

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable Michael G. Nettles, Circuit Court Judge

RECEIVED

JUL 05 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FASHUN BURGESS,

APPELLANT

APPELLATE CASE NO 2017-002222

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2017-GS-21-00157
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Fashun Burgess	)	)
<u>DEFENDANT</u>	)	October 9-10, 2017
		Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE; and a jury.

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

ANGEL DANIELS, ASSISTANT SOLICITOR
Attorney for the State

DANIEL JORDAN, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter

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1 THE COURT: Madam Solicitor, you may call your
2 first case.

3 MS. DANIELS: The State calls the State vs.
4 Fashun Burgess, that's indictment number 2016-GS-21-00157.
5 It's an indictment for trafficking herion and possession
6 of a weapon during a violent crime.

7 THE COURT: Very good. Ladies and gentlemen of
8 the jury, I hold in my hand the indictment that the
9 Solicitor has mentioned. It's simply a sheet of paper
10 that brings this matter to court. And in this indictment,
11 they're accusing Fashun Burgess of trafficking in herion
12 and possession of a weapon during the commission of a
13 violent crime. The allegations are that these events took
14 place on August -- on or about August 24th 2016. Just by
15 virtue of the fact that Mr. Burgess has been indicted and
16 that I hold this indictment in my hand, it bears
17 absolutely no evidentiary value. Mr. Burgess as he's
18 seated there at the defense table is presumed to be just
19 as innocent as me or you. We start from that frame of
20 reference. The State in this proceeding is required to
21 prove that he's guilty beyond a reasonable doubt. Right
22 now throughout the trial of this case and only into
23 deliberation, he's presumed to be innocent.

24 I'm going to ask, Mr. Jordan, if you can stand
25 with your client and ask Mr. Burgess to face the jury

1 panel. This is Mr. Fashun Burgess. Is anyone related by
2 blood or marriage, do you have a close social, business or
3 personal relationship with Mr. Burgess, if so please
4 stand? No response.

5 Mr. Burgess, you may be seated. Thank you, sir.

6 There are potential witnesses in this case pay
7 very close attention as I list them: Jake Chamberlain,
8 Angel Clark, Mitchell Hansen, Joseph Koenig, Brad
9 McDowell, Jason Pate, Allen Rhodes, Rollins Rhodes,
10 Kathleen Street, Kent Williams. Is anybody related by
11 blood or marriage, do you have a close social, business or
12 personal relationship with any of these potential
13 witnesses, if so please stand? Yes, sir. If you could
14 please come forward.

15 Yes, ma'am, you can come forward and stand right
16 there and we'll take you in order.

17 BAILIFF: Juror number 91.

18 THE COURT: Your full name, sir?

19 PROSPECTIVE JUROR: Christian Todd Rhodes.

20 THE COURT: Christian Todd Rhodes.

21 PROSPECTIVE JUROR: So my dad is the lieutenant
22 in the narcotics department for Florence County. His
23 middle name is Allen. So is that the Allen Rhodes you're
24 talking about?

25 MR. JORDAN: That's the one.

1 THE COURT: You know what that excuses you for
2 the purposes of this trial, but for just purposes of this
3 case, certainly do not discuss anything about this case or
4 your relationship, Mr. Rhodes, while you're in the jury
5 panel. But we're going to ask that you stay with us in
6 the event we try another case this week, so just go back
7 and have a seat. Do not discuss the case or any other
8 case and we'll proceed forward. You excused for the
9 purposes of this trial only.

10 BAILIFF: Juror number 81.

11 (WHEREUPON, juror number 81 is Rebecca C. Munn.)

12 PROSPECTIVE JUROR: I'm not certain if this is
13 the same Kent Williams, but I wasn't sure whether to come
14 or not.

15 MS. DANIELS: He's a narcotics investigator.
16 It's not the senator.

17 THE COURT: You qualified to serve. Thank you.

18

19 BAILIFF: Juror number 42.

20 THE COURT: Juror Number 42 Samuel Godwin. Yes,
21 sir.

22 PROSPECTIVE JUROR: I'm really good friends with
23 Jake, Pate and Rollins.

24 THE COURT: And do you deal with them on a daily
25 basis?

1 PROSPECTIVE JUROR: Not really, no.

2 THE COURT: Have you ever had Jake Chamberlain
3 to your house and eaten dinner with him at your house?

4 PROSPECTIVE JUROR: Uh-huh.

5 THE COURT: You ever been to his house?

6 PROSPECTIVE JUROR: Uh-huh.

7 THE COURT: And you consider him to be a close
8 personal friend?

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: If called upon to serve on this
11 jury if you were to testify, would you give greater weight
12 to his testimony by virtue of the greater or lessor weight
13 based on your knowledge of him? You would or would not?

14 PROSPECTIVE JUROR: Say the question again, I'm
15 sorry.

16 THE COURT: My job is to try to determine
17 whether or not you could be fair and impartial.

18 PROSPECTIVE JUROR: Oh, I'll be fair. I can be
19 fair.

20 THE COURT: All right. Do you think if any of
21 these individuals that you mention if they were to
22 testify, would you give greater weight to their testimony
23 by virtue of the fact that you are friends with them?

24 PROSPECTIVE JUROR: No.

25 THE COURT: And could you give both the State

1 and the defendant a fair and impartial trial?

2 PROSPECTIVE JUROR: Uh-huh.

3 THE COURT: Is that a yes?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: All right. You're qualified to
6 serve. Thank you.

7 BAILIFF: Juror number 125.

8 PROSPECTIVE JUROR: You call out the name Jason
9 Pate and I work with a Jason Pate. I don't know if it's
10 the same one or not.

11 THE COURT: I don't believe it would be. Is
12 Jason Page an officer?

13 MS. DANIELS: Yes, he's an officer.

14 PROSPECTIVE JUROR: Okay, that's not him then.
15 Thank you.

16 THE COURT: You qualified to serve. Thank you.

17 Ms. Daniels, I'll ask that you remain standing
18 and turn around and face the jury panel and identify
19 yourself and the members of your office.

20 MS. DANIELS: My name is Angel Daniels. I'm an
21 assistant solicitor here in Florence County. This is your
22 Solicitor Mr. Ed Clements. We also have Mr. Todd Tucker,
23 Mr. John Jepertinger, they are your deputy solicitors.
24 The other individuals in our office include David
25 Richardson, Stephen Hill, Susan McGill, Loyld Flores, Ryan

1 White, Rick Hoefer, John Holt, Kevin Hope and Julianna
2 Battenfield.

3 THE COURT: Thank you, Ms. Daniels. Is anyone
4 related by blood or marriage do you have a close, social
5 or business relationship with any of these lawyers, some
6 of these lawyer have been engaged in private practice have
7 they ever represented you in the past, if so please stand?
8 No response.

9 Mr. Jordan, if you could stand and identify
10 yourself and the members of your office.

11 MR. JORDAN: My name is Daniel Jordan. I'm with
12 the Twelfth Circuit Public Defender's office. Our Chief
13 Public Defender is Mr. Scott Floyd. And we have Vick
14 Meetze, Karen Parrott, Jay Jordan, Julie Rochester,
15 Elizabeth Neil, Emily Crayton. I think that's it. Rick
16 Jones.

17 THE COURT: Very good. All right. Is anyone
18 related by blood or marriage, do you have a close, social
19 or business relationship with any of these lawyers, in
20 addition to that is any -- have any of these lawyers ever
21 represented you in the past, if so please stand? No
22 response.

23 Is any member of the jury panel formed or
24 expressed any opinion about any issue or matter involved
25 in this case, if so please stand? No response.

1 Is any member of the jury panel aware of any
2 bias or prejudice towards either the State or the
3 defendant in this case, if so please stand? No response.

4 Is any member of the jury panel a -- is any
5 member of this jury panel a person who has served on the
6 grand jury who indicted this case, if so please stand? No
7 response.

8 Is any member of the jury panel, heard seen or
9 read anything about this case, if so please stand? No
10 response.

11 There are a number of different organizations
12 that exist whose primary concern is the promotion of law
13 enforcement of some of these organizations mothers'
14 against drunk driving, students' against drunk driving,
15 CAVE citizens' against violent crime, just about every
16 sheriff's department, highway patrol they all have
17 associations that promote law enforcement. Is there any
18 member of the jury panel who is a member of any of these
19 associations or do you contribute to them, if so please
20 stand? No response.

21 Does any member of the jury panel know of any
22 reason whatsoever why you could not serve as a juror in
23 this case with a particular emphasis being placed on your
24 ability to be fair and impartial to both the State and the
25 defendant, if so please stand? No response.

1 Any additional questions from the State, Ms.
2 Daniels?

3 MS. DANIELS: No, Your Honor.

4 THE COURT: Any from defense?

5 MR. JORDAN: No, Your Honor.

6 THE COURT: All right. Strikes will be five and
7 five; is that correct, Ms. Daniels?

8 MS. DANIELS: That's correct, Judge.

9 THE COURT: Mr. Jordan.

10 MR. JORDAN: Yes, sir, Your Honor.

11 THE COURT: Five and five and we will select
12 two alternates. Strikes will be one and two on each
13 alternate. Very good. Bear with us just one moment.

14 (WHEREUPON, a pause in the proceedings.)

15 THE CLERK: When I call your name, if you come
16 up to the front of the courtroom and stand right here
17 where the podium is and just face the back of the
18 courtroom and make sure you bring all your belongings with
19 you. 47 Jennifer Robinson.

20 (WHEREUPON, a white female, comes forward.)

21 THE CLERK: What say the State?

22 MS. DANIELS: Please present Ms. Robinson.

23 THE CLERK: What say defendant?

24 MR. JORDAN: Please seat Ms. Robinson.

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

1 47 L.C. Grant.

2 (WHEREUPON, a black male, comes forward.)

3 THE CLERK: What say the State?

4 MS. DANIELS: Please excuse Mr. Grant.

5 THE CLERK: You been excuse from this trial
6 only, sir. You may return to your seat.

7 27 Michael Clontz.

8 (WHEREUPON, a white male, comes forward.)

9 MS. DANIELS: Please present Mr. Clontz.

10 THE CLERK: What say the defendant?

11 MR. JORDAN: Please seat Mr. Clontz.

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

14 64 Michelle Lane.

15 (WHEREUPON, a black female, comes forward.)

16 THE CLERK: What say the State?

17 MS. DANIELS: Please present Ms. Lane.

18 THE CLERK: What say the defendant?

19 MR. JORDAN: Please seat this juror.

20 THE CLERK: Please have a seat in the jury box,
21 ma'am.

22 125 Scott Young.

23 (WHEREUPON, a white male, comes forward.)

24 THE CLERK: What say the State?

25 MS. DANIELS: Please excuse Mr. Young.

1 THE COURT: You been excused from this trial
2 only. You may return to your seat.

3 102 Laquita Simmons.

4 (WHEREUPON, a black female, comes forward.)

5 THE CLERK: What say the State?

6 MS. DANIELS: Please present Ms. Simmons.

7 THE CLERK: What say the defendant?

8 MR. JORDAN: Please excuse Ms. Simmons from this
9 trial.

10 THE CLERK: You been excused from this trial
11 only, ma'am. You may return to your seat.

12 90 Dionne Reed.

13 (WHEREUPON, a black female, comes forward.)

14 THE CLERK: What say the State?

15 MS. DANIELS: Please present Ms. Reed.

16 THE CLERK: What say the defendant?

17 MR. JORDAN: Please excuse Ms. Reed from this
18 trial.

19 THE CLERK: You been excuse from this trial
20 only, ma'am. You may return to your seat.

21 28 Livingston Collins.

22 (WHEREUPON, a black male, comes forward.)

23 THE CLERK: What say the State?

24 MS. DANIELS: Please excuse Mr. Collins.

25 THE CLERK: You been excuse from this trial

1 only, sir. You may return to your seat.

2 22 Lillian Casley.

3 (WHEREUPON, a black female, comes forward.)

4 THE CLERK: What say the State?

5 MS. DANIELS: Please excuse Ms. Casley.

6 THE CLERK: You been excused from this trial

7 only, ma'am. You may return to your seat.

8 95 April Hopkins.

9 (WHEREUPON, a white female, comes forward.)

10 THE CLERK: What say the State?

11 MS. DANIELS: Please present Ms. Hopkins.

12 THE CLERK: What say the defendant?

13 MR. JORDAN: Please excuse Ms. Hopkins from this

14 trial.

15 THE CLERK: You been excused from this trial

16 only, ma'am. You may return to your seat.

17 63 Carry Klein.

18 (WHEREUPON, a white female, comes forward.)

19 THE CLERK: What say the State?

20 MS. DANIELS: Please present Ms. Klein.

21 THE CLERK: What say the defendant?

22 MR. JORDAN: Please excuse Ms. Klein from this

23 trial.

24 THE CLERK: You been excused from this trial

25 only, ma'am. You may return to your seat.

1 75 Desma McWhite-Williams.

2 (WHEREUPON, a black female, comes forward.)

3 THE CLERK: What say the State?

4 MS. DANIELS: Will you please present Ms.
5 Williams.

6 THE CLERK: What say the defendant?

7 MR. JORDAN: Please seat Ms. Williams.

8 THE CLERK: Please have a seat in the jury box,
9 ma'am.

10 101 Michael Shields.

11 (WHEREUPON, a white male, comes forward.)

12 THE CLERK: What say the State?

13 MS. DANIELS: Please present Mr. Shields.

14 THE CLERK: What say the defendant?

15 MR. JORDAN: Please seat this juror.

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

18 108 Deborah Lavender.

19 (WHEREUPON, a white female, comes forward.)

20 THE CLERK: What say the State?

21 MS. DANIELS: Please present Ms. Lavender.

22 THE CLERK: What say the defendant?

23 MR. JORDAN: Please excuse this juror from this
24 trial only.

25 THE CLERK: You may return to your seat. You

1 been excused from this trial only, ma'am.

2 70 Carlee Linke.

3 (WHEREUPON, a white female, comes forward.)

4 THE CLERK: What say the State?

5 MS. DANIELS: Please present Ms. Linke.

6 THE CLERK: Does the defendant wish to challenge
7 this juror for cause?

8 MR. JORDAN: No, ma'am.

9 THE CLERK: Please have a seat in the jury box,
10 ma'am.

11 16 Julius Bunch.

12 (WHEREUPON, a white male, comes forward.)

13 THE CLERK: What say the State?

14 MS. DANIELS: Please present Mr. Bunch.

15 THE CLERK: Does the defendant wish to challenge
16 this juror for cause?

17 MR. JORDAN: No, ma'am.

18 THE CLERK: Please have a seat in the jury box,
19 sir.

20 127 Karen Carpenter.

21 (WHEREUPON, a white female, comes forward.)

22 THE CLERK: What say the State?

23 MS. DANIELS: Please present Ms. Carpenter.

24 THE CLERK: Does the defendant wish to challenge
25 this juror for cause?

1 MR. JORDAN: No, ma'am.

2 THE CLERK: Please have a seat in the jury box,
3 ma'am.

4 38 Jonathan Fuller.

5 (WHEREUPON, a black male, comes forward.)

6 THE CLERK: What say the State?

7 MS. DANIELS: Please present Mr. Fuller.

8 THE CLERK: Does the defendant wish to challenge
9 this juror for cause?

10 MR. JORDAN: No, ma'am.

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

13 72 Michael Matthews.

14 (WHEREUPON, a white male, comes forward.)

15 THE CLERK: What say the State?

16 MS. DANIELS: Please present Mr. Matthews.

17 THE CLERK: Does the defendant wish to challenge
18 this juror for cause?

19 MR. JORDAN: No, ma'am.

20 THE CLERK: Please have a seat in the jury box,
21 sir.

22 80 Mark Munn.

23 (WHEREUPON, a white male, comes forward.)

24 THE CLERK: What say the State?

25 MS. DANIELS: Please excuse Mr. Munn.

1 THE CLERK: You been excused from this trial
2 only, sir. You may return to your seat.

3 110 Marshall Townsend.

4 (WHEREUPON, a black male, comes forward.)

5 THE CLERK: Does the State wish to challenge
6 this juror for cause?

7 MS. DANIELS: No.

8 THE CLERK: Does the defendant wish to challenge
9 this juror for cause?

10 MR. JORDAN: No, ma'am.

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

13 105 Linda Stover.

14 (WHEREUPON, a black female, comes forward.)

15 THE CLERK: Does the State wish to challenge
16 this juror for cause?

17 MR. JORDAN: No.

18 THE CLERK: Does the defendant wish to challenge
19 this juror for cause?

20 MR. JORDAN: No, ma'am.

21 THE CLERK: Please have a seat in the jury box,
22 ma'am.

23 81 Rebecca Munn.

24 (WHEREUPON, a white female, comes forward.)

25 THE COURT: Strikes are one and two on each

1 alternate.

2 THE CLERK: What say the State?

3 MS. DANIELS: Please present Ms. Munn.

4 THE CLERK: What say the defendant?

5 MR. JORDAN: Please excuse Ms. Munn from this
6 trial.

7 THE CLERK: You been excuse from this trial
8 only, ma'am. You may return to your seat.

9 23 Elizabeth Cato.

10 (WHEREUPON, a black female, comes forward.)

11 THE CLERK: What say the State?

12 MS. DANIELS: Please excuse Ms. Cato.

13 THE CLERK: You been excused from this trial
14 only, ma'am. You may return to your seat.

15 12 Kathy Bradshaw.

16 (WHEREUPON, a black female, comes forward.)

17 THE CLERK: Does the State wish to challenge
18 this juror for cause?

19 MS. DANIELS: No.

20 THE CLERK: What say the defendant?

21 MR. JORDAN: Please seat Ms. Bradshaw.

22 THE CLERK: Please have a seat in the jury box,
23 ma'am.

24 24 Claretta Chaldler.

25 (WHEREUPON, a black female, comes forward.)

1 THE CLERK: What say the State?

2 MS. DANIELS: Please present Ms. Chandler.

3 THE CLERK: What say the defendant?

4 MR. JORDAN: Please seat Ms. Chandler.

5 THE CLERK: Please have a seat in the jury box,
6 ma'am.

7 THE COURT: Ladies and gentlemen, who remain in
8 the jury pool, you have concluded your service for today.
9 However, we going to ask that you call the clerk's office
10 after six o'clock today and follow the instructions left
11 on the answering machine. Might be a good idea for
12 everybody not to call right at six o'clock, the phone will
13 be busy, but call sometime before you go to bed tonight
14 and find out whether or not you have to report back
15 tomorrow morning, but it's important that you do that,
16 call and follow the instructions left on the answering
17 machine. Thank you. And you free to leave at this time.
18 Thank you.

