

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Lancaster County

SC Court of Appeals

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERMAINE DEMARCUS GRIER,

APPELLANT

APPELLATE CASE NO 2016-001045

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2016-GS-29-271
5 State of South Carolina
6 vs.
7 Jermaine Grier
8
9 Lancaster, South Carolina
10 May 11-12, 2016
11 Before the Honorable Brian M. Gibbons
12

13 APPEARANCES
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15 For the Defendant: Mark Grier
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18 Official Court Reporter
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PRETRIAL HEARING

1 MS. COLLINS: Your Honor, at this time the State of
2 South Carolina calls for trial the case of 2016-GS-29-271,
3 the State of South Carolina versus Jermaine Demarcus Grier.
4 Mr. Grier is present -- I mean, Mr. Jermaine Grier is
5 present in the courtroom and is represented by public
6 defender Mark Grier, appointed counsel. This is a true
7 billed indictment, it's a direct indictment for possession
8 of contraband by a county or municipal prisoner. The
9 original charge cited the wrong code section, that's why
10 it's a direct indictment and we would probably need to
11 arraign the defendant at the proper time, but at first we
12 need to have a Blair hearing. Dr. Richard Frierson is
13 present today from the Department of Mental Health has had
14 an opportunity to speak with Mr. Grier, the defendant, this
15 morning, and has previously evaluated the defendant on
16 January 15, 2015, and March 16th of 2015. He is available
17 for testimony as to the defendant's competency to go
18 forward this morning.

19 THE COURT: All right. Mr. Mark Grier, are you
20 prepared to go forward with the Blair hearing?

21 MR. GRIER: Yes, Your Honor. I would like to put the
22 Court on notice, at this time we would be challenging the
23 indictment under the contraband statute that he's charged
24 with but that would be a matter to take up later and is
25 irrelevant as to his competence.

PRETRIAL HEARING

1 THE COURT: We'll proceed forward with the competency
2 hearing at this time and then we'll deal with the matter of
3 law depending on the finding of the Court as to his
4 competency.

5 MS. COLLINS: Thank you, Your Honor. At this time the
6 State calls as its witness in the competency hearing Dr.
7 Richard Frierson.

8 The witness, RICHARD FRIERSON, was first duly sworn
9 And testified as follows:

10 DIRECT EXAMINATION

11 BY MS. COLLINS:

12 Q Pleas state your name?

13 A My name is Richard Lesesne Frierson.

14 Q What is your occupation?

15 A I am a forensic psychiatrist.

16 Q Can you tell the Court of your education and your
17 experience in that field, your education to become so
18 licensed and your experience?

19 A Yes. After receiving a Bachelor's Degree in Music
20 from the University of South Carolina in 1984 I completed
21 medical school at the University of South Carolina in
22 1988, and then completed four years of residency in
23 general psychiatry at William S. Hall Psychiatric
24 Institute in Columbia in 1992, completed a one year
25 fellowship in forensic psychiatry in 1993, and am

PRETRIAL HEARING

1 currently board certified by the American Board of
2 Psychiatry and Neurology in the fields of general and
3 forensic psychiatry.

4 Q Is that a national certification?

5 A Yes.

6 Q How long have you been so certified approximately?

7 A Since 1994.

8 Q So am I correct in that you're also a medical doctor
9 but with a specialty in psychiatry; is that correct?

10 A Yes.

11 Q So you're licensed in South Carolina to practice
12 medicine?

13 A Yes.

14 Q What specialty in psychiatry?

15 A Yes.

16 Q Forensic psychiatry?

17 A Yes.

18 Q How long have you been employed with the Department of
19 Mental Health in South Carolina?

20 A Well, actually I'm not employed with the Department
21 of Mental Health. I am employed by the University of
22 South Carolina School of Medicine, and I do this work for
23 the Department of Mental Health contractually, they have a
24 contract with the university for my services.

25 Q And those services are to perform forensic psychiatric

PRETRIAL HEARING

1 evaluations of people referred to you for those type of
2 exams?

3 A Yes. I do competency and criminal responsibility
4 evaluations for counties throughout South Carolina.

5 Q And how long have you provided those services?

6 A Since 1993.

7 Q And approximately how many evaluations have you done?

8 A Several thousand.

9 Q And have you testified in a court of law as an expert
10 witness in the field of forensic psychiatry?

11 A Yes.

12 Q Approximately how many times?

13 A I would estimate about 250 or 300 times.

14 MS. COLLINS: Your Honor, at this time I do
15 respectfully offer Dr. Frierson as an expert witness in the
16 field of forensic psychiatry.

17 THE COURT: All right. Mr. Grier, any further voir
18 dire?

19 MR. GRIER: No, Your Honor.

20 THE COURT: All right, thank you. So qualified as an
21 expert in the field of forensic psychiatry.

22 Q Dr. Frierson, in your field and as part of your
23 contractual services with DMH, did you have an occasion to
24 meet with the defendant, Jermaine Grier, in order to
25 perform a forensic evaluation upon him?

PRETRIAL HEARING

1 A Yes.

2 Q What dates did you meet with him?

3 A I met with him on January 15th of 2015, and again on
4 March 16th of 2015.

5 Q And that was pursuant to an order from the Court for
6 an evaluation?

7 A Yes.

8 Q And that, in fact, was an order for an evaluation
9 under the M'Naghten criminal responsibility standard; is
10 that correct?

11 A That is correct. That was for criminal
12 responsibility and capacity to perform evaluation.

13 Q And that specifically was as to his charges which he
14 is facing on the murder charge; is that right?

15 A Correct.

16 Q But in so meeting with him, am I correct in stating
17 that one of the preliminary things you do in meeting with a
18 defendant who you have been ordered to so evaluate is to do
19 an overview to establish his competency to the extent of
20 his ability to cooperate with you and to understand the
21 general legal processes?

22 A When we get a criminal responsibility evaluation we
23 do a brief screen for competency, I'm not going to say
24 it's extensive as a competency eval, but we screen. We
25 ask several questions about the court and how it works,

PRETRIAL HEARING

1 and if we have any reason to believe from the totality of
2 our evaluation that he might not be competent to stand
3 trial then we suspend that evaluation and request from the
4 court an order for competency evaluation.

5 Q When you first met with him on January 15th of 2015,
6 that evaluation was, in fact, suspended, am I correct?

7 A Yes.

8 Q But not for concerns about competency, was it due to
9 his not cooperating with the evaluation without counsel
10 present at that time?

11 A Well, it was -- he didn't ask for counsel, it was
12 just that he was not cooperating at all. He says he
13 didn't know any words, he doesn't read at all, didn't know
14 where he was, didn't know where he came from, didn't know
15 what day it was, didn't know how old he was, didn't know
16 his date of birth. These are things that even severely
17 impaired people generally would know.

18 Q So did the department send attorney Mark Grier a
19 letter dated January 15th of 2015 indicating that the
20 defendant did not cooperate with the evaluation and that
21 counsel would need to be present at the next scheduled
22 appointment?

23 A Right. When I have people that present this way I
24 typically say okay, let's reschedule them, let's have
25 their attorney present and let's see if having their

PRETRIAL HEARING

1 attorney present might assist in getting better
2 cooperation. In the meantime in this particular case I
3 also referred Mr. Grier for some psychological testing.
4 We have specific tests that are designed to detect people
5 who are fading memory impairment and mental illness and
6 that was done before I saw him back.

7 Q And was that done here locally?

8 A That was in Columbia.

9 Q Did you receive a report from that evaluation?

10 A I did.

11 Q And that evaluation, correct me if I'm wrong, was done
12 by a mental health professional as well?

13 A Yes. By Dr. Sandra Stater, (phonetically) she's a
14 psychologist that was working at the time for the
15 Department of Mental Health.

16 Q And you received a written report from her?

17 A I did.

18 Q And upon receiving that, did you review it?

19 A I did.

20 Q And did you rely upon that in going forward with your
21 own subsequent evaluation of the defendant?

22 A Yes.

23 Q And you did meet again with the defendant on what
24 date?

25 A The second meeting with the defendant that I had was

PRETRIAL HEARING

1 on March 16th.

2 Q Of 2015?

3 A Yes.

4 Q And at that time was counsel present?

5 A Yes, he was.

6 Q And at that time were you able to not only begin anew
7 the evaluation but complete it successfully?

8 A We did.

9 Q Can you please tell the Court the results of that
10 evaluation and what was your final conclusion in regard at
11 that time to the defendant's standard -- I realize again
12 you were evaluating him for M'Naghten, but if I may ask,
13 first of all, did you have any concerns during the course
14 of that evaluation on March 16th of 2015 as to his
15 competency to go forward at that time?

16 A I did not.

17 Q Okay. And you made a conclusion in regard to
18 M'Naghten at that time too as well, specifically again to
19 the incident date and charge on the murder case; is that
20 right?

21 A That is correct.

22 Q Was your conclusion -- and I realize that's not the
23 standard for the Court, but to the point it may pertain to
24 his mental health and ability to go forward today, what was
25 your conclusion as to the M'Naghten standard test?

PRETRIAL HEARING

1 A It was my conclusion that Mr. Grier would have been
2 criminally responsible on or about June 10th of 2014.

3 MS. COLLINS: Your Honor, at this time I would like to
4 move the nine page report of Dr. Frierson with the
5 coversheet from Dr. Musick, (phonetically) the chief
6 psychologist there, into evidence as State's Exhibit 1 for
7 the purposes of this hearing only.

8 MR. GRIER: No challenge, Your Honor.

9 THE COURT: All right. Without objection introduced
10 for the purpose of this hearing.

11 Q Dr. Frierson, you have had an opportunity again this
12 morning to speak with the defendant, Mr. Jermaine Grier; is
13 that correct?

14 A Yes.

15 Q Was Attorney Mark Grier present during that time?

16 A For most of it, yes.

17 Q And in your meeting with him today were you able to
18 address his competency in order to go forward in legal
19 proceedings today whether that ultimately is a plea or to
20 stand trial?

21 A Well, I don't have a reason -- let me put it this
22 way, I have no reason to believe that Mr. Grier is not
23 competent to stand trial. If I may explain my opinion a
24 little bit. First of all, when I saw him back in March he
25 told me he was charged with trafficking cocaine and

PRETRIAL HEARING

1 marijuana but I told him, "No, you're actually charged
2 with murder," and the other charges that he was facing.
3 Then I asked him were those charges serious and he said,
4 "Yes." I said, "What could happen?" And he said, "They
5 carry time." I asked him how much time he could get and
6 he said, "A life sentence." So that's actually accurate
7 to my understanding of the most serious charge, which is
8 the murder charge. He identified his attorney by name as
9 he did today, stated he is a lawyer, he is there to
10 represent you, to help you, to stay what he can to help
11 me, which is accurate. He knew that the judge let's you
12 know what's going on and makes a decision. And I said,
13 "What address does the Judge decide? Whether you're
14 guilty or not guilty." I asked him, "Is the judge for
15 you, against you or in the middle?" And he said that the
16 judge was in the middle, which is accurate. He said
17 solicitors are against you and wants to make you go to
18 jail. He knew that a jury is when they round everybody up
19 and there are 12 people. He did not know what they
20 actually did but he was capable of understanding that when
21 it's explained to him. He knew what a plea bargain was,
22 he knew what the requirements of probation were, and he
23 described evidence as "something they have against me."
24 So that was my screening for competency, and based on
25 those responses I have no reason to have concerns about

PRETRIAL HEARING

1 his competency. Also I will add that he has prior legal
2 experience. He has been through the court systems several
3 times and to my knowledge there's never been a concern
4 about it. Thirdly, he does not have a mental illness that
5 would typically impair capacity to stand trial. He has
6 cannabis use disorder but he hasn't been smoking
7 marijuana, at least I hope not, in that detention center.
8 And on the only other diagnosis that I assigned was a
9 personality disorder, antisocial personality disorder,
10 which does not rise to the level to impair competency.

11 Q So based upon your meeting with him in March of 2015
12 and again meeting with him this morning, do you have any
13 concerns to a reasonable degree of scientific and medical
14 certainty as to his ability to understand the proceedings,
15 the legal proceedings and to assist his counsel and as to
16 his competency to proceed in the legal justice system?

17 A I do not have a reason to doubt his capacity. He may
18 choose not to cooperate, but that's different than lacking
19 the capacity.

20 MS. COLLINS: Thank you, Doctor Frierson. Please
21 answer any questions of Attorney Grier.

22 THE COURT: All right. Mr. Mark Grier?

23 MR. GRIER: Thank you.

24 CROSS EXAMINATION

25 BY MR. GRIER:

PRETRIAL HEARING

1 Q Dr. Frierson, how many times have you seen Mr.

2 Jermaine Grier.

3 A Three total.

4 Q And who else has seen him professionally that you're
5 aware of?

6 A I don't know what you're -- are you referring to the
7 report that you showed me?

8 Q Well that -- actually prior to that as far as SCDC.

9 A Yeah. He had a history in South Carolina Department
10 of Corrections of contacts with mental health
11 professionals that were called to evaluate him when he was
12 on crises intervention or when he had threatened suicide
13 on one occasion. Also he had chronic problems within the
14 department of corrections controlling his anger, throwing
15 stuff at officers, similar to my understanding with some
16 of the problems he may be having in the Lancaster County
17 Detention Center. And so they tried him on a variety of
18 medications such -- Tabradol is the one that's been used
19 the most, which frequently is used in psychiatry to
20 attempt to help people gain better control of their anger,
21 so they did that. They had assigned a diagnosis of
22 intermittent explosive disorder, which means people have
23 angry outbursts that are well out of context of whatever
24 they felt slighted about or the reason the anger is way
25 out of proportion to whatever happened. I was not -- I

PRETRIAL HEARING

1 have not assigned that diagnosis because I think that
2 you -- part of antisocial personality disorder is people
3 have difficulty controlling their anger and they can
4 behave angry and aggressively, and so I didn't think those
5 behaviors warranted an additional diagnosis. But even
6 intermittent explosive disorder, even if he had that, is
7 not a disorder that would impair his competency.

8 Q Okay. What would be the associations perhaps of the
9 interim explosive disorder to an irresistible impulse
10 disorder?

11 A Well, if you believe that he has intermittent
12 explosive disorder then there's some impairment in a
13 person's ability perhaps to conform when they're angry.

14 Q All right. And he had received that as a diagnosis in
15 SCDC?

16 A Yes. Well, it was -- at times they say rule out
17 intermittent explosive disorder, they say intermittent
18 explosive disorder provisional.

19 Q What would that mean, provisional?

20 A That means we see some evidence of it, that just
21 means that psychiatric diagnoses are made over time.

22 Q Okay.

23 A And you may suspect something and you make a note of
24 it for further consideration.

25 Q So would -- what would account for one person finding

PRETRIAL HEARING

1 a professional finding of that disorder or some evidence of
2 it and you're not finding it?

3 A A difference of opinion.

4 Q Okay. So now, Mr. Grier, first of all, was
5 uncooperative with you upon your first meeting with him.

6 Did he present any anger issues towards you or any
7 aggressive issues or anything of that nature?

8 A No.

9 Q Has he ever?

10 A To me personally?

11 Q Yes, during your interviews.

12 A Not to my recollection.

13 Q But during your inquiry into this matter, did you
14 become aware of his history with his ability to communicate
15 with his attorney?

16 A I understand that there had been difficulties with
17 communication with the attorney.

18 Q Okay. Now?

19 A There are times he refuses to talk to you.

20 Q Okay. Now, as far as acknowledging his name or his
21 identity, have you had issues with that as well?

22 A Yeah. He would insist that his name is Green, not
23 Grier, or he will give the social security number
24 correctly until we get to the last four, then he'll change
25 the numbers around, or he will give you a date of birth

PRETRIAL HEARING

1 that is close but not his correct date of birth, or claim
2 he doesn't know how old he is. He does that, I think,
3 purposefully.

4 Q And on what evidence do you come to that conclusion of
5 his purposefulness?

6 A One of the things that we notice is he gives
7 near-miss answers, and people -- that's something that we
8 call in forensics Ganzer Syndrome. For example, I'm not
9 saying -- let me just give you an example, this is
10 something he did. For example I said what is today, it's
11 Thursday. What month are we in, it's April. What's the
12 date? Oh, it's the 9th. What year is it? 2017. You
13 know, the answer is always one off or a very near miss.
14 And for people to do that consistently, you have to know
15 what the correct answer is. So the only explanation is
16 you are purposefully giving an incorrect answer.

17 Q Is there any kind of probability standard associated
18 with that conclusion that you could relate to us?

19 A No. But in the testing that was done demonstrated
20 that he was purposefully choosing wrong answers
21 statistically in a test of memory impairment, that he was
22 trying to make himself look like he had a memory problem
23 that statistically was not possible, and that was
24 consistent with this near miss answer stuff.

25 Q When you do these evaluations whether it -- obviously

PRETRIAL HEARING

1 if it's a competency and you immediately run into problems
2 you don't get into the facts of the case I suppose, but
3 typically is there some conversation about the facts
4 alleged by the State when you're doing either a competency
5 or a M'Naghten?

6 A We certainly talk about what we're doing, criminal
7 responsibility or M'Naghten, we talk about it at length.
8 In a competency eval we might do more of what is your
9 understanding of the evidence against you? Why are they
10 saying you did without having to tell us what happened.
11 But in a criminal responsibility we say tell us what
12 happened so that we can learn exactly what their mental
13 state was at the time of the criminal act. He told me he
14 didn't remember.

15 Q Okay. And did that pertain to multiple charges or, I
16 guess, all of the events that you actually evaluated him on
17 back in March of 2015 that was -- there were -- I guess for
18 lack of a better word, there were multiple charges but
19 there were really three events alleged on that basis?

20 A Yes. He was murder, attempted murder, I think
21 possession of a weapon or violent crime, burglary. They
22 were all from stemming from the same event, or close in
23 time events.

24 Q Okay. Were you able to have or did you attempt to
25 have and were you able to have any substantive conversation

PRETRIAL HEARING

1 with him about guilt or innocence about those events?

2 A He said that he has no memory for that period of
3 time, that he doesn't think he committed these offenses.
4 And having said that, when someone tells me they cannot
5 remember anything I have to think, okay, is there a reason
6 they can't remember, and there's several here. One could
7 be malingering, like he does remember and he's saying he
8 doesn't. One could be that he was intoxicated but
9 substances -- if you're drunk enough you may not remember
10 how you got home the night before, he might not have
11 remembered because he was intoxicated what he actually
12 did. Or sometimes when there's a violent offense such as
13 murder I've seen pretty normal defendants, they blocked
14 out -- they remembered up to a certain point and then
15 they'll say, "I blacked out." They didn't actually black
16 out, they just didn't remember what happened. And so when
17 I have a defendant who says he doesn't remember anything,
18 I have to look at their behavior as reflected in the
19 police reports. And in this case there was evidence of
20 trying to prevent someone from calling 911, of cleaning up
21 evidence, of giving another story as to what happened, he
22 fell out of the bed instead of, "I killed him." He tried
23 to be somewhat -- I'm not going to say -- he was sort of
24 deceitful in what had happened, trying to dispose of
25 evidence, those behaviors indicate that whoever committed

PRETRIAL HEARING

1 them likely was aware of the wrongfulness of murder. You
2 don't dispose of evidence or deny it or prevent someone
3 from calling 911 unless you know you have done something
4 that's wrong, so we base the opinion more on what's in the
5 police reports and the evidence rather than just on what
6 he says.

7 Q As to the charges that are before this Court today in
8 this case of contraband, did you have any substantive
9 discussion with -- and I'm not asking you to make -- to say
10 what he said, but were you able to have any substantive
11 conversation with him about the facts alleged?

12 A I was able to inform him of the facts contained in
13 the incident report.

14 Q Did he --

15 A He denied that that was him.

16 Q Okay.

17 A But he also was aware that officers can testify
18 against him, and he was able to indicate that he thought a
19 jury might believe the officers over what he had to say.

20 Q Not to be repetitive, but as far as mental illness
21 just to make sure that I understand that in case of future
22 reference and for today, you find him of symptoms, or do
23 you have an opinion about what mental illnesses he does
24 exhibit as of today?

25 A I think he has a cannabis use disorder in a

PRETRIAL HEARING

1 controlled environment, that means when he is on the
2 street he was using pretty heavily, he tested positive for
3 it at Richland Memorial Hospital, and I believe that
4 cannabis has caused him problems. So he has cannabis use
5 disorder in a controlled environment, it just means if
6 he's in the jail he doesn't have access to it right
7 now. My other diagnosis is an antisocial personality
8 disorder. He has a history of failure to conform to
9 social norms beginning at a very young age. I think he
10 was in DJJ for a burglary, and I don't want to mislead the
11 Court but it was fairly young, 13. Has a history of petty
12 larceny in '94, some disorderly conducts, burglary,
13 shoplifting, probation violation, all of this as a
14 juvenile, failed to conform to normal behavior in school,
15 was expelled two years in a row, was sent to a boys home.
16 And then as an adult he has failed to maintain his normal
17 adult role responsibilities such as having employment.
18 He's never really held a job. He's told people that he
19 has sold drugs. He has been repeatedly arrested and
20 incarcerated, and been aggressive and assaulted at times.
21 And has difficulty with authority, hence correctional
22 officers. And those symptoms are consistent with
23 antisocial personality disorder.

