 In determining whether Defendant had the intent to
10 distribute heroin, you may consider the circumstances
11 surrounding the Defendant's alleged possession. You
12 may consider the amount of the substance alleged to
13 have been possessed, the manner in which it was
14 allegedly possessed, the place where it was allegedly
15 possessed, and other factors which you consider to be
16 important.

17 You must find that the Defendant did not intend to
18 have the heroin solely for his own use. Possession of
19 more than two grains of heroin creates an inference
20 that the Defendant possessed the heroin with intent to
21 distribute it. This inference does not relieve the
22 State from proving beyond a reasonable doubt that the
23 Defendant had the intent to distribute. It is simply
24 an evidentiary fact to be taken into consideration by
25 you along with the other evidence in the case and be

1 given the weight that you decide it should have.

2 If you find that the State has failed to prove
3 beyond a reasonable doubt that the Defendant is guilty
4 of possession with intent to distribute heroin, you may
5 consider whether the State has proved beyond a
6 reasonable doubt the Defendant is guilty of simple
7 possession of heroin. Simple possession does not
8 require an intent to distribute the heroin.

9 The Defendant's also charged with possessing with
10 intent to distribute marijuana. I have previously
11 instructed you on the charge of possession with intent
12 to distribute heroin. The law is the same for the
13 charge of possession with intent to distribute
14 marijuana, the only difference being that the drug
15 involved is marijuana rather than heroin.

16 Additionally, possession of more than 28 grams or
17 one ounce of marijuana creates an inference that the
18 Defendant possessed the marijuana with intent to
19 distribute it. The inference does not relieve the
20 State from proving beyond a reasonable doubt the
21 Defendant had the intent to distribute. It is simply
22 an evidentiary fact to be taken into consideration by
23 you along with other evidence in the case and to be
24 given, again, the weight that you decide it should
25 have.

1 If you find that the State has failed to prove
2 beyond a reasonable doubt that the Defendant's guilty
3 of possession with intent to distribute marijuana, you
4 may consider whether the State has proved beyond a
5 reasonable doubt that the Defendant is guilty of simple
6 possession of marijuana. Simple possession does not
7 require an intent to distribute.

8 The Defendant's also charged with possession of
9 cocaine. The State must prove beyond a reasonable
10 doubt the Defendant knowingly or intentionally
11 possessed cocaine. Knowingly means with knowledge,
12 consciously, not accidentally. Intentionally means
13 willfully intending the result which actually occurred,
14 not accidentally or involuntarily. Intent may be shown
15 by acts and conduct of the Defendant and other
16 circumstances from which you may naturally and
17 reasonably infer intent.

18 To prove possession the State must prove beyond a
19 reasonable doubt Defendant had both the power and
20 intent to control the disposition or use of the
21 cocaine. Possession may be either actual or
22 constructive. Actual possession means the cocaine was
23 in the actual physical custody of the Defendant.
24 Constructive possession means that the Defendant had
25 dominion and control or the right to exercise dominion

1 and control over either the cocaine itself or the
2 property in which the cocaine was found.

3 Again, mere possession -- presence, excuse me, at
4 the scene where the drugs were found is not enough to
5 prove possession. The Defendant's knowledge and
6 possession may be inferred when a substance is found on
7 the property under the Defendant's control.

8 However, this inference is simply an evidentiary
9 fact to be taken into consideration by you along with
10 the other evidence in the case and to be given the
11 weight you decide it should have. Two or more persons
12 may have joint possession of the drug.

13 Now, there are two possible verdicts which you may
14 find on each indictment in this case, either guilty or
15 not guilty. And there is no significance whatsoever in
16 the order in which I state these possible verdicts,
17 it's just that one has to be stated first. Your
18 verdict, ladies and gentlemen, must be a unanimous one.