19 (WHEREUPON, the remaining jury panel is
20 excused.)

21 THE COURT: Is there any objections with regard
22 to the jury selection process from the State?

23 MS. DANIELS: No, Your Honor.

24 THE COURT: Any from defense?

25 MR. JORDAN: No, Your Honor.

1 THE COURT: Very good. All right. Mr. Bunch,
2 I'm going to ask that you serve as the foreman of this
3 jury. I'm going to ask if you can exchange chairs with
4 this young lady seated up here. Mr. Bunch, you like
5 everyone else when it comes time to deliberate will have
6 one vote, but you going to have additional
7 responsibilities. If there are questions or concerns that
8 the develop throughout the trial of this case or during
9 the deliberation process, I'm going to ask that the jurors
10 communicate that question or concern to you. You reduce
11 it to writing and give it to the bailiff and if it's
12 something I can help you with, I'll be happy do so.

13 In addition to that, when it comes time to
14 deliberate, you are going be charged with the
15 responsibility of presiding over the deliberation process.
16 And essentially what that means is to ensure that
17 everybody's voice is heard. You will remain in that chair
18 the entire time. It might be good for you to organize
19 your entry into the courtroom behind this first row, so
20 you'll always be there. And when the other jurors are
21 coming, it's always good to go all the way to the end.
22 You know, some people like to sit in the same chair, but
23 I'm going to ask that you go all the way to the end so
24 people won't have to crawl over you. And the alternates
25 who are seated right here in these two chairs, we're going

1 to ask that you all remain in those two chairs the entire
2 time. So the alternates and the foreman have assign
3 seating. The rest of you are general admission. It's
4 going to be required that you all stay in those chairs the
5 entire time. I'm going to ask each of you to stand and
6 raise your right hand as the clerk administers the oath.

7 (WHEREUPON, the jury is sworn.)

8 THE COURT: Ladies and gentlemen of the jury, we
9 have some legal matters that we need tend to with regard
10 to this case. We will not need your services for the
11 balance of the day. We're going to ask that you return
12 back in the morning to the 11th floor and be here at 9:30,
13 9:30 sharp. I'm going to ask that you allow for the
14 parking. You know we building the new courthouse across
15 the way. It's taken up a lot of parking until we can make
16 other arrangements. So bear in mind there are going to be
17 parking problems and sometimes with court going on there
18 problems with the elevators. So let's be here, be here on
19 time make allowances for those delays.

20 Also, I'm going to order and demand that you all
21 not discuss this case with anyone. You all don't know
22 anything more than the name of the defendant and what he's
23 been accused of. Do not discuss the case amongst
24 yourselves or with anyone else. It might be that if you
25 go home your spouse or loved one or your co-worker is

1 going to say tell me what's going on with your jury duty.
2 This is one time you don't have to respond to them because
3 I'm going to order that you not do that. At the
4 conclusion of the case, you can discuss it with them all
5 you want to, because it might be that they have a
6 particular opinion about this type litigation. It might
7 be that they know something about it. And you need to
8 base your decision on what transpires here in this
9 courtroom without any distractions from any other source.

10 I also give you instructions and order that you
11 not do any independent investigation. We don't even know
12 at this juncture where these allegations arose from, but
13 at some point in time you will. Do not go and start
14 looking at the scene of the allegations. Do not do any
15 independent investigation. Everything that you need to
16 know with regard to deliberations in this case and the
17 rendering of a verdict, you will hear within the confines
18 of this courtroom. I don't anticipate there will be any
19 coverage with regard to this thing in the newspaper or
20 otherwise, but if there is, I'm going to ask that you
21 divert your attention from that because once again you
22 need to base your decision on what transpires here in this
23 courtroom.

24 Over the 20 years I practiced law and some 12
25 years I been on the bench, I participated in litigation

1 day after day. And I read what the newspaper says about
2 what transpired and quite often they get it wrong. So do
3 not under any circumstances read any articles or anything
4 about this case.

5 There's also, you know, now days with the advent
6 of the internet and the Google you can look up about
7 anything. You can look up specific events. You can look
8 up arrest records. You can look up personalities or
9 characters or witnesses involved in this case and do
10 research on that. I'm going to order and demand that you
11 not do that. That's inappropriate for you to do that, be
12 a violation of the law. Do not do that under any set of
13 circumstances. Mr. Foreman, there will be times in the
14 morning when you get here at 9:30. There might be a delay
15 where we're taking up matters of law outside of your
16 presence. You'll be in the jury room by yourself. I'm
17 going to order that you not allow anybody to discuss this
18 case in anyway, shape or form. You all can talk about
19 Carolina and Clemson football. You can talk about the
20 weather. You can talk about anything you want to talk
21 about, but you can't talk about this case or the
22 personalities, the lawyers, what a witness said. Do not
23 do that until I -- the case has been concluded. I charge
24 you the law and tell you to begin deliberations. Do not
25 do that.

1 I'm going to ask that you all -- when you exit
2 the courtroom, I'm going to ask that you wear those very
3 handsome badges. And there's a reason for that because
4 the way this courtroom is configured you all travel down
5 in the same elevator with witnesses, law enforcement and
6 lawyers. Everybody gets on the same elevator. Sometimes
7 they're talking about the case. It will be inappropriate
8 for you to hear anything outside the confines of this
9 courtroom. So if you wear that badge people will be
10 alerted to the fact that you are a juror and will try to
11 make every effort to eliminate any contact or any
12 discussions outside -- in your presence.

13 If anyone were to try to contact you about this
14 case, that's certainly unacceptable. It's against the
15 law. If someone were to try to talk to you about this
16 case, you have one obligation and that's to try to
17 identify them as best you can, report it to me and I'll
18 deal with them accordingly. It's completely
19 inappropriate, illegal for anybody to contact you about
20 this case or your deliberations in anyway, shape or form.
21 We're going to ask that you be back at 9:30, 9:30 sharp.

22 Anything from the State before we dismiss the
23 jury, Ms. Daniels?

24 MS. DANIELS: Nothing, Your Honor.

25 THE COURT: Anything from defense, Mr. Daniels

1 -- Mr. Jordan?

2 MR. JORDAN: Nothing, Your Honor.

3 THE COURT: All right. I'm going to ask that
4 everyone remain seated as the jury exits the courtroom be
5 back at 9:30, 9:30 sharp.

6 (WHEREUPON, the jury excused for the day.)

7 THE COURT: Ms. Daniels, do you have anything
8 that you would like to add at this time?

9 MS. DANIELS: Just a brief scheduling matter,
10 Your Honor. I think we may need to have a brief Jackson
11 v. Denno hearing right before the jury comes in and my
12 investigator isn't available until tomorrow morning, so it
13 should be brief. The defendant made a statement during
14 the execution of the search warrant.

15 THE COURT: We're going to start that nine
16 o'clock, nine o'clock sharp, so we can start right on
17 time. So everybody needs to be here a little bit before
18 nine, so we can get started on that.

19 Anything from defense?

20 MR. JORDAN: No, sir, Your Honor.

21 THE COURT: All right. Have you all had an
22 opportunity to mark any exhibits that you all might have?

23 MS. DANIELS: Judge, we haven't yet. I've got
24 the evidence which is in the evidence room coming this
25 afternoon, so I think we'll have an opportunity to go over

1 it.

2 THE COURT: If you can get with the court
3 reporter Ms. Keshia sometime before the end of the day, so
4 we can mark those. And if there's an agreement with
5 regard to the introduction of those, we can put that on
6 record in the morning. Anything further?

7 MS. DANIELS: I don't think so.

8 THE COURT: Mr. Jordan.

9 MR. JORDAN: No, sir.

10 THE COURT: All right. We'll stand at ease
11 until one o'clock, one o'clock sharp. We'll reconvene
12 with guilty pleas.

13 (WHEREUPON, the proceedings were concluded for
14 the day to be reconvened on October 10, 2017.)

15 THE COURT: Okay. I understand. We have a
16 Jackson v. Denno Hearing. You recognize.

17 MS. DANIELS: Thank you, Your Honor. we have
18 just a few more exhibits to pre-mark too. We can do that
19 after or before. You want us to do it now?

20 THE COURT: No, we can do it afterwards.

21 MS. DANIELS: Okay, sure. The State would call
22 Investigator Jake Chamberlain.

23 THE COURT: Mr. Chamberlain, please come forward
24 I'm going to ask if you could to place your left hand on
25 the Bible and raise your right hand as the clerk

1 administers the oath?

2 THE CLERK: Do you swear the testimony you give
3 in this case to be the truth, the whole truth, and nothing
4 but the truth so help you God?

5 THE WITNESS: Yes, I do.

6 THE CLERK: Please be seated and state your full
7 name for the record?

8 THE COURT: Officer Chamberlain, is that your
9 stuff right there?

10 MS. DANIELS: These are the exhibits.

11 THE COURT: Okay, very good. Have a seat, Mr.
12 Chamberlain. I'm going to ask if you could pull up real
13 close to that microphone, speak loudly, clearly and slowly
14 in order that we can hear everything that you have to say.
15 And let's start with your full name please, sir?

16 THE WITNESS: Jake Ray Chamberlain.

17 THE COURT: Yes, ma'am.

18 MS. DANIELS: Thank you, Your Honor.

19 WHEREUPON,

20 Jake Chamberlain,

21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION IN-CAMERA

23 BY MS. DANIELS:

24 Q Where are you employed?

25 A Florence County Sheriff's Office.

- 1 Q In what capacity?
- 2 A Currently a narcotics investigator.
- 3 Q How long have you been a narcotics investigator?
- 4 A I've been in narcotics for approximately three years
- 5 now.
- 6 Q Were you working on August 24th of 2016?
- 7 A Yes, ma'am, I was.
- 8 Q Where were you working on that date?
- 9 A In the Florence area of Florence County.
- 10 Q What particular location were you at around 12:30?
- 11 A We were at the Florence Inn and Suites located at
- 12 3821 Bancroft Road room 119 in Florence.
- 13 Q As part of your duties for that day, did you have the
- 14 opportunity to come in contact with the defendant Fashun
- 15 Burgess?
- 16 A Yes, ma'am, I did.
- 17 Q Could you describe how you came into contact with
- 18 him?
- 19 A I obtained lawful search warrant for the previously
- 20 mentioned address at 3821 Bancroft Road at the Florence
- 21 Inn and Suites room -- it's a motel. The room number was
- 22 119.
- 23 Q Where was the defendant.
- 24 A Mr. Burgess was located inside of room 119.
- 25 Q When you executed the search warrant?

1 A Yes, ma'am.

2 Q After you came in contact with the defendant, was the
3 defendant placed under arrest?

4 A Yes, ma'am, he was.

5 Q Now, did you attempt to read the defendant his
6 Miranda rights?

7 A Yes, ma'am, I did.

8 Q What happened as you tried to read the defendant his
9 Miranda rights?

10 A A forceable entry was made into the room by our SWAT
11 team. The defendant was detained. And as I attempted to
12 read Mr. Burgess his Miranda rights from a Miranda card,
13 he begin screaming disorderly, making a profound
14 statement.

15 Q What specifically did the defendant blurt out?

16 A Specifically, as I attempted to read the Miranda
17 rights quoting Mr. Burgess, he said y'all got me and my
18 shit, please take me to my fucking cage so I can lay down.
19 Y'all got me.

20 Q Now, after he said that were you able to read him his
21 Miranda rights?

22 A Later after Mr. Burgess -- at that time obviously he
23 was being disorderly and screaming, so ---

24 Q Did you give him time to calm down?

25 A Yes, ma'am. We gave him a little while. He actually

1 calm down where I could read him the Miranda rights and he
2 stated that he understood them.

3 Q Where was the defendant in the room when you read him
4 his Miranda rights?

5 A When you entered the room, there was a small table on
6 the right of the doorway and there's two chairs there. He
7 was sitting in one of the chairs.

8 Q Who all was present when you read him his rights?

9 A According to -- there would be Lieutenant Rhodes,
10 myself, Investigator Rhodes, Investigator Pate,
11 Investigator Williams, Clark and McDowell.

12 Q Were any other individuals with Mr. Burgess when you
13 read him his rights or around Mr. Burgess?

14 A There was -- yes, ma'am, there was a female in the
15 room also.

16 Q Was the defendant in handcuffs when you read him his
17 Miranda rights?

18 A Yes, ma'am, he was.

19 Q Now, did you read those rights from a form or a card
20 or did you recite them from memory?

21 A No, ma'am, I read them from an issued card.

22 Q Do you have a copy of that card?

23 A Yes, ma'am, I have the actual card.

24 Q Okay. Would you ---

25 MS. DANIELS: Your Honor, may I approach?

1 THE COURT: Yes.

2 BY MS. DANIELS:

3 Q Would you read exactly the rights that you read to
4 the defendant that day?

5 A I will. The rights that were read were before we ask
6 you any questions you must understand you have the right
7 to remain silent. Anything you say can be used against
8 you in court. You have the right to talk to a lawyer for
9 advice before we ask you any questioning and to have a
10 lawyer with you during questioning. If you cannot afford
11 a lawyer, one will be appointed for you before any
12 questioning if you wish. And then it resumes with do you
13 understand and then are you willing to answer some
14 questions.

15 Q Did the defendant indicate to you that he understood
16 those rights?

17 A Yes, ma'am, he did.

18 Q And did he indicate to you that he wished to waive
19 those rights?

20 A Yes, ma'am.

21 Q How did the defendant respond to your questions that
22 you asked him? Did he respond clearly?

23 A Yes, ma'am, he did.

24 Q Did it appear that he understood your questions
25 regarding his rights?

1 A Yes, ma'am.

2 Q And was the defendant ever threatened, coerced or
3 pressured, in any fashion or promised any reward in
4 exchange for talking with you?

5 A No, ma'am.

6 Q Was the defendant ever deprived of any food or water?

7 A No, ma'am.

8 Q About how long did your interview last would you say
9 with the defendant?

10 A As far as speaking with him in the room, maybe I
11 don't know a couple minutes.

12 Q And did the defendant freely agree to speak with you
13 without an attorney present?

14 A Yes, ma'am, he did.

15 Q Did it ever appear to you that the defendant wished
16 to invoke any of his rights and not speak with you?

17 A No, ma'am.

18 Q Did the defendant actually speak with you?

19 A Yes, ma'am, he did.

20 Q And was it written or was it spoken?

21 A It was spoken.

22 Q How would you describe the defendant's physical
23 condition when he spoke with you?

24 A At that time he was calm and, you know, spoke normal
25 at that time.

1 Q Okay. And did it appear to you that throughout the
2 whole process he understood what was going on?

3 A Yes, ma'am.

4 Q What exactly did the defendant say to you
5 specifically?

6 A After -- as I said before after he calm down, I read
7 his Miranda. He stated that he understood his rights. At
8 that time I more less explain to him that we had obtained
9 a search warrant for the room and that we had an
10 outstanding arrest warrant for his arrest. And I inquired
11 in reference to the drugs that were on the bed that were
12 in plain view as we entered the room, Burgess told me the
13 herion was his and that -- he also told me that he had a
14 gun registered to him in the room. This was before we
15 located the gun.

16 Q So you had not found the gun?

17 A At the time, no, ma'am.

18 Q Where was the gun actually located?

19 A If I recall right, it was in the nightstand drawer.
20 I believe, it was in the drawer of the nightstand between
21 the two beds.

22 Q Did the defendant indicate that anything else in the
23 room was his?

24 A At that time when I spoke to him he just said that
25 the -- after the Miranda, he said that the herion that was

1 on the bed was his and that he had a gun in the room, but
2 the gun was registered to him and that would be what he
3 claim possession of at that time.

4 Q And did he make any other statements to you at that
5 time?

6 A Not at that time he didn't, no, ma'am.

7 Q Did at any other time did he make any statements to
8 you?

9 A After the search of the room, it appears, you know,
10 obviously we do the search warrant. I explain to
11 Mr. Burgess and the female that was in the room the items
12 that were going to be seized from the room as evidence.
13 And it appears Mr. Burgess stated that -- the female claim
14 there was a small plastic bag containing marijuana. She
15 stated that was hers and Mr. Burgess stated that all the
16 other items were his and that the handgun was registered
17 in his name.

18 Q Okay. Anything -- any further statements?

19 A Not that I can recall at this time.

20 MS. DANIELS: Thank you. No further questions
21 at this time for Mr. Chamberlain.

22 THE COURT: Cross-examination.

23 MR. JORDAN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25

1 BY MR. JORDAN:

2 Q Agent Chamberlain, when you all entered the room, did
3 you immediately begin searching or did you just detain Mr.
4 Burgess and the other individuals right away?

5 A They were detained right away.

6 Q Was there an odor of anything in the room?"

7 A Sir?

8 Q Did it smell like marijuana smoke in the room or
9 anything like that?

10 A Well, yes, sir.

11 Q Okay. And did Mr. Burgess appear to have been using
12 marijuana?

13 A He was -- his appearance at first -- I mean, the
14 screaming and the yelling and that kind of stuff that's
15 not -- that doesn't -- that's not really a common behavior
16 of someone that is high, so I can't say whether he was
17 using marijuana or not.

18 Q But you say he quickly calm down?

19 A He did calm down after we placed him in the chair.

20 Q Approximately how many agents were there?

21 A There were -- I don't know exactly how many. I say
22 approximately eight total agents.

23 Q And what were they doing while you were talking with
24 Mr. Burgess?

25 A Well, we were -- I mean, we obviously secured the

1 room and...

2 Q Were they around or you were talking to ---

3 A Yes, sir.

4 Q --- to him just one on one?

5 A No, they were there. I was talking to him in the
6 room. Some were in the room with me and some were
7 securing the outside of the...

8 Q Was your conversation recorded in anyway?

9 A No, sir, it wasn't.

10 Q Okay. I mean, you clearly seem to remember exactly
11 what he said in terms of the excited utterance, correct?

12 A Yes, sir, I quoted it in my incident report.

13 Q But you didn't quote anything else, did you?

14 A I didn't what?

15 Q You didn't quote anything else?

16 A I put in here where he told me that the herion
17 located in there was his and that he told me that he had a
18 gun in the room.

19 Q Right. But you didn't put that in quotes, did you?

20 A Put it in quotes?

21 Q Right.

22 A No, I didn't.

23 Q All right. So you clearly remember the excited
24 utterance, but as to the rest of it and the wording, you
25 maybe a little off?

1 A No, sir, I just -- I clearly remember the exciting
2 utterance because he repeatedly yelled it over and over
3 and over. I mean, it's kind of hard to forget with that
4 language and stuff.