24 Q Would it be possible that between the time that you
25 did the March evaluation and today that his diagnosis could

PRETRIAL HEARING

1 have changed in your opinion, could change about the
2 malingering aspect, in terms of the testing that you
3 performed in March, you did not perform that today.

4 A No.

5 Q So how can we have any confidence that there's not
6 some other factor accounting for the same symptoms today
7 that exhibited a year ago other than that without
8 performing the test.

9 A Well, his presentation is similar and he has a long
10 history presenting this way. He denied to me hearing
11 voices or other symptoms of severe mental illness today.
12 I have no reason to believe that he has developed a mental
13 illness since I saw him in March. But is that a remote
14 possibility? I suppose it is. It's been a year since I
15 saw him.

16 MR. GRIER: Thank you, Dr. Frierson.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MS. COLLINS:

20 Q Do any of those answers to the questions of Attorney
21 Grier change your answer to the final question that I posed
22 to you in terms of your expert opinion to a reasonable
23 degree of scientific and medical certainty that the
24 defendant is competent to go forward with legal proceedings
25 today?

PRETRIAL HEARING

1 A No.

2 MS. COLLINS: Thank you. Nothing further.

3 THE COURT: Thank you, sir, you may step down.

4 MS. COLLINS: Your Honor, that would be the extent of
5 the State's witnesses on the Blair Hearing and we're
6 prepared to argue at the appropriate time.

7 MR. GRIER: Beg the Court's indulgence.

8 MS. COLLINS: Dr. Frierson has asked if he could be
9 excused.

10 THE COURT: Any objection to the doctor leaving?

11 MR. GRIER: Your Honor, if Dr. Frierson could hold on
12 for just a minute until I can conclude this, sorry to hold
13 you up.

14 (Break in proceedings.)

15 MR. GRIER: Thank you, Dr. Frierson. That would be
16 all. We agree to excuse Dr. Frierson.

17 THE COURT: All right. Are y'all ready to proceed
18 with argument?

19 MR. GRIER: Yes, Your Honor.

20 MS. COLLINS: It would the position of the State, Your
21 Honor, that any issue as to the competency of the defendant
22 to go forward with the proceedings here this week on the
23 charge before the Court at this time have been resolved by
24 the expert testimony of Dr. Frierson and his expert opinion
25 expressed thereon.

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1 THE COURT: All right. Mr. Mark Grier?

2 MR. GRIER: Yes, Your Honor. Dr. Frierson conceded
3 that there had been previous disorders of interim explosive
4 disorder, which would be consistent with the irresistible
5 impulse -- I know we're not here about that -- but in other
6 words, he has a special disagreement with the conclusions
7 that other professionals have had concerning Mr. Grier,
8 Your Honor. And his testimony today was that he didn't
9 perform the test that he performed back a year ago, and
10 that Mr. Jermaine Grier's -- his personality, whether his
11 conclusions -- there were some chance that they might be
12 different and other things could account for a change in
13 consistent behavior in Mr. Jermaine Grier that he observed
14 today other than the conclusions that he had last time. He
15 didn't test Mr. Grier today, it's been over a year since he
16 performed the test that he relied on in concluding that Mr.
17 Grier was a malingerer and is choosing not to cooperate,
18 and I would ask you to find based on that that there's
19 insufficient evidence to find that he is competent.

20 THE COURT: All right. Based upon the testimony and
21 evidence presented and considering arguments of counsel, I
22 find that the defendant is competent to proceed with legal
23 proceedings today, specifically the trial of the charge of
24 possession of contraband by a prisoner, which the jury has
25 been qualified for. All right. I made the finding of

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1 competency. Mr. Grier, you indicated you had a legal issue
2 concerning the indictment in this case?

3 MR. GRIER: Yes, Your Honor. But I think we would
4 have to have some testimony from the State's witnesses to
5 determine it. I will go ahead and tell you what it is and
6 we can just figure out what we need to do to resolve it.
7 Your Honor, I would submit that, you know, the evidence
8 that the State that I have been provided through the
9 discovery process -- I wouldn't submit it, but I will tell
10 you that the evidence provided to me in advance of this
11 case coming to trial was a -- suggests the conclusions that
12 Mr. Grier's possession of an item, which was basically the
13 clip off of a pen that had been sharpened, but --

14 THE COURT: The clip off of a pen?

15 MR. GRIER: Yeah.

16 THE COURT: The part that you use --

17 MR. GRIER: That is used to put on your shirt if I
18 said that correctly. And Your Honor, the evidence assuming
19 that they -- that the corrections officers and the people
20 that are going to be testifying for the State testify
21 consistent with what they have said in their police report
22 is that, you know, it appeared that inmate Grier was trying
23 to use the metal piece as a way to unlock his handcuffs.
24 The indictment, of course, alleges that he was in
25 possession of a weapon. And, Your Honor, the difference

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1 between -- he's not charged with escape, and certainly the
2 difference in being charged with a weapon indictment says
3 that --

4 THE COURT: Let me see the indictment?

5 MR. GRIER: -- alleges a weapon.

6 THE COURT: What is the definition of contraband?

7 MR. GRIER: Well, Your Honor, 24-950 says, "It should
8 be unlawful to furnish or attempt to furnish any prisoner
9 under the jurisdiction under the department of corrections
10 any matter declared to be contraband. It shall also be
11 unlawful for any prisoner under the jurisdiction of the
12 department of corrections to possess any matter considered
13 to be contraband. Matters considered contraband within the
14 meaning of this section shall be those which are determined
15 to be such by the director and published by him in a
16 conspicuous place available to visitors and inmates at each
17 correctional institution." And then, of course, it goes on
18 to go to the -- says it's a felony what the -- but that
19 provision has been interpreted, of course, also to apply to
20 county detention centers, Your Honor. But my point is
21 the -- that there's no --

22 THE COURT: The indictment says that the writing --
23 the metal piece derived from a writing pen described it as
24 an illegal weapon.

25 MR. GRIER: That's right. Whereas the evidence that's

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1 been provided to me in discovery says that it appeared to
2 be a metal piece to use to unlock his handcuffs, and
3 contraband -- the statute pertaining to contraband 24-3-965
4 says --

5 THE COURT: My question is -- and I'm sorry to
6 interrupt -- does contraband have to be an illegal weapon?

7 MR. GRIER: No, Your Honor.

8 THE COURT: Okay. Then doesn't that defeat your
9 argument in and of itself?

10 MR. GRIER: Well, except for this probably --

11 THE COURT: I understand. I want you to make your
12 record, but I just want to make sure we all understand
13 where we're going here. Whether or not it's an illegal
14 weapon or not, or whether or not it's a weapon or not
15 doesn't matter if contraband is contraband.

16 MR. GRIER: But section 24-3-965 states -- and I'll
17 just cut to the chase on it -- the offense of possession of
18 contraband other than weapons or illegal drugs, weapons or
19 illegal drugs by an inmate in a county jail must be tried
20 exclusively in magistrate's court.

21 MS. COLLINS: Judge, respectfully let's cut to the
22 chase. Attorney Grier is citing the wrong code section.
23 We're not here under 965, that applies to the department of
24 corrections facilities. The direct indictment corrected
25 that error in the warrant and charged the defendant

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1 appropriately with possession of contraband by county or
2 municipal prisoner, that is 24-7-155. And I think while
3 the wording is similar it's not identical and I just want
4 to clarify that.

5 THE COURT: Okay. So 24-71-55 is a minimum of one, up
6 to ten.

7 MS. COLLINS: Correct.

8 THE COURT: I understand. But contraband is
9 contraband whether it's classified as a weapon or not. So
10 while -- here is -- let me cut to the chase. While
11 certainly you present a viable argument as to whether or
12 not this sharpened metal piece from a writing pen could be
13 considered a weapon, I mean, that's an issue -- that's a
14 matter of finding of fact that the jury can determine. But
15 not even getting to that, if it's contraband it's
16 contraband, so we don't even have to consider when it's
17 not -- or whether or not it's a weapon or not. So on that
18 basis then that I respectfully deny your motion to quash
19 the indictment. Anything else?

20 MR. GRIER: That's all, Your Honor.

21 THE COURT: Okay.

22 MS. COLLINS: Just formal arraignment we can do that
23 after lunch or we can do that now.

24 THE COURT: Okay. Let's do it now while everybody is
25 sitting there.

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1 MS. COLLINS: I've handed up the original indictment,
2 we will provide certified true copies to the defendant and
3 his attorney, but in the interest of time we'll just go
4 forward with formal arraignment. I have a copy.

5 THE COURT: All right.

6 MS. COLLINS: Jermaine Demarcus Grier, you are hereby
7 charged in true billed indictment 2016-GS-29-271, a direct
8 indictment for possession of contraband by a county or
9 municipal prisoner in violation of South Carolina Code
10 24-7-155. In that indictment the grand jurors of Lancaster
11 County did present upon their oath that you are charged
12 under that code section that Jermaine Demarcus Grier, a
13 prisoner of the county or municipal jail, prison, work camp
14 or overnight lockup facility did in Lancaster County, South
15 Carolina on or about November 16th of 2015 unlawfully
16 possess a quantity of matter declared by the superintendent
17 of the facility to be contraband, to wit: A sharpened
18 metal piece derived from a writing, an illegal weapon in
19 violation of 24-7-155 of the Code of Laws of South Carolina
20 1976 as amended. To that charge, Mr. Grier, Mr. Jermaine
21 Grier, how do you plead?

22 THE DEFENDANT: Not guilty.

23 MS. COLLINS: Not guilty? And how will you be tried?

24 THE DEFENDANT: By country.

25 MS. COLLINS: How will you be tried, sir?

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1 THE DEFENDANT: Not guilty.

2 MS. COLLINS: I understand that's your plea, how will
3 you be tried?

4 THE COURT: Mr. Mark Grier, you can say it.

5 MR. GRIER: Your Honor, I don't think I can say it.

6 THE COURT: I heard him say country. You know, he's
7 supposed to say by God and by country, by a jury trial is
8 sufficient for this Court. Mr. Jermaine Grier, I'm talking
9 to you now, you're entitled to a jury trial on this charge.
10 Do you wish to have a jury trial?

11 THE DEFENDANT: (Nods head yes.)

12 THE COURT: All right. He nods to his ascent yes.
13 Thank you, sir, and we will provide you a jury trial.
14 Thank you. I find this arraignment is properly done both
15 common law and procedurally. Anything further pretrial?

16 MS. COLLINS: No, Your Honor.

17 THE COURT: And we will have five and five strikes.
18 What we're going to do, the jury is coming back at 2:00, we
19 don't have any other preliminary criminal matters, we will
20 actually select a jury in this courtroom and so y'all will
21 just make arrangements to be in here right a little after
22 2:00. We'll bring all of the jurors in, have them assemble
23 in the assembly room and then we will bring them down here
24 and we are ready. We may select a smaller -- depending on
25 the number of seats we may select a smaller panel to come

1 MR. GRIER: No, sir.

2 THE COURT: All right. Bring them in.

3 MR. GRIER: Just for the record I just renew my motion
4 to quash the indictment.

5 THE COURT: All right, motion denied.

6 (The jury returned to the courtroom.)

7 THE COURT: All right. All members of the jury are
8 present. Madam Clerk, if you will please swear the trial
9 jury.

10 (The jury was sworn.)

11 THE COURT: Before we begin the trial let me speak to
12 you just for a few minutes. I always like to talk to
13 jurors to give you an idea about what to expect and I
14 always like to talk to jurors about what to expect because
15 many people don't have the actual chance to participate in
16 court like you're doing and think what they see on TV or
17 read in books or see in the movies is the way that trials
18 always are. Now ladies and gentlemen, while it's true that
19 sometimes trials can be full of riveting circumstances,
20 high drama and intense action, this trial is not for
21 entertainment. This trial is a fundamental part of our
22 democracy, it's a search for the truth in an effort to make
23 sure that justice is done between the parties before the
24 Court. And sometimes making sure that justice is done can
25 be a slow, deliberate and repetitive process, the opposite

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1 has been presented, the parties have made their closing
2 arguments to you and until I've advised you on the law in
3 this case. It is your solum responsibility to determine
4 the guilt or the innocence of the defendant, and your
5 verdict must be unanimous and it must be based solely on
6 the evidence received in this courtroom and on the law as I
7 instruct in this courtroom at the end of this trial. Thank
8 you again very much, we will now proceed with opening
9 statements. Madam Solicitor?

10 MS. WALKER: May it please the Court?

11 THE COURT: Yes, ma'am.

12 MS. WALKER: Ladies and gentlemen of the jury, we're
13 here today because on November 16, 2015, the defendant,
14 Jermaine Grier, was an inmate at the Lancaster County
15 Detention Center. On that date he was found with
16 contraband on his person. Mr. Grier was being prepared for
17 a transport to this courthouse, so several law enforcement
18 officers went to his cell and began preparation for their
19 protocol of transporting him to this building. In that
20 preparation he was asked to place his hands through --
21 there's a little slot kind of midway down the door, and he
22 was asked to place his hands through the door slot, we'll
23 show you pictures of that when the times comes, he was
24 asked to place his hands through there in order to be
25 handcuffed. At that time he somewhat suspiciously pulled

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1 his hand back, his left hand back and the law enforcement
2 officials saw him place something in a pocket in his
3 jumpsuit, that alerted the deputies and the officers of
4 something suspicious happening. So once he was handcuffed
5 he was then taken to a separate private room where he was
6 searched for any sort of contraband, and on his person a
7 sharpened metal object was found. This sharpened metal
8 piece could be used for a variety of reasons, but we will
9 present through the testimony of law enforcement today that
10 the rules of the Lancaster County Detention Center and also
11 the law of this state prohibits inmates from having any
12 such contraband. You know, just as we have rules out here
13 in general society, whether's it's going to the grocery
14 store or driving down the roads, we have certain rules and
15 laws to protect us, they're meant from everybody's benefit
16 to keep everybody moving along nicely, and they have
17 similar rules and laws within the detention facilities.
18 And these regulations are meant to not only protect law
19 enforcement officials but also inmates themselves, because
20 you have a lot of different people there for a lot of
21 different reasons and the rules are meant to protect
22 everyone to keep everything going nice and calm. So, as
23 the Judge mentioned to you, the State, that is the ladies
24 sitting at this table, we bear the burden of proof proving
25 to you beyond a reasonable doubt that the defendant,

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1 Jermaine Grier, did possess contraband on his person while
2 being an inmate at the Lancaster County Detention Center.
3 Through the evidence, including the testimony of the law
4 enforcement officials, we're confident that you guys will
5 have what you need to return a guilty verdict by the end of
6 the trial, and we thank you for your time.

7 THE COURT: Thank you, Madam Solicitor. Mr. Mark
8 Grier?

9 MR. GRIER: Thank you, Your Honor. May it please the
10 Court? Madam Solicitor? Thank you for acting as jurors
11 today. I know it's an imposition and a burden, but jury
12 duty is one of the highest calling of citizens of our
13 country next to armed services, and without it justice
14 could not be administered. Everybody accused of a crime
15 has a right to a trial, and the burden of proof is on the
16 State to prove that they committed some violation of law.
17 First impressions can cause you to jump to conclusions that
18 are wrong, I'm guilty of it myself in many respects. And
19 that's one of the reasons -- not to suggest that y'all are
20 any different than anybody because you're not, we've gone
21 through a process of selecting you. But whenever you hear
22 something, a story, if you hear one side of the story it
23 can be very misleading and it can cause you to jump to
24 conclusions. And always in criminal trials, of course, the
25 State gets to argue first, actually first of all they get

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1 to come out and say this person is accused of a crime, so
2 the first thing you hear is, hey, this person is accused of
3 a crime. The next thing you hear is the State getting up
4 here and stating facts that the State allege occurred and
5 you hear their version of what happened. The next thing
6 you hear, of course, you get to hear me argue, but the
7 first evidence that you hear will be from the State as
8 well. So the first impressions that you get are all the
9 State's version of what you should consider important and
10 of the evidence. Now, our founders of this country, the
11 framers of our constitution recognized that the State is
12 powerful and that individuals relative to the states
13 comparatively are not powerful unless they are individuals
14 within the state, and we have a system that tries to guard
15 against jumping to conclusions and making sure that
16 everybody, even the most humbled person, has the access to
17 present a case and to have the evidence considered in the
18 light that would protect the State from overreaching. And,
19 you know, that's not a -- that's why the State has the
20 burden of proof, and that's why you're considered -- you're
21 presumed innocent when you step into this courtroom accused
22 of committing a crime, as the Judge has told you, you are
23 presumed innocent. Why is that? To avoid -- to try to
24 mitigate and guard against first impressions having
25 individuals say "Oh, well, you know, I've heard the State's

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1 version of it," and coming to conclusions. The Judge,
2 that's why he tells you not to deliberate, to listen to
3 everything in this courtroom before you make a decision,
4 not because you're any different than anybody else, because
5 it's human nature to take what you hear first and to
6 perhaps give that more weight, so that's why you're asked
7 to wait before you start talking about the case. So in
8 that sense each of you are your own little jury until you
9 start exchanging ideas about the evidence in this case.
10 Our system is designed to protect freedom, that's why the
11 State has the burden of proof. For other reasons that I
12 mentioned the State has the first opportunity to get your
13 attention, but also compared to the individual it's
14 powerful and, you know, the experience of the people that
15 framed the constitution was everybody didn't get a fair
16 deal, if you weren't connected you didn't get a fair shake.
17 So what the framers of our constitution did is they put the
18 burden of proof on the State and the State must prove guilt
19 beyond a reasonable doubt. The Judge just told you, what
20 is a reasonable doubt? It's the kind of doubt, when you,
21 hear all of the evidence if you hesitate to convict because
22 you're not convinced then that's a reasonable doubt. The
23 Judge will instruct you that if upon hearing all of the
24 evidence you are firmly convinced of Mr. Jermaine Grier's
25 guilt then you must convict. However, if you believe and

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1 find the real possibility of innocence then you must
2 acquit. Now, that's not a get out of jail free card, it's
3 simply a protection against the power of the State to make
4 sure we don't send people who are not guilty of crimes --
5 to try to keep people that are not guilty of crimes from
6 being convicted nonetheless. This is a criminal trial,
7 this is about determining the liberty, the freedom of an
8 individual ultimately. If you commit a crime, well, there
9 is consequences for that, that's why the burden of proof in
10 a criminal case is beyond a reasonable doubt. This is not
11 a civil case, civil cases are about money. In a civil case
12 the burden of proof is what we call a preponderance of the
13 evidence, more likely than not. So those -- the Judge will
14 probably compare those but do not confuse the two, they're
15 easily confused, those are the two main burdens of proof.
16 But in a civil case you're talking about somebody has
17 committed some wrong against somebody and you're asking for
18 money and you merely have to tip the scales more likely
19 than not that they committed some infraction that would
20 entitle somebody to some money. So merely 51 percent of
21 the evidence, merely tipping the scales would be enough for
22 a jury to say, hey, we find for the person who's claiming
23 they were injured. But in a criminal case we're talking
24 about freedom. If I've got my freedom I can make more
25 money, so if you take away my money -- if you get it wrong

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1 in a civil case the jury isn't as bad as when you have the
2 potential for losing your freedom, because if I've got any
3 freedom I can continue to act as a citizen and get out
4 there and make more money if I need to. And so that's the
5 difference in the reasoning behind having two different
6 standards for what juries consider, civil and criminal.
7 Again, I ask you to wait until all of the evidence is
8 presented. I'm not going to get into discussing the facts
9 of the case, that's going to play out here in this
10 courtroom and you're going to get to hear the officers who
11 encountered Mr. Jermaine Grier on November 16th or 17th,
12 I'm not sure, I thought it was the 17th, of 2015. And
13 after hearing all of the evidence, one of the things -- the
14 State has -- there's a statute and that statute is simply a
15 law that the State -- is that the State must prove all of
16 the elements of the statute. So it must prove every
17 element to convict Mr. Grier of being guilty of having been
18 in possession of contraband, and it includes a notice
19 requirement that you know what contraband is. And we will
20 argue more about that later after we see what evidence is
21 presented in our closing arguments. But after hearing all
22 of the evidence if you think that Jermaine might be guilty,
23 well the State hasn't met their burden of proof. We don't
24 take away freedom, liberty, privilege because somebody
25 might be guilty. If you think that Mr. Jermaine Grier is

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1 probably guilty, well, we don't take away people's freedom
2 because you think it's more likely than not that he might
3 be guilty. In fact, if you think he might not be guilty
4 then the State has not met their burden of proof and you
5 must acquit. I believe upon hearing all of the evidence in
6 this case you will find that Jermaine is not guilty of
7 violating the contraband statute. Thank you for your
8 attention.