19 Mr. Foreperson, I'm going to send you into your
20 jury room in just a moment, and there will always be a
21 bailiff outside your door or sheriff's deputy. When
22 you reach a verdict, if you will simply write your
23 verdict on the verdict forms that I'm going to provide
24 for you, and I'll discuss that in a moment, and sign
25 your name. Then if you'll just knock on the door and)

1 inform the bailiff that you have reached a verdict, at
2 that time we'll receive you back in the courtroom.

3 Now, I'm going to ask you to go to your jury room,
4 but do not begin your deliberations. There's a
5 possibility I may have to give you a further charge.
6 If I do, I'll bring you back in, charge you further,
7 and then send you out. If I don't bring you back out
8 and instead I send in these exhibits and my charge and
9 the verdict forms, that's your signal that there will
10 be no further charge and you may begin your
11 deliberations.

12 During your deliberations process, if you need
13 anything, coffee, note pads, pens, pencils, anything
14 like that, don't hesitate to inform Mr. Ropp. He will
15 take care of that for you.

16 I want to for a moment just look at the verdict
17 forms. I have the first verdict form here for
18 possession of marijuana with intent to distribute. And
19 it simply says: As to the charge of possession of
20 marijuana with intent to distribute, we, the jury,
21 unanimously find the Defendant -- and you just circle
22 your verdict. I have guilty and not guilty there, and
23 again, there's no significance to the way they're
24 listed.

25 Under that you will see there is a sentence or a

1 couple sentences, it says: If you found the Defendant
2 guilty of possession with intent to distribute
3 marijuana, stop your deliberations. If you found the
4 Defendant not guilty of possession with intent to
5 distribute marijuana, you may consider the charge of
6 possession of marijuana.

7 If you have found him guilty, and I don't suggest
8 that is what you should do, if you found him guilty,
9 you need not consider simple possession. You would
10 simply mark that. If you found him not guilty, then
11 you may consider what we call the lesser included
12 offense. And that's addressed in my charge.

13 The same thing applies for possession with intent
14 to distribute heroin, you may find him guilty of that.
15 You may go on down to second, you don't have to find
16 him guilty of other either one, but they are there for
17 your consideration alone. And, finally, as to the
18 possession of powder cocaine, that does not have a
19 lesser included, okay.

20 Now, if I send these documents in to you, as I
21 said, that means begin your deliberations, all right.
22 Mr. Ropp, if you'd take the jury to the jury room.

23 (WHEREUPON, the jury exited the courtroom at
24 4:31 p.m.)

25 THE COURT: Mr. Axelrod, Mr. Caraker?

1 MR. CARAKER: Yes, sir.

2 THE COURT: Anything from the State?

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

4 THE COURT: Mr. Axelrod?

5 MR. AXELROD: I would like to see the verdict
6 forms, if I may, Your Honor.

7 THE COURT: Okay. Anything further?

8 MR. CARAKER: No, sir.

9 MR. AXELROD: No, sir.

10 THE COURT: All right, very well. Gentlemen, if
11 you would check and make sure that all the exhibits are
12 at hand. Terri, if you would mark my charge.

13 (WHEREUPON, Court's Exhibit No. 1 was marked for
14 identification only.)

15 (Discussion off the record.)

16 THE COURT: The marijuana is not sealed. I'm
17 going to have the court reporter maintain custody of it
18 so that it doesn't contaminate the jury room. If they
19 want to see it, they can ask for it.

20 MR. CARAKER: Yes, sir.

21 MR. AXELROD: Yes, sir.

22 (WHEREUPON, the jury begins to deliberate at
23 4:40 p.m.)

24 THE COURT: The jury foreman says, can you offer
25 any clarification as to that the phrase, right to

1 exercise control or dominion and control, means.

2 Okay. I think that the proper response, we tried
3 to get a dictionary definition of what the words mean
4 that I believe might help them. And I intend -- of
5 course I'll hear from you both -- to charge them that
6 the word dominion as used in my charge means the power,
7 authority or right to use or dispose of property.
8 Control means to have power over a thing.