5 Q Sure. And I give you credit for that. It's quoted
6 in the statement?

7 A Yes, sir.

8 Q But as to the other things you didn't have him fill
9 out a written statement, did you?

10 A No, sir, I didn't.

11 Q All right. And you didn't tape record the statement?

12 A No, sir.

13 Q You didn't have anybody else with you as he was
14 talking with you?

15 A Yes, sir, there were additional people in the room.

16 Q All right. I understand they were in the room, but
17 I'm talking about with you interviewing him?

18 A There were people standing with me, yes, sir, while I
19 spoke with him.

20 Q Okay. All right. But you didn't remember the exact
21 verbiage he was using?

22 THE COURT: Mr. Jordan, really the focus of this
23 hearing is about the voluntariness of whether or not he's
24 under arrest, whether or not the Miranda. These go really
25 to whether or not the jury believes what he said. Why

1 don't we focus on the issue of voluntariness, the issue of
2 the Miranda, whether it was required and probably more
3 than anything the voluntariness.

4 MR. JORDAN: Yes, sir.

5 THE COURT: Why don't we focus on that.

6 MR. JORDAN: Yes, sir, will do.

7 BY MR. JORDAN:

8 Q All right. Just in conclusion, Agent Chamberlain,
9 there were about eight to ten people in the room?

10 A I can't say exactly how many were in the room. Some
11 were, you know, in the door way just securing the
12 perimeter.

13 Q And that was while you were talking with Mr.
14 Burgess?

15 A Yes, sir.

16 Q And he was under arrest?

17 A Yes, sir.

18 Q And at that time you'd already mention to him that
19 there were other charges, correct?

20 A After the Miranda, I advised him that he had an
21 arrest warrant for his arrest. There was an outstanding
22 arrest warrant.

23 MR. JORDAN: Your Honor, at this time I have no
24 further questions.

25 THE COURT: Very good. Any redirect, Ms.

1 Daniels?

2 MS. DANIELS: No redirect, Your Honor.

3 THE COURT: You may step down, Mr. Chamberlain.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 THE COURT: You may call your next witness.

7 MS. DANIELS: The State would call Investigator
8 Brad McDowell.

9 THE COURT: Yes, sir, please come forward. You
10 can sit your paperwork down. Place your left hand on the
11 Bible and raise your right hand as the clerk administers
12 the oath.

13 THE CLERK: Do you swear to tell the truth, the
14 whole truth and nothing but the truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: You may be seated on the witness
17 stand and state your name for the record.

18 THE COURT: Sit in that witness chair; pull up
19 real close to that microphone, speak loudly, clearly and
20 slowly in order that we can hear everything that you have
21 to say. And let's start with your full name please, sir?

22 THE WITNESS: It's Brad Stephen McDowell.

23 THE COURT: Very good. Ms. Daniels.

24 DIRECT EXAMINATION

25

1 after first having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. DANIELS:

4 Q Where are you employed?

5 A Florence County Sheriff's Office.

6 Q What's your position there?

7 A I'm a narcotics investigator.

8 Q How long have you been an narcotics investigator?

9 A Approximately eight years.

10 Q Were you working on August 24th 2016?

11 A I was.

12 Q Where were you working on location around 12:30 in
13 the afternoon?

14 A We were executing a search warrant at the Florence
15 Inn hotel off of Bancroft Road.

16 Q And is part of your duties did you come into contact
17 with the defendant at the Florence Inn and Suites?

18 A Yes, ma'am.

19 Q How did you come into contact with them?

20 A After the search warrant, he was detained by the SWAT
21 team. After he was detained, the agents conducting the
22 search entered the room and Mr. Burgess was detained.

23 Q Was he located in the room?

24 A Yes, ma'am.

25 Q Was he placed under arrest?

1 A Yes, ma'am.

2 Q Did you specifically place him under arrest?

3 A I did not.

4 Q What were you doing specifically that day when you
5 were there when they were -- when the search warrant was
6 being executed?

7 A I was actually at the door as the other agents were
8 conducting the search making sure nobody came up to the
9 room.

10 Q Did you personally speak with the defendant?

11 A I did not.

12 Q Did you observe the defendant speaking with
13 Investigator Chamberlain?

14 A Yes.

15 Q Did you observe Investigator Chamberlain read the
16 defendant his Miranda rights?

17 A I did.

18 Q Can you describe the defendant's behavior while his
19 Miranda rights were being read to him?

20 A Initially, he was disorderly. He was screaming,
21 screaming out. Eventually, he did calm down at which time
22 both individuals in the room were read their Miranda
23 rights and he did advise that he understood.

24 Q What specifically did you hear that the defendant was
25 screaming what you just mentioned?

1 A It was something to the effect of y'all got my shit,
2 take me to my cage.

3 Q Were was the defendant sitting after or sorry --
4 where was the defendant in the room after his Miranda
5 rights were read?

6 A I believe he was sitting in the chair.

7 Q Can you describe his demeanor?

8 A On the second attempt?

9 Q Sure, yes.

10 A He was calm at that time.

11 Q Did you observe the defendant speaking with
12 Investigator Chamberlain?

13 A Yes.

14 Q And did it appear to you that he wished to waive his
15 rights and speak with Investigator Chamberlain?

16 A Yes.

17 Q Did it appear to you that the defendant understood
18 the questions that were being asked of him?

19 A I'm not really sure about the questions that he was
20 asked during the interview, so I wouldn't know that.

21 Q Were you present for the interview that Investigator
22 Chamberlain had with the defendant?

23 A I was in the room, but as far as the conversation, I
24 can't speak on.

25 Q You weren't asking the defendant any specific

1 questions?

2 A Right.

3 Q But you were listening to the interview being
4 conducted; is that correct?

5 A Yes.

6 Q Okay. Did it appear to you that the defendant was --
7 had agreed to freely speak to Investigator Chamberlain
8 without an attorney present?

9 A Yes.

10 Q Approximately how long would you say -- did you
11 notice that the interview lasted?

12 A Approximately maybe five minutes from what I
13 remember.

14 Q And during that time, did it appear to you that the
15 defendant was being deprived of anything like food or
16 water?

17 A No, ma'am.

18 Q Do you remember the statements that the defendant
19 made to Investigator Chamberlain in response to the
20 interview?

21 A As far as any specifics, no, I don't.

22 Q Okay.

23 MS. DANIELS: No further questions at this time,
24 Your Honor.

25 THE COURT: Cross-examination.

1 MR. JORDAN: Beg the Court's indulgence. Your
2 Honor, I have no questions for the investigator.

3 THE COURT: You may step down.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 THE COURT: Ms. Daniels, you may call your next
7 witness.

8 MS. DANIELS: The State has no further we
9 witnesses, Your Honor.

10 THE COURT: Okay, very good. Be glad to hear
11 from defense with regard to the matters set forth in the
12 Jackson v. Denno. Yes, sir.

13 MR. JORDAN: Thank you, Your Honor. Your Honor,
14 at this point in time, I mean, it's been stated that
15 Mr. Burgess made an excited utterance as a later after
16 Mirandized he allegedly made it as some sort of admission.
17 The excited utterance, Your Honor, was vague. It did
18 not -- he claimed ownership of anything in particular in
19 that room. Y'all got my staff stuff. Now, what that
20 stuff is, I don't know, Your Honor.

21 THE COURT: That would probably go towards -- it
22 would be a factual issue that the jury needs to resolve.
23 How about the voluntariness? Do you have anything that
24 you like to say as to whether or not this -- the
25 statements that were given and or volunteered were

1 involuntary?

2 MR. JORDAN: Well, Your Honor, I mean, eight to
3 ten people busting in a small room all wearing -- all
4 obviously law enforcement. They're accusing him of other
5 crimes as well. I would think that would be highly or
6 that would place him in a high state of duress, Your
7 Honor. I think that to allow either one of these
8 statements in is certainly more prejudicial than
9 probative. And I would ask that they be excluded.

10 THE COURT: Very good. Ms. Daniels, be glad to
11 hear from you.

12 MS. DANIELS: Thank you, Your Honor. As far as
13 to the issue of voluntariness, Investigator Chamberlain
14 stated that he read his rights and it appeared that
15 Mr. Burgess understood them, that he was willingly
16 answering Investigator Chamberlain's questions. I don't
17 think at this point that the defendant or the defense had
18 suggested any information that the statements given
19 weren't voluntary. As to their admissibility, I think,
20 at this point they would be deemed to be admissible,
21 Judge. As far as the weight that the jury gives it, that
22 would be up to jury to determine.

23 THE COURT: Very good. All right. I do indeed
24 find that the statements are admissible. Under these
25 circumstances, clearly he was under arrest and the Miranda

1 warnings were triggered and however Officer Chamberlain
2 did give him the Miranda warnings. I think the statement
3 that was initially issued, I think you all were referring
4 to it as an excited utterance which is really an exception
5 to the hearsay rule. This has nothing to do with hearsay
6 because it's the defendant's statement and it was not
7 given pursuant to questioning. So therefore I don't think
8 Miranda applies when someone voluntarily says something,
9 whether it's an admission of -- an admission of criminal
10 activity or not is left up for the jury to decide. Those
11 are factual issues you can talk to the jury about. He
12 didn't say that the cocaine was his. Those are issues
13 that can be put before the jury.

14 I specifically find with regard to the
15 voluntariness that it was not involuntary given the facts
16 and circumstances. He was given his Miranda warnings.
17 Mr. Chamberlain was very clear in that his demeanor was
18 calm and deliberate as he responded to his questions. I
19 find that the defendant although I don't think it was
20 specifically stated in the testimony his age he doesn't
21 appear to be of tender years. I don't think the age is an
22 issue. No one has set forth any evidence that he has a
23 lack of education that would impair his ability to
24 understand nor any low intellectual functioning.

25 This isn't -- you know, quite often when you're

1 talking about voluntariness, you're talking about someone
2 being held in an interrogation room for hours on in. This
3 is a very brief conversation between Officer Chamberlain
4 and the defendant, gave him his Miranda warnings. He
5 admitted liability. I mean, admitted ownership of the
6 drugs.

7 There has been some discussion about use of
8 marijuana. The fact that there was a smell of marijuana.
9 There's been no indication that the defendant was
10 intoxicated to the point that he could not understand the
11 questions, the Miranda warnings or what he was saying.
12 Given those circumstances, I think the State has met the
13 threshold level of allowing it to be admissible. However,
14 all these issues with regard to whether or not he was
15 under arrest, whether or not the Miranda warning was
16 triggered and whether or not it was voluntarily given is
17 all a factual issue that you can be given wide latitude to
18 put before the jury. So we will indeed allow the
19 introduction of the statements. Anything further, Ms.
20 Daniels?

21 MS. DANIELS: No, Your Honor.

22 THE COURT: Anything, Mr. Jordan?

23 MR. JORDAN: Your Honor, not in reference to
24 this. I do have two things.

25 THE COURT: Okay.

1 MR. JORDAN: Your Honor, I believe Ms. Daniels
2 and I had stipulated that there is a -- within the
3 incident report here and there maybe some testimony about
4 a control buy that allegedly took place at this room prior
5 to the execution of the search warrant. I believe we had
6 stipulated that we are not going to elicit testimony about
7 that and any testimony that accidentally comes out about
8 that will be stricken. As well, I believe that we have
9 agreed to stipulate to there not being any testimony about
10 the prior distribution charge that Investigator
11 Chamberlain brought up that he didn't know about that as
12 well, Your Honor.

13 THE COURT: All right. Mr. Chamberlain, Mr.
14 Koenig and all of the officers who are here that are going
15 to be testifying, everybody understands that there be no
16 mention of a prior sell or any criminal record of the
17 defendant. Does everybody understand that? All right.
18 And I'm specifically ordering that you all not say
19 anything about that. And certainly if there was something
20 that was said, it would be stricken and there might be a
21 mistrial. Everybody's on notice do not say anything about
22 any prior drug activity or any prior convictions. All
23 right. Anything else?

24 MS. DANIELS: Judge, I would just say may be
25 perhaps one caveat as far as the execution of the search

1 warrant as for investigative purposes, I think the jury
2 would need to understand why the search warrant was being
3 executed which was based on a tip that there was drug
4 activity going on.

5 THE COURT: What does the defendant have to say
6 about that?

7 MR. JORDAN: Well, I mean, Your Honor, that's --
8 I mean, that's clearly -- I mean, that's within bounds. I
9 mean, it's got to be some sort of reason and I have no
10 reason to keep that out, Your Honor.

11 THE COURT: All right. I think what we ought to
12 do is just limit it to that that there was a tip of drug
13 activity. And I'm not talking about the details of any
14 transaction, but just limit it to that there was some drug
15 activity which led to the search warrant.

16 MS. DANIELS: Thank you, Your Honor.

17 THE COURT: Anything further before we proceed?

18 MS. DANIELS: I think nothing from the State.

19 THE COURT: Anything from defense?

20 MR. JORDAN: Nothing from the defense, Your
21 Honor.

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

23 MS. DANIELS: Judge, if you just give me five
24 minutes to finish pre-marking the exhibits?

25 THE COURT: Okay, good. We can do that. We'll

1 stand at ease for five minutes.

2 (WHEREUPON, a break was taken.)

3 THE COURT: We ready to start.

4 THE CLERK: You ready for the jurors?

5 THE COURT: We ready.

6 (WHEREUPON, the jury came into open court.)

7 THE COURT: Mr. Foreman, ladies and gentlemen of
8 the jury, thank you for being here and being here on time.
9 We had one legal matter that we had need to resolve before
10 we got started, but thank you for your patience. We're
11 about to begin the trial of the State of South Carolina
12 vs. Fashun Burgess. As I mentioned to you earlier, you
13 have been subpoenaed to participate in a term of general
14 sessions court, criminal court. I point that out to you
15 because many of you have probably served on a civil jury
16 before. Civil court is what we call money court where the
17 issues that are being litigated have to do with money,
18 automobile accident, medical malpractice, contract
19 disputes. As a matter of fact if you were to sit at the
20 back of this courtroom and take a look at this proceeding
21 and if you were just to look at the set up, you wouldn't
22 be able to tell whether it's criminal court or criminal
23 court because in both forms you have a jury that's sitting
24 there, listening to the evidence, resolving the factual
25 disputes. You have litigants on both sides and you have

1 witnesses taking the witness stand. The similarities
2 really stop there because there's certain constitutional
3 safeguards that come into play when you talking about
4 criminal court because we're talking about a persons very
5 important constitutional rights and liberties, so certain
6 constitutional safeguards come into play.

7 The first of which is the defendant as he's
8 sitting at that table over there is presumed to be just as
9 innocent as me or you or the Solicitor for that matter.
10 That's the frame of reference that we start with. That
11 presumption of innocence is like a cloak of protection
12 that guards him throughout this trial and only into the
13 deliberation process. We start from that frame of
14 reference.

15 The second constitutional safeguard is that the
16 State is the one who has brought this charge and they have
17 the burden of proof. There's some practical and
18 logistical reasons for that is that they have the
19 resources to gather up all of the evidence to present to
20 you to establish the individual has committed a crime.
21 They have the wherewithal of law enforcement. And there's
22 also some theoretical reasons behind that because we live
23 in a free and democratic society. And when the government
24 attempts to take away your liberties, they're going to be
25 required to prove that you're guilty of a crime. And in

1 some third world countries, you can be accused of a crime
2 and be haul before a court and be required to prove you're
3 innocent.

4 It's not the case in the of United States of
5 America.. The defendant need not testify. He need not
6 present any evidence. The burden rests solely on the
7 State of South Carolina to prove this case, each and every
8 element of this case beyond a reasonable doubt. And
9 that's the third safeguard is imagine with me if you will
10 that you're participating in money court, civil court,
11 common pleas where there's a medical malpractice case and
12 the patient was claiming that the doctor did something
13 wrong to cause them injury. And that case imagine with me
14 if you will the scales of justice where the lady is blind
15 folded from all bias and all prejudice. When the trial
16 starts, the scales are even. And in a civil case, the
17 plaintiff, the patient, would only -- would need only tilt
18 the scales ever so slightly in their favor and they will
19 prevail because after all they're talking about is money.
20 But in a criminal case, we're talking about important
21 civil liberties. And in order for someone to be found
22 guilty of a crime, they have to as I envision as locking
23 up the scales proof beyond a reasonable doubt. The
24 highest burden of proof known to our judicial system bear
25 that in mind as we proceed.

1 I want to talk to you a little bit about what to
2 expect and how we're going to proceed. First of all,
3 Ms. Daniels who is the assistant solicitor prosecuting
4 this case, she's going to have an opportunity to stand up
5 before you, tell you a little bit about the case, a little
6 bit about the law and what she intend to prove. The
7 defendant has an opportunity after that Mr. Jordan to
8 stand up before you and give an opening statement. Once
9 again, I remind you he doesn't have to do that. He's
10 going to be given an opportunity to do it if he would like
11 to. I anticipate he probably would, but the law doesn't
12 require that because the burden rests solely on the State.

13 After that, we will proceed forward to the
14 introduction of evidence and the trial of the case. And
15 evidence is presented and takes a number of different
16 forms. The primary one is where witnesses have a seat in
17 this witness chair. They take an oath on the Bible and
18 the lawyers ask them questions. And their testimony as
19 evidence for you to consider in your deliberation process.
20 There other forms of evidence like documents that are
21 documentary evidence that's introduced into evidence,
22 stipulations of counsel where the lawyers agree as certain
23 facts to be true, that those are things that you can
24 consider and in certain instances particularly in civil
25 cases their depositions can be introduced, but all of

1 those things you are going to be called upon to evaluate
2 and determine what the truth is in this case.

3 The State goes first. They required to put up
4 their case in chief. The defendant is going to be given
5 an opportunity to present any evidence if they elect to do
6 so. They're not required to do so. If the defendant were
7 to present evidence, then the State has an opportunity to
8 reply, so that's the way this goes. The plaintiff has the
9 burden of proof. They go first. The defendant if they
10 elect to put up any evidence, the State since they have
11 the burden of proof can reply, that's the way we proceed.

12 After that, the lawyers will have an opportunity
13 to stand up before you again and give you a summary
14 presentation. And this presentation is a little bit
15 different than opening statement because at that point in
16 time all of the evidence will have been presented and they
17 can point to the evidence that supports their relative
18 theory in the case, what they have to say at this juncture
19 would not be evidence, but it would aid you immensely in
20 your deliberation process. So I'm going to ask that you
21 pay very close attention to those presentations. After
22 that, I will charge you the law.