9 THE COURT: All right. Thank you. Madam Solicitor,
10 you may call your first witness.

11 MS. BREWER: The State calls Larry Deason.

12 The witness, LARRY DEASON, was first duly sworn and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BREWER:

16 Q State your name for the record.

17 A My name is Captain Larry Deason.

18 Q And what's your occupation, Mr. Deason?

19 A I am the captain of corrections at the Lancaster
20 County Detention Center.

21 Q How long have you been employed there?

22 A I've been employed there 24 years.

23 Q How long have you been in law enforcement?

24 A Law enforcement? Twenty-four years.

25 Q So your entire career in law enforcement has been at

LARRY DEASON - DIRECT

1 the detention center?

2 A Yes, ma'am.

3 Q Have you been a captain that entire time?

4 A No, ma'am. I have only been a captain for the last
5 12 years.

6 Q So you've been a captain at the detention center for
7 the last 12 years.

8 A Yes, ma'am.

9 Q Can you tell the members of the jury what your duties
10 as a captain at the detention center are?

11 A I'm sorry, I couldn't --

12 Q What your duties are as captain?

13 A My duties as a captain of the corrections is
14 basically to oversee the day to day operations of the
15 detention center, make sure that everything is running
16 smoothly and make sure we have personnel where personnel
17 needs to be. Make sure the inmates are given what the law
18 says we have to do to provide for them, make appointments
19 for attorneys. Make sure doctors can come in and see
20 inmates, all of that, scheduled court, stuff like that.

21 Q Is there a set of rules that the inmates have to abide
22 by at the corrections facility?

23 A Yes, ma'am. Once an inmate walks into the door
24 during the booking process we give them a copy of the
25 rules and we get them to sign on them saying they've

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1 received a copy of them.

2 Q And how are those rules formulated?

3 A The rules were formulated over the statutes, also
4 from safety and security purposes from experiences over
5 the years, and like I said, the statutes.

6 Q Who wrote those rules?

7 A They was formulated between myself and the director
8 of the facility, Ms. Horne.

9 Q And you -- and I'm sorry, Ms. Horne, what is her first
10 name?

11 A Deborah Horne.

12 Q Okay. So you as the captain and this lady, Ms. Horne,
13 together came up with the list of rules for the facility?

14 A Right.

15 Q And you base that on current statutes?

16 A Current statutes, department of corrections
17 regulations, which department of corrections also inspects
18 us and oversees us, so some of their regulations apply to
19 us and the statutes, and just officer and inmate safety
20 issues.

21 Q About how long is that handbook, how many pages
22 roughly?

23 A The one that was in place when Mr. Grier came in is
24 about six or seven pages.

25 Q Is there any rule in that book on contraband that

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1 inmates can have in their cells?

2 A There is a list that says what they can have in their
3 cell, there's also a section that states contraband, the
4 definition of contraband.

5 Q To the best of your knowledge, what did you base the
6 definition of contraband on?

7 A Again, statutes and also officer and inmate safety
8 issues over the years.

9 Q Captain Deason, did you use a section of South
10 Carolina Code of Regulations from the State Department of
11 Corrections in creating a definition for contraband?

12 A Yes, ma'am, 33.1.

13 Q And you based the rule and the handbook off of that
14 statute?

15 A Yes, ma'am.

16 MS. BREWER: Your Honor, I'm showing Captain Deason
17 what has been previously marked as State's Exhibit 7.

18 THE COURT: Okay.

19 MS. WALKER: Permission to approach the witness?

20 THE COURT: Yeah.

21 Q Is that reflective of what you used to base the
22 contraband rule off of in that handbook?

23 A Yes, ma'am, that looks like the 33.1.

24 Q Would you mind reading to the jury what is listed
25 under Section B of that statute?

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1 A Yes, ma'am. "Weapons, any and all firearms, knives
2 of any and all descriptions, clubs, billy's or any other
3 article that may be used for offense or defense."

4 Q And that's just something that you would use as a
5 standard when you're coming up with rules and --

6 A Yes, ma'am.

7 MS. BREWER: Beg the Court's indulgence.

8 (Break in proceedings.)

9 Q Could you read the section under letter E on that
10 statute?

11 A Yes, ma'am. It also says under E is keys and locks.

12 Q Thank you.

13 MS. BREWER: Your Honor, at this time the State would
14 move to admit this exhibit as State's Exhibit 7.

15 THE COURT: Any objection?

16 MR. GRIER: No objection.

17 THE COURT: Without objection entered into evidence.

18 (The contraband article was received as State's 7.)

19 Q Captain Deason, can you explain the standard procedure
20 when an inmate is booked as to how they're made aware of
21 these rules?

22 A Yes, ma'am. As far as the booking procedure just
23 like when we're asking them questions about their name,
24 date of birth, social security number, all of that stuff
25 we give -- we send a copy of the jail rules on the desk

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1 and say these are the rules and regulations you must
2 follow here. We ask them do you have any questions, and
3 then we have a sheet that they sign, then it was manually,
4 now they actually sign on an electronic pad. And that is
5 put with their booking stuff until they're actually
6 released from the jail.

7 Q Are they given a copy of those rules and regulations?

8 A Yes, ma'am.

9 MS. BREWER: Your Honor, I'm showing Captain Deason
10 what has been previously marked as State's Exhibit 5.
11 Permission to approach?

12 THE COURT: All right.

13 Q Captain Deason, is this a current and accurate
14 representation of what is in the handbook at the detention
15 center?

16 A This is actually an older version, we have a newer
17 version. But this would be pretty close to what we used
18 in 2014 when Mr. Grier came to the jail.

19 Q So these rule were in place in 2014?

20 A Yes, ma'am.

21 Q And it would have been given at that time to an inmate
22 being booked into the detention center?

23 A Yes, ma'am. He would never leave the desk -- booking
24 desk without this being done.

25 Q Can you turn to page five to that list of rules? Is

LARRY DEASON - DIRECT

1 there a section on contraband in there?

2 A Yes, ma'am.

3 Q And can you read that portion of the handbook out?

4 A Contraband?

5 Q Yes, sir.

6 A "Contraband is any item specified not permitted in
7 the jail or any item used in any way from which it was not
8 originally intended, as well as too much of any item an
9 inmate is allowed.

10 Q Thank you.

11 MS. BREWER: And Your Honor, at this time the State
12 would move to have this submitted into evidence.

13 MR. GRIER: No objection.

14 THE COURT: Without objection introduced into
15 evidence.

16 (The rules were received as State's 5.)

17 Q Captain Deason, when you guys wrote this list of rules
18 and regulations, did someone have to approve it?

19 A Yes. Everything that is done in the detention center
20 is approved by the undersheriff, then the sheriff.

21 Q Okay. So this was approved by the sheriff before it
22 was published.

23 A Yes, ma'am.

24 MS. BREWER: Thank you, Captain Deason, no further
25 questions.

LARRY DEASON - CROSS

1 THE COURT: Mr. Grier?

2 CROSS EXAMINATION

3 BY MR. GRIER:

4 Q You said that the regulations were put into their
5 property --

6 A I'm sorry, Mr. Grier, I couldn't hear the first of
7 that.

8 Q You said the regulations that they were given a copy
9 of were put into their property?

10 A We put it on a desk for them to take with them.

11 Q So they actually take it out into their cell?

12 A Yes, sir. Except that the blank part where they
13 sign, we keep that and put in their booking.

14 Q Okay. And you say there are new regulations? There
15 have been some new regulations published?

16 A Well, we just introduced a new handbook altogether
17 with our new policy manual that went into effect this
18 year, it's in like a booklet form.

19 Q Okay. And as opposed to what was given to Mr. Grier
20 people that are booked or given this book that has it all?

21 A Right.

22 MR. GRIER: All right. That's all.

23 THE COURT: All right. Thank you, sir, you can step
24 down. You can call your next witness, Solicitor.

25 MS. WALKER: Your Honor, we would like to call

LARRY DEASON - CROSS

1 Sergeant Plyler.

2 The witness, RICHARD PLYLER, was first duly sworn and
3 testified as follows, on:

4 DIRECT EXAMINATION

5 BY MS. WALKER:

6 Q Would you please state your name for the record?

7 A Sergeant Richard Plyler.

8 Q All right. And what is your occupation?

9 A I'm a Sergeant over C-shift in the detention center.

10 Q And you exclusively work with the Lancaster County
11 Detention Center?

12 A I do.

13 Q How long have you been with law enforcement?

14 A I've been with the detention center for three years
15 and I've been in law enforcement for eight.

16 Q And what did you do for the five years previous?

17 A I was a corrections officer at the South Carolina
18 Department of Corrections.

19 Q What are your present duties at the detention center?

20 A I oversee a shift of six people, day to day
21 operation, escorting inmates to the judge, feeding the
22 inmates, taking them to sick call, stuff like that.

23 Q And are you also involved with the booking of the
24 inmates when they're first brought in?

25 A I am.

RICHARD PLYLER - DIRECT

1 Q Okay. And at one point were you involved with the
2 intake process, the booking process of Jermaine Grier?

3 A I was.

4 Q And do you --

5 MS. WALKER: Your Honor, I'm just going to show what
6 has been marked as State's Exhibit 6 to Mr. Grier.

7 THE COURT: Okay.

8 MS. WALKER: I would like to approach.

9 THE COURT: All right.

10 Q Does that look familiar to you at all, the paper I
11 just gave you?

12 A Yes, ma'am. It's the signature page of the
13 regulations that I give him the day he came up to the
14 jail.

15 Q Okay. And is that a piece of paper that you would
16 give all new inmates?

17 A Every inmate that comes to the door receives a copy
18 of the rules and regulations, and they sign to make sure
19 that they received them, and when they get them there we
20 take them and process them further and they take them to
21 the cell group.

22 Q Okay. And when you hand them this group of papers,
23 are they stapled? Paper clipped? How are they held
24 together?

25 A They were stapled but we will take the staple out to

RICHARD PLYLER - DIRECT

1 make sure that they don't have contraband in their cells,
2 so it would be loose paper.

3 Q So you take that measure at that point to remove the
4 staple?

5 A Yes.

6 Q And you maintain for the record that signature page.

7 A Yes, ma'am. We would keep it and attach it to their
8 booking cards, and to the day they get released out of the
9 jail it will stay up front with us.

10 Q And the rules and regulations, I guess the first part
11 of the papers that would have come with that, what happens
12 to that?

13 A The inmate keeps a set with him so he can know what
14 he's supposed to do while he's in the jail and stuff.

15 Q Okay. And at the time that Mr. Grier was being
16 brought in as an inmate, did he indicate to you that he was
17 unable to understand those written pages?

18 A No, ma'am, because I gave him the copy of the rules.
19 I told him this is a copy of our rules and regulations,
20 that he understand what he had signed for it and he signed
21 it and said he understood it.

22 Q Okay. Did he ask you any other -- to your
23 recollection did he ask any other questions?

24 A He really didn't talk much that day.

25 MS. WALKER: Your Honor, at this time I would like to

RICHARD PLYLER - DIRECT

1 move this into evidence, State's Exhibit 5 -- or 6, I
2 apologize.

3 THE COURT: Any objection?

4 MR. GRIER: Well, Your Honor, I don't think it was --
5 I don't think there's been any proof as to the signature on
6 it.

7 THE COURT: Objection overruled, introduced as State's
8 number whatever.

9 MS. WALKER: 6.

10 (The signature page was received as State's 6.)

11 Q Could you tell me, Sergeant Plyler, what types of
12 items inmates are allowed to keep in their cells?

13 A Everything that we issue them. Nothing that they
14 would bring in they can take in their cell with them, so
15 we issue them a jumpsuit, shower shoes, a bed roll, it
16 will be a sheet, blanket, towel, wash cloth. We give them
17 a toothbrush, tooth paste, all of their hygiene items.
18 Other than that there's nothing else they have in there
19 but a mattress and any legal paperwork they might have.

20 Q Are they able to purchase any sort of writing
21 instruments or anything throughout the course of their
22 stay?

23 A They can purchase it off the canteen system but we
24 don't issue it.

25 Q Okay. All right. And can you tell me whether the

RICHARD PLYLER - DIRECT

1 Lancaster County Detention Facility is nationally
2 accredited as a corrections facility?

3 A Ma'am?

4 Q Is the Lancaster Detention Center nationally
5 accredited as a detention center to your knowledge?

6 A I know that -- I don't know to tell you the truth.

7 Q Okay. That's okay, that's all right.

8 MS. WALKER: If you would, please answer any questions
9 that Mr. Grier has.

10 THE COURT: All right. Mr. Grier?

11 MR. GRIER: Beg the Court's indulgence.

12 (Break in proceedings.)

13 MR. GRIER: No questions.

14 THE COURT: Thank you, sir, you can step down. State
15 can call its next witness.

16 MS. BREWER: State calls LaQuentin Smith.

17 The witness, LAQUENTIN SMITH, was first duly sworn and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MS. BREWER:

21 Q Can you please state your name for the record?

22 A Seal LaQuentin Smith.

23 Q And where are you currently employed?

24 A At the Lancaster County Detention Center.

25 Q How long have you been employed there?

LAQUENTIN SMITH - DIRECT

1 A Currently I've been there I would say about nine
2 months.

3 Q For how long, sorry?

4 A Nine months currently, I was there before previously.

5 Q How long were you there before?

6 A A year and a half.

7 Q How long have you been in law enforcement?

8 A Three years and eight months.

9 Q Were you employed anywhere else other than the
10 Lancaster County Detention Center?

11 A Yes, ma'am.

12 Q Where was that?

13 A Cabarrus County Sheriff's Office.

14 Q And what's your rank at the detention center?

15 A Correctional officer.

16 Q Can you explain what your duties as a correctional
17 officer are to the jury?

18 A They usually will help assist with booking people in
19 the jail, feeding inmates, searching inmates whenever they
20 come into the jail.

21 Q So you were working there on November 16th of last
22 year, correct?

23 A Correct.

24 Q And are you familiar with the defendant, Jermaine
25 Grier?

LAQUENTIN SMITH - DIRECT

- 1 A Yes, ma'am.
- 2 Q How do you know him?
- 3 A Just by him being in the jail.
- 4 Q He was an inmate at the jail at that time?
- 5 A Yes.
- 6 Q Did you have any encounters with him on that day?
- 7 A Yes.
- 8 Q How did you encounter Mr. Grier on that day?
- 9 A Like booking him in, getting ready for court.
- 10 Q You were booking him to get him ready for court?
- 11 A I was getting ready to belly chain him and bring him
- 12 to court.
- 13 Q Can you explain how that process works when you belly
- 14 chain people?
- 15 A Usually we ask the inmates to stick their hands
- 16 through the food troft, and then at that point we place
- 17 the cuffs on both hands, then we ask them to turn around
- 18 so their back is against the door so we can -- there's
- 19 like a little chain that needs to be wrapped around them,
- 20 then there's a lock we have to put the chain through
- 21 like a -- it's like a little hoop. Once it's through the
- 22 hoop we have to connect the lock, there's another little
- 23 hoop and clip it in. J
- 24 Q What do these food doors look like in the jail cell
- 25 doors.

LAQUENTIN SMITH - DIRECT

1 A I would say that they're a little below the waist,
2 about this wide and that high (indicating.)

3 Q And are they in all of the cells in the detention
4 center?

5 A Only on a private hall.

6 Q I'm sorry?

7 A On the private hall.

8 Q Okay. Was Mr. Grier located in the private hall at
9 that point in time?

10 A Yes, ma'am.

11 MS. BREWER: Your Honor, I'm showing Mr. Grier what
12 has been marked as State's Exhibit 1 and 2. Permission to
13 approach?

14 THE COURT: All right.

15 Q Officer Smith, can you verify that these are a fair
16 and accurate representation of what those doors looked like
17 in the private hall?

18 A Yes, ma'am, they are.

19 Q And can you describe where the food door is there?

20 A The food door is right there on this picture, it's
21 here.

22 Q If you wouldn't mind holding it up for the jury to
23 see.

24 A On this picture the food door is here, and on this
25 one it's --

LAQUENTIN SMITH - DIRECT

1 Q So inmates when you're transporting them out of those
2 cells, they stick their hands through those doors there?

3 A Correct.

4 Q And that's when you place the cuffs on them.

5 A Correct.

6 Q Okay. Thank you.

7 MS. BREWER: And Your Honor, at this time the State
8 would move to have these admitted into evidence.

9 MR. GRIER: No objection.

10 THE COURT: Without objection introduced as the
11 State's next in order.

12 (The photos were received as State's 1 and 2.)

13 Q So can you explain what happened with Mr. Grier on
14 that date when you began to transport him to court?

15 A Myself and two other officers went to Mr. Grier's
16 cell, I asked Mr. Grier to stick his hands out because he
17 was going to court that day. As he stuck his hands out I
18 asked him to open his hands, both hands to ensure that he
19 didn't have anything. At that point Mr. Grier took his
20 left hand and placed it back out of the food trap and like
21 placed it inside of his jumpsuit. At that point Mr. Grier
22 had already opened his right hand and I asked Mr. Grier to
23 place his left hand back through, and I asked Mr. Grier to
24 open his left hand and then there was nothing in there.

25 After --

LAQUENTIN SMITH - DIRECT

1 Q Where were you standing in relation to this?

2 A Right in the front of the door.

3 Q Were you at an eye's level with the door?

4 A Are you talking about the top glass or -- well, I
5 had -- to put the belly chains on we have to squat down
6 because the foot trap, it's a little below the waist.

7 Q So that's how you were able to see his hand?

8 A Yes, ma'am.

9 Q Sorry. So he was told to put his hands back out?

10 A Once he placed his hands back out I asked him to open
11 his left hand because I didn't see if anything was in his
12 left hand. After we belly chained him up I notified my
13 supervisor, who was right there with me, that we should
14 maybe search Mr. Grier because I suspect he may be having
15 something in his jumpsuit.

16 Q Did you search Mr. Grier then?

17 A Once he came out of the cell the sergeant put his
18 hands in the jumpsuit pocket.

19 Q Where was -- did this take place in the hallway?

20 A Yes, ma'am.

21 Q Okay. So your sergeant placed his hands in the
22 jumpsuit?

23 A Correct. And once he did that he removed the item,
24 and then after that we went to the other room to continue
25 searching him.

LAQUENTIN SMITH - DIRECT

1 Q And what was found in that jumpsuit?

2 A It resembled the -- I guess the metal piece of the
3 pen that you use to hang on to your pocket or something.

4 Q Was it in the same condition that a normal pen clip
5 would be?

6 A No, ma'am. Because it wasn't attached to the pen and
7 it seemed like it was twisted in a way.

8 Q How was it twisted?

9 A I assume it's like if you're trying to pull it off
10 the pen like to twist it.

11 Q Did it appear that it had any edges to it?

12 A Seemed like it was sharpened just a little bit.

13 Q Who were the other officers that were with you at the
14 time?

15 A Sergeant Matthew Kennington and Corporal Nicholas
16 Tuley.

17 Q And just back up. Can you explain where the pocket is
18 on the inmates jumpsuits?

19 A I can't remember which side it's on but it's like
20 where our pocket is now.

21 Q So they just have a little pocket.

22 A Yeah, it's just one pocket.

23 Q To your knowledge as a correctional officer, a type of
24 metal object of this kind is not allowed to be held by any
25 inmate in the facility, correct?

LAQUENTIN SMITH - CROSS

1 A Correct.

2 MS. BREWER: No further questions.

3 THE COURT: Mr. Grier?

4 MR. GRIER: Thank you.

5 CROSS EXAMINATION

6 BY MR. GRIER:

7 Q Officer Smith, approximately -- do you mind standing
8 up for a second?

9 A Sure.

10 Q About where is that door in relation to your body?

11 A I guess about -- I'm not really sure, I would have to
12 be there.

13 Q Is it at the knee or slightly above, would that be
14 accurate?

15 A It's definitely below the knee.

16 Q Okay. That's fine, I'm not trying to get you to jump
17 up and down. Now, did you ever see any object period in
18 his hand?

19 A You say when he placed his hands out did I see any
20 objects?

21 Q Right.

22 A I did not.

23 Q The first time you actually saw an object was in his
24 breast pocket.

25 A Once it was removed that's when we saw the object.

LAQUENTIN SMITH - CROSS

1 Q That was the first time. So nothing was seen until it
2 was seen in the pocket, correct?

3 A It was seen after he removed it, after it was removed
4 from the pocket.

5 Q Okay. Yeah. What made you suspicious that he needed
6 to be searched again?

7 A Because he took his left hand -- at first he didn't
8 open both hands, like he took his left hand, placed it
9 back in his cell, like stuck in his jumpsuit like he was
10 trying to hide something, that's what made me suspicious.