9 Mr. Caraker?

10 MR. CARAKER: I have no objection to that, Your
11 Honor. I think if it came from the dictionary, I think
12 that's fair.

13 THE COURT: Okay. Well, there are all sorts of
14 definitions for dominion that are like it can be a
15 country. But we looked and tried to find what it
16 means. And Mr. Axelrod?

17 MR. AXELROD: I have concerns with it, Your Honor.
18 What I -- I'm going to read from is that State v. Heath
19 case, Your Honor --

20 THE COURT: Okay.

21 MR. AXELROD: -- that we mentioned. And I'm going
22 to go to the very end, and I'll back up. The Justice
23 Toal said that the home is owned by -- in this case the
24 home was owned by appellant's mother. In our case,
25 Nicole signed the lease.

1 As a result, it's arguable that the appellant
2 merely had a right to access the area where the crack
3 was found, not actual domain and control of the
4 property. I think -- I'm not sure, but I think
5 somewhere both that language, both parts of that
6 language, needs to be incorporated that -- because this
7 is good law, and --

8 THE COURT: Mr. Axelrod, we're not going to get
9 into something they haven't asked for. They simply
10 asked what dominion and control means. And, you know,
11 you're wanting me to essentially comment on the facts
12 of the case to talk to them about who had -- who might
13 have had the right to -- what do you want me to tell
14 them? What do you want me to tell them?

15 MR. AXELROD: That's a fair thing. I'll tell you
16 what I'd like you to tell them, I would like you to
17 tell them that one could have access to something and
18 still not have dominion and control.

19 THE COURT: No, I'm not going to do that. I think
20 that that goes beyond it. They want to know what
21 dominion and control means. That is to address the
22 facts in the case.

23 Now, we have charged them that mere possession is
24 not enough, that they must have dominion and control.
25 And dominion and control means the power or authority

1 to or right to use or dispose of the property. It
2 means to have power over something.

3 My charge says that more than one person can have
4 dominion and control. You know, you want me to tell
5 them that?

6 MR. AXELROD: Did you cover dominion and control
7 in your charge?

8 THE COURT: Yes, I did.

9 MR. AXELROD: Then I would just --

10 THE COURT: They've essentially just asked me,
11 what does dominion and control mean.

12 MR. AXELROD: Then I would read from the charge
13 what you read is what dominion and control meant.

14 THE COURT: Okay, very well. Let's bring in the
15 jury.

16 MR. CARAKER: Your Honor, does that mean you're
17 just going to read it back to them?

18 THE COURT: No. I'm going to tell them what I
19 just said.

20 MR. CARAKER: Yes, sir.

21 MR. AXELROD: All right, Your Honor. I would take
22 exception to that.

23 THE COURT: Very well, okay. Where is your
24 client? Where is your client?

25 MR. AXELROD: He went out, I think, to smoke

1 and he --

2 THE COURT: He should be in custody, put him in
3 custody. When you find him, put him in custody. That
4 way I don't have to look for him again. All right,
5 stop the jury. We can't bring the jury in until he's
6 here.

7 THE DEPUTY: Your Honor, as soon as we figured out
8 that you wanted to have court, the jury had a question,
9 we have been looking for him. Last was seen, Stuart
10 said he seen him smoking a cigarette outside.

11 THE COURT: But he's not out there now?

12 THE DEPUTY: He's not currently, no, sir.

13 THE COURT: Okay.

14 MR. AXELROD: I saw him smoke. When I took my
15 briefcase and my material to the car, which was an hour
16 and a half ago was when I saw him smoking a cigarette.

17 THE COURT: Okay. Let's put out a BOLO for him
18 and start looking for him. Mr. Axelrod, you're telling
19 me that your client is absent and he's not kept in
20 contact with you, and you don't know where he is?

21 MR. AXELROD: At this point, no, sir.

22 THE COURT: All right. Then he's waived his
23 presence for this part of the proceedings. Let's bring
24 the jury in. Mr. Caraker?