23 Ladies and gentlemen of the jury, you and I have
24 very defined roles in this proceeding. You are going to
25 be the triers of fact. You're the ones who listen to the

1 evidence. You determine what the truth is. In every case
2 that's tried in this court, there are disputes about the
3 facts. There's a rare occasion where everybody agrees to
4 the facts, but disagrees to inferences to be drawn from
5 those facts, but in both instances you and your collective
6 wisdom will gather up all the evidence. You all talk
7 about it, evaluate it and determine what the truth is and
8 resolve any questions of fact and apply it to the law as I
9 charge it to you.

10 Ladies and gentlemen of the jury, in your role
11 as the trier of fact, you necessarily will be called upon
12 to evaluate the credibility of witnesses. The law tells
13 us how you are to do that. The first thing that the law
14 does not say is to use your good common sense, leave your
15 good common sense at home. You know, everybody in your
16 every day lives we just from life's experience know how to
17 listen to someone and make a determination as to whether
18 or not they telling us the truth. You need to ask
19 yourselves what opportunity these witnesses had to observe
20 the things to which they're testifying to, ask yourself
21 whether or not what they say is corroborated by other
22 evidence or whether or not its contradicted by other
23 evidence, ask yourself whether or not the witness has an
24 interest or bias or prejudice in what they're saying.

25 I'll tell you from the very beginning that you

1 can believe one witness against many, many against one.
2 You can believe all of what a witness says. A portion of
3 what a witness says or none of what a witness says, that's
4 completely within your parameter as a jury to make these
5 very important decisions. In addition to that, you need
6 to listen to what a witness says, but any of you who have
7 ever raised teenage children sometimes it's important to
8 hear what a person tells you, but also the way they act
9 when they're telling you. The law says that you can take
10 into consideration the way a person acts while they're
11 testifying, their demeanor, pay very close attention to
12 all aspects of it.

13 One of the things that you need to understand is
14 your role as the jury if you make an error with regard to
15 the findings of fact, those issues very seldom -- very
16 often cannot be corrected. So it's important for you to
17 pay very close attention as the witness testifies. These
18 are important matters. We want you to pay very close
19 attention.

20 Ladies and gentlemen of the jury, I have a very
21 different role from you. Mine is to be the arbiter of the
22 law. I preside over this trial. I determine what
23 evidence you get to hear and I charge you the law at the
24 conclusion of the case. Pay very close attention. You
25 are participating in a time-tested system. This is an

1 important case. It's an important case to the State of
2 South Carolina. It's an important case to the defendant.
3 It's an important case to you because you've taken an
4 solemn oath to listen to the evidence, determine what the
5 truth is and apply it to the law. I'm convinced that you
6 will do that. Given the nature of the case, length of the
7 case, I'm going to ask that you not take notes. So I'm
8 going to implore you to pay very close attention as the
9 trial progresses.

10 Ms. Daniels, you recognize.

11 MS. DANIELS: May it please the Court, Mr.
12 Jordan and ladies and gentlemen of the jury. Drugs, a
13 gun, money, those are the classics components of a drug
14 trafficking case. And what we have here today is a
15 classic drug trafficking case his drugs, his gun, his
16 money. The State will present evidence today that would
17 prove to you beyond a reasonable doubt that the defendant
18 is guilty of trafficking in heroin 28 grams or more and
19 the possession of a weapon during the commission of a
20 violent crime.

21 On August 24th 2016, investigators with the
22 Florence County Sheriff's Office executed a lawful search
23 warrant at the Florence Inn and Suites, which is on
24 Bancroft Road. And when they got there -- when they
25 entered the room 119, they found the defendant,

1 Mr. Burgess, with drugs over 28 grams of herion, a gun and
2 cash money.

3 Now, at the end of this trial, the judge is
4 going to instruct you on the law and the judge is going to
5 explain to you that trafficking in herion 28 grams or more
6 occurs when someone knowingly attempts to bring into the
7 state or conspires with somebody to bring into the state
8 or is in actual or constructive possession of 28 grams or
9 more of herion.

10 Now, I'm going to take this time right now just
11 to preview a little bit of the evidence that you're going
12 to see here today in this trial. You are going to have
13 the opportunity to hear from several of the investigators
14 as well as the drug analyst. And they're going to explain
15 to you how they executed the search warrant and how they
16 arrested the defendant. And what they're going to tell
17 you is they got a search warrant at the Florence Inn and
18 Suites room 119 because they had received a tip that there
19 was unlawful drug activity in that room. When they got to
20 the room, you'll hear evidence that there was actually a
21 SWAT team that had to go to the room because of the
22 potential of drugs and the danger in that. That when they
23 got there that the defendant was there along with one
24 woman, another individual and that the herion was in plain
25 view when they entered the room on the bed.

1 You'll have the opportunity to hear from
2 Investigator Chamberlain who was the lead investigator on
3 this case. And he will tell you that when the SWAT team
4 entered that room and that he was there when the defendant
5 was arrested. He will tell you that he had the
6 opportunity to speak with the defendant and the defendant
7 told him then and there that the drugs were his. He told
8 him that the gun was his. You'll also have the
9 opportunity to hear from the chemist in this case and
10 he'll explain to you how he analyze that control substance
11 and determine that it was in fact herion. And you'll have
12 the opportunity to hear from another investigator as well.

13 I just ask that you pay very close attention to
14 the facts. You're going to have a chance to see the
15 actual evidence that the investigators collected at the
16 scene. You're going to see the drugs. You're going to
17 see the gun. You're going to see the photos that they
18 took. So I just ask that you pay very careful attention
19 and close attention. And if you do, I'm confident that
20 you will return a verdict of guilty. Thank you.

21 THE COURT: Ms. Daniels, thank you very much.

22 Mr. Jordan, you're recognized.

23 MR. JORDAN: Thank you, Your Honor. May it
24 please the Court. Ms. Daniels. Folks, my name is Daniel
25 Jordan. I am employed with Twelfth Circuit Public

1 Defender's office and my client is the defendant, Mr.
2 Fashun Burgess. When I went to law school, I swore I
3 never practice criminal law. I never wanted to do it
4 until I took the class criminal law. Then I understand --
5 began to understand why it's important, why attorneys seek
6 out that line of profession. It's important because
7 everyone who is charged with a crime deserves to have
8 their day in court. They deserve to have the facts of
9 their case heard by 12 members of a jury and they deserve
10 to have the truth discern by you all. Now, some folks --
11 a lot of folks do when admittedly I can't tell you how
12 many folks I represented, but a lot them do chose to plead
13 guilty. But just because Mr. Burgess decided to take a
14 trial, doesn't mean he's hiding anything often times
15 that's what people think. Well, he's just taking a trial,
16 he's stubborn, that's not what's going on here.
17 Mr. Burgess has chosen to take a trial because he believes
18 in the 12 of you. He believes that the 12 of you will
19 listen to the evidence and you will discern what happened
20 here.

21 When I was growing up, I have a younger brother.
22 He's 21 months younger than I am. Admittedly, he is my
23 parents favorite child. I had a problem with that growing
24 up. I don't any more. When I became a lawyer, I said
25 well, you know, everybody's proud of me now I'm favorite.

1 Now, he went and became preacher, so I'm back down on the
2 totem pole, but it's all right.

3 When I was ten or 11, I started with Boy Scouts.
4 When you start with Boy Scouts, they tell you the motto is
5 to be prepared. And they give you a pocket knife and
6 matches and all that kind of stuff and a tent and a
7 sleeping bag all that of kind. My brother and I shared a
8 room. I had a bed here and he had a bed here. One day we
9 were both in the room. I wasn't paying an awful lot of
10 attention because he's younger than me and I was -- I
11 don't know what I was doing. All of a sudden I smelled
12 smoke. My brother had taken the matches that I had been
13 issued from the Boy Scots and caught his bedspread on
14 fire. So we ran down the hall and got water and put the
15 fire out. My mother came running. Obviously, she smelled
16 smoke. It wasn't a big house. She came in and there were
17 her two boys. There was the smoking bedspread. There
18 were the mattresses -- I mean, there were the matches
19 laying there. I got a spanking of a lifetime for setting
20 that bed on fire. Based on what she saw when she entered
21 the room, based on me having been issued those matches and
22 all the stuff from Boy Scouts, she just assumed that I was
23 playing with the matches. She asked a few questions, but
24 her opinion of what happened was colored by what she saw
25 as she immediately entered the room. She wasn't looking

1 for -- and I don't blame her for it. She wasn't looking
2 for anything other than what she did or what she assumed.

3 This case that Ms. Daniels has laid out involves
4 officers executing a search warrant and coming into a room
5 that contained two individuals. A quantity of herion was
6 found, a handgun was found. The State and law enforcement
7 want somebody to pay for this. They want somebody to be
8 found guilty of possession or trafficking this herion, but
9 it's not Mr. Burgess. This case -- and I believe you'll
10 hear through the testimony and you'll see through the
11 evidence contains a lot of jumping to conclusions, a lot
12 of this is what I see. This is kind of what I think is
13 going on. This obviously has to be what happened here.

14 You are not going to hear any testimony about
15 DNA evidence. You are not going to hear any testimony
16 about fingerprinting. The investigation went no further
17 than that room that day. Law enforcement merely focused
18 on what they saw and what they initially heard as they
19 entered that room and they questioned the individuals
20 there. You have eight to ten officers rushing into your
21 room, placing you under arrest. I'd be freaking out
22 personally. At the end of the day I trust and Mr. Burgess
23 trust that the 12 of you will listen to everything. And
24 you'll figure out what the truth is here, that's what
25 you're charged with doing. That's why you're so

1 important.

2 At the end of the day I believe you're going to
3 have a lot of questions about what actually happened in
4 that room. I believe you're going to have doubt about
5 what happened in that room. This case is not about
6 whether or not you like me or you like Ms. Daniels or
7 Mr. Burgess or any of the investigators. It's about
8 whether or not you can reasonably figure out beyond a
9 shadow of a doubt what happened in that room. I believe
10 at the end of the day after you hear all the evidence you
11 won't believe beyond a reasonable doubt that Mr. Burgess
12 intended to possess, possessed or otherwise traffic heroin
13 and I believe you'll return a verdict of not guilty. I
14 appreciate you all showing up this morning. I value you
15 all being here. And I thank you.

16 THE COURT: Thank you, Mr. Jordan.

17 Ms. Daniels, you recognize. You may call your
18 first witness.

19 MS. DANIELS: Thank you, Your Honor. The State
20 calls Investigator Joseph Koenig.

21 THE COURT: Officer Koenig, if you could please
22 come forward and place your left hand on the Bible and
23 raise your right hand as the clerk administers the oath.

24 THE CLERK: Do you swear the testimony you give
25 in this case to be the truth, the whole truth, and nothing

1 but the truth so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your full
4 name for the record.

5 THE COURT: Mr. Koenig, have a seat in that
6 witness chair, pull up real close to that microphone,
7 speak loudly, clearly and slowly in order that we can hear
8 everything that you have to say. And let's start with
9 your full name please, sir?

10 THE WITNESS: Joseph Michael Koenig.

11 THE COURT: Spell that last one for us.

12 THE WITNESS: It's spelled K-O-E-N-I-G, sir.

13 THE COURT: Very good. Ms. Daniels.

14 WHEREUPON,

15 Joseph Koenig,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. DANIELS:

19 Q Where you employed?

20 A I'm employed by the Florence County Sheriff's office
21 as a narcotics investigator.

22 Q How long have you been working there?

23 A I been working with the sheriff's office for almost
24 nine years now. Prior to that, I was employed by the
25 South Carolina Law Enforcement Division as a narcotics

1 investigator. I retired from there in 2009 and all
2 together I been a narcotics investigator for 25 years.

3 Q So you have 25 years of experience in narcotics law
4 enforcement?

5 A As a narcotics investigator. Yes, 35 years all
6 together in law enforcement.

7 Q What are some of your primary duties as a narcotics
8 investigator?

9 A As a narcotics investigator, we obviously investigate
10 complaints and information that we receive about drug
11 trafficking, drug related crimes. We sometimes we will be
12 involved in surveillance operations where we will go out
13 and watch areas where drug activity is being reported. We
14 will sometimes make traffic stops of vehicles that are
15 suspected of being involved in drug trafficking.
16 Sometimes we'll have undercover operations involved. We
17 will interview people that have information about drug
18 activity. We will interview people who are involved in
19 drug activity themselves or previously involved in drug
20 activity themselves, a whole spectrum of things.
21 Occasionally, we'll even pretend like we're drug dealers
22 and go out and see who decides they want to come and make
23 some buys from us.

24 Q I'd like to call your attention to August 24th 2016
25 were you working on that day?

1 A Yes, ma'am.

2 Q Where were you working?

3 A That Wednesday afternoon I was working in Florence.
4 I was assign to assist with the execution of a search
5 warrant.

6 Q Where was that search warrant being executed?

7 A The search warrant was to be executed at the Florence
8 Inn and Suites which is located on Bancroft Drive in
9 Florence. That's a hotel that is right at the interchange
10 of U.S. 76 West Palmetto Street and I-95.

11 Q Is that in Florence County?

12 A It is. It's in Florence County. It's actually a
13 Florence address.

14 Q What was your role that day during that execution of
15 the search warrant?

16 A My role that day was to support the SWAT team that
17 was actually charged with the entry and gaining control in
18 that particular operation. And then photographing the
19 crime scene if there was in fact a crime scene at that
20 location and assisting with the search. And then the
21 dreaded other duties as assigned.

22 Q Where -- what room was the search warrant executed
23 on?

24 A This was I believe room 119.

25 Q Can you describe the way that room looked when you

1 first approached it?

2 A Yes, ma'am. The hotel itself, it's a two-story
3 hotel. It's one building. And the room itself is on the
4 side of the hotel that faces I-95. And the room is
5 located on the first floor of the hotel. And all the
6 doors to the rooms exit out into the parking lot. Second
7 floor you got to take the stairs that helps, but the first
8 floor you just walk right in from the parking lot. This
9 room in particular was just a typical hotel room. As you
10 walk in the front door of the room, there would be two
11 beds off to the right side of the room. There is a
12 countertop I guess you would call it or a dresser with a
13 television on it, a television stand sort of thing on the
14 left side obviously the beds. You keep on going you got a
15 sink at the end of the room with a counter top surrounding
16 that sink. And then you got a bathroom off of the right
17 side of the sink and a little tiny closet on the left side
18 and that's it.

19 Q Were you present when the search warrant was executed
20 on the actual room when entry was made?

21 A I was. I observed the SWAT team actually make the
22 entry.

23 Q And how did they make the entry into the room?

24 A The entry was actually made through a window in the
25 room and the SWAT team members then went in through that

1 window and secured the room.

2 Q After the SWAT team secured the room, what did you do
3 next?

4 A At that time I began taking photographs of the hotel
5 itself and then I actually went into the room itself and
6 took photographs of the inside of the room. And then as
7 the room was searched and things were found inside the
8 room, I took photographs of those items that were found.

9 Q Did you see the defendant when you entered the room?

10 A When I first saw him, he was actually being brought
11 out of the room by members of a SWAT team.

12 Q And can you describe how the defendant appeared when
13 he was sleeping in the room when you first saw him?

14 A He was handcuffed. He just wearing civilian
15 clothing. He didn't have shoes on I remember. I think he
16 had socks on.

17 Q Do you see the defendant present in the courtroom
18 today?

19 A Yes, ma'am.

20 Q Can you point out the defendant Fashun Burgess and
21 describe an article of clothing that he's wearing?

22 A Yes, ma'am. He's seated beside Mr. Jordan with the
23 light color button-down shirt. His hair was a bit longer
24 the day that we arrested him, but I'm certain that's him.

25 Q Thank you.

1 MS. DANIELS: Your Honor, let the record reflect
2 that the witness has identified the defendant.

3 BY MS. DANIELS:

4 Q Was anyone else besides law enforcement and the
5 defendant present inside the hotel room when a search
6 warrant was executed?

7 A Yes, ma'am. There was a woman inside the hotel room
8 also and she was also brought on site by the SWAT team.

9 Q Were you the investigator, did you interview either
10 one of these individuals?

11 A No, ma'am, I did not.

12 Q Was that your role in this investigation in
13 particular?

14 A No, ma'am.

15 Q Now, you mentioned earlier that you took pictures at
16 the scene?

17 A Yes, ma'am.

18 Q If I showed you a copy of those pictures, would you
19 recognize them?

20 A Yes, ma'am.

21 MS. DANIELS: Your Honor, may I approach?

22 THE COURT: You may.

23 MS. DANIELS: Your Honor, I'm showing the
24 defendant what's been marked for identification purposes
25 as State's Exhibits 1 through 12.

1 (WHEREUPON, State's Exhibits Nos. 1-12 were
2 marked for identification only.)

3 BY MS. DANIELS:

4 Q Will you just take a second and look at these and
5 tell me if you recognize them?

6 A Yes, ma'am.

7 Q Are these some of the pictures that you took at the
8 scene that day?

9 A Yes, ma'am, they are.

10 Q And do they fairly and accurately depict the hotel
11 room and the search warrant that day?

12 A They do. Yes, ma'am.

13 MS. DANIELS: Your Honor, at this time the State
14 would move into evidence what's been marked as State's
15 Exhibits 1 through 12 for identification purposes.

16 THE COURT: Any objection from defense?

17 MR. JORDAN: Well, Your Honor, I have reviewed
18 them and I do feel that they are obviously more
19 prejudicial than probative in this matter. And so I would
20 object on that ground.

21 THE COURT: All right. Might I see the
22 photographs. State's Exhibits 3 and 4 are excluded. The
23 balance are admitted over objection by the defense.

24 (WHEREUPON, State's Exhibit Nos. 1, 2 and 5-12
25 were admitted into evidence.)

1 MS. DANIELS: Thank you, Your Honor. With Your
2 Honor's permission, can I have Investigator Koenig to come
3 down by the jury box so the jurors can see a little
4 better?

5 THE COURT: Sure.

6 BY MS. DANIELS:

7 Q On State's Exhibit 1, would you show that to the jury
8 and just briefly tell them what the picture of that is?

9 A This is the Florence Inn and Suites at I-95 at U.S.
10 76. And the view that we're looking at is a view of what
11 you'll see of the hotel if you're coming in the main
12 entrance off of U.S. 76. The room that we were executing
13 a search warrant on is actually located on the other side
14 of the hotel roughly in the area of where this tree is on
15 the other side right behind is where I-95 is located.

16 Q Thank you, Investigator. Can you also explain to the
17 jury the State's Exhibit 2 and State's Exhibit 5 that are
18 similar?

19 A State's Exhibit 2 is a photograph of the outside of
20 the room. And you can see where the window was breached
21 so the SWAT team could make access to that room. State's
22 Exhibit 5 is the interior of the room and again that's --
23 this view was looking in from the front door of the room
24 with the only access door to the room.