11 Q You could see him put his hand in his pocket?

12 A I didn't see him stick it in his pocket. It seemed
13 like he was turned a little bit and trying to stuff it
14 this way.

15 Q Okay. You just saw some movement of his hands that
16 was suspicious.

17 A It was suspicious like he was trying to hide
18 something.

19 Q Okay. So once you saw that, did you withdraw from
20 attempting to do anything else with preparing him for court
21 until that suspicion was investigated?

22 A Once I noticed like he was trying to -- like stuck
23 his hand inside, I asked him to place his hand back out to
24 continue getting the belly chain on.

25 Q And so at what point did you report that there was

LAQUENTIN SMITH - CROSS

1 something suspicious about his behavior to another officer,
2 or was there somebody there with you?

3 A It was two other guys with me.

4 Q Okay. All right. So he was you went through the
5 procedure at that point of getting him -- what would have
6 been basically getting him ready to move into the next
7 phase of getting him ready to go to court, correct?

8 A Correct.

9 Q So that y'all at that point determined he needed to be
10 searched?

11 A We determined that he needed to be like further
12 searched once we found the object in his pocket after he
13 came out so --

14 Q Okay. Well, did you look in the pocket out of
15 suspicion?

16 A I didn't go in his pocket, it was my sergeant who
17 moved the object.

18 Q Okay. Did you suggest that he needed to be searched?

19 A I did.

20 Q And was the pocket, you know, examined as the result
21 of your observations or of someone else's?

22 A Repeat the question again.

23 Q I said was his pocket searched because of what you
24 told someone or what you observed?

25 A Well, the policy states that before somebody goes to

LAQUENTIN SMITH - CROSS

1 court that pockets needs to be searched to make sure he
2 doesn't have anything.

3 Q So that was going to be searched just routinely.

4 A Yes.

5 Q Okay. Well, was he cooperative with your preparation?

6 Did he --

7 A Once he puts his hands out like I was saying -- he
8 was cooperative throughout the process.

9 Q Okay. Thank you. Well, pardon me, sorry. Do you
10 recall speaking with Officer Lefler?

11 A I do.

12 Q Okay. Do you recall telling him that it appeared that
13 after -- that was after you had seen this object that was
14 recovered, correct?

15 A After everything was recovered we called Officer
16 Lefler who came and took the report.

17 Q Did you describe that object as something that he
18 appeared to have been using or attempting to use to unlock
19 his cuffs?

20 A We explained to him that it's possible it could have
21 been used to open his cuffs.

22 Q Did you ever make any accusations or suggestions that
23 he was using it as a weapon, or was there ever any attempt
24 to use it as a weapon, or did you tell anybody that you
25 perceived it as a weapon?

LAQUENTIN SMITH - REDIRECT

1 A Well, it could be used as both, as a weapon or as a
2 key the way it was made.

3 Q Okay. Do you recall ever telling anybody that you
4 considered it a weapon?

5 A I don't recall.

6 Q Okay.

7 MR. GRIER: Thank you.

8 THE COURT: Any redirect?

9 MS. BREWER: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. BREWER:

12 Q What is the standard procedure for searching an inmate
13 before you take them to court?

14 A Usually we make sure there's like nothing in their
15 hair, check their pockets, make sure the belly chains are
16 on correctly.

17 Q If there was any reason to give you cause for
18 suspicion you would thoroughly search them, correct?

19 A Correct.

20 Q So when he withdrew his hand and you saw it go toward
21 the pocket area, that gave you reason to think that there
22 should be reason to search him, correct?

23 A Repeat the question one more time again.

24 Q When you saw him take his hand back in after it had
25 been out there and it went toward that area where the

LAQUENTIN SMITH - REDIRECT

1 pocket was, you had the reason you thought to search him?

2 A Correct.

3 MS. BREWER: No further questions.

4 THE COURT: All right. Thank you, sir, you can step
5 down. State can call its next witness.

6 MS. WALKER: Your Honor, the State calls Brittany
7 Hudson.

8 THE COURT: All right.

9 The witness, BRITTANY HUDSON, was first duly sworn and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. WALKER:

13 Q Would you please state your name for the record?

14 A Brittany Hudson.

15 Q What is your occupation?

16 A My occupation at the Lancaster County Sheriff's
17 Office is a evidence technician.

18 Q And how long have you been employed in that capacity?

19 A I've been with the sheriff's office going on three
20 years June 17th, I've been in this position since about
21 September.

22 Q Okay. And what are your duties in this new position?

23 A My duties is to intake evidence from our locker
24 storage or from the officers themselves when they bring it
25 in. I put it into our computer system, assign it a number

BRITTANY HUDSON - DIRECT

1 and it goes to storage from there.

2 Q And did you receive any evidence related to the case
3 that's in the court today?

4 A Yes, ma'am, I did.

5 Q Okay. And can you explain what it is that you
6 received?

7 A What happens is when they submit evidence it comes in
8 on an evidence submission form, from there it's labeled as
9 what they said it is. It is viewed to make sure it's not
10 anything that needs to be stored separately on the
11 submission that I have here. It's stated as made key from
12 ink pen.

13 Q And when did you receive this item?

14 A I received this item on November 17th.

15 Q Okay. Of what year?

16 A Of 2015.

17 Q Who did you receive the evidence from?

18 A The evidence was actually stored in the locker. I
19 received this item from the locker on 11/17/15 at 11:35.
20 The evidence was submitted on 11/16/2015 at 6:00 p.m.

21 Q And explain, what is the locker? What do you mean it
22 was in a locker?

23 A When you walk into our evidence only we have two
24 doors, one door is completely secured, only the staff that
25 works in there can enter and exit from there. On the

BRITTANY HUDSON - DIRECT

1 other side of the building we have an additional door
2 where officers can come in. In that room it's considered
3 as evidence storage, we have lockers. Once anything is
4 brought in to evidence it's locked, once it goes in and it
5 is locked nobody can retrieve it other than I and another
6 evidence tech. or our lieutenant.

7 Q And was there an evidence form filled out for this
8 item?

9 A It was.

10 Q Okay. What did you do with the evidence? Like with
11 that form, did you assign case numbers, that kind of thing?

12 A Once a submission comes in the submission usually has
13 the case number, the item, who is submitting, time it was
14 submitted, the time that they collected that item and I
15 input it in the system, which is the Law Enforcement
16 Records Management System, therefore it is assigned a case
17 number by that case. In this case it was item number one.

18 Q Okay. And do you have that item with you today in
19 court?

20 A I do.

21 Q All right. Would you mind opening that?

22 A I will.

23 Q All right. Ms. Hudson, can I ask you to just open
24 that up, please, ma'am?

25 A (Witness complies.)

BRITTANY HUDSON - CROSS

1 Q Can you check that item out and tell me whether it's
2 in substantially the same condition it was in when it was
3 first received?

4 A Yes, ma'am.

5 Q Okay.

6 MS. WALKER: At this time the State would move to
7 enter it into evidence as State's Number 8.

8 MR. GRIER: No objection.

9 THE COURT: Without objection entered into evidence as
10 State's 8.

11 (The pen clip was received as State's 8.)

12 MS. WALKER: No further questions from you, Ms.
13 Hudson.

14 THE COURT: Mr. Grier?

15 CROSS EXAMINATION

16 BY MR. GRIER:

17 Q I've seen pictures, I just need to look at it first.
18 You don't know anything about where that came from other
19 than what you have been told, right?

20 A Absolutely not.

21 MR. GRIER: Thank you. That's all of the questions I
22 have.

23 THE COURT: Thank you, Madam Witness. If you would
24 please put it back into the envelope and just hand it to
25 the court reporter as you stand down from the witness

NICHOLAS TULEY - DIRECT

1 stand. All right. State can call its next witness.

2 MS. WALKER: State calls Nick Tuley.

3 The witness, NICK TULEY, was first duly sworn and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MS. WALKER:

7 Q Would you state your name for the record?

8 A Nicholas Tuley.

9 Q And what is your occupation?

10 A I'm a sergeant at the Lancaster County Detention
11 Center.

12 Q Okay. And how long have you been employed there?

13 A Since November 11th of 2013.

14 Q All right. Is that detention center located within
15 the boundaries of Lancaster County?

16 A Yes, ma'am.

17 Q So you said 2007?

18 A 2013.

19 Q 2013, I apologize. And did you have any previous law
20 enforcement experience?

21 A No, ma'am.

22 Q All right. And what exactly are your duties at the
23 detention center?

24 A I'm a shift supervisor. I just supervise over day to
25 day operations, make sure that the officers are doing what

NICHOLAS TULEY - DIRECT

1 they need to do and doing more advanced paperwork at the
2 jail.

3 Q Okay. And the day to day operations that you would be
4 supervising include what?

5 A As far as the officers doing their rounds, passing
6 out meals, stuff like that.

7 Q Would it also include supervising preparation of
8 inmates to be transferred for court appearances?

9 A Yes, ma'am.

10 Q And on the date, November 16th when this incident
11 allegedly occurred, do you recall being involved in the
12 transport of the defendant?

13 A I was never directly involved as far as hands on, but
14 I was standing there and observed the inmate and belly
15 chains being placed on the inmate.

16 Q By standing there, were you -- how far away were you?

17 A Probably three or four feet. I was standing at the
18 next cell over.

19 Q So Officer Smith and Sergeant Kennington were the two
20 who were mainly involved in the hands-on application?

21 A Yes, ma'am.

22 Q Okay. And you were there supervising, watching,
23 assisting, did you do anything else with that incident?

24 A No, ma'am.

25 Q Okay. Did you observe them removing Jermaine Grier

NICHOLAS TULEY - DIRECT

1 from his cell?

2 A I did.

3 Q Was he cuffed at that time?

4 A Yes, ma'am.

5 Q Okay. And did you observe them searching Mr. Grier?

6 A I only observed Sergeant Kennington pulling the metal
7 object out of Mr. Grier's pocket, but I did not observe
8 them actually searching him because they took him into
9 another room.

10 Q Okay. All right. So that initial removal of the
11 metal object was done pretty immediately?

12 A Yes, ma'am.

13 Q Okay. So once you observed that the two other
14 officers went where?

15 A We have -- right at the front of our hallway near the
16 booking desk we have a room where we do pictures and
17 fingerprints, and inmate Grier was taken into that room
18 and at that time was searched by Sergeant Kennington and
19 CO Smith.

20 Q And you were not involved in that?

21 A No, ma'am.

22 MS. WALKER: All right. No further questions from me.

23 CROSS EXAMINATION

24 BY MR. GRIER:

25 Q It was probably going to be a repeat but I kind -- you

NICHOLAS TULEY - CROSS

1 speak pretty quietly and I didn't hear what you described
2 having seen. Did you see any suspicious movement of his
3 hands yourself?

4 A The only thing I could see -- I couldn't see what
5 happened inside of the cell because of the location I was
6 at, but I could see him sticking his hands out, Officer
7 Smith asking him to open his hands, him pulling his hand
8 back in and then briefly sticking it back out opening it
9 up for Officer Smith.

10 Q That's what I thought.

11 MR. GRIER: That's it, thank you.

12 THE COURT: Thank you, sir, you can step down. Call
13 your next witness.

14 MS. WALKER: Yes, Your Honor. The State calls
15 Sergeant Kennington.

16 The witness, MATTHEW KENNINGTON, was first duly sworn
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. WALKER:

20 Q Please state your name for the record.

21 A Sergeant Matthew Kennington.

22 Q What is your occupation?

23 A I am a sergeant in the detention center.

24 Q At the Lancaster County Detention Center?

25 A Lancaster County Detention Center, yes, ma'am.

MATTHEW KENNINGTON - DIRECT

1 Q And how long have you been there?

2 A I have been there three and a half years.

3 Q And before that did you have any law enforcement
4 experience?

5 A No, ma'am.

6 Q So three and a half years, all at the Lancaster County
7 Detention Center?

8 A Yes, ma'am.

9 Q And what -- you're a sergeant now, so what are your
10 daily activities like?

11 A Supervising, making sure that the shift is doing what
12 they need to do, to make sure that the Judge is taken care
13 of, make sure that the officers are following policy,
14 making sure the day to day operations are running
15 smoothly, things of that nature.

16 Q And were you involved assisting in the transport of
17 Jermaine Grier on November 16, 2015?

18 A Yes, ma'am.

19 Q Are you able to identify Mr. Grier in the courtroom?

20 A Yes, ma'am. That individual right there at the desk.

21 Q So you identified the defendant.

22 A Yes, ma'am.

23 Q And is that the gentleman who you engaged with this
24 incident like through the cell door on November 16th?

25 A Yes, ma'am.

MATTHEW KENNINGTON - DIRECT

1 Q Could you just tell me a little bit about that
2 exchange and how it started?

3 A Myself and CO Smith and Corporal at the time Nicholas
4 Tuley went to the cell to get him ready to go to court.
5 He stuck both of his hands out just like this, had his
6 hands balled up like that, I said, "Open your hands up so
7 I can see your hand." He took this hand back and was
8 messing around inside the cell because CO Smith was
9 standing in front of the door, I was standing beside the
10 door on the other side of the flap. So if you --

11 MS. WALKER: Permission to approach?

12 THE COURT: Yeah.

13 Q Using this photo, which is State's Exhibit 1, is that
14 a pretty fair description of what the door looked like?

15 A Right, yeah.

16 Q Okay.

17 A Officer Smith will be standing right in front of the
18 door depending on the flaps, if the flaps are on this side
19 I would be on the other side providing assistance. He
20 would put both of his hands out, we would handcuff him,
21 hold the chain, he would turn around, we would belly chain
22 him before he walks out the door. Now, what happened that
23 day is that he kept putting his hand back and putting it
24 back -- taking his hand into the cell and coming back in,
25 that was the reason why there was suspicion about him

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1 possibly having something in his hand. I told him, "Open
2 your hand up, open your hand up." And once he had messed
3 around inside of the cell of his jumpsuit, he put is hand
4 back through the flat and we were able to handcuff him.

5 Q So as we previously discussed, this food trap, the
6 little door on the bottom half of the larger cell door,
7 that food trap door, that's a little bit lower than
8 eyesight, right?

9 A Yes, ma'am.

10 Q Okay. So would it be fair to say it would be about
11 here approximately?

12 A Yeah, you have to squat down.

13 Q Even I would?

14 A Yes, ma'am.

15 Q So would it be typical protocol for whatever officer
16 is preparing the belly chain to kneel down, would that be
17 like to at least engage that?

18 A Most officers squat down, yes, ma'am. Because it's
19 difficult to belly chain him -- when you're wrapping
20 around the waist it's difficult to see what you're doing
21 and you don't want to stick your hands inside of a cell
22 without eyes on, so almost all officers squat down.

23 Q Sure. Okay. And that top flap, that's at the top of
24 the door?

25 A Yes. This window up here is a way for us to look

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1 inside the cell and do rounds, that little piece right
2 there so you can talk to the inmates, this is a flap that
3 we can close if we need to.

4 Q Would that flap have been opened or closed at this
5 point?

6 A That day that flap would be opened, that flap would
7 be open whenever we're going to court. Whenever we're
8 getting people ready for court to move an inmate from a
9 cell like that, that would be open.

10 Q Okay. And is that just part of general policy?

11 A For it to open it up?

12 Q Yes, sir.

13 A For the most part, yes, ma'am, just to keep eyes on
14 inmates while we're belly chaining them, stuff like that.

15 Q Okay. So at that point if Officer Smith is engaged at
16 the lower food trap door, were you able to see through that
17 top door?

18 A I was able to look inside the window and see him
19 turning away from me, messing with his jumpsuit, yes,
20 ma'am.

21 Q Okay. But also were you able to see when he put his
22 hands forward through the lower food trap, were you able to
23 observe him moving his hands in and out?

24 A Yes, ma'am.

25 Q Okay. And was that weird behavior for him to be

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1 moving them in and out like that?

2 A It's not normal, no, ma'am.

3 Q Okay. And in that event, would that have kind of
4 triggered alarm bells --

5 MR. GRIER: Your Honor, I've let it go but she's
6 leading him and I would rather he just testify.

7 THE COURT: Okay. Just rephrase your question.

8 MS. WALKER: Yes, Your Honor.

9 Q So when you saw that, what was your reaction? How did
10 you respond to seeing him moving his hands in and out?

11 A When something like that happened any inmate would do
12 that, we would search him. That's the first thing we're
13 going to do is look inside his jumpsuit into that pocket
14 after seeing him turn away from me and not respond to me
15 and continue to go back and forth inside the cell, yeah.

16 Q Okay. So once the defendant was brought from his cell
17 he was belly chained at that point?

18 A Yes, ma'am.

19 Q Okay. And what happened then?

20 A Once we got him belly chained and we opened the door
21 and walked him out, the first thing that I did was -- they
22 have a pocket on their jumpsuit right there, a lot of
23 inmates put their legal mail in, so the first thing I did
24 was look inside of the pocket and I seen something that
25 was in the bottom of the pocket and that's when I pulled

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1 out that object from his pocket.

2 Q Okay. And --

3 MS. WALKER: Permission to approach, Your Honor?

4 A Yes.

5 Q Would you please take a look at this? Is that what
6 you pulled from the defendant's jumpsuit.

7 A Yes, ma'am.

8 Q And are there any sort of identifiers on the item that
9 make it look unique?

10 A The first thing that I would point out would be the
11 somewhat sharpened on this end that's been modified
12 somehow, that's the first thing that stuck out when I
13 pulled it out of the pocket.

14 Q Okay. All right. So you just stated that it had been
15 modified in some way?

16 A Right. It looks like it had been sharpened down to a
17 tip right here at the very end, it looks like it's been
18 sharpened down. That's the first thing I see is that has
19 been sharpened down right there.

20 Q And in your experience as a detention officer, is that
21 something that could be used as a weapon?

22 A Yes, ma'am.

23 Q Is that something that under the Lancaster County
24 Detention Center rules and regulations would qualify as
25 contraband?

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1 A Yes, ma'am.

2 Q And initially somebody said that it could have been a
3 key. Is it possible that that could be used for multiple
4 purposes?

5 A Yes, ma'am. It could be used for both as a weapon or
6 something to get a cuff off.

7 Q So after you guys searched the inmate -- sorry, I
8 apologize, let me rephrase that. Did you find any other
9 items of contraband?

10 A No, ma'am.

11 MS. WALKER: If you would please answer any questions
12 Mr. Grier has.

13 THE COURT: Mr. Grier?

14 CROSS EXAMINATION

15 BY MR. GRIER:

16 Q Sergeant, did you -- were you involved in the search
17 after the object was found?

18 A Yes, sir, I was.

19 Q And were there any other items found on him at all?

20 A No, sir.

21 Q Anything else? Are there pockets, on the pants?

22 That's the only pocket on the jumpsuit?

23 A That's the only pocket, yes, sir.

24 Q How long have you been working out there at the
25 detention center?

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- 1 A Over three years.
- 2 Q Have you found any knives during that time?
- 3 A Yes, sir.
- 4 Q Okay. Now, you know, how would you define a knife?
- 5 A Well, it depends -- anything with a sharp edge.
- 6 Q Okay.
- 7 A Anything that could puncture something.
- 8 Q Well, is it fair to say, you know, a knife has a blade
- 9 on it?
- 10 A Is it fair to say that a blade has a knife on it, is
- 11 that what you're trying to say?
- 12 Q That a knife has a blade, that a knife -- a knife is
- 13 defined by something with a blade, a sharp edge?
- 14 A I would think that anything that could puncture
- 15 someone doesn't necessarily mean that the whole side of it
- 16 needs to be sharp, just the tip of it can be sharp.
- 17 Q Okay. Have you still got it? Okay. Now, nothing on
- 18 this object has been filed down to have any sharp blade on
- 19 it, would that be accurate? Would you agree with that?
- 20 A I would agree that the side of it has not been
- 21 modified. I would say that this has been modified, that
- 22 tip had been sharpened.
- 23 Q But it hasn't been made to have a blade on it, has it,
- 24 in other words a fine edge that you typically would find on
- 25 a knife?

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1 A Well, not typical, but that's different than a knife.

2 Q Okay. Well, you've found things that have been made
3 into blades, haven't you?

4 A I have found other things, yes.

5 Q That actually have an edge² to them that -- there are
6 limitations on how much you can sharpen something, but --

7 A I wouldn't answer that question because there's
8 different things that I have found that are different than
9 that.

10 Q Well, isn't this more characteristic of a pick for a
11 lock than it is of a knife? If you had to call it one or
12 the other, would it not be -- the way that it's even
13 modified on the end that it's more consistent with being a
14 pick than a knife?