25 MR. CARAKER: Yes, sir.

1 MR. CARAKER: Thank you, sir.

2 (WHEREUPON, a brief recess was taken at 6:21 p.m.)

3 (WHEREUPON, Court's Exhibit Nos. 2 and 3 were
4 marked for identification only.)

5 THE COURT: I understand we have a verdict.

6 Mr. Axelrod, do you have your client?

7 MR. AXELROD: No, sir, Your Honor, I was unable to
8 locate him.

9 THE COURT: Has he given you any explanation or
10 any hint that he was not going to be here?

11 MR. AXELROD: No. To be honest with you, Your
12 Honor, he's always showed up to court, he came to
13 trial, came back after lunch. I had no inkling of
14 anything of that sort. And I told him, for the Court's
15 understanding, I said -- I told him, I said, I think
16 your wife did a good job for you, I think she testified
17 well. And I told him, I said, I believe I have a
18 chance to win this case, is what I told him.

19 THE COURT: Well, he has voluntarily absented
20 himself from receiving the verdict. If there is a
21 verdict of guilty, of course I will enter a sealed
22 sentence. And there already is a bench warrant for
23 him. I find that he has voluntarily absented himself
24 and waived his right to be present during that process.
25 All right. Gentlemen, let's bring in the jury.

1 (WHEREUPON, the jury came into open court at
2 approximately 7:15 p.m.)

3 THE COURT: All right. Mr. Foreman, I see we have
4 all our jurors in. It's my understanding you've
5 reached a verdict?

6 THE FOREPERSON: We have, Your Honor.

7 THE COURT: Have you reached a verdict as to each
8 indictment?

9 THE FOREPERSON: Yes, we have, Your Honor.

10 THE COURT: And were these verdicts unanimous?

11 THE FOREPERSON: Yes, they were, Your Honor.

12 THE COURT: Thank you very much. Would you please
13 hand the verdict to Mr. Ropp, the verdict forms. Thank
14 you. All right, madam clerk.

15 Let me say that the Defendant has voluntarily
16 chosen now to absent himself from the return of the
17 verdict, so he will not be present. If you would.

18 THE CLERK: Indictment No. 2015-GS-26-3963, the
19 State of South Carolina versus Calvin Solomon Barr, as
20 to the charge of possession with intent to distribute
21 heroin we, the jury, unanimously find the Defendant
22 guilty.

23 Indictment No. 2015-GS-26-3962, State of South
24 Carolina versus Calvin Solomon Barr, as to the charge
25 of possession of marijuana with intent to distribute,

1 we, the jury, unanimously find the Defendant guilty.

2 Indictment No. 2015-GS-26-3964, State of South
3 Carolina versus Calvin Solomon Barr, as to the charge
4 of possession of powder cocaine we, the jury,
5 unanimously find the Defendant guilty.

6 Signed by foreperson Drew Korlowski. Ladies and
7 gentlemen of the jury, if this is your verdict, so
8 signify by raising your right hand. Thank you.

9 (WHEREUPON, All jurors raised their hands.)

10 THE COURT: All right. Request for individual
11 polling?

12 MR. AXELROD: No, sir.

13 THE COURT: All right. Motions?

14 MR. AXELROD: After the jury leaves.

15 THE COURT: All right.

16 MR. AXELROD: If you want to excuse the jury. If
17 you choose not to, then --

18 THE COURT: Well, Mr. Caraker, I believe that the
19 CDR codes indicate that these were indictments for more
20 than the first offenses?

21 MR. CARAKER: Yes, sir, Your Honor. With
22 regard --

23 THE COURT: Can you explain that to me.

24 MR. CARAKER: Yes, sir, Your Honor. With regard
25 to the possession with intent to distribute marijuana,

1 that's a first offense. And the possession with intent
2 to distribute heroin, that is a second offense based
3 upon a prior and --

4 THE COURT: Occurring?

5 MR. CARAKER: Occurring in 2010.

6 THE COURT: Okay.

7 MR. CARAKER: And the possession of powder cocaine
8 is also a second offense based upon the prior from
9 2010.

10 THE COURT: Okay. So both of those are seconds.
11 And the sentencing range for those?

12 MR. CARAKER: Five to 30 years, Your Honor.

13 THE COURT: On each, the heroin and the coke?

14 MR. CARAKER: The heroin is five to 30. The
15 powder cocaine is zero to five, and the possession with
16 intent marijuana is zero to five.