25 Q What is in State's Exhibit 6? Can you tell the jury

1 what that picture is?

2 A State's Exhibit 6 is a plastic bag that's containing
3 a light-tan colored powder substance. And this was
4 located on the bed that's closest to the door as you walk
5 into that room.

6 Q And was that the substance that was tested?

7 A Yes, ma'am. This is a substance that was succinctly
8 tested and that's actually the bed itself that it's still
9 sitting on there.

10 Q Here's State's Exhibit 7 could you explain that?

11 A State's Exhibit 7 is a photograph I took inside the
12 hotel room. And this view is from the wall facing the
13 beds and depicted in this photograph is the nightstand and
14 the drawer for the nightstand is open in this photograph.

15 Q What was found in the nightstand in that drawer?

16 A In the nightstand, you can see there's a handgun
17 that's sitting right on top of a book inside that
18 nightstand and beside that there is like a -- like a
19 handbag. And there was some drug paraphernalia inside
20 that handbag. And there was also a driver's license
21 located inside that drawer directly in front of the
22 handgun.

23 Q What is State's Exhibit 8 if you would show that to
24 the jury and explain what that picture is?

25 A State's Exhibit 8 is a close up of the inside of that

1 drawer of the nightstand between two beds and that is the
2 handgun that is inside that drawer and that is the
3 driver's license that was also inside that drawer.

4 Q What is State's Exhibit 9?

5 A State's Exhibit 9 is a magazine that goes to that
6 handgun and the cartridges that go to that magazine
7 particular magazine holds eight rounds of ammunition and
8 that's eight rounds of ammunition that came out that
9 magazine.

10 Q And can you explain to the jury or describe the
11 photos in State's Exhibit 10 and 11 they're similar?

12 A In State's Exhibit 10, we are just turning around and
13 taking a picture of that television stand and the counter
14 space surrounding it. And there is a quantity of money at
15 each end of that particular stand. State's Exhibit Number
16 11 is just a close up of that money that was found at that
17 particular location.

18 Q How much money was found?

19 A I believe the exact amount it was a little bit over
20 \$700.

21 Q Okay. And finally what is State's Exhibit 12?

22 A State's Exhibit 12 is a book bag that was found
23 inside the hotel room. And the book bag has got some
24 ammunition visible inside it and that ammunition is
25 actually the same caliber that matches the handgun that

1 was in the drawer between the two beds.

2 Q Thank you.

3 A It's also a magazine in that one too. The second
4 magazine and it looks exactly -- you can see the top of it
5 protruding. That second magazine matches this one and
6 also had eight rounds of ammunition inside of it.

7 Q Thank you. You can take a seat back at the witness
8 stand. Thank you. When you first say defendant, did the
9 defendant have any weapons on him?

10 A He did not have a weapon, no. He did have a holster
11 on him.

12 Q Can you describe that holster that the defendant had
13 on him?

14 A It was a black holster. It was a holster that
15 matched the handgun that was found inside the room.

16 Q When you say matched, could you just explain what you
17 mean to the jury as far as that goes?

18 A Holster itself was molded to the contours of that
19 weapon. Can I look at one of the photographs of the
20 handgun?

21 Q Sure. State's Exhibit 8.

22 A Can I approach again?

23 MS. DANIELS: Your Honor, may the witness step
24 down?

25 THE COURT: Yes.

1 A In a particular holster that he had, you can see how
2 the gun has got different contours to it. Specifically,
3 in the front, there's a recessed area in front of the
4 handgun. The holster was molded specifically to
5 accommodate that model weapon. You can also see here that
6 there's a pin that protrudes a little bit from the frame
7 of there, that's called a take down pin and that holster
8 also have the recess to accommodate that take down pin.
9 It's a large frame handgun of a type that I been familiar
10 with for a lot of years. I recognize that very quickly.
11 The handgun, the holster itself was design for a
12 right-handed draw and actually had it on the left side of
13 his body, that's something else that stood out to me. And
14 it had belt loops and he also was wearing a belt and had
15 it secured by the belt.

16 Q When you say the holster was on the left side of his
17 body, why did that stand out to you?

18 A It seemed odd because again it was a right-handed
19 holster and the holster is design to go slightly forward
20 which assist wearer in getting the handgun out of the
21 holster. So with it being situated on the other side of
22 the body, it actually slants the other direction and makes
23 it more difficult to draw that weapon.

24 Q Okay. As part of your investigative duties that day,
25 did you assist in gathering and search and collecting the

1 evidence in the hotel room that day?

2 A I did more of the photography, not so much the hands
3 on searching.

4 MS. DANIELS: Your Honor, at this time I would
5 show the witness what's been marked as State's Exhibit
6 Number 15. May I approach?

7 THE COURT: Yes.

8 BY MS. DANIELS:

9 Q Can you look inside there and just tell me if you
10 recognize what that is?

11 A Yes, ma'am. This is a plastic bag containing a light
12 tan colored powder substance. It's consistent with what
13 was on the bag or what was on the bed, the bag of light
14 tan powder substance that was on the bed when we entered
15 that hotel room.

16 Q And where did you get that item from?

17 A I received this item from the Florence County
18 Sheriff's office evidence custodian and brought this to
19 court for today.

20 Q And what days did you bring that item from the
21 evidence custodian to court?

22 A I actually brought it yesterday.

23 Q Did you bring it any other day?

24 A I brought it in today, yes, ma'am.

25 Q Okay. Did you tamper with that item in any way?

1 A No, ma'am, the item is sealed. It's actually heat
2 sealed at the top. It's what we call a tamper resistant
3 packaging. So if there was any tampering with this
4 package, it would be apparent to anybody else who was
5 familiar with it.

6 MS. DANIELS: Your Honor, may I approach?

7 THE COURT: Yes.

8 MS. DANIELS: Thank you, Investigator Koenig.
9 Please answer any questions that Mr. Jordan has.

10 THE COURT: Mr. Jordan, cross-examination.

11 MR. JORDAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. JORDAN:

14 Q Investigator Koenig, I think you said you have 25
15 years worth of narcotics agent experience?

16 A Yes, sir.

17 Q And you been with the sheriff's department for the
18 past nine years, correct?

19 A Almost nine now, yes, sir.

20 Q On this particular date, you were merely charged with
21 photographing the evidence collected; is that right?

22 A Yes, sir.

23 Q And initially you photographed the hotel, correct?

24 A I took some of the photographs of the hotel first,
25 then I took some actually last.

1 Q Okay. And, I guess, there's no photographs or you
2 don't recall taking any photographs of the actual breach,
3 do you?

4 A No, sir.

5 Q What were you doing while that was going on?

6 A At that time my duty was to cover the SWAT team in
7 the event that they had to make a hasty retreat.

8 Q Okay. Once they made entry, what did you do?

9 A Once the SWAT team made entry?

10 Q Yes, sir.

11 A Then I got my camera and went up to the room and
12 began taking photographs?

13 Q Now, between the SWAT team and the agents with the
14 Florence County narcotics unit, you all searched room 119
15 after at the Florence Inn and Suites; correct?

16 A Yes, sir.

17 Q And you searched a black Mercedes SUV, correct?

18 A Yes, sir.

19 Q Now, when you all got to the Florence Inn and Suites,
20 there was one vehicle in the parking lot?

21 A Yes, sir, that was that black Mercedes.

22 Q And that was the only vehicle in the parking lot?

23 A Correct.

24 Q There weren't people milling about?

25 A No, sir.

1 Q Okay. There was no surveillance actually in the room
2 prior to the breach, correct?

3 A Not that I'm am aware of.

4 Q No, surveillance of the -- within the parking area
5 prior to the breach?

6 A Not that I'm aware of.

7 Q So everything that you did was after the breach?

8 A Correct.

9 Q Okay. And you took all the photographs, correct?

10 A Yes, sir.

11 MR. JORDAN: Your Honor, if I may approach the
12 witness?

13 THE COURT: You may.

14 BY MR. JORDAN:

15 Q Hand him what's marked Defendant's Exhibits 1 through
16 10. I just ask that you look at those and let me know
17 whether or not you recognize them?

18 A Yes, sir. Yes, sir, I took all these.

19 Q Now, you've already testified as to some other photos
20 that you taken; correct?

21 A Yes, sir.

22 Q And those are State's Exhibits, correct?

23 A Yes, sir.

24 Q Now, State's Exhibit 7 you photographed the
25 nightstand; is that correct?

1 A Yes, sir.

2 Q All right. I'll let you hold on to that. And within
3 that nightstand you found a gun, an ID and a teal colored
4 purse?

5 A With drug paraphernalia, yes, sir. Purse or handbag
6 I'm not sure of the exact nomenclature on that.

7 Q I understand. I don't either. And is it fair to say
8 that Defendant's Exhibit 7, 8 and 9 are representations of
9 what was of that purse or handbag as well as the contents
10 thereof?

11 A Yes, sir, those are photos I took of the contents of
12 that particular hand bag or purse.

13 Q Okay. I guess, if you come on down here since
14 Ms. Daniels had you do it this morning. If you could go
15 through these three and just show the jury what the
16 contents actually are.

17 A In State's Exhibit 7, again the picture of the drawer
18 that's between two the beds in the nightstand. You can
19 see the teal colored purse or handbag there and then I
20 took three closeup shots of the contents. And in
21 Defendant's Exhibit 7, this is just the initial opening of
22 that bag so you can kind of see what the overall contents
23 are inside. You can see the cap of a needle in orange.
24 And then when you remove some of the clutter from the top
25 you can see a little bit better the needles and this is

1 going to be in Defendant's Exhibit 8. You'll see more
2 needles down there. You'll see some aluminum foil that's
3 at the bottom of that bag. And then in Defendant's Number
4 9 you will see a spoon that was also inside that bag and
5 again foil that was wrapped around that spoon.

6 Q Investigator Koenig, I just ask that you stand right
7 there that way you can go through some of the others.
8 Briefly, there were two people in the room, correct?

9 A Yes, sir.

10 Q And one of them was a female, correct?

11 A Yes, sir.

12 Q And you all searched her car and you took photographs
13 of things that you found there?

14 A Yes, sir.

15 Q All right. I like you to identify for the jury
16 what's in exhibits one, two and three please?

17 A Sure. In Defendant's 1, they were all items that
18 were inside the glove box of that vehicle which was a
19 black Mercedes SUV parked in the parking lot opposite the
20 hotel room. It's a traffic ticket and the traffic ticket
21 was issued in Florence County and it was issued to an
22 Adrienne Dawn Huffstodt H-U-F-F-S-T-O-D-T for no valid
23 driver's license and the date on that was January 4th of
24 2016. In Defendant's Exhibit 2, this was a kind of like a
25 memo pad, a page off of a memo pad that you would write

1 like a phone note on something like that. And it says
2 from the desk of Evon Stoneberg it has emblem from
3 Knoxville Police Department which I'm assuming is
4 Tennessee. Third is Defendant's Exhibit 3 and Defendant's
5 Exhibit 3 this is again inside the glove box of that
6 vehicle and there is another spoon inside that glove box
7 and that's all. That's a nice purple bow, that's what I
8 see.

9 Q And then I'm going to ask you to explain exhibits
10 four, five and ten please?

11 A Defendant's Exhibits 4, 5 and 10 were all taken again
12 by myself inside the hotel room. This is the first that
13 was inside the hotel room and inside this purse there is a
14 United States passport. Defendant's Exhibit Number 5 is a
15 closeup that I took of that passport and that passport
16 bares the name of Adrienne Dawn Huffstodt. The last
17 photograph that's here is Defendant's Exhibit 10 is the
18 book bag from before that had the ammunition and the
19 pistol magazine in it. And also a second handbag or a
20 second book bag whatever that is.

21 Q And very briefly I like to hand you this one earlier
22 that's just another one?

23 A Okay. And that's going to be going back to the
24 dresser drawer again in that teal colored bag and that's
25 just another view inside Defendant's Exhibit 6.

1 Q Thank you. You can return to the stand please.

2 A Thank you, sir.

3 Q Okay. Now, Investigator Koenig, I'm going to ask you
4 a couple follow up questions on these pictures, okay?

5 A Yes, sir.

6 Q In regard to Defendant's Exhibit 4, it appears to be
7 Ms. Hoffstodt handbag; is that correct? Or a handbag with
8 her passport.

9 A Handbag containing her passport, yes, sir.

10 Q All right. Within that handbag, what is this orange
11 capped item? Or rather what could it be?

12 A Could be a number of things. I really can't tell
13 from the photograph what that is.

14 Q All right. Would it be consistent with these orange
15 capped items or could it possibly be?

16 A It could possibly be, yes, sir.

17 Q And in regard to Defendant's Exhibit 10.

18 A Yes, sir.

19 Q Within that pink bag there appears to be sort of a
20 turquoise or teal colored item; is that correct? I'm not
21 asking you to identify the item. I'm saying is there
22 something of that color?

23 A There's something in there, but I have a hard time
24 telling what's shadow and actually color in this
25 particular photo.

1 Q I understand.

2 MR. JORDAN: Your Honor, at this point in time I
3 would ask to move exhibits -- Defendant's Exhibits 1
4 through 10 into evidence.

5 THE COURT: Any objection from the State?

6 MS. DANIELS: No objection, Your Honor.

7 THE COURT: Defendant's 1 through 10 are into
8 evidence without objection from the State.

9 (WHEREUPON, Defendant's Exhibit Nos. 1-10 were
10 admitted into evidence.)

11 BY MR. JORDAN:

12 Q Investigator Koenig, I just want to conclude you
13 photographed the search, correct?

14 A Yes, sir.

15 Q You did not speak with either of the subjects in the
16 room?

17 A Correct.

18 Q All right. You weren't present for any interview of
19 either subject?

20 A No, sir, I wasn't.

21 Q Okay.

22 MR. JORDAN: I beg the Court's indulgence one
23 moment, Your Honor. Your Honor, at this point in time I
24 have no further questions.

25 THE COURT: Any redirect?

1 MS. DANIELS: No, Your Honor.

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

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 THE COURT: We're going to take a brief recess.
7 And I'm going to allow the jury to return to the jury room
8 and refresh themselves. Mr. Foreman, once again be no
9 discussion about the case whatsoever. I'm going to ask
10 that you enforce that rule. Everyone remain seated as the
11 jury executes the courtroom.

12 (WHEREUPON, the jury retire to the jury room.)

13 THE COURT: Anything from the State before we
14 recess for a moment?

15 MS. DANIELS: No, Your Honor.

16 THE COURT: Anything from defense?

17 MR. JORDAN: No, Your Honor.

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

20 (WHEREUPON, a break was taken.)

21 THE COURT: There was a request apparently one
22 of the jurors apparently is pumping post delivery or
23 whatever and she indicates that she can wait until 12.
24 I've ask her -- and I'm going to ask direct that she bring
25 the pump back for this afternoon and tell us whatever

1 schedule we will try to accommodate her as best we can.

2 I'm just going to make this note a part of the record.

3 (WHEREUPON, Court's Exhibit No. 1 was admitted
4 into evidence.)

5 THE COURT: Anything from the State before we
6 proceed?

7 MS. DANIELS: No, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. JORDAN: No, sir.

10 THE COURT: We ready for the jury.

11 (WHEREUPON, the jury came into open court.)

12 THE COURT: Ms. Daniels, you recognize you may
13 call your next witness.

14 MS. DANIELS: Thank you, Your Honor. The State
15 calls Investigator Brad McDowell.

16 THE COURT: Investigator McDowell, I'm going to
17 ask if you could to place your left hand on the Bible and
18 raise your right and as the clerk administers the oath.

19 THE CLERK: Do you swear the testimony you give
20 in this case to be the truth, the whole truth, and nothing
21 but the truth so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Please be seated and state your full
24 name for the record?

25 THE COURT: Investigator McDowell, have a seat

1 in that witness chair, pull up real close to that
2 microphone, speak, loudly, clearly and slowly in order
3 that we can hear everything that you have to say and let's
4 spell that last one?

5 THE WITNESS: It's Brad Stephen McDowell
6 M-C-D-O-W-E-L-L.

7 THE COURT: Very good. Ms. Daniels.

8 WHEREUPON,

9 Brad McDowell,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. DANIELS:

13 Q Where are you employed?

14 A The Florence County Sheriff's office.

15 Q How long have you been working there?

16 A Since 2005.

17 Q What's your position there?

18 A Currently, a narcotics investigator.

19 Q How long have you been a narcotics investigator?

20 A Approximately eight years.

21 Q And as a narcotics investigator what are some of your
22 primary duties?

23 A Investigate narcotic complaints. We execute raids,
24 search warrants, investigate citizen complaints of drug
25 activity, surveillance, undercover buys.

1 Q I'd like to call your attention to August 24th 2016
2 around 12:30 in afternoon. Were you working that day?

3 A Yes, ma'am, I was.

4 Q Where were you working?

5 A At the Florence County Sheriff's office. We executed
6 a search warrant off Bancroft Road at the Florence Inn and
7 Suites hotel.

8 Q What was your role in the execution of that search
9 warrant?

10 A My role was to assist Investigator Chamberlain with
11 the execution of the warrant.

12 Q How did you go about assisting him with execution of
13 the warrant?

14 A My job was to provide security at the door once the
15 search started to make sure nobody other than law
16 enforcement enter the room or approached the room.

17 Q And where -- what door were you referring to when you
18 said to provide security?

19 A 119 of the Florence Inn and Suites hotel on Bancroft
20 Road.

21 Q Who entered the room first?

22 A The Florence County SWAT team.

23 Q And were you there when the SWAT team entered the
24 room?

25 A I was.

1 Q Did you go in after the SWAT team?

2 A I did.

3 Q What did you see when you first went into the room?

4 A When I first entered the room, there was two subjects
5 in there. Mr. Burgess, the defendant, and a female was
6 also in the room and they were detained.

7 Q Where were they located in the room?

8 A At the time I saw Mr. Burgess he was between the bed
9 handcuffed on the floor.

10 Q Where was the woman who was with him?

11 A She was -- I think she was on the other side of the
12 bed.

13 Q Were you there when Mr. Burgess was detained?

14 A Yes.

15 Q Who detained him do you remember?

16 A The SWAT team would have.

17 Q Sure. Did you have an opportunity to speak with the
18 defendant in this case?

19 A I did not.

20 Q Were you there when any of the investigators had the
21 opportunity to speak with the defendant?

22 A Yes.

23 Q And which investigator if you remember spoke with the
24 defendant in this case?

25 A Investigator Chamberlain.

1 Q Do you remember did Investigator Chamberlain read the
2 defendant his Miranda rights?

3 A He did.

4 Q Were you there when that happened?

5 A Yes.

6 Q Can you describe the defendant's demeanor when
7 Investigator Chamberlain read his Miranda rights to him?

8 A I originally whenever the rights were attempted to
9 read him his rights, the defendant was disorderly.
10 Investigator Chamberlain couldn't even get it out of his
11 mouth. So after the defendant calm down, he was read his
12 rights again and he advised that he understood.