15 A I would say that piece right there, it can go either
16 way, it could be used in multiple ways, not just to pick a
17 lock.

18 Q Well, I mean, a piece of paper can cut you, can't it?

19 A Right.

20 Q So is paper contraband?

21 A It depends on --

22 Q It can be?

23 A It can be. If you have too much of it, yes, sir, it
24 can be.

25 Q Okay. What now, if you've got too much of it?

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1 A There's a certain amount of things that you can have
2 inside of your cell, a certain amount of certain things
3 without going into great detail.

4 Q I've got you. Okay. Okay.

5 MR. GRIER: Beg the Court's indulgence.

6 (Break in proceedings.)

7 MR. GRIER: Thank you. That's all of the questions I
8 have.

9 THE COURT: Any further questions for this witness?

10 MS. WALKER: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. WALKER:

13 Q Sergeant Kennington, so are there many items that one
14 could get in jail to turn into a knife or are resources
15 kind of limited?

16 A There's some things that you can get ahold of that
17 you can make into a weapon, yes, ma'am.

18 Q And I notice I asked knife, you answered weapon. So
19 there different things that can be considered in jail a
20 weapon that are not necessarily a knife?

21 A Yes, ma'am. There's different things that you can
22 use that can be a weapon, things that we issued. There's
23 things that can be modified, yes, ma'am, and that's
24 contraband.

25 Q Sure. And I'll just ask you to reread section 13 of

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1 State's Exhibit --

2 MR. GRIER: Your Honor, that's not even responsive.

3 THE COURT: Sustained.

4 Q I'll ask you just hold that. Touch the top of it.

5 A (Witness complies.)

6 Q Is it sharp?

7 A Yes, ma'am.

8 Q Where did that item originally come from to the best
9 of your ability?

10 MR. GRIER: Your Honor, that's speculative, I object
11 to it.

12 THE COURT: Sustained.

13 Q Does it appear to you that that has been modified in
14 any way?

15 A Yes, ma'am.

16 Q Okay. And is the tip sharp?

17 A Yes, ma'am.

18 Q Are there other identifiers along the shaft of it,
19 like scratch marks, anything like that?

20 A Yes, ma'am, there is.

21 MR. GRIER: Your Honor, I'm not attempting to
22 interrupt or be obstructive, but we urgently need a
23 restroom break.

24 THE COURT: How many more questions do you have on
25 redirect?

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1 MS. WALKER: Two more questions.

2 THE COURT: Okay. Well, we will be done in a second.

3 Q Does a sharpened metal object like that have any sort
4 of street names that you might refer to that as in jail?

5 A A shank.

6 Q Anything else?

7 A To the best of my knowledge we always called it a
8 shank.

9 Q Okay. And would that be something that is considered
10 contraband at the Lancaster County Detention Center?

11 A Absolutely, yes, ma'am.

12 MS. WALKER: Okay. No other questions.

13 THE COURT: Any recross.

14 MR. GRIER: No, Your Honor, thank you.

15 THE COURT: All right. Thank you very much, make sure
16 all of evidence is with my court reporter. Ladies and
17 gentlemen of the jury, we're going to take a brief recess
18 at this point in time, do not talk about the case. Thank
19 you.

20 (The jury left the courtroom and a recess was taken.)

21 THE COURT: All members of the jury are present.

22 Before we proceed any further, where is Mr. Bracero? Am I
23 saying that right?

24 THE JUROR: Yes, sir.

25 THE COURT: I'm going to appoint you as the foreman of

1 trial jury. You will be the jury's spokesperson here in
2 court, you'll also be the presiding juror in the jury room
3 when you're deliberating and you will be the only one
4 authorized to write on the verdict form whenever y'all have
5 reached a verdict. But you can't write on the verdict form
6 until y'all have reached a unanimous verdict.

7 THE JUROR: Yes, sir.

8 THE COURT: Thank you for volunteering to serve in
9 that capacity. All right. Thank you. Is the State ready
10 to proceed?

11 MS. BREWER: Yes, sir.

12 THE COURT: You may call your next witness.

13 MS. BREWER: Your Honor, the State rests.

14 THE COURT: The State has rested. Now, ladies and
15 gentlemen of the jury, given the late hour of the day we
16 will go ahead and take a break and we'll reconvene tomorrow
17 morning. I have some matters to take up not involved in
18 this case, other matters which have previously been
19 scheduled for earlier than that, so I will have you here
20 tomorrow morning at 10:00 and we'll proceed with the
21 remainder of this trial. So remember what I told you
22 earlier, don't do any independent research on the case,
23 don't talk to anybody else about the case. If somebody
24 asks you what kind of trial is it, just tell them, "Judge
25 Gibbons told me I can't talk about it, okay?" See you in

1 the morning.

2 (The jury left the courtroom.)

3 THE COURT: All right. Mr. Grier, if you will have
4 your client please stand.

5 MR. GRIER: Your Honor, can I just reserve my right to
6 make a direct verdict?

7 THE COURT: Oh absolutely, do you want to go ahead and
8 do that now?

9 MR. GRIER: I can do that. Judge, I would like to
10 renew my motion earlier to quash the indictment, and again,
11 I think the evidence presented is that -- is that this pick
12 might be used as a weapon. And I think it's clear from the
13 statutes unless they proved or present evidence that it was
14 a weapon or drugs that jurisdiction under 24-3-950 --
15 excuse me, under 24-3-965 it is an offense that should be
16 considered where jurisdiction would be proper in
17 magistrates court because it specifically -- it
18 incorporates not withstanding the provisions of 24-7-155,
19 the offenses of possession of contraband in a county jail
20 are to be tried unless it's weapons or drugs. And I
21 understand probably that the testimony was that it was
22 possible that it could be used as a weapon but there's no
23 evidence that it was, in fact, used as a weapon or
24 presented as a weapon. And, in fact, you know the
25 appearance I think you could infer based on testimony that

1 the likelihood was that it was intended to be used as a
2 pick and if you believe that the evidence would have
3 demonstrated it was intended to be used as a pick it wasn't
4 a weapon and it wasn't drugs and jurisdiction would be
5 proper in magistrates court.

6 THE COURT: Yes, sir. And by that same token a
7 reasonable juror could infer that it could be used as a
8 weapon as well. So it was on that basis used on any
9 evidence standard for a directed verdict motion and I
10 respectfully deny your motion. Well, excuse me, again to
11 deny your motion to quash, and I will deny your directed
12 verdict motion as well, but go ahead and make it for the
13 record.

14 MR. GRIER: Okay. Well, Your Honor, please consider
15 that the statutes 24-7-155 says that matters considered
16 contraband within the meaning of this section are those
17 which are designated published by the department of
18 corrections 33-1, this regulations must be displayed in a
19 conspicuous place available and -- must be displayed in a
20 conspicuous place available and visible to visitors and
21 inmates at the facility. Must be displayed. There's no
22 evidence that has been presented that there was any display
23 of the contraband list at all.

24 THE COURT: I do want to hear from the State on that.
25 Let me hear from you, Madam Solicitor.

1 MS. WALKER: Yes, Your Honor. The display, the
2 conspicuous display, the evidence is the regulations and
3 rules are printed out and individually handed to each
4 inmate, and also there is a -- I have a photograph of it
5 here if you would like to see it -- of a sign printed for
6 visitors at the entry way --

7 THE COURT: Was that testified to or introduced into
8 evidence? Did somebody testify about that sign being
9 conspicuously noticed?

10 MS. WALKER: We did not introduce that because it
11 specifically deals with visitors and in this case, I
12 apologize --

13 THE COURT: Well, don't apologize to me. But you
14 still -- you had witnesses, or a witness or two testify
15 that each individual inmate is handed the piece of paper
16 and they take it with them and it has all of the rules and
17 regulations printed. I think that's enough to get past the
18 directed verdict, Mr. Grier.

19 MR. GRIER: Displayed in a conspicuous place.

20 THE COURT: I find that that was conspicuous.

21 MR. GRIER: Thank you, Your Honor.

22 THE COURT: Yes, sir. But you've got a good issue on
23 appeal. All right. Anything else?

24 MR. GRIER: That's all, thank you.

25 THE COURT: All right. Thank you. Mr. Jermaine

1 Grier, if you will stand for me, sir, real quick. All
2 right.

3 (The defendant was sworn.)

4 THE COURT: You can be seated. All right. Now, Mr.
5 Grier, at this time I'm going to explain certain rights to
6 you that you have, okay? If you don't understand anything
7 I'm saying to you, let me know and I'll try to explain it
8 better to you or have your lawyer explain it to you. Do
9 you understand?

10 (Defendant nods yes.)

11 THE COURT: He nods to the affirmative. We've now
12 reached the stage of the trial, the State is through
13 putting up their case, okay, and now you get to present
14 your defense if you wanted to. Now, you have certain
15 rights under the 5th Amendment to the United States
16 Constitution which says that no person can be compelled in
17 any criminal case to be a witness against himself, this
18 means nobody can make you testify if you don't want to,
19 okay? Now, you have the right to testify but nobody can
20 make you do that, do you understand that?

21 (Defendant nods yes.)

22 THE COURT: He nods in the affirmative. Now, if you
23 do decide to testify the State can -- their lawyers can
24 cross examine you and try to make you look bad and make you
25 not look believable in front of the jury, and if you have

1 any past crimes on your criminal record that you've been
2 convicted of that the State can impeach you on, they can
3 try to make you look bad that way, do you understand?

4 (Defendant nods yes.)

5 THE COURT: Okay. He nods in the affirmative. Now,
6 if you do decide to testify, you must be able to freely,
7 voluntarily and intelligently make this decision
8 understanding your 5th Amendment rights, do you understand
9 that?

10 (Defendant nods yes.)

11 THE COURT: Do you know your 5th Amendment rights?

12 (Defendant nods yes.)

13 THE COURT: He has nodded in the affirmative to that
14 last question and to this current question. Now, if you
15 decide to exercise your right and not testify I will
16 specifically instruct that jury that they can't even bring
17 that up in the courtroom, they cannot use that against you
18 and they can't give it any consideration whatsoever, and
19 there's absolutely no prejudice to you because you didn't
20 testify, it's left entirely up to you whether or not you
21 wish to testify. Do you understand what I am telling you?

22 (Defendant nods yes.)

23 THE COURT: Okay. Do you need to talk to your lawyer
24 anymore about whether or not you're going to testify?

25 (Defendant shakes head no.)

1 THE COURT: He indicates no. What I'm going to do
2 since this is very important to you and since we are kind
3 of late in the day, I'm going to recess my questioning of
4 you and tomorrow morning before we start I'm going to give
5 you the night to maybe think about it and talk to Mr. Grier
6 some more either today or in the morning and then I will
7 finish up my questioning of you tomorrow morning, okay?
8 Mr. Grier, do you have anything else you would like me to
9 ask your client at this time about his 5th Amendment
10 Rights?

11 MR. GRIER: No, Your Honor. I think this was
12 inconclusive of everything.

13 THE COURT: Thank you. We will be recess then and
14 start back tomorrow morning at 10:00.

15 (Court recessed for the evening and resumed at 10:00
16 A.m. on Thursday, May 12, 2016.)

17 THE COURT: All right. We're back on the record.
18 After taking a recess overnight, Mr. Mark Grier, before I
19 speak to your client again, you indicated you wished to
20 make more argument about the directed verdict motion.

21 MR. GRIER: I do, Your Honor.

22 THE COURT: Yes, sir?

23 MR. GRIER: Your Honor, one thing in retrospect that I
24 did not argue yesterday about 24-7-155, the language is
25 that not only do those regulations have to be available,

1 which I have to concede they were available to my client, I
2 did not argue that -- the statute says it must be visible.
3 I think that clearly takes it beyond the merely being
4 available which I couldn't argue. And it certainly -- the
5 plain meaning of that is that the legislature intended that
6 those regulations be in a position where they could be
7 observed and not merely available, which although it
8 doesn't say posted it says displayed in a conspicuous
9 place, available and visible. If it were merely available
10 you wouldn't need the word visible. I think visible is the
11 more critical issue in determining the statutory meaning of
12 it and in light of that argument, which I did not make
13 yesterday, I would ask the Court to revisit my directed
14 verdict motion and consider that.

15 THE COURT: Okay. Yes, sir. Madam Solicitor?

16 MS. WALKER: Yes, Your Honor. The State still holds
17 the same position that, I mean, it was displayed and
18 visible to inmates when it is physically print copied,
19 handed to them and they have every single right to maintain
20 possession of that in their cell throughout the duration of
21 their stay there. And as far as visible to visitors,
22 again, we didn't enter that into evidence because that's
23 not the issue we're dealing with here. We're talking about
24 the inmate's ability to read and understand and know the
25 regulations of the Court -- I mean, sorry, of the detention

1 center. And I think the intention of the legislature is to
2 make sure that the inmates are actually aware of the
3 expectations of them while they're there.

4 THE COURT: Mr. Grier, come back to you.

5 MR. GRIER: Well, Your Honor, it's not in evidence,
6 but those rules are posted to the visitors, the visitors
7 are irrelevant. Simply put, they are not in a position,
8 they are not displayed in a conspicuous place. They're
9 available but they're not visible to the inmates as
10 required by the statute.

11 MS. WALKER: Again, until the statute is revised by
12 our state legislature as it was in, I believe, 2011, they
13 did not make an addition of language that it must be posted
14 on a wall or posted on a door. If they'd wanted it to say
15 posted they could have well done so when it was amended.
16 And being displayed, the plain meaning of displayed is as
17 you know, here guys, it's being displayed to you, and it's
18 not being hidden from the inmates, it's given to them. I
19 don't know how much more conspicuous it could be.

20 THE COURT: Let me clarify my ruling from yesterday to
21 be specific for this printed record and transcript that
22 other judges will be reading at some time in the future
23 provided there's an appeal. All right. 24-7-155, which
24 was effective June 11th of 2010, it was amended in 2010 and
25 rewritten by our legislature, here is what it says. "It is

1 unlawful for a person to furnish or attempt to furnish a
2 prisoner in any county, municipal or multi-jurisdictional
3 jail, prison camp, work camp or overnight lockup facility
4 with a matter declared to be contraband." Well, that's not
5 the case here because the State is not prosecuting somebody
6 who furnished. It goes onto say, "It's unlawful for an
7 inmate of the facility to possess a matter declared to be
8 contraband. All right. So that's what this case is about.
9 Matters considered contraband within the meaning of this
10 section are those which are designated as contraband and
11 published by the department of corrections as regulations
12 33-1 of the department of corrections, and this regulation
13 must be displayed in a conspicuous place available and
14 visible to visitors and inmates at the facility. That is
15 the key language here that's operative in this directed
16 verdict motion. To clarify my ruling from yesterday, as
17 all of the lawyers in this room know, the cardinal rule of
18 statutory interpretation is to ascertain and effectuate the
19 intent of the legislature, okay? So in interpreting this
20 statute I have to ascertain the intent of the legislature.
21 In my opinion the intent of the legislature is for the
22 inmates at a facility to have notice, actual notice of what
23 is considered to be contraband. And as the State has
24 argued, what better notice is there than actually handing
25 them a document setting forth what is considered to be

1 contraband, what you can and cannot have. It says it must
2 be displayed in a conspicuous place. I believe the intent
3 of the legislature is not for just a sign to be up, I think
4 in this case the Lancaster County Detention Center went
5 above and beyond what's required by the statute in that
6 they actually handed a written document, which is not
7 required by the statute, but they handed a written document
8 to each inmate as was testified yesterday to notify them of
9 what they can and cannot have, so as such I believe that
10 was the intent of the legislature and that's my ruling. I
11 respectfully deny your directed verdict motion. I believe
12 there is -- obviously you've got a solid issue that you're
13 protected on, Mr. Grier, in the event of a conviction, but
14 I wanted to make sure I stated my reasoning in the record
15 for my ruling, okay?

16 MR. GRIER: Yes, sir. Just to also clarify, I take
17 the position there would be nothing preventing me from
18 arguing that to the jury notwithstanding your ruling.

19 THE COURT: I think the way the statute reads
20 certainly it's arguable, yes, sir. I think you're -- the
21 statute -- I'm going to charge essentially the statute
22 because I can't find a charge in the bench book, you know,
23 and so I think that is an arguable issue, a factual issue
24 that you can argue, whether or not he had notice.

25 MR. GRIER: Yes, sir. I just wanted to anticipate

1 that to avoid a potential objection or having to clarify
2 that during argument. Judge, also in terms of what you
3 charge, Judge, I'm going to be asking you to -- I gave you
4 a curative instruction.

5 THE COURT: Yeah. I like that charge, I'll charge
6 that. Here what it says, Madam Solicitor, it says, "The
7 fact that Jermaine Grier was housed at the Lancaster County
8 Detention Center at the time of the alleged crime is not
9 relevant to his guilt or innocence on this charge and is
10 not to be considered by any juror and is not considered or
11 even discussed by the jury during deliberations." Do you
12 have new problem with that?

13 MS. WALKER: No, Your Honor.

14 THE COURT: Certainly, I'm sure the jury will go,
15 "What's he in jail for?" They don't need to be concerned
16 about that.

17 MR. GRIER: Thank you, Your Honor. Just in light of
18 the fact that he is incarcerated now and they are not
19 permitted to know about that, I think that --

20 THE COURT: That's correct. And the State has been
21 very careful in making sure that that didn't come up as to
22 why he was incarcerated in the first place.

23 MR. GRIER: Judge, my last matter would be -- I'm
24 asking you to include 24-3-965, you know, charge that as a
25 lesser-included offense. I think that as you said

1 yesterday that the jury could determine that this lock pick
2 was a weapon or not. And in light of the fact that the
3 jury is going to make a factual determination of the status
4 of that object, whatever it is, if they determine that it
5 is not a weapon this would fall under section 24-3-965
6 since it excludes trial of anything that's not illegal
7 drugs -- or rather, it gives jurisdiction to magistrates
8 court for anything that's not illegal drugs or weapons,
9 given that that is factually something that a jury is in a
10 position to determine based on my argument yesterday, you
11 know, in my directed verdict motion, I believe, where it
12 said that the jury could determine it was a weapon or not.
13 Well, if they determine -- I think they have to make a
14 factual determination of whether it was a weapon or not,
15 and if they determine that it was not a weapon then they
16 would have to return a verdict on -- if they determine it
17 was contraband and that it was not a weapon then I think he
18 would be -- his liability would be under statute 24-3-965
19 and I'm asking you to charge that.

20 THE COURT: All right. Madam Solicitor?

21 MR. GRIER: Your Honor, first of all we don't believe
22 that this is the lesser-included offense of the statute
23 under which he was charged, which is 24-7-155. It
24 specifically says in the lower level statute
25 non-withstanding provisions of 24-7-155. They seem to be

1 mutually exclusive and that's the intent of the legislature
2 there. But in the lower statute it says, as Mr. Grier just
3 said, anything other than weapons or illegal drugs. All of
4 the officers yesterday called that thing a weapon, it has a
5 sharp end on it, it's one of the things that's listed under
6 that 33-1 of the department of corrections regulations, and
7 keys and locks are included under those items that are
8 listed under contraband for under 33-1. So I mean, we're
9 taking the position that it's a weapon, but either way it's
10 covered under 33-1, which is the statute cited in 24-7-155
11 law that he was charged --

12 THE COURT: Aren't tools included as defined
13 contraband as well?

14 MR. GRIER: Correct, under the 33-1. But this
15 magistrate level offense specifically says things
16 designated by the detention center. The detention center
17 is not alleging weapons or locks or anything like are
18 contraband, I believe the two are mutually exclusive. The
19 24-7-155 --

20 THE COURT: So what does 24-3-965 cover, a magazine?

21 MS. BREWER: It says anything other than weapons or
22 illegal drugs. This could have been a weapon, we don't
23 know what it was, but -- and we're --

24 THE COURT: So if it could be a weapon it's covered
25 under 24-7-155.

1 MS. BREWER: Correct.

2 MR. GRIER: If they find it was a weapon.

3 THE COURT: Didn't Mr. Grier ask the sergeant
4 yesterday, "Can a piece of paper be considered to be a
5 weapon because it's sharp on the side?"

6 MR. GRIER: I did.

7 THE COURT: And then I think the sergeant answered it
8 depends upon the amount of paper.

9 MR. GRIER: He did. But --

10 THE COURT: All right. Anyway -- go ahead.

11 MR. GRIER: Contraband. He said it could be a weapon
12 but he said it could be contraband if you had too many
13 sheets, I'm not sure how many you're allowed, 20 sheets or
14 something, I'm not sure. But, Your Honor, I don't think --
15 why is that statute excluding drugs and weapons from the
16 magistrates court? I mean, you know, if the jury believes
17 it was a lock pick then it's not drugs or a weapon and you
18 know, not withstanding 7-155.