17 THE COURT: All right. Anything that you want to
18 tell me considering sentencing?

19 MR. CARAKER: If it please the Court, Your Honor,
20 just so Your Honor can have the Defendant's record in
21 mind when pronouncing the sentence --

22 THE COURT: Of course, sentence must be sealed.

23 MR. CARAKER: Yes, sir, Your Honor. Starting in
24 1996, possession of marijuana, '97 a DUS and possession
25 of sawed-off shotgun, '99 voluntarily manslaughter, '99

1 possession of crack cocaine, first offense, 2011
2 financial identity fraud, forgery, FTC theft and
3 federally chartered institution crime which is a bank
4 fraud. And a 2010 possession of cocaine base or crack
5 cocaine.

6 THE COURT: All right. Isn't he on probation now?

7 MR. CARAKER: I believe the Defendant indicated
8 earlier when asked by Your Honor, he's on parole.

9 THE COURT: He's on parole now?

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

11 THE COURT: All right. Mr. Axelrod, I'll hear you
12 as to sentencing.

13 MR. AXELROD: Your Honor, I would ask the Court to
14 take whatever consideration they can take from this
15 case. My client's 39 years old, he has three children.
16 And I have several motions to renew. If you would like
17 me to renew them, I will renew them at this time or --

18 THE COURT: I'll do it whenever you want to.

19 MR. AXELROD: I'm going to renew my motions that
20 I've gone throughout the trial. If you want me to do
21 it before, we're done now?

22 THE COURT: It's up to you, I'll give you the
23 opportunity to do it whenever.

24 MR. AXELROD: Okay. Your Honor, I'm going to
25 renew my motions on the first -- renew my motion for

1 the search warrant. On its face of the search warrant,
2 it clearly was deficient in the ability to have the
3 search warrant. I would renew my motion to suppress
4 the material that was given to us yesterday on the
5 moped. We weren't able to research it and fully maybe
6 to develop a defense to that.

7 I would also renew my motion for a directed
8 verdict. Your Honor, in this case, and I cite the
9 Heath case again, that there's -- that the case law was
10 on a directed verdict that you could -- the current
11 case law is that it's arguable that a person may have
12 access to where the drugs are but not actually domain
13 and control of the property.

14 And I would dovetail that, that I felt that when
15 you informed the jury of what their question was of
16 dominion and control, I had asked the Court to explain
17 to them that one could have access to a drug but not
18 actually have dominion and control. And I felt that
19 was improper. And I asked for the Court to actually
20 just read the charge that it read initially to the jury
21 for that.

22 For those reasons I would ask the Court to take
23 this back and get a new trial at this point.

24 THE COURT: All right. For the reasons I have
25 already stated, I would deny all of your motions. My

1 reasons are on the record. Anything further?

2 MR. AXELROD: No, sir, Your Honor.

3 THE COURT: Ladies and gentlemen, whenever a
4 Defendant absents himself -- and I will tell you now
5 that after the fact that this Defendant was in custody
6 and has fled -- that would require me to not make
7 public to anyone my sentence but to seal it. And I
8 will certainly do that.

9 Whenever he is found he will be brought back
10 before me or some other judge, and the sentence will be
11 opened and read to him. And I assure you he will be
12 found. But you have heard his record, it is extensive.
13 He has an extensive record for drugs, among other
14 things. Those things I had ruled earlier were not
15 appropriate for your consideration on this particular
16 charge.