13 Q When you say that the defendant -- that Investigator
14 Chamberlain couldn't even get it out of his mouth, what
15 did the defendant do?

16 A He was speaking real loud. He was speaking over
17 Investigator Chamberlain, so Investigator Chamberlain he
18 didn't say anything else until he calm down and then he
19 read them again.

20 Q What did the defendant say when he was speaking over
21 Investigator Chamberlain were you able to hear that first
22 of all?

23 A I did. He -- several times he advised y'all got my
24 shit, take me to the cage.

25 Q Did he say that multiple times?

1 A He said it multiple times throughout the process,
2 yes.

3 Q When you say throughout the process, were you there
4 when Investigator Chamberlain did read his rights to him?

5 A Yes.

6 Q About how long after did he read his rights to him
7 after he was being disorderly?

8 A About how long...

9 Q How long did it take for him to calm down a better
10 way to put it?

11 A About five minutes.

12 Q Okay. Were you there after the rights were read
13 during the interview that Investigator Chamberlain had
14 with the defendant?

15 A I was there. I'm not sure what the exact questions
16 that Jake asked him, but I was standing in the doorway.

17 Q Can you describe the defendant's demeanor during that
18 interview?

19 A He was calm right after he advised him of his rights,
20 he was not being disorderly anymore.

21 Q And about how long did that interview last?

22 A Five minutes I'm assuming.

23 Q And did you hear the defendant make any statements
24 during that interview that stood out to you?

25 A Other than the previous statement about his -- y'all

1 got my shit, take me to the cage, no.

2 Q Okay. Now, as part of your investigation, did you
3 speak with anyone from the hotel?

4 A I did. I spoke with the hotel owner.

5 Q And what did you learn from the hotel owner as part
6 of your investigation?

7 A That room 119 was currently registered to Mr.
8 Burgess.

9 MS. DANIELS: Thank you. Please answer any
10 questions that Mr. Jordan has.

11 THE COURT: Cross-examination, Mr. Jordan.

12 MR. JORDAN: Your Honor, I have no questions for
13 Investigator McDowell.

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

15 (WHEREUPON, the witness leaves the witness
16 stand.)

17 THE COURT: Ms. Daniels, you recognize. You may
18 call your next witness.

19 MS. DANIELS: Thank you, Your Honor. The State
20 calls Lieutenant Kathleen Streett.

21 THE COURT: Lieutenant Streett, I'm going to ask
22 you if you could to please come forward, place your
23 paperwork down, put your left hand on the Bible and raise
24 your right hand as the clerk administers the oath.

25 THE CLERK: Do you swear the testimony you give

1 in this case to be the truth, the whole truth, and nothing
2 but the truth so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seated and state your full
5 name for the record?

6 THE COURT: Have a seat in the witness chair,
7 pull up real close to that microphone. I'm going to ask
8 that you speak loudly, clearly and slowly in order that we
9 can hear everything that you have to say and state your
10 full name please, ma'am.

11 THE WITNESS: First is Kathleen with a K.
12 Middle name is Vargovchik V-A-R-G-O-V-C-H-I-K last name
13 Streett S-T-R-E-E-T-T.

14 WHEREUPON,

15 Kathleen V. Streett,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. DANIELS:

19 Q Where do you work?

20 A Florence County Sheriff's office.

21 Q What's your position there?

22 A I am the lieutenant who supervises the forensics
23 crime scene division evidence room and impound, also the
24 homicide unit.

25 Q How long have you been working in that position?

1 A Since 2012.

2 Q And how long have you been in the Florence County
3 Sheriff's office total time?

4 A Since 1996, the end of '96.

5 Q As lieutenant what are some of your primary duties
6 just in general?

7 A I supervise -- I have a sergeant over processing of
8 the crime scenes. I have two corporals that also process
9 crime scenes, collect evidence, run the impound yard. I
10 have an evidence custodian that works in the evidence
11 room. And then I also have a what we call a forensics
12 evidence analyst download cell phones and collects
13 computer evidence and digital evidence.

14 MS. DANIELS: Your Honor, I'm now going to show
15 the witness what's been marked for identification purposes
16 as State's Exhibit 15. May I approach?

17 THE COURT: You may.

18 BY MS. DANIELS:

19 Q Can you open that and tell me if you're able to
20 identify?

21 A Yes, ma'am. This is what we call in the evidence
22 room a lab return. All of the drugs that are submitted
23 that are collected for evidence that the officer would
24 like them to be submitted for analysis, go into a best
25 pack. They then go to the chemist. And when the chemist

1 is done with the analysis, he returns the drugs back to
2 the evidence room where they're logged back in.

3 Q And how are you able to recognize that?

4 A It has our packaging here says Florence County
5 Sheriff's office drug analysis security envelope.

6 Q And do you know the date that you received that item?

7 A I would have to look at the actual chain of custody.

8 Q Sure. Your Honor, I show the witness what's been
9 marked for identification as State's Exhibit 14.

10 A Yes, ma'am, this is the evidence log sheet concerning
11 this particular item of evidence right here.

12 Q Okay.

13 A It appears that it came into the evidence room on the
14 first of September of 2016. And then it was signed out of
15 the evidence room on September 27th of 2016. I signed it
16 out to Lieutenant Mitch Hansen who is our chemist that
17 runs our drug lab and does all the analysis. Then looks
18 like Lieutenant Hansen ---

19 Q Let me just ask you is the item in the same or
20 similar condition when as you brought it Lieutenant Mitch
21 Hansen?

22 A He actually came and got it. He comes to the
23 evidence room and gets it. It would have been in a
24 different package. No, it would have in this particular
25 package here, yes, ma'am, this is the handwriting and the

1 bar code right here.

2 Q And did you tamper with the item in any way?

3 A No, ma'am.

4 Q And did you maintain the integrity of the item?

5 A When it was our custody in the evidence room, yes,
6 ma'am.

7 Q And or than transferring it or when Mitch came to get
8 it, did you transfer the item any other time?

9 A Looks like when he returned it on the 27th, it went
10 back into inventory and then it appears that on
11 November -- that was on November the 2nd. And it went
12 back into inventory and then it was signed out again to
13 Joe Koenig yesterday when he brought it here.

14 MS. DANIELS: Thank you. That's all the
15 questions I have. Please answer any questions that
16 Mr. Jordan has.

17 THE COURT: Cross-examination.

18 MR. JORDAN: I have no questions for this
19 witness, Your Honor.

20 THE COURT: You may step down.

21 (WHEREUPON, the witness leaves the witness
22 stand.)

23 THE COURT: Mr. Foreman, ladies and gentleman of
24 the jury, we going to recess for lunch. We're going to
25 ask that you be back at one o'clock, one o'clock sharp.

1 Once again, do not discuss the case amongst yourselves or
2 with anyone else. Do not do any independent investigation
3 and we'll see you back at one o'clock, one o'clock sharp.
4 Everyone remain seated as the jury exists the courtroom.

5 (WHEREUPON, the jury is excused for lunch.)

6 THE COURT: Anything from State before we recess
7 for lunch?

8 MS. DANIELS: No, Your Honor.

9 THE COURT: Anything from defense?

10 MR. JORDAN: No, Your Honor.

11 (WHEREUPON, a lunch break was taken.)

12 THE COURT: Anything from the State before we
13 proceed?

14 MS. DANIELS: No, Your Honor.

15 THE COURT: Anything from defense?

16 MR. JORDAN: No, Your Honor.

17 THE COURT: We ready for the jury.

18 (WHEREUPON, the jury came into open court.)

19 THE COURT: Mr. Foreman, ladies and gentlemen of
20 the jury, everybody looks well fed and rested and ready to
21 proceed forward with testimony. Thank you for being here
22 and being here on time.

23 Ms. Daniels, you recognize. You may call your
24 next witness.

25 MS. DANIELS: Thank you, Your Honor. The State

1 calls Mitchell Hansen.

2 THE COURT: Mr. Hansen, please come forward.
3 I'm going to ask you if you could to place your left hand
4 on the Bible and raise your right hand as the clerk
5 administers the oath. You can sit your paperwork down
6 right there. Thank you.

7 THE CLERK: Do you swear the testimony you give
8 in this case to be the truth, the whole truth, and nothing
9 but the truth so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Please be seated and state your full
12 name for the record.

13 THE COURT: Come on around have a seat in that
14 witness chair, pull up real close to that microphone and
15 ask you speak loudly, clearly and slowly in order that we
16 can hear everything that you have to say and let's start
17 with that full name.

18 THE WITNESS: Mitchell Reed Hansen.

19 THE COURT: Very good.

20 WHEREUPON,

21 Mitchell R. Hansen,
22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. DANIELS:

25 Q Where do you work?

1 A Florence County Sheriff's office.

2 Q What's your position there?

3 A I'm a lieutenant. I'm a forensic chemist.

4 Q How long have you been a lieutenant and a forensic
5 chemist?

6 A At Florence County almost seven years.

7 Q Almost seven years?

8 A Yes.

9 Q And what are your primarily duties as a chemist
10 there?

11 A I analyze substances to see if they're controlled.

12 Q What type of training -- well, let's start with
13 education. What type of education do you have to be a
14 chemical analyst?

15 A I have a associates of science, a associates in arts,
16 a bachelor's in chemistry, training from SLED and drug
17 analysis and also basic law enforcement training.

18 Q Do you still receive training occasionally?

19 A Yes, I do.

20 Q What type of occasional training do you receive?

21 A We do once a year meetings where we all get together.
22 We go over things, learn new techniques. We also do
23 proficiency testing every year where we get unknowns and
24 analyze them as submitted them to see if we have them
25 correct or not.

1 Q Have you ever been asked to analyze a substance that
2 was herion before?

3 A Yes, I have.

4 Q Has it been a lot of times?

5 A More than probably I can count.

6 Q Okay. Have you ever testified in court concerning
7 your analysis of control substances?

8 A Yes, I have.

9 Q Do you know -- have you ever been qualified in court
10 as an expert in chemical analysis?

11 A Yes, I have.

12 Q Do you know approximately how many times?

13 A Approximately 48 times.

14 MS. DANIELS: Your Honor, at this time the State
15 moves to have Mitchell Hansen qualified as an expert in
16 the field of chemical analysis.

17 THE COURT: Any query with regard to his
18 qualifications, Mr. Jordan?

19 MR. JORDAN: No, sir, Your Honor.

20 THE COURT: Mr. Foreman, ladies and gentlemen of
21 the jury, there's certain category of witnesses we call
22 expert witnesses. Ordinarily a witness, a lay witness is
23 only able to testify as to things they heard, saw and
24 felt. There's an exception to that when a person who is
25 qualified by their experience or education is an expert in

1 some field, then they're not only allowed to testify as to
2 what they heard, saw and felt, but render opinions in
3 their field of expertise if so qualified. He is -- and I
4 qualify him as an expert in drug analysis and just by
5 virtue of the fact that a witness is an expert does not
6 mean that you have to believe or accept their opinion.
7 You listen to what they have to say and evaluate it like
8 you would any other evidence and give it the weight you
9 think it deserves. Ms. Daniels.

10 MS. DANIELS: Thank you.

11 BY MS. DANIELS:

12 Q Were you asked to analyze the substance in this case?

13 A Yes, I was.

14 Q And how did you go about getting that substance to be
15 analyzed?

16 A I normally go down and I pick up evidence from the --
17 our evidence room once or twice a month.

18 Q Do you remember the date and time in this case that
19 you were asked to analyze the evidence?

20 A The evidence was picked up in this case on 9-27-2016.

21 Q Did you go to the evidence room to pick it up?

22 A Yes, I did.

23 Q Can you describe how the evidence, the substance was
24 packaged when you picked it up from the evidence room?

25 A It would have been packaged in a best kit, that is a

1 kit that is put together for a submission into the lab.
2 The best kits contain paperwork request forms, also a
3 tamper evident bag in which -- once the officer is placed
4 the drugs and information into the bag, if anybody tries
5 to tamper with it, open it or any, you know, or just
6 anything with it, you can actually see the stretch marks
7 on the bags and know that it's been tampered with.

8 Q Now, where did you take the substance to analyze it
9 how far away was it from the evidence room?

10 A I don't really roughly know in feet.

11 Q Same building?

12 A Same building.

13 Q All right. I'll show you what's been marked as
14 State's Exhibit 15. Just take a look at that and tell me
15 if you recognize it?

16 A Yes, I do.

17 Q And how do you recognize it?

18 A This is the best kit bag that the drugs would have
19 been in, the tamper evidence bag. It has where I put the
20 seal was intact and dated it. It also has a lab number
21 which is covered by the sticker, but it also has my
22 sticker on it. It has my signatures and the dates in
23 which I sealed it from the inside of the bag and heat seal
24 over it.

25 Q And can you tell me what is in that exhibit in

1 State's Exhibit 15?

2 A This is the stuff that was analyzed that was
3 everything that was analyzed and was in the best kit.

4 Q Okay. And how did you go about analyzing what's in
5 there?

6 A We do once it's picked up and we determine that the
7 seal was intact, we then -- we weigh it. We do a chemical
8 analysis where it's a spot test that kind of gives us an
9 indication of what a substance maybe. We also do an
10 instrumental test which we use a GC mass spec.

11 Q And after you analyze the substance, what did you do
12 with it?

13 A It's sealed back up. It was placed in my safe until
14 I did a drop off which I normally I drop off a number of
15 cases back into evidence at one time.

16 Q Did you -- so did you take it back to the evidence
17 room?

18 A Yes, I did.

19 Q Did you have to sign for it when you took it back?

20 A Yes, when we take it there and take it back, we
21 always sign for it.

22 Q Your Honor, at this time I'll show the witness what's
23 been marked as State's Exhibit 14. Do you recognize this?

24 A Yes, I do.

25 Q And how do you recognize it?

1 A It has my signature when I signed it out and also
2 this is the complete chain of the this evidence.

3 Q And does that show when you signed it back in as well
4 into the evidence room?

5 A I signed it back in on 11-2-2016.

6 Q Okay. Now, can you tell the jury what the results of
7 your analysis were in this case?

8 A The results there was a zip lock bag and then it was
9 subbed item out. It was containing a plastic bag
10 containing a tan powder substance. Item 1.2 was a gray
11 plastic bag containing a plastic bag containing a tan
12 powder substance. The results for item 1.1 was herion
13 found, 16.80 grams schedule 1. Item 1.2 was herion found,
14 26.97 grams schedule 1.

15 Q What was the total weight in that report of the
16 herion of those two packages combined? Test your math
17 skills here.

18 A The total weight here would have been 43.77 grams.

19 Q Did you prepare a report to that effect?

20 A Yes, I did.

21 MS. DANIELS: Your Honor, at this time I'm
22 showing the witness what's been marked as State's Exhibit
23 20. May I approach?

24 THE COURT: Yes.
25

1 BY MS. DANIELS:

2 Q Do you recognize this?

3 A Yes, I do.

4 Q And how do you recognize it?

5 A It is a report that was generated and has my lab
6 number and my signature.

7 Q And it indicates that the substance was herion in
8 that report?

9 A Yes, it does.

10 MS. DANIELS: Your Honor, at this time I would
11 move into evidence what's been marked as State's Exhibit
12 20 for identification.

13 THE COURT: Any objection from defense?

14 MR. JORDAN: No objection, Your Honor.

15 THE COURT: It's into evidence.

16 (WHEREUPON, State's Exhibit No. 20 was admitted
17 into evidence.)

18 MS. DANIELS: Thank you. I have no further
19 question at this time. Please answer any more questions
20 that Mr. Jordan has for you.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. JORDAN:

24 Q Mr. Hansen, you work for the Florence County
25 Sheriff's department, correct?

MITCHELL HANSEN - CROSS-EXAMINATION BY MR. JORDAN

1 A I do.

2 Q And I believe you said you're the chemical analyst?

3 A Yes.

4 Q And you were charged with analyzing certain evidence
5 in this case?

6 A Yes.

7 Q You analyze certain evidence in this case?

8 A Yes.

9 Q All right. And there was approximately 43, 44 grams
10 of herion found?

11 A I think the total would be 43.77 grams.

12 Q All right. Now, when you interacted -- first
13 interacted with the substance it was already in a best
14 kit?

15 A Correct.

16 Q You were not with Fashun Burgess or Adrienne
17 Huffstodt on August 24th of 2016?

18 A No, I was not.

19 Q You were not with the law enforcement team that
20 raided room 119 at the Florence Inn and Suites?

21 A No, I was not.

22 Q You didn't see anyone here and you didn't see Fashun
23 Burgess or Adrienne Huffstodt or anyone in that room
24 possessing those drugs, did you?

25 A No, I did not.

MITCHELL HANSEN - CROSS-EXAMINATION BY MR. JORDAN

1 Q All right. But you did test a quantity of drugs?

2 A Yes, I did.

3 Q And it was labeled when you got it, correct?

4 A As far as labeled wise, it was placed in a best kit.
5 It had two different -- it's two different packaging as
6 far as the way it was described and one was a gray bag.

7 Q It had a case number on it?

8 A It had case a number on the request forms.

9 Q All right. In terms of all the other evidence in the
10 case, I mean, you didn't test anything else, did you?

11 A No, we only -- we test for control substances and
12 trace evidence.

13 Q You didn't test for fingerprints?

14 A No, I do not.

15 Q You didn't test for DNA?

16 A No, I only test for control substances.

17 Q Are you aware of any drug paraphernalia that was
18 seized in this matter?

19 A Only of what was submitted for testing.

20 Q All right. And the only thing submitted for testing
21 was that right there?

22 A Correct.

23 Q All right. So you didn't test any spoons, needles
24 anything like that?

25 A Not to my knowledge. This was the only thing that

MITCHELL HANSEN - CROSS-EXAMINATION BY MR. JORDAN

1 was in this particular best kit.

2 Q So you tested what you're asked to test and nothing
3 more?

4 A Correct.

5 Q All right. You have no idea who the drugs belonged
6 to?

7 A As far as was I there, I don't know who they belong
8 to, no.

9 MR. JORDAN: Your Honor, I don't have any
10 further questions.

11 THE COURT: Any redirect?

12 MS. DANIELS: No redirect, Your Honor.

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

14 (WHEREUPON, the witness leaves the witness
15 stand.)