19 THE COURT: I've got you. I'm not going to charge it,
20 you're protected in the record, I don't believe it's a
21 lesser-included offense.

22 MR. GRIER: Okay.

23 THE COURT: All right. Motion on that is denied.
24 Well, let's move to charge conference before I finish
25 talking with Mr. Jermaine Grier. I've already ruled on not

1 charging the lesser-included. I'm going to include Mr.
2 Mark Grier's request to charge as to the them not going
3 into why he is in the detention center in the first place.
4 All right. Of course, I'm going to -- let me read to you
5 the following, "It is unlawful for an inmate in a county,
6 municipal or multi-jurisdictional camp, work camp or
7 overnight lockup facility to possess a matter declared to
8 be contraband. And then I talk about possession. I'm
9 going into actual and constructive possession. Do y'all
10 want me to charge constructive possession? The testimony
11 indicated it was found on his person in his pocket, all of
12 the testimony indicated that he allegedly removed -- it was
13 in his hand and he put it in his pocket. Constructive
14 possession means that the defendant had dominion and
15 control or the right to exercise dominion and control over
16 the contraband.

17 MR. GRIER: Judge, I don't want you to charge it but I
18 would like you to charge -- do you have an intent charge
19 that you intend to charge?

20 THE COURT: Criminal intent?

21 MR. GRIER: Yes, sir.

22 THE COURT: I can charge criminal intent.

23 MS. WALKER: But what would be the basis for the
24 criminal intent considering there's -- I don't know -- the
25 statute just says possession, there's no intention in the

1 statute.

2 THE COURT: Mr. Grier?

3 MR. GRIER: He would have to intend to possess it to
4 commit a crime. If it was a mistake or an accident where
5 there -- to evade criminal liability when you are in
6 possession.

7 THE COURT: All right. In an abundance of caution I
8 will charge criminal intent, I think he's right about that.
9 So I'm just going to charge actual possession.

10 MS. WALKER: I would request that you do constructive
11 as well especially since he was in a cell only by himself
12 and basically --

13 MR. GRIER: That's not in evidence. I do not believe
14 that was in evidence that he was in a cell by himself.

15 THE COURT: You are correct, that is not in evidence.
16 I'm going to charge constructive. Here is my constructive
17 charge. "Constructive possession means that the defendant
18 had dominion and control or the right the exercise dominion
19 and control over the contraband. The defendant's knowledge
20 and possession may be inferred when the contraband is found
21 on the property under the defendant's control or on the
22 defendant's person. However, this inference is simply an
23 evidentiary fact to be taken into consideration by you.
24 Contraband. Matters to be considered -- matters considered
25 to be contraband are those which are designated as

1 contraband and published by the department of corrections
2 as regulation 33-1 of the department of corrections..
3 Contraband is any item which was not issued to the prisoner
4 officially or which cannot be purchased by him or her in
5 the jail canteen," that's right out of 33-1. "Some
6 examples of contraband are any and all firearms, knives of
7 any and all descriptions, or any other article that may be
8 used for the offense or defense, keys and locks and tools
9 of any description not approved or issued to prisoners." I
10 think that's the law, I'm giving you an opportunity.

11 MR. GRIER: Judge, since the regulations are in
12 evidence --

13 THE COURT: Wasn't that right out of the regulations?

14 MS. WALKER: Yes, sir.

15 MR. GRIER: I don't see where charging them is
16 necessary or appropriate since they are going to be -- the
17 evidence is going to be controlling in the issue of
18 contraband, not the instruction.

19 THE COURT: All right. I understand your position.
20 You think it's an impermissible comment on the evidence.

21 MR. GRIER: I do.

22 MS. BREWER: I mean, just given that the statute --

23 THE COURT: I can simply say that contraband is
24 defined by regulation 33-1 of the department of corrections
25 which is in evidence period, that's not commenting on the

1 evidence. Are you okay with that one, Mr. Grier?

2 MR. GRIER: Yes, sir.

3 THE COURT: Matters to be considered to be contraband
4 are those which are designated as contraband and published
5 by the department of corrections as regulations 33.1 of the
6 department of corrections, period, that's it. Okay.
7 Anything else y'all wish me to charge, or any other
8 questions on the charge?

9 MS. BREWER: Nothing from the State, Your Honor.

10 THE COURT: I feel like we have beat this horse until
11 it is dead for the fourth time.

12 MR. GRIER: Yes, sir. Would I be allowed to hand out
13 the statute to the jurors rather than displaying it, not
14 that they can take them back to the jury room, but during
15 arguments?

16 THE COURT: What do you mean?

17 MR. GRIER: I mean I had copies printed which I
18 intended -- I didn't think I was going to be able to
19 display it based on -- I don't understand this technology.
20 I am like Francis in that regard and I'm close to his age
21 so I printed up copies in anticipation of just handing them
22 to the jury and then taking them back after my argument on
23 the statute that you are going to charge.

24 THE COURT: Yes, sir. And that was my charge. I'm
25 not -- okay.

1 MR. GRIER: Because during argument I'm not going to
2 be arguing, of course, about the statute.

3 MS. WALKER: But Your Honor, could we ask that the
4 language about the visitors and the applicability of the
5 visitors and it being -- since that was into evidence that
6 that be stricken from whatever he shows to the jury?
7 That --

8 THE COURT: Don't want to confuse the jury. Let's
9 look at the statute again. You don't have the penalty
10 section in there, do you?

11 MR. GRIER: I took it out. We discussed this earlier
12 and I took out the -- well, the word penalty --

13 THE COURT: Why don't you redact the first sentence,
14 it is unlawful for a person to furnish or attempt to
15 furnish, get rid of that first sentence. I don't have any
16 problem with you showing the jury it's unlawful for an
17 inmate of a facility to possess a matter declared to be
18 contraband. Matters considered contraband within the
19 meaning of this section are those which are designated as
20 contraband and published by the department of corrections
21 as regulations 33-1 of the department of corrections, and
22 this regulation must be displayed in a conspicuous place
23 available and visible to visitors and inmates at the
24 facility period. Okay. I don't have any problem with the
25 rest of the statute, just redact the first sentence where

1 it talks about what the penalty is.

2 MR. GRIER: Yes, sir, I did that. So after the
3 word --

4 MS. WALKER: My question is whether we could redact
5 the two visitors, well just visitors and after the visit.

6 THE COURT: No. I understand why you would want to do
7 that but that would just -- no, we'll just let that one
8 ride.

9 MS. WALKER: Okay.

10 MR. GRIER: So the first sentence would read it's
11 unlawful for a person to --

12 THE COURT: -- furnish or attempt to furnish or
13 attempt to furnish a prisoner in any county, municipal
14 multi-jurisdictional jail, prison camp, work camp or
15 overnight lockup facility with a matter declared to be
16 contraband, get rid of that sentence. Just black out that
17 sentence, and then the rest of it is in except for the
18 second paragraph where it talks about the penalty.

19 MR. GRIER: That's right.

20 THE COURT: And I would rather you -- since you are
21 redacting it I would rather you just show it on the screen
22 rather than hand 12 redacted copies to 12 jurors because
23 they can read through that, they'll hold it up to the
24 light, you know, and see things.

25 MR. GRIER: Well, I mean, it will take me five minutes

1 to go up and yank it out and have it clean if you would
2 rather I do that.

3 THE COURT: I would rather you use the monitors and do
4 it that way, that's why we have this stuff. Can one of
5 y'all assist, Mr. Clerk or somebody assist him in doing
6 that?

7 (Break in proceedings.)

8 THE COURT: Anything else? Let me talk to Mr.
9 Jermaine Grier a little bit more. Mr. Grier, can you hear
10 me okay?

11 (Defendant nods yes.)

12 THE COURT: He nods. All right. Now Mr. Grier, do
13 you remember yesterday -- he can be seated, he's fine.
14 Yeah. Mr. Grier, do you remember yesterday we were talking
15 about whether or not you wish to testify?

16 (Defendant nods yes.)

17 THE COURT: He nods. All right. Do you want to
18 testify?

19 (Defendant shakes head no.)

20 THE COURT: All right. He indicates no. Okay. And
21 you have been over -- and you have talked to your lawyer
22 about that?

23 (Defendant nods yes.)

24 THE COURT: He nods in the affirmative. Mr. Mark
25 Grier, anything you wish to add on that?

1 MR. GRIER: Well, Your Honor, just for the sake of --
2 my client just raised an issue that I want to put on the
3 record that -- and which I've explained to him but to --
4 he's saying that I need to raise the issue of the arrest
5 warrant being defective because Jeffrey Lefler is listed as
6 the affiant initially in the printed copy, and then over in
7 the left-hand column of it his name is also listed as the
8 prosecuting officer. However the affiant -- Lefler's is
9 scratched out and the signature of the affiant was -- it
10 was executed by Wes Phillips and he's asked me to raise
11 that issue. I've explained to him what matters in the
12 arrest warrant is that affiant's signature being that that
13 person, you know, was presented to the Judge and it says
14 affiant Lefler, Smith and others witnessed the same, that
15 that -- often times we encounter this and that that's -- I
16 guess we can call scrivener's error or a circumstance that
17 changes where the person that's actually the affiant
18 changes and they just scratch out the original name and
19 then the warrant is sworn by a different person than is
20 initially named. You know, I told him that would have no
21 bearing in this hearing, that's just a matter for the Judge
22 to consider, that's not an issue that is for the jury to
23 decide as a matter of law and is not one that has any
24 consequence.

25 THE COURT: All right. Your client's positions is

1 clearly reflected in the record, however I deny any motion
2 to dismiss based upon that legal theory.

3 (Break in proceedings.)

4 MR. GRIER: Your Honor, the defense is not going to
5 present any evidence in this case.

6 THE COURT: So what I'll do is when the jury comes
7 back in you say the defense rests, we'll move straight into
8 closing arguments. The State goes first, defense gets to
9 go last.

10 (The jury returned to the courtroom.)

11 THE COURT: All members of the jury are present.
12 Sorry for the delay, thank you for your patience. I assure
13 you we just haven't been sitting in here twiddling thumbs,
14 I've been handling other matters as expeditiously as
15 possible and we got you in here as soon as possible, so
16 thank you for your patience. We are providing lunch for
17 you today, I'm sure you've been told that, I promise you it
18 will be really good so don't worry about that either, okay?
19 All right. So when we ended yesterday the State rested.
20 Mr. Grier?

21 MR. GRIER: Your Honor, the defense rests.

22 THE COURT: The defense has rested, okay? Ladies and
23 gentlemen of the jury, we have now finished the testimony
24 and evidence phase of the trial, we're now going to move
25 into the closing arguments. And remember what I told you

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1 yesterday what closing arguments are, after the conclusion
2 of the closing arguments that's when I will instruct you on
3 the law here momentarily and that's when you'll begin to
4 deliberate your verdict here later on this morning, okay?
5 At this point in time, Madam Solicitor, you may close.

6 MS. BREWER: May it please the Court?

7 THE COURT: Yes.

8 MS. BREWER: Yesterday you heard a lot of testimony
9 and a lot of evidence about this case, but when you go back
10 there and you're deliberating we want you to keep three
11 things in mind. First of all there are rules and Jermaine
12 Grier, the defendant, knew about the rules that were in
13 place, and he took a risk. He took a risk when he broke
14 those rules and there was a result, and the result is that
15 he's here today because there's consequences for breaking
16 the rules. When the defendant was booked into the
17 Lancaster County Detention Center he received a copy of
18 these rules and he was asked to read through them and he
19 was given a copy to bring back into the cell with him. And
20 this isn't a handbook, it's six pages, you know, it's
21 pretty short. And there's a section in here about
22 contraband, and it says the contraband is anything under
23 these rules that's been altered in any way. And he took
24 these rules back in his cell and part of the protocol in
25 the detention center is that when they give these rules to

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1 inmates they have to sign a piece of paper that says that
2 they got the rules, they got a copy of it. So Jermaine
3 Grier signed this piece of paper, and it says, "My
4 signature indicates that I received a copy of the Lancaster
5 County Detention Center rules and regulations." He got
6 these rules, he knew what counted as contraband. In
7 November of last year at some point the defendant obtained
8 this object and he sharpened it. You heard testimony from
9 the officers who were here yesterday that it looks
10 sharpened and you can see that it has been sharpened. They
11 thought maybe it was the clip on a pen, however he got it,
12 he took a piece of metal and he sharpened the end of it.
13 And on November 16th of last year he had a court date in
14 this courthouse. The protocol of the officers is when they
15 bring an inmate out of their cell and in this courthouse
16 they have to chain them from their cell. So they went to
17 Mr. Grier's cell and asked him to put his hands through the
18 food door, and he had this in his left hand. When he put
19 his hands through the door his fist was closed and they
20 asked him to open it. He didn't realize they were going to
21 open his hands so he pulled his left hand back in and he
22 hid this in the jumpsuit of -- his prison jumpsuit, he hid
23 it in the pocket. The officers that testified yesterday,
24 they do this all the time, they're aware of suspicious
25 activity and they were alerted to search him because they

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1 didn't know what was in his hand and they found this. This
2 doesn't look that dangerous, I know it's small, it's a
3 small piece of metal, but within the confines of the
4 Lancaster County Detention Center this could be used as a
5 weapon. It can be used to poke someone in the eye, it can
6 be used to poke somebody in the neck, it can be used to
7 unlock your handcuffs, it can be used for a lot of things.
8 And he wasn't just trying to keep it in his cell, he was
9 trying to take it out of his cell. He was trying to take
10 it out where there were other human beings. He was risking
11 the safety of the three officers that testified yesterday
12 who were there that day, he was risking the safety of the
13 other inmates at the detention center and he was risking
14 his own safety. He's not allowed to have this. And under
15 the rules of the Lancaster County Detention Center,
16 anything that's been altered counts as contraband. This is
17 contraband. The results of that could have been really
18 dangerous. The statute under which he was charged says
19 that inmates in the detention center cannot have contraband
20 and it lists things that could count as contraband, one of
21 those as weapons that could be used for offensive or
22 defensive purposes, or key or a lock. And you heard from
23 Captain Deason who runs the jail yesterday, he said that
24 they took that into consideration when he wrote that
25 handbook. But the fact of the matter is that the law

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1 states that prisoners in a detention center cannot have
2 contraband. Ladies and gentlemen, it's common sense that
3 inmates in a prison can't have sharp objects or anything
4 that can be perceived as a weapon, and Mr. Grier had
5 contraband on him on November 16th of 2015. He had this
6 object first in his hand and then in his jumpsuit. He
7 broke the rules of the detention center. He took a risk
8 when he decided to break those rules and he risked the
9 safety of the officers in the detention center, of the
10 inmates at the detention center and he risked breaking the
11 rules that he had agreed to follow, the results are that he
12 is sitting here today and that there needs to be
13 consequences for his actions because the results on that
14 day could have been dangerous. This is contraband under
15 the law and under the rules that he signed, and Jermaine
16 Grier is guilty of possession of contraband by an inmate at
17 the Lancaster County Detention Center. When you go back
18 into that jury room we would ask that you find him guilty
19 of that law. Thank you.

20 THE COURT: Thank you, Madam Solicitor. Mr. Grier?

21 MR. GRIER: May it please the Court? Madam Solicitor?
22 Give me a minute to set up here. Thanks for serving on
23 this jury. It was mercifully short in actuality compared
24 to most trials that you encounter so you kind of --
25 regardless of how you feel sitting here you need to feel a

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1 little bit lucky because this has been a short trial. I
2 spend a lot of times at the jail, I know all of these guys
3 that testified yesterday and I kind of like them. I depend
4 on them for my safety and for -- obviously, you know, they
5 have a tough job that I really respect just like I respect
6 law enforcement. I'm a citizen too and, you know, I end up
7 on the opposite side of them quite often, but generally
8 it's not personal. I never make it personal. If somebody
9 makes it personal then that's a problem, but they don't
10 take it personally. But the solicitor said that Mr.
11 Jermaine Grier didn't follow the rules. Well, you know,
12 the law requires not only that he follow rules, but it also
13 requires the State to follow rules; and when you think
14 about the big picture of order in society when the -- who
15 polices the State? Who make sure that the State follows
16 the rules? You do, juries do. Attorneys have the
17 responsibility of making sure and bringing to light when
18 the State doesn't follow the rules. If there was not a
19 mechanism for bringing to light when the State doesn't
20 follow the rules, imagine how that could get out of hand
21 and often does in other societies that don't have the
22 procedures and the constitutional protections that our
23 constitution provides. Now, what you see before you and on
24 the screen I guess -- do y'all have something in front of
25 you -- is the statute that Mr. Grier is charged under, and

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1 the statute defines contraband. And, of course, the
2 penalties aren't part of what we are here today about, what
3 the jury considers because that's the Judge's job, so
4 that's not there. But the rules, the defining rules are in
5 that statute for how you determine whether somebody is
6 guilty or not, and of course it puts a duty on the State
7 that's in that statute. If you'll look in the fifth
8 sentence of the second paragraph it says that these rules,
9 which is State's -- 31-1, which is in evidence, you will
10 get to look at this, which is encompassed by these
11 Lancaster County Detention Center rules and regulations,
12 that the State has to -- that those rules must be displayed
13 in a conspicuous place available and visible to visitors
14 and inmates at the facility. Now, the plain meaning of
15 this -- the plain meaning of this language is that, you
16 know, the -- these rules must be visible, not that they be
17 available, I mean, he was given a copy of it. If all the
18 statute intended was that they be available, well, I would
19 have to concede that, you know, these regulations were made
20 available, but that's not what the statute says. It says
21 they must be displayed in a conspicuous place and available
22 and visible. Now, you know, when you get handed a piece of
23 paper, a contract or something you're supposed to do -- I'm
24 on a CPAP machine now, and the paperwork and the rules and
25 regulations for following my insurance are just -- I have

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1 to pull that out every night and -- not every night, but
2 often to understand what I've got to do to make sure I
3 don't mess up my insurance and that my insurance pays, you
4 know. You oftentimes receive something and you set it
5 aside, you know, it's available to you but do you -- is it
6 visible to you? The plain language in that statute,
7 24-7-155 is that it must be visible, the reason being there
8 are illiterate people in the jail, there are people that
9 have very low functioning capabilities, there are people
10 that are mentally ill in the jail. The jail has to deal
11 with issues that our society used to deal with now and
12 that's one of the very strong reasons that I have a lot of
13 sympathy and appreciation for the jail. But the reason
14 that the rules need to be visible is because there needs to
15 be a discussion where people can see them and there's a
16 discussion among the inmates about what these rules are.
17 Because you pick up a piece of paper and, you know, you
18 take it to your cell if you read it, it's short for
19 somebody that's functioning maybe that's literate and
20 functionally intelligent enough to comprehend it and
21 appreciate it, yeah. But making the rules visible and
22 available in a conspicuous place brings a consciousness of
23 the rules to the inmates that just hand them a piece of
24 paper and sending them back to their cell does not give to
25 them. And to me that's the only thing that makes sense and

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1 why our legislature made this rule that the detention
2 center is required by law to follow and they have not done.
3 There is no evidence that they have displayed these rules
4 in a conspicuously visible place to conform with the law.
5 Now, I mean, that's a procedural issue, but it's an
6 important one and your legislature thought enough of it to
7 put it and make it the law and a requirement just like Mr.
8 Grier is required to follow the rules before he can be
9 found to have -- number one, before anything is contraband
10 the State must follow those rules and they've presented no
11 evidence that they made those regulations visible and
12 displayed in a conspicuous place. Certainly you -- well,
13 the defendant has no duty to prove anything, the burden of
14 proof is on the State and they have to prove beyond a
15 reasonable doubt that they displayed the rules in a
16 conspicuous place available to the inmates. If they don't
17 do that then certainly you must find that Mr. Grier is not
18 guilty. In terms of the evidence that was presented, you
19 don't know anything about what happened up until that
20 moment in time, that was the only thing that the State
21 presented. When did Mr. Grier put on this jumpsuit, it's
22 called -- I guess you're familiar with the term jumpsuit,
23 TV probably, but what the inmates wear. Did he put it on
24 immediately before he was told "You're going to court?"
25 Did he, you know, know what was in the jumpsuit? There's

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1 no evidence that he did anything or that he had the intent
2 to possess this. Are there jumpsuits there that you put
3 on? Was a jumpsuit given to him to take? Is it really
4 possible that he didn't know that this lock pick was in
5 that pocket? I submit to you that it's really possible
6 that he didn't even know. He was given a jumpsuit, someone
7 else could have put the object in that jumpsuit. Certainly
8 the real possibility exists that he had no knowledge that
9 this was even on him. In retrospect it's easy to say, "Oh,
10 he acted suspicious, he pulled his hands back," and did
11 this and the other. Well, when we look back at things, you
12 know, we're often suspicious of things. And then when your
13 suspicion is -- you find something that suggests that you
14 often in retrospect say that's suspicious behavior but I
15 realize now what they were doing, and the real possibility
16 exists that that's what happened in this case. The burden
17 of proof is on the State. Number one, they must prove that
18 the regulations were displayed in a conspicuous place
19 available to the visitors and inmates at the facility,
20 available and visible, which they didn't do. Number two,
21 certainly the State has not proved that there was not an
22 opportunity for somebody else to have placed that object in
23 that pocket that Mr. Grier was found to be wearing that day
24 because we don't even know what happened before Mr. Grier
25 was asked to come to this door that day. The State has a

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1 burden of proof beyond a reasonable doubt, the Judge has
2 already told you, I'm mentioning it in my opening argument.
3 What is a reasonable doubt? A reasonable doubt is the kind
4 of doubt that would cause you to hesitate to convict, in
5 other words you don't have such confidence that the
6 State -- that there's a possibility of innocence that you
7 hesitate. I think the Judge will charge you that if you
8 are firmly convinced of Jermaine's guilt then you must
9 convict him, however if you believe that there's the real
10 possibility that he's not guilty then you must acquit. So
11 has the State proved beyond a reasonable doubt that it
12 followed the rules? If it didn't Mr. Grier is not guilty
13 and they need to fix the system so that it complies with
14 the rules, it's the only way the system works. You are the
15 police of the State, you tell them that they need to fix
16 that system. Number two, did the State prove beyond a
17 reasonable doubt that Mr. Grier is -- is it really possible
18 that Mr. Grier might not have even known that that object
19 was in his pocket? And I would submit to you that a real
20 possibility exists that he might not have known that was in
21 there, and that is the State's burden of proof, they have
22 got to prove that he had that knowledge. Thank you for
23 listening and for your attention and I hope you enjoy your
24 pizza and I ask that you find Mr. Grier not guilty.