17 If he had testified, it would have been
18 appropriate for you to know for the purpose of
19 assessing his credibility, his believability. But
20 since he did not testify, those matters were not
21 appropriately before you.

22 You have sat patiently, you've been very
23 attentive. We appreciate your service in this matter.
24 I can assure you that this case would still be on our
25 dockets had you not been willing to come forward and

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2015-GS-26-03962,03963,03964

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

June 13, 2016

CALVIN SOLOMON BARR,)

Defendant.)

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

David P. Caraker, Jr., Esquire
Attorney for Plaintiff

Jeffrey T. Lucas, II, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

State v. Barr - 2015-GS-26-03962,03963,03964
SENTENCE OF THE COURT

3

1 **(JUNE 13, 2016 - 9:47 A.M.)**

2 THE COURT: Yes, Mr. Caraker?

3 MR. CARAKER: Good morning, Your Honor. May it please
4 the Court? We're here for unsealing of a sentence State v.
5 Calvin Solomon Barr. He was tried before Your Honor during
6 the week of April 18th, 2016. He was found guilty by a jury
7 of possession with intent to distribute marijuana, indictment
8 ending 3962; possession with intent to distribute heroin,
9 indictment ending 3963; and possession of cocaine, indictment
10 ending 3964. Before the Jury had returned its verdict, the
11 Defendant fled the courtroom and was eventually picked up, I
12 believe, in Myrtle Beach. Your Honor, had sealed the sentence
13 and we're here today for the unsealing.

14 THE COURT: All right. Mr. Lucas, you're here with Mr.
15 Barr; is that right?

16 MR. LUCAS: That is correct, Your Honor.

17 THE COURT: I recall you participated some in the trial,
18 didn't you?

19 MR. LUCAS: I did, Your Honor.

20 THE COURT: Mr. Axelrod was here for most of it.

21 All right. I'm unsealing the sentences.

22 All right, Mr. Lucas, you -- do you have anything for me
23 before I read the sentences?

24 MR. LUCAS: Your Honor, I had some things in mitigation
25 but if the -- if Your Honor has already decided on the

State v. Barr - 2015-GS-26-03962, 03963, 03964
SENTENCE OF THE COURT

4

1 sentences, I'm not sure that it's appropriate at this point.

2 THE COURT: Okay. All right. Mr. Barr.

3 MR. BARR: Yes, sir.

4 THE COURT: On the charge of possession of cocaine,
5 second offense, the sentence of this Court is that you be
6 confined in the State Department of Corrections for a period
7 of five years. As to the possession with intent to distribute
8 marijuana, first offense, the sentence of the Court is you be
9 confined in the State Department of Corrections for a period
10 of five years. As to the charge of possession with intent to
11 distribute -- was it -- was it cocaine?

12 MR. CARAKER: It was heroin, Your Honor.

13 THE COURT: Heroin.

14 MR. CARAKER: Yes, sir

15 THE COURT: Heroin. It is the sentence of this Court
16 that you be confined to the Department of Corrections for
17 period of fifteen years. These are all concurrent sentences.

18 MR. CARAKER: Thank you, Your Honor.

19 THE COURT: All right, very well.

20 MR. LUCAS: Thank you, Your Honor.

21 (ADJOURNED - 9:20 A.M.)

22

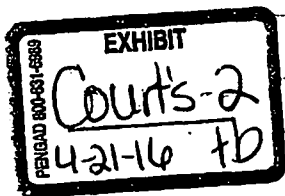
23

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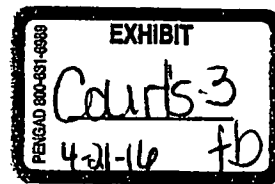
Can you offer any clarification
as to what the phrase "right to
exercise dominion and control" means

W. K. K. K.
Foreman



The word dominion as used in my charge means the power, authority, or right to use or dispose of property.

Control means to have power over a thing.