16 THE COURT: Ms. Daniels, you may call your next
17 witness.

18 MS. DANIELS: State calls Investigator Jake
19 Chamberlain.

20 THE COURT: Investigator Chamberlain, if you
21 could please come forward. You can place your paperwork
22 down and place your left hand on the Bible and raise your
23 right hand as the clerk administers the oath.

24 THE CLERK: Do you swear the testimony you give
25 in this case to be the truth, the whole truth, and nothing

1 but the truth so help you God?

2 THE WITNESS: Yes, ma'am, I do.

3 THE CLERK: Please be seated and state your full
4 name for the record.

5 THE COURT: Have a seat in that witness chair,
6 pull up real close to that microphone speak loudly,
7 clearly and slowly in order that we can hear everything
8 that you have to say and lets start with your full name.

9 THE WITNESS: Jake Ray Chamberlain, III.

10 THE COURT: Yes, ma'am.

11 WHEREUPON,

12 Jake R. Chamberlain,
13 after first having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. DANIELS:

16 Q Where are you employed?

17 A Florence County Sheriff's office.

18 Q How long have you been working there?

19 A I been with the sheriff's office a little over nine
20 years.

21 Q What's your position there?

22 A I'm currently a narcotics investigator.

23 Q And how long have you been a narcotics investigator?

24 A Narcotics investigations a little over three years.

25 Q What type of training do you have to be a narcotics

1 investigator?

2 A Prior to being a narcotics investigator, I worked on
3 our proactive community enforcement to the street level
4 basically a street level criminal interdiction team. We
5 would work the crime areas where citizens will complain
6 and it could be anything from speeding in school zones, to
7 selling drugs, to burglaries to any of the above. I did
8 that for five years and went to numerous numerous numerous
9 drug interdiction classes.

10 Q Okay. I'd like to direct your attention to the date
11 of August 24th 2016. Were you working on that day?

12 A Yes, I was.

13 Q What area were you working in?

14 A In that day -- that day I was working the Florence
15 area of -- the West Florence area of Florence County. I
16 executed a search warrant on Bancroft Road is off of
17 Highway 76 near I-95. It was executed at the Florence Inn
18 and Suites.

19 Q Is that in Florence County?

20 A Yes, ma'am, it's in Florence County.

21 Q Are you the main investigator on the case that we're
22 talking about?

23 A Yes, ma'am, I initiated this case and search warrant.

24 Q Why did you get the search warrant in the case?

25 A We had received complaints with narcotics dealings at

1 this location of trafficking in and out of this location.
2 And we received a tip that the defendant was selling
3 herion from this location. The room number was given, a
4 name was given, details were given of the case.

5 Q And what room number, what room that was it that you
6 executed the search warrant in?

7 A The room was 119.

8 Q About what time of day was it when you executed the
9 search warrant?

10 A It would have been after lunch around one or so.

11 Q And who went into the room first?

12 A Our SWAT team actually executed the search warrant
13 and I'd love to explain why they did if that's okay.

14 Q I think at this point I'll just continue to ask
15 questions if we need to revisit we can.

16 A Okay. I understand.

17 Q Where were you when the SWAT team went into the room?

18 A I was outside of the room in the parking area.

19 Q Okay. About how long did it take you to get into the
20 room after the SWAT team went in there?

21 A A minute or so.

22 Q Okay. And when you got in the room, what did you see
23 or who was in there?

24 A The defendant, Fashun Burgess, and a female by the
25 name of -- forgive me for the last name, I may butcher it,

1 but I think it's Huffstodt.

2 Q Okay. What was her first name?

3 A I think it was Adrianne if I recall.

4 Q Where in the room were that located?

5 A When I entered the room, Mr. Burgess was on the floor
6 detained between the two beds of the room and -- I'm just
7 going to go with Adrianne because it's easier. She was
8 detained at the side of the other bed at the back of the
9 room.

10 Q Okay. When you first got into the room, when you
11 walked in there what did you do?

12 A The first thing I noticed -- well, the first thing I
13 did was -- Mr. Burgess and Adrianne were -- they were
14 taken out of the room for a brief moment where we could
15 set the chair -- set the -- you been in the motel room
16 there's usually a table and like two chairs on each side
17 of the little table be by the window, that stuff obviously
18 got knocked over when the SWAT team made entry. So we sat
19 those chairs up, cleared that area of any weapons, that
20 way we could sit them back -- bring them back to sit in
21 those chairs.

22 Q And did you then bring them back to sit in those
23 chairs?

24 A Yes, ma'am.

25 Q Could you describe the demeanor of Mr. Burgess when

1 you brought him back?

2 A When he was first taken out, we sat the chairs down
3 beside the table near the exit of the room. And
4 Mr. Burgess was brought back in along with Adrienne. They
5 were sitting in the chairs and informed them that I would
6 like to read them their rights before we did anything.
7 And I began to read them their rights.

8 Q Were you able to read the complete Miranda rights?

9 A I started reading from my card and Mr. Burgess began
10 to -- he started screaming and cursing becoming very
11 disorderly. And at that time I couldn't Mirandize him
12 over the screaming and yelling.

13 Q When you say he was screaming and yelling, what was
14 he saying?

15 A This was said numerous times and I quote from what
16 Mr. Burgess was saying. As I attempted to read them their
17 Miranda rights -- and again I quote he stated y'all got me
18 and my shit, take me to my fucking cage so I can lay down,
19 y'all got me. He continuously stated that over and over
20 and over. Therefore, I quit trying to read him his
21 Miranda rights at this time.

22 Q Were you able to later read him is Miranda rights?

23 A Yes, ma'am. A couple minutes later he calm down.
24 His demeanor changed. He -- you know, he was wasn't
25 screaming. He wasn't being obnoxious, I guess, you would

1 say.

2 Q Was he sitting when you were able to read his ---

3 A Yes, ma'am, he was sitting in the chair, yes, ma'am.

4 Q Did you read him his Miranda rights?

5 A Yes, ma'am, after he calm down, then, you know,
6 explain to him that I would like to read them their
7 Miranda rights again. I did read the Miranda rights at
8 this time from Miranda warning card. And Mr. Burgess and
9 Adrianne both stated that they understood their Miranda
10 rights.

11 Q And what were their rights that you read to them?

12 A There's my Miranda card over there. I'm sorry. I
13 left it.

14 MS. DANIELS: Your Honor, may I approach?

15 THE COURT: Yes.

16 A This is a card that I keep with me at all times that
17 way I always read the same Miranda rights. I'm assuming
18 you like me to read it?

19 Q Yes, please read the Miranda rights?

20 A The card states before we ask you any questions you
21 must understand you have the right to remain silent.
22 Anything you say can be used against you in court. You
23 have the right to talk to a lawyer for advice before we
24 ask you any questions and have a lawyer with you during
25 questioning. If you could not afford a lawyer, one will

1 be appointed for you before any questioning if you wish.
2 And that follows well do you understand and are you
3 willing to answer some questions.

4 Q Did the defendant indicate that he understood those
5 warnings?

6 A Yes, ma'am.

7 Q And did he indicate that he wish to speak with you?

8 A Yes, ma'am.

9 Q Were you then able to interview Mr. Burgess?

10 A I then asked Mr. Burgess a couple questions, yes,
11 ma'am.

12 Q About how long would you say it took you to ask them
13 the questions that you had for them?

14 A No more than just a couple minutes.

15 Q And what was his demeanor like as you were able to
16 ask him those questions?

17 A At this point he was fine. He was -- it was normal,
18 just normal conversation just like we're having now.

19 Q And what did he tell you?

20 A After he stayed, he understood his rights. I explain
21 to him that I had obtained a lawful search warrant for his
22 hotel room and that he was under arrest for an outstanding
23 warrant.

24 Q Did he ---

25 MR. JORDAN: Objection. May we approach?

1 THE COURT: Yes.

2 (WHEREUPON, a bench conference was held in the
3 presence of the jury, but out of the hearing of the
4 jury.)

5 THE COURT: You may proceed.

6 MS. DANIELS: Thank you, Your Honor.

7 BY MS. DANIELS:

8 Q When you were speaking with the defendant, did you
9 speak with him about the drugs that you found in the room?

10 A I did.

11 Q What did he tell you as far as those drugs?

12 A Obviously, when we came into the room the -- all the
13 herion was sitting on the bed in plain sight. I asked
14 him, you know, basically just in conversation I said
15 what's the deal with the dope man. I mean, that's -- we
16 were having a normal conversation and he stated that the
17 herion was his. And then he also stated that he had a
18 handgun that was registered to him in the drawer.

19 Q At that point had you searched the room?

20 A At that point, no, ma'am, we had not located the
21 handgun or any of that.

22 Q But he told you there was a handgun?

23 A Yes, ma'am, he did tell me that.

24 Q Who did he say that handgun belong to?

25 A He said it was registered to him.

1 Q The other individual who you were talking with
2 Adrienne did she say anything to you about any drugs?

3 A Throughout the whole process the only thing she ever
4 said was that there also a little bag of marijuana
5 found inside the room, along with a marijuana cigarette
6 blunt.

7 Q Can you describe her demeanor, behavior?

8 A She was really -- she was calm just kind of almost
9 kind of out of it and, you know, she didn't get excited.
10 She wasn't -- didn't seem concerned, just kind of there.

11 Q Did she say anything else about the drugs to you?

12 A She said that the only thing that was hers besides
13 anything in her bags was the small bag of marijuana that
14 was located beside the bed.

15 Q And how about the defendant did he ---

16 A Mr. Burgess stated that the herion and the gun was
17 his.

18 Q All right. Can you tell the jury a little bit about
19 the search of the room and what you found?

20 A Yes, ma'am. And obviously as I explain when we
21 entered the room or when SWAT entered the room, Mr.
22 Burgess was detained. There was obviously a substantial
23 amount of herion laying on the bed in plain view. When I
24 entered the room, I could see the herion there. They were
25 bringing Mr. Burgess and Ms. Adrienne out. You could see

1 that Mr. Burgess had a pistol holster on his side. During
2 the search, we located, of course, the herion, the
3 handgun, some identification, a bag containing some
4 ammunition, a small marijuana cigarette, a little small
5 bag of marijuana, some digital scales. And during the
6 search of the room, there were some female bags located
7 what seem to be female bags and claim by females with user
8 paraphernalia inside as far as the needles and the spoons.
9 I mean, it all goes consistent with a herion user.

10 Q And as far as the needles and the spoons where were
11 those located?

12 A Those -- some of those were located in the drawer in
13 that teal color bag they showed y'all which she claimed.
14 Of course, she said the bags were hers and the pocketbook
15 of course was hers and it had user paraphernalia in it
16 also. No narcotics were located in those bags just your
17 typical user paraphernalia.

18 Q You state earlier that you said that the defendant
19 had a holster on when he was in the room. Were you able
20 to determine what gun that was for?

21 A Yes, it was for the pistol that was located in the
22 nightstand that Mr. Burgess stated was his.

23 MS. DANIELS: Your Honor, at this time I'm going
24 to show the witness what's been marked as State's Exhibit
25 17.

1 THE COURT: You may.

2 BY MS. DANIELS:

3 Q Can you open this bag and tell me what's inside and
4 if you recognize it?

5 A Yes, ma'am. There's a Smith and Wesson Springfield
6 handgun saying 1911 model.

7 Q And what else is in there?

8 A There are two 1911 style magazine.

9 Q And do you recognize those?

10 A Yes, ma'am, I do.

11 Q And how do you recognize them?

12 A They were located in the hotel room where the search
13 warrant was executed.

14 MS. DANIELS: Your Honor, at this time the State
15 would move into evidence what's been marked for
16 identification as State's Exhibit 17.

17 THE COURT: Any objection?

18 MR. JORDAN: No objection, Your Honor.

19 THE COURT: It's into evidence without
20 objection.

21 (WHEREUPON, State's Exhibit No. 17 was admitted
22 into evidence.)

23 MS. DANIELS: Your Honor, the State would show
24 the witness what's been marked as Exhibit 18.

25

1 BY MS. DANIELS:

2 Q Do you recognize this?

3 A Yes, ma'am, I do.

4 Q And how do you recognize it?

5 A This was ammunition that was found -- also found in
6 the hotel while executing the search warrant.

7 Q Sure. Do you remember where it was found in the
8 room?

9 A If I recall right, the boxes of ammunition were in a
10 Gamecock book bag by the bed.

11 Q What type of ammunition is that?

12 A These are one box is an estate ammunition, a .45
13 caliber and the other is a Hornaday .45 caliber pistol and
14 ammunition.

15 Q And what caliber is the gun?

16 A A .45 caliber.

17 MS. DANIELS: Your Honor, at this time the State
18 would move into evidence what's been marked for
19 identification as State's Exhibit 19 -- I'm sorry it's not
20 19, it is 18.

21 THE COURT: Any objection?

22 MR. JORDAN: No objection, Your Honor.

23 THE COURT: Eighteen is into evidence.

24 (WHEREUPON, State's Exhibit No. 18 was admitted
25 into evidence.)

1 MS. DANIELS: Your Honor, the State show the
2 witness what's been marked as State's Exhibit 19.

3 BY MS. DANIELS:

4 Q Do you recognize this?

5 A Yes, I do.

6 Q And how do you recognize that?

7 A It's a digital scale that was located inside and also
8 inside the hotel room, room 119.

9 Q What is the digital scale typically used for?

10 A This type scale -- this type scale is typically used
11 for weighing out small amounts of narcotics. As far as
12 seeing the scale, it appears still be residue on the scale
13 obtaining powder residue. So it's commonly known to weigh
14 out smaller quantities of narcotics.

15 MS. DANIELS: Your Honor, at this time the State
16 move into evidence what's been marked as State's Exhibit
17 19.

18 MR. JORDAN: No objection.

19 THE COURT: State's Exhibit 19 is into evidence.

20 (WHEREUPON, State's Exhibit No. 19 was admitted
21 into evidence.)

22 BY MS. DANIELS:

23 Q State's now showing the witness what's been marked as
24 State's Exhibit 16. Do you recognize this?

25 A Yes, ma'am, I do.

1 Q What is that?

2 A It's the defendant Fashun Burgess' South Carolina ID.

3 Q Where was that found?

4 A If I recall, it was in the -- I believe it was in the
5 drawer with the pistol.

6 MS. DANIELS: Your Honor, at this time the State
7 would move into evidence what's been marked as State's
8 Exhibit 16.

9 MR. JORDAN: No objection.

10 THE COURT: It's into evidence.

11 (WHEREUPON, State's Exhibit No. 16 was admitted
12 into evidence.)

13 MS. DANIELS: Your Honor, showing the witness
14 what's been marked as State's Exhibit 13.

15 BY MS. DANIELS:

16 Q Do you recognize this?

17 A Yes, I do.

18 Q Where was that item found?

19 A This was found by the bed in the hotel room.

20 Q And what is that?

21 A As referred in my incident report it's a South
22 Carolina Gamecocks book bag.

23 Q Do you remember what was found in that book bag?

24 A Yes, ma'am, two boxes of ammunition, and I believe a
25 loose round of ammunition were inside the bag.

1 MS. DANIELS: Your Honor, at this time the State
2 Exhibit would move into evidence what's been marked as
3 State's Exhibit 13.

4 MR. JORDAN: No objection.

5 THE COURT: Thirteen is into evidence.

6 (WHEREUPON, State's Exhibit No. 13 was admitted
7 into evidence.)

8 MS. DANIELS: Your Honor, the State is showing
9 the witness what's been marked as State's Exhibit 15.

10 BY MS. DANIELS:

11 Q Do you recognize that?

12 A Yes, ma'am, I do.

13 Q What is that?

14 A This is a best pack that I filled out and placed into
15 evidence that contains the -- it contains the tan powder
16 that was located on the bed inside of the motel room.

17 Q Can you explain to the jury what a best pack is?

18 A A best pack is basically a drug analysis request.
19 What we do is fill it out as you can kind of see here.
20 It's marked with a control number and we actually have a
21 -- keep a receipt off of this for matching control
22 numbers. What we do is filled out the agency and you
23 print the name of the person sealing it which will be me
24 and I would sign it. I would date it. I'd put my case
25 number on it. I turn it into evidence. It is a sealed

1 package with tamper proof seal on the top. And then our
2 chemist -- it's a drug analysis request form. So he knows
3 whatever is in this bag we want to be tested.

4 Q You stated earlier that you found the herion on the
5 bed. After you found it on the bed, what kind of package
6 did you put it in after that from there?

7 A The herion was in a -- obviously, you can see here
8 the herion was in these plastic bags kind of grocery style
9 bags and it was also in those bags were vacuum sealed bags
10 which are a common way to ship quantities.

11 Q Did you put the those bags into the best pack at that
12 point?

13 A Yes, ma'am, I did.

14 Q And what did you do with best pack right after you
15 put ---

16 A After the best pack was sealed, it was placed -- I'd
17 have to -- do you have the log sheet?

18 Q Sure.

19 MS. DANIELS: Your Honor, I'm showing the
20 witness what's been marked as State's Exhibit 14.

21 BY MS. DANIELS:

22 Q Here you go.

23 A Yeah, this -- yeah, they were placed in there and
24 placed in our narcotics bin.

25 Q Did you take them to the narcotics bin?

1 A Yes, I did.

2 Q And after you brought them to the narcotics bin, they
3 would have been tested after that; is that right?

4 A Yeah, after they would have been moved from our
5 narcotics -- from our hold bin to the actual evidence bin
6 which are side by side and that's where the evidence
7 custodian would come get them for testing.

8 MS. DANIELS: Your Honor, at this time the State
9 move into evidence what's been marked as State's Exhibit
10 14 and State's Exhibit 15.

11 MR. JORDAN: No objection, Your Honor.

12 THE COURT: Fourteen and 15 are into evidence
13 without objection from the defense.

14 (WHEREUPON, State's Exhibit No. 14 and 15 were
15 admitted into evidence.)

16 BY MS. DANIELS:

17 Q You stated earlier you been a narcotics officer for
18 about three years; is that right?

19 A Yes, I worked in narcotics related crimes for eight
20 years, but I've been titled as a narcotics investigator
21 for three.

22 Q As part of that experience, have you had a chance to
23 conduct any types of undercover buys?

24 A Yes, ma'am, we done numerous search warrants. We do
25 undercover buys. I mean anything from surveillance to

1 traffic stops, work a lot of citizen complaints as in this
2 case and, you know, people call all the time, hey, so and
3 so selling drugs down the road from my house. So we would
4 do surveillance and see what we can come up with. We can
5 stop some cars, get undercover buys at a house, do a
6 search warrant. It just build cases.