25 THE COURT: All right. Thank you, Mr. Grier. Ladies

JURY CHARGE

1 and gentlemen, if you'll please turn to me as I charge you
2 the law that pertain to the issues involved in this case.
3 And I'm going to do my best not to just read it to you
4 because I know there's nothing more boring than looking at
5 a talking head reading something, okay? I will try to make
6 eye contact with you as I go through this, but I will from
7 time to time be reading directly from what my law clerk and
8 I prepared. Because what I tell is you very important, it
9 is the law you must go by and I want to make sure I get it
10 absolutely correct, okay? Mr. Foreman and members of the
11 jury, you've heard the testimony and the evidence and the
12 arguments of both the State and the defense, I will now
13 explain to you the law that applies in this case. Under
14 the constitutional laws of South Carolina you are the
15 finders of fact in this case. I don't have the right to
16 pass upon the facts or even express any opinion that I may
17 have as to what I think the facts are because that's a
18 matter solely for you, the jury, to determine. As jurors
19 it is your duty to determine the effect, the value, the
20 weight and the truth of the evidence presented during
21 trial. As the trial judge it has been my responsibility to
22 preside over the trial and to rule upon the admissibility
23 of the evidence offered during the trial. You are to
24 consider only the testimony which has been presented from
25 this witness stand together with any exhibits which have

JURY CHARGE

1 been made part of the record. Now, I'm charging you the
2 law applicable to this case, and as the presiding judge,
3 ladies and gentlemen, I am the sole judge of the law of
4 this case. It is your duty as jurors to accept as correct
5 and to apply the law that I now state it to you and use
6 that to reach your verdict. Now, the fact that I may
7 instruct you on various subjects in this case must not be
8 taken as indicating what I think or what you think I think
9 that the facts show or what your verdict should be.
10 Finally I charge you, ladies and gentlemen, that you should
11 not be concerned with what you think the law ought to be
12 but rather what I charge you the law is. Now, you are the
13 sole judges of the credibility, that is the believability
14 of the witnesses who have testified and of the evidence
15 which has been presented during this trial, and in passing
16 upon credibility you can take into consideration many
17 things such as the demeanor and manner of testifying,
18 whether or not the witness had a reason to be biased or
19 prejudiced, or whether or not a witness' testimony was
20 contradicted on the one hand or supported or corroborated
21 on the other hand. All of these things you'll consider
22 bearing in mind that you should give the defendant the
23 benefit of any reasonable doubt. It becomes your duty as
24 jurors to analyze and to evaluate the evidence and
25 determine that evidence which convinces you of its truth.

JURY CHARGE

1 Now, let's talk about evidence briefly. There's two types
2 of evidence that are generally presented during a trial,
3 you have direct evidence and you have circumstantial
4 evidence. Direct evidence is the testimony of a person who
5 claims to have actual knowledge of a fact such as an eye
6 witness. It's evidence which immediately establishes the
7 main fact to be proved, okay? You also have circumstantial
8 evidence, that's a proof of a chain of facts and
9 circumstances which indicate the existence of a fact. I'm
10 going to give you a law school definition, then I'll
11 explain it to you. It's evidence which immediately
12 establishes collateral facts from which the main fact can
13 be inferred. Circumstantial evidence is based on inference
14 and not on personal knowledge or observation. For example,
15 we're not in winter anymore thank goodness, we're in late
16 spring, but imagine if on a winter night you look outside
17 before you go to sleep, you see brown grass on your front
18 lawn. You go to bed and you wake up the next morning and
19 you see snow on your front lawn with footprints going
20 through it. Well, first you can infer that it snowed.
21 Secondly, you can infer that somebody was walking on your
22 lawn. See, those are things that you can infer even though
23 you didn't see it snow and even though you didn't see
24 somebody walk on your lawn, okay? Now, the law makes
25 absolutely no distinction between the weight or value to be

JURY CHARGE

1 given to either direct or circumstantial evidence, nor is
2 there a greater degree of certainty required of
3 circumstantial evidence than of direct evidence. You
4 should weigh all of the evidence in the case, and after
5 weighing all of the evidence if you're not convinced of the
6 guilt of the defendant beyond a reasonable doubt you must
7 find the defendant not guilty. Now, the fact that the
8 defendant was arrested, charged and indicted is not
9 evidence in this case and cannot be considered by you as
10 evidence of guilt in this case, nor does it create any
11 presumption or inference of guilt. As I told you at the
12 outset, the indictment is simply the formal written
13 instrument which contains the charge made against the
14 defendant. An indictment is merely the formal document by
15 which a case is brought to court. Now, as you know, the
16 defendant has pled not guilty to the charge in the
17 indictment and that plea places the burden on the State to
18 prove the defendant guilty. A person charged with
19 committing a criminal offense is never required to prove
20 innocence. I charge you ladies and gentlemen that it is an
21 important rule of law that a defendant in a criminal trial,
22 no matter what the seriousness of the charge may be, will
23 always be presumed to be not guilty of the crime for which
24 the indictment was issued unless guilt has been proven by
25 evidence satisfying you, the jury, of that guilt beyond a

JURY CHARGE

1 reasonable doubt. Now, this presumption of innocence does
2 not end when you begin your deliberations but it
3 accompanies the defendant throughout the trial until you
4 reach a verdict. This presumption of innocence can be
5 described as like a robe of righteousness placed about the
6 shoulders of the defendant which remains with him until it
7 has been stripped from him by evidence satisfying you of
8 the defendant's guilt beyond a reasonable doubt. Now, this
9 presumption of innocence, ladies and gentlemen, is not just
10 a mere legal theory, it's not a legal phrase, it is a
11 substantial right to which every defendant is entitled
12 unless you, the jury, are satisfied from the evidence of
13 the defendant's guilt beyond a reasonable doubt. So what
14 is a reasonable doubt? A reasonable doubt is a doubt which
15 makes an honest, sincere, conscientious juror in search of
16 the truth to hesitate to act. Proof beyond a reasonable
17 doubt must therefore be proof of such a convincing
18 character that a reasonable person would not hesitate to
19 rely and act upon it in the most important of his or her
20 own affairs. Now, proof beyond a reasonable doubt can also
21 be described as proof that leaves you firmly convinced of
22 the defendant's guilt. Now, ladies and gentlemen, there's
23 very few things we know in this world with absolute
24 certainty, and in criminal cases the law does not require
25 proof that overcomes every possible doubt. Now, if based

JURY CHARGE

1 on your consideration of the evidence you are firmly
2 convinced that the defendant is guilty, then you must find
3 him guilty. If on the other hand you think there's a real
4 possibility that he is not guilty, then you must give him
5 the benefit of that doubt and find him not guilty. Let's
6 talk about intent. In order to establish criminal
7 liability criminal intent is required. For example, the
8 mental state required to be proven by the State for a
9 particular crime might be purpose, intent, knowledge,
10 recklessness or criminal negligence. Now, criminal intent
11 must be proven by the State beyond a reasonable doubt.
12 Criminal intent is always a matter that must be determined
13 by the jury from the circumstances surrounding the
14 situation. There's no way you can prove intent to a
15 mathematical certainty. There's no way that medical
16 science can dissect a person's brain and determine what the
17 person had in mind, so the law says that criminal intent
18 can be inferred from the circumstances which have been
19 shown to have existed. That's how you make a determination
20 of whether or not the element requiring intent was present.
21 It's not necessary to establish intent by direct and
22 positive evidence, but intent may be established by
23 inference in the same way as any other fact by taking into
24 consideration the acts of the parties and all of the acts
25 and circumstances of the case. Criminal intent can be

JURY CHARGE

1 described as a mental state, a conscious wrongdoing. It's
2 up to you to determine what the defendant intended to do
3 based upon the circumstances which have been shown to have
4 existed. Criminal intent can arise from actions or a
5 failure to act. It can arise from negligence, recklessness
6 or an indifference to duty or consequences that's
7 considered by the law to be equivalent of criminal intent.
8 Now, ladies and gentlemen, I instruct and emphasize to you
9 the fact that the defendant did not testify is not a factor
10 to be considered by you in any way in your deliberations
11 and in your consideration on the question of the guilt or
12 innocence of the defendant. It must not be considered by
13 you in any manner whatsoever. A defendant has a
14 constitutional right to remain silent, and the assertion of
15 this right must not be considered by you in your
16 deliberations. So I repeat, under your oath you are to
17 draw no conclusion whatsoever from the fact that the
18 defendant in this case did not testify. The fact that the
19 defendant did not testify should not even be brought up in
20 the jury room. The burden of proof as I have stated to you
21 is on the State, the defendant is not required to prove
22 innocence. The burden of proof remains on the State to
23 prove guilt beyond a reasonable doubt. Now, the fact that
24 the defendant was housed at the Lancaster County Detention
25 Center at the time of this alleged crime is not relevant to

JURY CHARGE

1 his guilt or innocence on this charge against him and is
2 not to be considered by any juror and is not to be
3 considered or even discussed by the jury during
4 deliberations. Possession of contraband by a county or
5 municipal prisoner, that is the statute 24-7-155. It is
6 unlawful for an inmate in a county, municipal or
7 multi-jurisdictional jail, prison camp, work camp or
8 overnight lockup facility to possess a matter declared to
9 be contraband. Matters considered to be contraband are
10 those which are designated as contraband and published by
11 the department of corrections as regulation 33-1 of the
12 department of corrections. The regulation must be
13 displayed in a conspicuous place available and visible to
14 visitors and inmates at the facility. To prove possession
15 the State must prove beyond a reasonable doubt that the
16 defendant had possession of the contraband. Possession can
17 either be actual or constructive. Actual possession means
18 that the contraband was in the actual visible custody of
19 the defendant. Constructive possession means that the
20 defendant had dominion and control, or the right to
21 exercise dominion and control over the contraband. The
22 defendant's knowledge and possession may be inferred when
23 the contraband is found on the property under the
24 defendant's control, or if the contraband is found on the
25 defendant's person. However, this inference is simply an

JURY CHARGE

1 evidentiary fact to be taken into consideration by you
2 along with the other evidence in the case and to be given
3 the weight you decide it should have. Now, ladies and
4 gentlemen, as I finish up my remarks to you let me say
5 something about deliberations. The word deliberation is
6 defined as a careful consideration weighing up with a view
7 to a decision. The genius of our jury system is that it
8 allows 12 good people, both men and women, from differing
9 backgrounds, life experiences and perspective to consider
10 the evidence, talk about it and ultimately reach a verdict.
11 The task of a juror is called deliberations for a reason,
12 you, the jurors, are to consider the evidence in this case
13 carefully and deliberately, and discuss it in a calm,
14 thorough and courteous manner. Now remember, you're not
15 partisans or advocates for one side over the other favoring
16 one side over the other, you are judges of the facts. Your
17 sole duty is to decide what happened and then find the
18 truth from the evidence presented in this courtroom. The
19 supreme law of our land, the United States Constitution,
20 affords everyone a day in court and a fair trial, so this
21 case is very important to both sides because it is their
22 day in court. I charge you, ladies and gentlemen, to
23 listen to the views of your fellow jurors, carefully
24 consider their viewpoints, and courteously discuss the
25 evidence. Remember, you're doing something deliberately,

JURY CHARGE

1 you're not in a big hurry, and you are tasked with a duty
2 of utmost importance. And in conclusion, ladies and
3 gentlemen, you have been selected by both the State and the
4 defense to be fair and impartial jurors. It is your duty
5 then in your deliberations to determine the truth in this
6 case giving the defendant the benefit of every reasonable
7 doubt on this charge, and from the facts which you
8 determine to be true you take and apply the law, which I
9 have just given you, and thus arrive at a verdict which
10 speaks the truth in this case. I've told you the standards
11 you have to apply to this charge in this indictment, you've
12 heard the evidence and now you've heard the law. Now,
13 whatever your verdict is as to the indictment, guilty or
14 not guilty, Mr. Foreman, you'll indicate it by marking the
15 jury's decision in the blank on the verdict form that says
16 either not guilty or guilty, and then you'll sign it down
17 here and date it, okay? Now, you're not authorized to fill
18 out the verdict form or sign and date it until all 12 of
19 you have reached a unanimous verdict, okay? And after
20 you've reached that unanimous verdict and after you've
21 completed that verdict form, that's when you're going to
22 knock on your jury room door, advise the bailiff of that
23 and then we will bring you out here to receive your
24 verdict, okay? Now, what's going to happen is I'm fixin'
25 to send you back to your jury room, but don't start

JURY CHARGE

1 discussing the case until you've received this verdict form
2 along with that evidence. Once the bailiffs hand you that,
3 that's your signal to begin talking about the case, and
4 once you start talking about the case and deliberating you
5 will continue until you've reached a verdict, okay? Again,
6 thank you very much, we look forward to hearing from you,
7 just head on back to your jury room at this time. Madam
8 alternate, if you'll stick around with us, please.

9 (At this time the jury left the courtroom.)

10 THE COURT: All right. Any exception to the charge
11 from the State?

12 MS. WALKER: No, Your Honor.

13 THE COURT: From the defense?

14 MR. GRIER: No, Your Honor.

15 (The alternate was dismissed.)

16 THE COURT: My understanding is we have a verdict.
17 Let's go ahead and bring the jury in.

18 (The jury returned to the courtroom.)

19 THE COURT: All right. All members of the jury are
20 present. Mr. Foreman, it's my understanding that the jury
21 has been able to reach a verdict?

22 THE JUROR: Yes, sir.

23 THE COURT: Is the verdict unanimous?

24 THE JUROR: Yes, sir.

25 THE COURT: Did you sign and date the verdict form?

JURY VERDICT

1 THE JUROR: Yes, sir.

2 THE COURT: If you will please hand that to my clerk.

3 All right. Mr. Clerk, you may publish the verdict?

4 THE CLERK: Yes, sir. Indictment number

5 2016-GS-29-271, State of South Carolina versus Jermaine

6 Demarcus Grier, defendant. We, the jury, unanimously find

7 the defendant as to the offense of possession of contraband

8 by county or municipal prisoner, guilty. This is signed

9 Ramon Bracero, dated May 12th of 2016. Ladies and

10 gentlemen of the jury, if this be your verdict so say you

11 all by the raising of your rights hands. Let the record

12 reflect all jurors raised their right hands.

13 THE COURT: All right. Thank you, Mr. Clerk. Ladies

14 and gentlemen, thank you so much for your service to the

15 State of South Carolina and citizens of Lancaster County.

16 You are now done with your jury duty for the week. You are

17 free to leave at this time, you are more than welcome to

18 stick around for sentencing if you wish to, okay? But at

19 this point in time I will ask that you go back --

20 MR. GRIER: With all due respect, I would ask that the

21 jury be polled.

22 THE COURT: Okay. Yes, sir. After we poll I'm going

23 to have you step back into your jury room and then we'll

24 let, you know -- I'll come speak to you and let you know

25 about leaving or staying, okay? Thank you.

SENTENCING HEARING

1 THE CLERK: Mr. Foreman, Ramon Braceró, is this your
2 verdict and is this still your verdict?

3 THE JUROR: Yes, sir.

4 THE CLERK: Christy Starnes, is this your verdict and
5 is this still your verdict?

6 THE JUROR: Yes, sir.

7 THE CLERK: Jay Reitzes, was this your verdict and is
8 this still your verdict?

9 THE JUROR: Yes, sir.

10 THE CLERK: Jamal Lewis, is this your verdict and is
11 this still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Timothy Catoe, is this your verdict and is
14 this still your verdict.

15 THE JUROR: Yes.

16 THE CLERK: Diane Poston, is this your verdict and is
17 this still your verdict?

18 THE JUROR: Yes, sir.

19 THE CLERK: Penney Preslar, is this your verdict and
20 is this still your verdict?

21 THE JUROR: Yes, sir.

22 THE CLERK: Jerrilynn Mingo, is this your verdict and
23 is this still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Steele Poynor, is this your verdict and is

SENTENCING HEARING

1 this still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Leslie Harris, is this your verdict and is
4 this still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Laura Torres, is this your verdict and is
7 this still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Vija Griffin, is this your verdict and is
10 this still your verdict?

11 THE JUROR: Yes.

12 THE CLERK: Thank you.

13 THE COURT: All right. Thank you very much, ladies
14 and gentlemen, you may go back to your jury room, I will be
15 back there momentarily.

16 (The jury left the courtroom.)

17 THE COURT: All right.

18 MR. GRIER: Your Honor, defense would ask that the
19 Court grant the defendant a new trial, grant a motion for
20 the new trial based on all of the matters that I already
21 presented to the Court. If the Court wants me to
22 articulate those I can go back through them, but if the
23 record is protected on that. I would ask the Court to
24 revisit the issues of the charges and all of my other
25 motions pertaining to this case and grant the defendant a

SENTENCING HEARING

1 new trial, or in lieu of that in the position assume the
2 roll of the 13th juror and grant a new trial based on your
3 interpretation of the evidence.

4 THE COURT: Thank you. Those motions are respectfully
5 denied but you are clearly protected on the record. All
6 right. We're going to be in recess while the State gets a
7 sentencing sheet ready, present it to me, bring it up
8 here -- we'll take about three minutes and then we'll be
9 back in here for sentencing if y'all have one ready, okay?

10 MS. WALKER: Yes, sir.

11 (A break was taken.)

12 THE COURT: All right. Madam Solicitor?

13 MS. WALKER: Yes, Your Honor, here is the sentencing
14 sheet.

15 THE COURT: Let me hear them from the State in regard
16 to sentencing and then I will hear from Mr. Grier.

17 MS. WALKER: Yes, Your Honor. The State requests the
18 full ten years on the sentence. Mr. Jermaine Grier has a
19 pretty extensive record, and due to the nature of the crime
20 and the potential threat that it poses to his immediate
21 community and potentially this community since he was being
22 transported to court on that date, we believe this
23 necessitates the full ten years.

24 THE COURT: What is his prior record?

25 MS. WALKER: In 2002 he was convicted of accessory

SENTENCING HEARING

1 after the fact to a felony, and that was a three year
2 suspended to 18 months of probation. 2003 accessory before
3 the fact to a felony and that was -- he received 30 days on
4 that. Also in 2003 in North Carolina he was convicted of a
5 breaking and entering and received six to eight months on
6 that. In 2004 burglary again, five years suspended to two
7 years with one year of probation. 2007, two counts of
8 burglary and the grand larceny which he served four years.
9 And he was being held in the Lancaster County Detention
10 Center on charges of murder, attempted murder, burglary, and
11 possession of a weapon by a violent felon at the time that
12 he committed this crime.

13 THE COURT: All right. Anything further from the
14 State?

15 MS. WALKER: No, Your Honor.

16 THE COURT: Thank you. Mr. Grier?

17 MR. GRIER: Well, Your Honor, if you will give me one
18 minute if you would, something has come up.

19 THE COURT: Yes, sir.

20 (Break in proceedings.)