WITNESSES

Stephen Thackray Myrtle Beach Police
Department

CERTIFIED COPY

DOCKET NO. 2015-GS-28-3962

FILED
HORRY COUNTY

2015 SEP 18 PM 1:12

MELANIE BOULERS WARD
CLERK OF COURT

2016 JUN 15 The State of South Carolina

Melanie Boulers Ward County of Horry

CLERK OF COURT
HORRY COUNTY
D. Caraker, Jr.

DATE RECEIVED FROM
GRAND JURY

COURT OF GENERAL SESSIONS

September, 2015 TERM

ARREST WARRANT NUMBER

2014A2620801785

CDR: 0186 44-53-0370(b)(2)

DOA: 8/10/2014

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

Calvin Solomon Barr
B/M

Myrtle Beach, SC 29577-3949

DOB:

SSN:

ATTORNEY: Stuart M. Axelrod

Forperson of Grand Jury

Date: SEP 17 2015

Indictment for

Possession of marijuana with intent to
distribute

Jimmy A. Richardson, II, Solicitor

VERDICT

Forperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

CDR: 0186 44-53-0370(b)(2)

That Calvin Solomon Barr did in Horry County, on or about August 9, 2014, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver, a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and in violation of Section 44-53-0370(b)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Stephen Thackray Myrtle Beach Police
Department

CERTIFIED COPY

DOCKET NO. 2015-GS-26-

3963

2016 JUN 15 PM 1:18

The State of South Carolina

County of Horry

CLERK OF COURT
HORRY COUNTY

David P. Caraker, Jr.
14H03413

COURT OF GENERAL SESSIONS

September, 2015 TERM

ARREST WARRANT NUMBER

2014A2620601786

CDR: 0184 44-53-0370(b)(1)

DOA: 8/10/2014

ACTION OF GRAND JURY

TRUE BILL

Forperson of Grand Jury

Date: SEP 17 2015

VERDICT

Foreperson of Petit Jury

Date:

VS.

Calvin Solomon Barr
B/ M

Myrtle Beach, SC 29577-3949

DOB:

SSN:

ATTORNEY: Stuart M. Axelrod

Indictment for

Possession with intent to distribute heroin

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY

2015 SEP 18 PM 1:12

MELANIE HUGHES WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

CDR: 0184 44-53-0370(b)(1)

That Calvin Solomon Barr did in Horry County on or about August 9, 2014, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Heroin, a Schedule I controlled substance under the provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(b)(1), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

200 5-20

WITNESSES

Stephen Thackray Myrtle Beach Police
Department

DOCKET NO. 2015-GS-26- **3964**

CERTIFIED COPY

2016 JUN 15 PM 1:10
The State of South Carolina
County of Horry

Melanie Higgins-Ward
David P. Ceraker, Jr.
CLERK OF COURT
HORRY COUNTY

2015 SEP 18 PM 1:12

MELANIE HIGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

COURT OF GENERAL SESSIONS

September, 2015 TERM

ARREST WARRANT NUMBER

✓ 2014A2620601787
CDR: 3012 44-53-0370 (d)(3)
DOA: 8/10/2014

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

Calvin Solomon Barr
B/ M

Myrtle Beach, SC 29577-3949
DOB: _____
SSN: _____

ATTORNEY: Stuart M. Axelrod

Leah Smith
Foreperson of Grand Jury
Date: **SEP 17 2015**

VERDICT

Indictment for

Possession of powder cocaine

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date: _____

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF POWDER COCAINE

CDR: 3012 44-53-0370(d)(3)

That Calvin Solomon Barr did in Horry County on or about August 9, 2014, knowingly, willfully, and intentionally possess a quantity of Powder Cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such possession not having been authorized by law, and being in violation of Section 44-53-370(d)(3), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

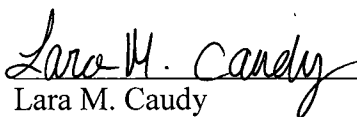

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

2ND 0-5

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of February, 2018.

RECEIVED
FEB 05 2018
SC Court of Appeals