21 MR. GRIER: Your Honor, Mr. Jermaine Grier is 31 years
22 old. I think the Court is aware through Dr. Frierson of
23 some of the difficulties that this case has presented from
24 the defense's perspective in terms of communicating with
25 Mr. Grier about the alleged facts of the case which have

SENTENCING HEARING

1 now been found to be true by the jury, we can't contest
2 that. Judge, the range, of course, you know is up -- it's
3 up to ten. Your Honor, there's -- I think just on the face
4 of looking at this what's found to have been contraband but
5 whether or not it was a weapon we'll never know what jury
6 believed it to be, certainly any item -- any physical item
7 can be a weapon. And, you know, from my experience I think
8 the object appeared to be more akin to a pick and
9 whether -- I don't know whether that helps or hurts if the
10 Court believes it was a pick then the inference is that
11 perhaps he was -- had contemplated using it to get out of
12 his cuffs. But Your Honor, if he had intended it as a
13 weapon I think he had an opportunity to use it on the
14 individual in which -- unfortunately the CO's -- the
15 correctional officers have to contend with being attacked
16 and poked and that sort of thing as part of their job. But
17 on this occasion there was no aggressive nature. You heard
18 the officer say that they took him in and they didn't
19 have -- he submitted without incident, the object was found
20 on him without any incident. I would ask the Court to not
21 give him the max, I think certainly on the lower end given
22 the circumstances that there's no evidence that he intended
23 to harm anybody or injure anybody with this object, in
24 fact, that object could have been sharpened. I've seen --
25 they've shown me things at the jail similar to that that

SENTENCING HEARING

1 have been sharpened simply by rubbing them on concrete over
2 a long period of time, you can sharpen those objects to
3 make a blade so that -- it's obvious that it wasn't
4 intended as a blade to cut, slice or that sort of thing.
5 It was sharp on the end consistent with being a pick for a
6 lock. Your Honor, Mr. Grier has this extensive -- he has
7 an extensive psychiatric record and diagnosis for mental
8 retardation starting back in 2007 through the current
9 diagnosis and review by Dr. Frierson. I actually had him
10 evaluated by my own evaluator, and while Mr. Frierson, or
11 Dr. Frierson, believed that Mr. Grier was a malingerer, my
12 psychiatrist did not agree with that but attributed Mr.
13 Grier's perception of himself as being Mario Green and
14 having a different identity and not having any ability to
15 discuss the facts of the allegations in his various cases
16 as being due to a low functioning intellectual capacity and
17 a mechanism to avoid personal identification with the
18 things that he's accused of doing because of a low
19 functioning intellectual capacity. But notwithstanding
20 that, the jury has spoken. I know he's got some record.
21 Your Honor, you've been able to observe him during this.
22 He's been respectful and hasn't caused any issues and I
23 think -- I would ask the Court to give him credit for being
24 cooperative in court and being cooperative with the search
25 when he was found to have this object on him and take all

SENTENCING HEARING

1 of that into account. He does not have any work history
2 that I can ascertain to tell you about his prospects for
3 being able to participate in programs of a vocational
4 nature in SCDC or any kind of drug classes or anything of
5 that nature, of course that came up in Dr. Frierson's
6 diagnosis as well that he thought that he had some sort of
7 drug use disorder. So we would ask that you go to the low
8 side of the ten and just ask for the mercy of the Court.

9 THE COURT: All right. Thank you. Would your client
10 like to say anything prior to sentencing?

11 MR. GRIER: I've asked him, I've told him when the
12 time is appropriate he would have that opportunity again,
13 so Mr. Grier, would you like to speak to the Court? No,
14 sir, he declines to speak.

15 THE COURT: All right. Mr. Grier, the sentence of the
16 Court is eight years, you'll be given credit for time
17 served. Good luck to you, sir.

18 (End of trial proceedings.)
19
20
21
22
23
24
25

WITNESSES

Lefler/ Phillips - LCSO #15-54183

DOCKET NO. 2016-GS-29-271

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2016

ARREST WARRANT NUMBER/DOA

Direct Indictment IN RE: AWW#
2015A2910101432 (DOA-11-17-15)

THE STATE

vs.

Jermaine Demarcus Grier

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: FEB 11 2016

VERDICT

Foreperson of Petit Jury

Date:

Direct Indictment for

Possession of Contraband by County
or Municipal Prisoner

SC Code: § 24-07-0155

CDR Code: 0437

Class: Felony, E

CERTIFIED TO BE A TRUE COPY

Jeff Hammond
JEFF HAMMOND
CLERK OF COMMON PLEAS
AND GENERAL SESSIONS COURT
LANCASTER COUNTY, S.C.

2016 FEB 11 AM 11:58
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

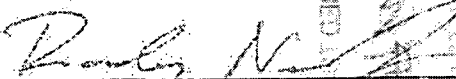
DIRECT INDICTMENT

At a Court of General Sessions, convened on February 11, 2016, the Grand Jurors of Lancaster County present upon their oath:

POSSESSION OF CONTRABAND BY COUNTY OR MUNICIPAL PRISONER

That Jermaine Demarcus Grier a prisoner of a county or municipal jail, prison, work camp or overnight lockup facility, did in Lancaster County, South Carolina, on or about November 16, 2015, unlawfully possess a quantity of matter declared by the superintendent of the facility to be contraband, to wit: a sharpened metal piece derived from a writing pen, an illegal weapon, in violation of §24-7-155, *Code of Laws of South Carolina, (1976), as amended*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Randy E. Newman, Jr., SOLICITOR

RECEIVED
CLERK OF COURT
JAN 11 2016
LANCASTER COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Lancaster
 STATE VS.
Jermaine Demarcus Grier

AKA:

Race: BLACK Sex: M Age: 31DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Lancaster, SC 29720-0823DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Prisoners / Contraband, furnish, or poss., county or municipal prisons prohibitedin violation of § 24-07-0155 of the S.C. Code of Laws, bearing CDR Code # 0437
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Walker, Cara100254
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	
TOTAL	\$	<u>133.70</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2900271A/W#: 2015A2910101432Date of Offense: 11/16/2015S.C. Code §: 24-07-0155 MAY 18 2016CDR Code #: 0437SC Court of Appeals
SENTENCE SHEET☐ CONVICTED OF or ☐ PLEADSCDR Code # 0437☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

(defendant's initials)

☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

100254
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
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3% to County (if paid in installments)	\$	
TOTAL	\$	<u>133.70</u>

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

LANCASTER COUNTY DETENTION CENTER RULES AND REGULATIONS

1. Personal Conduct/Behavior

- a. Use of abusive or disrespectful words or gestures toward Staff or others are prohibited.
- b. Fighting, loud, or disorderly behavior is prohibited.
- c. Threats to Staff or others is prohibited (this includes threats directed towards family members of Staff).
- d. No form of horseplay will be tolerated (this includes wrestling, boxing, strenuous physical activity or exercise).
- e. Tampering with or stealing another person's property is prohibited.
- f. Damage or misuse of any Jail issued property is prohibited.
- g. Failure to obey a lawful order from a Jail Staff member is prohibited.
- h. Transferring of property or money between inmates, this includes canteen, is prohibited.
- i. Gambling of any kind for anything is prohibited.
- j. Talking or yelling between cellblocks is prohibited.
- k. Talking to an inmate in another cellblock for any reason is prohibited.
- l. The throwing of litter or other items is prohibited.
- m. Group demonstrations, rioting, or inciting a riot is prohibited.
- n. The signing of petitions, group grievances and inciting other inmates to violate Jail rules or to not obey an order from a Jail Staff member is prohibited.
- o. Rattling of the bars is prohibited.
- p. Standing, sitting, or lying on tables is prohibited.
- q. No tattooing is allowed at LCDC.

2. PRISON RAPE ELIMINATION ACT (PREA)

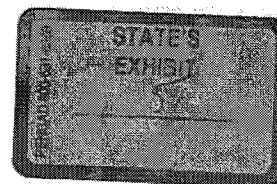
- a. Zero tolerance
 1. The Lancaster County Detention Center will have zero tolerance for any incident of rape, sexual assault, or sexual misconduct, and will make every effort to comply with applicable components of the Prison Rape Elimination Act and corresponding PREA standards.

3. Grievances

1. All inmates shall have the opportunity to file a grievance while they are detained at the Lancaster County Detention Center. They may file a grievance in any of the ways listed below:
 - a. The inmate may request a grievance form from any correctional officer. When the form is given to the inmate, the inmate will complete the form and return it to any correctional officer. The form will be then delivered to the Captain of Corrections for his review.
 - b. The inmate may simply write a letter outlining their grievance. Once the letter is written, they may give it to any correctional officer. The letter will then be delivered to the Captain of Corrections.
 - c. If the inmate is housed in an area where there is a commissary kiosk, they may access the grievance form by using the kiosk located in their cell block. The Captain of Corrections will then review the grievance once it is received.

4. Housing Unit Regulations-Cells

- a. Individual cells and Day Room will be cleaned daily.



LANCASTER COUNTY DETENTION CENTER RULES AND REGULATIONS

- b. Each inmate is responsible for his/her living quarters. All inmates will assist with the cleaning of the Day Room and shower of their Cell Block/Living Quarters.
- c. Each inmate must sweep and mop their Living Quarters daily.
- d. Covering any view ports, cameras, or otherwise obstructing a correctional officer's view into any individual cell or cellblock is prohibited.
- e. Draping blankets, towels, or clothing from beds, bars, or fixtures is prohibited.
- f. Nothing may be attached to the walls or ceilings, stuck in any wall seams or behind any fixture that is attached to the wall. This does not apply to items posted by the Jail Staff.
- g. Covering a light fixture or air vent with anything is prohibited.
- h. Inmates should insure that their head and face remain uncovered at all times.
- i. No hair or hair piece, other than your natural hair is allowed.

5. Allowable Items in Cell

- a. Jail provides: 1 sheet, 1 mattress, 1 uniform, 1 towel, 1 washcloth and 1 blanket, 1 pair of shower shoes.
- b. Inmates are limited to books and magazines as furnished by the jail or available for purchase through the commissary.
- c. Tearing out pages from books or magazines is prohibited.
- d. A reasonable amount of writing materials (paper, pencils and envelopes).
- e. No more than ten (10) photographs of no larger than 4" x 6" in size, based on space and inmate population.
- f. Legal paperwork.
- g. Mail (For safety, security and housekeeping issues, any mail may be placed in inmates' property until their release.)
- h. Items purchased through the canteen.
- i. Personal and hygiene supplies.
- j. Any items may be removed if they pose a fire/safety hazard.

6. Showers, uniforms, and laundry

- a. Inmates not on Lock Down status are given the opportunity to shower daily. Lock Down status inmates are given the opportunity to shower three times a week.
- b. Inmates are required to shower at least every other day.
- c. Showers are available after lunch until just after supper.
- d. All inmates are required to wear their jumpsuit, fully buttoned, outside the cellblock.
- e. Uniforms will be exchanged or laundered twice a week. Inmates that go out on Public Works will be issued clean pants and shirt daily or on days their rotation goes out to work.
- f. Linen will be laundered three times weekly.
- g. Personal clothes are laundered three times weekly.
- h. Blankets will be exchanged or laundered every 30 days.
- i. All laundry must be turned in during daily cleanup for laundering.
- j. Linen will not be turned in knotted or tied.

LANCASTER COUNTY DETENTION CENTER RULES AND REGULATIONS

7. Personal Hygiene

- a. Inmates are given razors on Saturdays only. Each inmate will be given 1 razor if razor privileges have not been suspended. Inmates are responsible for keeping track of their razors and turning them in when requested. Inmates returning razors that have been altered/broken may be disciplined.
- b. Each inmate will receive an admission pack of toothpaste, toothbrush and soap after their bond hearing. All additional needs must be purchased through canteen. Nothing will be allowed in from the outside.
- c. Indigent hygiene items can be ordered through the commissary.
- d. Each inmate must shower at least three times a week.

8. Meals

- a. Meals will be served around the following times: 6:30 A.M., 12:00 P.M., and 4:30 P.M.
- b. Each inmate must receive his/her own tray.
- c. Storing food items is prohibited. This does not include items purchased from canteen.
- d. Special diets will be provided for verified religious and medical reasons and must be mentioned during the booking process. Requests for such after the booking process must be made in writing and have to be approved by the county doctor.

9. Medical

- a. Requests to see the nurse may be made by filling out a sick call form. Once the sick call is filled out turn it into any officer. The officer will then put the sick call in the nurse's box.
- b. A nurse is at the jail 7 days a week, 12 hours a day.
- c. \$5.00 medical co-pay will be deducted from the inmate's account upon seeing the nurse. Certain visits are not deducted as determined by staff.
- d. Outside medical attention must be verified and authorized by the nurse unless in case of an emergency. In emergency cases, the nurse will be notified.
- e. Medication will be given out and will be taken by the inmate at that time.
- f. We will accept glasses and medication for inmates at the window provided it is in its original container with the prescription label attached. Bottles with mixed medication will not be accepted.
- g. Tylenol and antacids can be ordered off the commissary.
- h. The cost of one dental visit per inmate is allowable. Inmates may go more than once if visit is prepaid prior to dentist visit as staff security permits.
- i. In case of an emergency contact the supervisor on duty.
- j. Nurse's pass out medication twice a day, after breakfast and after supper; inmates must have their jumpsuits on and button up to receive their medication.

10. Mail

LANCASTER COUNTY DETENTION CENTER RULES AND REGULATIONS

a. Outgoing

- i. Mail will be picked up during the course of the day, with final pickup at lights out.
- ii. All outgoing mail is subject to inspection.
- iii. All outgoing mail must have inmate's name and return address.
- iv. The return address is PO BOX 908, Lancaster, SC 29721.
- v. Mail with extra writing or drawing on envelopes will not be allowed.
- vi. All inmates are allowed two letters mailed weekly at no expense to them.
- vii. If letters are excessive in weight and require 2 stamps for postage, this will count as their weekly limit.

b. Incoming

- i. All incoming mail will be subject to inspection and opened in the presence of the inmate.
- ii. Any Post Office money orders contained in the incoming mail will be placed in the inmate's account. The inmate will receive a receipt for this money. Money orders other than from the Post Office will be logged and placed in the inmate's property envelope.
- iii. Mail will be prohibited if it contains contraband, is obscene, or presents a risk to Jail security.

10. Privileges

a. Telephone

- i. All calls will be made from the phones in the cellblock Day Rooms. Calls are operator assisted collect calls that will cost the person being called a regulated fee.
- ii. Telephones are a privilege, and if abused, can be turned off.
- iii. Phones are turned on at 7am and turned off at 11pm.
- iv. Calls may be monitored.

b. Canteen

- i. Commissary slips will be passed out on Saturdays and must be turned in by breakfast time Tuesday morning. Orders are delivered on Wednesdays.
- ii. Canteen ordered and delivered to inmates who have been released will be held for a period of one week. Canteen left at the Detention Center longer than a week will be distributed at the Shift Supervisors discretion. Inmates being released cannot request or designate who gets their canteen items if they are released before canteen is received.
- iii. officers will not give inmates there commissary balances over the monitor.

c. Visitation

- i. Inmates are allowed two visitors for visitation. The names of the visitors are to be placed on the lists provided on Fridays. Inmates entering the detention center before noon on Saturday will be able to provide names for visitation. Inmates may change their visitor names bi-weekly. If names are not provided by noon Saturday, "No One" will be placed on the visitation list and inmate will not have a visit.
- ii. All visitors will be required to produce identification-i.e. a valid driver's license or state I.D. card and will be required to sign in. If the visitor is a minor of school age, then a

LANCASTER COUNTY DETENTION CENTER RULES AND REGULATIONS

- picture school id may be used. If the visitor is an infant/toddler a copy of their birth certificate and social security card is acceptable.
- iii. If a visitor is not able to provide appropriate identification they will not be allowed to enter the visitation area.
- iv. Visitation day is Sunday. An inmate's visitation time depends on which cell they are assigned.
- v. Visits between current inmates and past inmates can only occur if the past inmate has been released for 14 days or more.
- vi. Inmate visitation is one hour. Visitation time may be reduced depending on amount of inmates receiving visits. Visits may be terminated for inappropriate behavior by either inmate or visitor.
- vii. Visitors are to be clothed appropriately (as determined by staff) and are not to bring in any items considered to be contraband. This list includes, but is not limited to cell phones, tobacco of any kind and lighters.
- viii. Visitors may not leave the visitation area and reenter.
- ix. Clergy visits may be set up by appointment only by calling (803) 283-2084.
- x. Visitation may be suspended that day or a subsequent day if inmates behavior is unacceptable immediately before, during or immediately after their visitation.

11. Searches and Inspections.

Searches or inspections of inmates and cells may be conducted at any time for health, safety, or security reasons. Inmates are required to cooperate during searches or inspections. Cells will be searched a minimum of once weekly and not on a regular routine.

12. Indigent Inmates

The Jail will supply the following: 2 envelopes, 2 pieces of paper, and the cost of mailing these two letters weekly. Additional stamps, paper and envelopes may be ordered from the commissary. Indigent inmates may order hygiene items from the commissary. The Indigent pack contains a toothbrush, toothpaste and soap.

13. Contraband

Contraband is any item specifically not permitted in the jail or any item used in a way for which it was not originally intended as well as too much of an item an inmate is allowed.

/ 14. Recreation

- a. Each inmate may be given the opportunity of outside recreation once a week if weather, safety and security are not an issue. If weather, safety and security do not permit recreation outside, recreation will be outside inmates' cell blocks in Day Room area of immediate cell blocks. Outside recreation is a privilege, not a requirement and may be suspended for the following reasons, including but not limited to:
 - i. Inappropriate behavior immediately before, during or immediately after recreation.

LANCASTER COUNTY DETENTION CENTER RULES AND REGULATIONS

- ii. Escape, Safety or Security risk.
 - iii. Weather issues.
- b. Lockdown status inmates will also be allowed recreation unless the above outlined applies to them. If they are not allowed outside recreation, their recreation requirements will be met on their three times a week outside for shower in Dayroom/Shower area of cell and on their weekly phone call usage.
- c. Any yelling, profanity, removal of clothing (in whole or in part) or obscene behavior by inmate toward any person may result in indefinite suspension of their outside recreation privilege
- d. No outside recreation during G.S. court.

15. Identification Bracelets

- 1. Inmate identification bracelets are to be worn at all times.
- 2. Inmates must show their identification bracelet to receive the following (including but not limited to): Mail, Medication, Recreation, Canteen and Visitation. Medication will not be given to inmates that are not wearing an identification bracelet pending an Officers' positive identification of the inmate.
- 3. If an inmates' identification bracelet breaks for any reason, an Officer must be notified so a new one may be issued.
- 4. Any inmate caught wearing another inmates' identification bracelet or purposefully tampering with their own identification bracelet will be subject to disciplinary action.

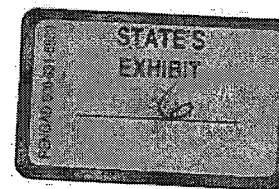
VIOLATION OF THE JAIL RULES AND REGULATIONS MAY RESULT IN THE LOSS OF PRIVILEGES, LOSS OF GOOD TIME AND/OR PLACEMENT IN PUNITIVE SEGREGATION. DISCIPLINARY ACTION TAKEN FOR ANY INFRACTION MAY BE APPEALED. VIOLATION OF FEDERAL, STATE, OR COUNTY LAWS WILL BE PROSECUTED IN A COURT OF LAW.

My signature indicates that I have received a copy of the Lancaster County Detention Center Rules and Regulations. This page and signature shall remain with my booking report until my release from the Lancaster County Detention Center.

REGULATIONS

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My signature indicates that I have received a copy of the Lancaster County Detention Center Rules and Regulations. This page and signature shall remain with my booking report until my release from the Lancaster County Detention Center.



Signature: Jamie R. R. Date: 6-10-14

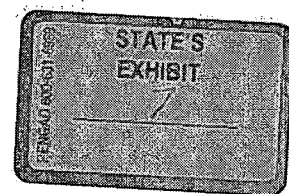
33-1 Contraband Articles.

33-1 Contraband Articles.

Under the authority of Chapters 1, 3 and 9 of Title 24 of the 1976 Code, the Department of Corrections publishes the following list of articles which are hereby designated as contraband at the State Penitentiary:

- a. Any item which was not issued to the prisoner officially or which cannot be purchased by him or her in the prison canteen.
- b. Weapons, any and all firearms, knives of any and all descriptions, clubs, billies or any other article that may be used for offense or defense.
- c. Drugs of any description and particularly barbiturates, narcotics, medicines and poison.
- d. Any and all types of alcoholic drinks and any liquid containing alcohol.
- e. Keys and locks.
- f. Tools of any description not approved for issue to prisoners by the Director.
- g. Money in any denomination or amount not submitted through the prison Treasurer.

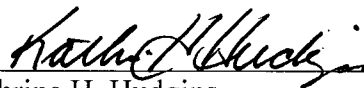
Notice is hereby served on all prisoners and their visitors and any other person that the provisions of Section 24-



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,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 13th day of April, 2017.