7 Q Based on that experience with undercover buys, are
8 you familiar with the value of narcotics?

9 A Yes, ma'am.

10 Q With the street value of narcotics?

11 A Yes, ma'am.

12 Q And based on your experience what is the value of
13 herion?

14 A As far as ---

15 Q And, I guess, let me back up. First of all, how is
16 it sold in what quantity, what's typical?

17 A Well, your typical quantity of herion, you know,
18 buying for a user buying a gram at the time would be a
19 pretty good amount to purchase at one time.

20 Q And approximately how much weight would a gram cost?

21 A A gram -- the way this herion is packaged we call
22 this loose because a lot of times it would be packaged in
23 bindles or little small wax bags, which are approximately
24 .03 grams. The loose herion here they would sell it, you
25 know, by the amount or money. You could value it street

1 level value of gram of herion as far as loose at
2 approximately \$150.

3 Q So approximately if herion is valued at \$150 a gram
4 approximately how much 43.77 grams come out to be?

5 A You know, with a street value, you know, on the fair
6 side saying 150 a gram at 43.77 grams, you're looking at a
7 little less than \$6,500 worth of herion.

8 Q Going back to the search of the hotel room and the
9 search of the defendant, when you searched the defendant
10 what did you find on his person?

11 A We located money the currency that was seized was on
12 his person.

13 Q How much was it?

14 A A little upwards of \$700 I think.

15 Q The other individual who was in the room with the
16 defendant did you charge her with any charges?

17 A Yes, ma'am. She was charged with simple possession
18 of marijuana in which she claimed the marijuana that was
19 in the small baggie.

20 Q Did you charge her with herion?

21 A No, ma'am. The defendant in this case claimed
22 ownership of the herion. And from my experience and in
23 doing this job, I mean her demeanor -- the needles, the
24 spoons, the paraphernalia to me she was clearly a
25 candidate for being a herion user. And as I said in my

1 experience, you don't see a herion user possess, you know,
2 43 almost 44 grams of herion. In all honesty, they would
3 probably be dead within an hour if a herion user possess
4 that much herion.

5 MS. DANIELS: Thank you. I have no further
6 questions at this time. Please answer any question
7 Mr. Jordan can has.

8 THE COURT: Cross-examination, Mr. Jordan.

9 MR. JORDAN: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. JORDAN:

12 Q Investigator Chamberlain, you say you joined law
13 enforcement about ten years ago or so?

14 A Going on ten. January will be ten.

15 Q You started off going through some sort of like
16 police academy?

17 A Yes, sir, I went to South Carolina Criminal Justice
18 Academy.

19 Q All right. And from there you were put out into the
20 community and then a few years ago you became a narcotics
21 officer?

22 A Well, once I graduated the academy, I worked as a
23 regular patrol deputy. I worked shift -- 12-hour shift
24 work, answering calls in the community, whatever came to
25 dispatch for a little over a year and a half. And then I

1 went to our proactive criminal enforcement team:

2 Q And how long have you been on that or how long have
3 you been on the narcotics squad?

4 A I went approximately three years, a little over three
5 years.

6 Q Now, law enforcement and narcotics agents in
7 particular tend to use confidential informants a good
8 deal, don't they?

9 A Yes, sir.

10 Q All right. And so you -- when you joined the
11 narcotics squad you learn how to do that? You learned how
12 to find and cultivate confidential informants?

13 A Yes, sir.

14 Q All right. Generally confidential informants are
15 likely to be people who are users or somebody that been
16 popped for something minor, right?

17 A Not necessarily, no, sir.

18 Q Okay. So fair to say that there's some benefit a CI
19 would get for cooperating?

20 A Is there -- I don't understand the question.

21 Q All right. Normal regular every day citizens are
22 generally not who you use as confidential informants, are
23 they?

24 A That's correct.

25 Q You generally use people who are in the business, but

1 you have some sort of dealing with the drug community?

2 A We use people that have information in the drug
3 community. It could be anywhere from a user to a users
4 brother, mother, father somebody that wants to help get it
5 off the streets. I mean, it's a variety of people that we
6 use.

7 Q And as a confidential informant generally do they get
8 paid for being a confidential informant?

9 A They can, yes, sir.

10 Q If a confidential informant is somebody who has
11 pending charges, there's a chance, you know, those charges
12 might be reduced?

13 A That is a possibility.

14 Q All right. They can get lighter sentences?

15 A That's possible.

16 Q Better recommendations from the solicitors?

17 A Basically, yes, sir.

18 Q Their charges might even be dropped?

19 A I can't drop the charges. I mean, all I can do is
20 recommend and put in a word if they cooperate if they help
21 us get other drugs off the streets.

22 Q If they cooperate, there is a benefit?

23 A There can be depending on their cooperation.

24 Q And so you say there can be, so they have a -- sort
25 of pressure to make cases when they cooperate?

1 A No, sir.

2 Q I'm not saying from you. I'm saying they may feel
3 pressure?

4 A I don't understand why they would, no, sir.

5 Q Well, if you were facing let's say 20 years and if
6 you cooperated you knew you were going to get a
7 probationary sentence, wouldn't you feel some pressure to
8 make cases?

9 A I couldn't speak for that, no, sir. I've never had
10 anyone tell me they were pressured, so I can't say that
11 they do.

12 Q I understand. And I'm not saying you pressured.

13 A Yes, sir, I understand. But I can't speak for them.

14 Q Now, when you use a confidential informant, you're --
15 you know, they're contacting you telling you they have
16 information, correct?

17 A In some cases.

18 Q All right. You're not asking where they got the
19 information?

20 A In some cases.

21 Q All right. But generally you try to build trust with
22 your confidential informants?

23 A Yes, sir, absolutely.

24 Q And so when one calls you and says we got
25 information, you tend to trust them?

1 A I would verify the information beforehand.

2 Q In this case, I believe your search warrant was based
3 on confidential information; is that correct?

4 A Information from a confidential reliable informant,
5 yes, sir.

6 Q Okay. And that information was provided within 72
7 hours of the search?

8 A That's correct.

9 Q All right. Now, there are no surveillance cameras,
10 no wiretaps, no surveillance photos in the parking lot of
11 the Florence Inn and Suites, are they?

12 A Not that I'm aware of.

13 Q There was no surveillance photos, wiretaps or cameras
14 inside room 119, were there?

15 A I have a question about that.

16 MS. DANIELS: Judge, may we approach?

17 THE COURT: Yes.

18 (WHEREUPON, a bench conference was held in the
19 presence of the jury, but out of the hearing of the
20 jury.)

21 THE COURT: Rephrase your question.

22 MR. JORDAN: Yes, sir, Your Honor.

23 BY MR. JORDAN:

24 Q Are there any surveillance photos, video recordings
25 or wiretaps inside the room 119?

1 A Not that I'm aware of.

2 Q Now, I think, Investigator McDowell testified earlier
3 that when he talk with the desk clerk the room was
4 registered to Fashun Burgess, correct?

5 A Yes.

6 Q All right. And his ID was found in the room?

7 A Yes, sir.

8 Q He never lied and said he was somebody else, did he?

9 A No, sir, as far as I know he never lied about
10 anything.

11 Q You didn't find a debit card or a credit card or
12 anything like?

13 A Of his?

14 Q Right.

15 A Not that I recall.

16 Q Do you have any idea how long he was at the Florence
17 Inn and Suites prior to SWAT making entry?

18 A Not specifically, no, sir, I don't.

19 Q You don't have an idea as to who came and went from
20 room 119 within the period of time that he was there?

21 A The information I received was multiple people an
22 hour came and went from the room.

23 Q But you can't verify that?

24 A I can't prove it, no, sir.

25 Q You can't prove whether or not Mr. Burgess ever left

1 that room, can you?

2 A Can I what?

3 Q Can you prove whether or not Mr. Burgess ever left
4 that room?

5 A Can I prove if he has ever left the room?

6 Q From the time he checked in which you don't know
7 until the search warrant was issued, can you prove how
8 long he was in that room?

9 A I'm afraid I don't understand what you're asking me?

10 Q Do you have any idea how long Mr. Burgess had been in
11 that room?

12 A He had been in there that day.

13 Q You don't know how long that day?

14 A Not to the minute, no, sir, I don't.

15 Q Now, you and other officers approach the Florence Inn
16 and Suites and there was only one car in the parking lot?

17 A As far as on that backside of the motel I believe
18 that was the only one.

19 Q Right. The car was a black Mercedes SUV?

20 A That's correct.

21 Q Had expired Idaho plates?

22 A I couldn't tell you for certain exactly what the
23 state plates were.

24 Q But it had expired plates on it from what you recall?

25 A I'm assuming.

1 Q All right. It was register to a Ms. Adrienne
2 Huffstodt?

3 A That I believe's correct.

4 Q All right. And I'm going to do like you I'm going to
5 call her Adrienne I can't pronounce her name.

6 A It's pretty tough.

7 Q At that time prior to you guys getting there, it
8 didn't appear like that Florence Inn and Suites was
9 necessarily hopping? There weren't a lot of people there?

10 A At the moment we got there it wasn't.

11 Q All right. Now, the only occupants in the room when
12 you all went in were Mr. Burgess and Ms. Huffstodt?

13 A Yes, sir, that's right.

14 Q SWAT entered through the window, right?

15 A That's correct.

16 Q You entered through the door?

17 A Yes, sir.

18 Q Okay. You detained two individuals?

19 A SWAT did.

20 Q SWAT did?

21 A Yes.

22 Q All right. One of those individuals was Fashun
23 Burgess?

24 A Yes, sir.

25 Q The other one was Adrienne Huffstodt?

1 A That's correct.

2 Q All right. You found at least two pieces of luggage
3 a Gamecock book bag and a pink tote bag?

4 A Yes, sir.

5 Q You found multiple purses in the room?

6 A Multiple purses. I'd have to look back through the
7 pictures. I don't remember -- maybe a little bag or
8 something and a purse.

9 Q But basically from what you testified earlier Ms.
10 Adrienne claimed possession of the teal purse, correct,
11 that was found in the...

12 A Yeah, she said -- make kind of like a zip bag or
13 something, like a makeup bag or something.

14 Q And we can assume that the pink piece of luggage
15 would have been perfect?

16 A I would, yes, sir.

17 Q All right. If there was another purse in the room,
18 that would be hers?

19 A I would guess so.

20 Q And the car was definitely hers, right?

21 A Yes, sir.

22 Q All right. Now, within the nightstand was the teal
23 purse which was Adrienne's, correct?

24 A Yeah, if going on her saying it was hers, yes, sir.

25 Q Or which we can assume is hers, I mean it's feminine?

1 A Okay.

2 Q So we could assume it's hers. And then there was a
3 gun and Mr. Burgess' ID?

4 A Which he stated was his, yes, sir.

5 Q Right. Well, obviously his ID was his. I mean, it's
6 got his picture ---

7 A I'm referring to the gun he stated was his.

8 Q Is it your understanding that both Mr. Burgess and
9 Adrienne had been staying at or within that room for
10 sometime?

11 A The information I received is all I can testify to
12 and the information I received was that Mr. Burgess was
13 staying in room 119 selling herion and known to carry a
14 gun on his person while doing so.

15 Q But you don't know? You have no idea?

16 A When we arrived and Ms. Huffstodt was there, I did
17 not know plan on her being there. I didn't know exactly
18 who was there. All I knew was Fashun Burgess at that
19 time.

20 Q Now, they were both in the room and you don't know
21 how long they'd been in the room?

22 A I mean, I don't understand when you ask how long.

23 Q You don't know if they been there all day. You don't
24 know they been there 20 minutes?

25 A They had been at least an hour.

1 Q All right. And the nightstand was not something that
2 was locked, right?

3 A I don't think you can lock the nightstand.

4 Q Something that both of them had access to?

5 A Yeah, I would say so.

6 Q Either of them could put something in it, take
7 something out of it?

8 A Yeah, I would say so.

9 Q Did you fingerprint that nightstand?

10 A No.

11 Q All right. Test it for DNA?

12 A No, sir.

13 Q All right. Let's -- we'll come back to that, okay.

14 A Sure.

15 Q All right. You all searched the room and
16 Investigator Kehoe photographed, correct?

17 A Who?

18 Q Joe.

19 A Oh, Koenig?

20 Q Thank you.

21 A Yes, sir.

22 Q And did you write up the report in this matter?

23 A This incident report?

24 Q Yes.

25 A Yes, sir, I do.

1 Q All right. You were taught how to write incident
2 reports? Through your training did you learn how to write
3 them?

4 A Oh, right, yes, sir.

5 Q Taught to be inclusive as possible? Take your time
6 when you're writing them?

7 A Yes, sir.

8 Q Okay. And in that report you report finding two wads
9 of money on the counter?

10 A Two what?

11 Q Two wads of money on the television counter?

12 A I think that's right. This was -- I have to skim
13 back through again. This been a little while ago.

14 Q Cigar packaging and suspected marijuana cigarette on
15 the floor?

16 A Right.

17 Q Two plastic bags of suspected herion on the bed
18 closest to the door?

19 A Yes, sir.

20 Q Plastic bag of marijuana on the bed closest to the
21 door?

22 A Okay.

23 Q Cellular telephone on the bed closest to the door?

24 A Uh-huh.

25 Q Smith and Wesson .45 in the nightstand?

1 A Yes, sir.

2 Q Mr. Burgess' driver's license?

3 A Yes, sir..

4 Q Drug paraphernalia and purse on nightstand?

5 A Okay.

6 Q All right. Box of .45 bullets and extra magazines
7 for the same?

8 A Yes, sir.

9 Q All right. And then another purse containing various
10 items including Adrienne's passport issued in Idaho?

11 A Yeah.

12 Q During the search, you were doing what? Were you
13 searching, were you interviewing, what were you doing?

14 A I assisted, I mean, in some of the search and then I
15 also spoke with Mr. Burgess before when I read him his
16 Miranda rights. And then I was in the room help assist
17 with some of the search and spoke with him after.

18 Q There were eight to ten officers searching this room?

19 A Not all at one time, no.

20 Q All right. So there were some standing around?

21 A Yeah, I mean, the officers listed they were obviously
22 present during the execution of a warrant, but as
23 Investigator McDowell said earlier, you know, he was
24 standing, you know, beside where Mr. Burgess was at the
25 door and Investigator Koenig taking pictures. You have

1 another person outside for security reasons in case
2 somebody else would have show up. So that leaves you with
3 three people, four people to search a room.

4 Q Okay. But you interviewed Mr. Burgess and Adrienne
5 by yourself?

6 A I interviewed them in the room while -- I mean, there
7 were numerous officers around.

8 Q Nobody was standing there with you to listen?

9 A Investigator McDowell was standing beside me at the
10 door.

11 Q Right, but he's testified he didn't hear a thing?

12 A He said he couldn't say for sure what he said, that's
13 what he testified to.

14 Q Okay. And did you interview Adrienne as well right
15 there sitting beside him?

16 A I spoke with her, yeah.

17 Q You interviewed them side by side?

18 A I spoke with Mr. Burgess and I spoke with Adrienne.

19 Q They were both sitting right there at the table?

20 A Yeah, I mean they were -- he was inside. I spoke
21 with him. She was over here sitting at the little table
22 because he was sitting here I spoke with him sitting here.
23 I spoke with her sitting right here.

24 Q Okay. You didn't record it in anyway?

25 A No, sir.

1 Q All right. You didn't have them write down the
2 statement in anyway?

3 A No, sir.

4 Q Okay. You didn't do anything other than rely on your
5 memory?

6 A I relied on my memory and the defendant's. He
7 obviously blurted out excited utterances y'all got me.
8 Y'all got my shit, take me to my cage. I mean, everybody
9 that was there heard that.

10 Q You don't have a clue what his shit was, did you?

11 A Yes, sir, it was herion and marijuana cigarette, a
12 gun.

13 Q That's what you believe it to be?

14 A No, sir, that's what he told me it was his.

15 Q But you can't verify that?

16 A Yes, sir, after Miranda, he told me that it belong to
17 him.

18 Q Right, but you can't verify that he told you that?

19 A Yes, sir, he told me that.

20 Q All right. So I'm suppose to take your word for it?

21 A I would hope so. I have no reason to lie.

22 Q Okay. You have a huge reason to lie. This is a huge
23 drug bust, isn't it?

24 A Can't say I build my career out of lies, but, no, I
25 have no reason to lie whatsoever.

1 Q Well, this is a huge drug bust for you, isn't it?

2 A This got a big herion dealer off the streets, yes,
3 sir. It's a successful, successful drug bust.

4 Q Right. Now, you call my client a herion dealer.
5 He's never been convicted of selling herion, has he?

6 A Has he been convicted of it?

7 Q Has he been convicted of selling herion?

8 A No, sir.

9 Q He's been convicted of minor driving offenses, hasn't
10 he?

11 A Yes, sir.

12 Q That's it. When you all searched the property that's
13 reasonably Adrienne's, you found hypodermic needles,
14 right?

15 A We found needles that are consistent with a user.

16 Q You found a spoon that obviously looked been use cook
17 herion?

18 A Yes, sir, all those would be consistent with that of
19 a herion user.

20 Q When you found a car or when you search her car, you
21 found a notice from the clerk of court's office for her
22 appearance dates for burglary second charges, correct?

23 A Not sure that that's relevant.

24 Q It's in your report. You must have thought it was
25 relevant at some point.

1 A Well, it was documented what was taken.

2 Q Are you aware that she had since pled guilty to those
3 charges and received a probationary sentence?

4 A No, sir.

5 Q You aware she also pled guilty to financial
6 transaction card fraud and received a probationary
7 sentence?

8 A No, sir, has nothing to do with our drug case.

9 Q Are you aware that a herion user right there in front
10 of you who's clearly near herion?

11 A Yes, a user, yes, sir.

12 Q Has now violated her probation and is in-patient
13 treatment for herion addiction?

14 A Am I aware of that, no, sir.

15 Q Okay. So in this room I just want get it straight
16 for everybody. We got a guy whose prior convictions are
17 minor traffic offenses. We got a girl whose got three
18 pending criminal charges?

19 A So no convictions pending?

20 Q She's since been convicted, but at the time, yes.

21 THE WITNESS: I do have question about that,
22 Your Honor. Any pending charges.

23 THE COURT: Might counsel approach the bench for
24 a moment.

25

1 (WHEREUPON, a bench conference was held in the
2 presence of the jury, but out of the hearing of the
3 jury.)

4 MR. JORDAN: Your Honor, I will withdraw my last
5 question.

6 THE COURT: Very good.

7 BY MR. JORDAN:

8 Q Investigator Chamberlain, to the best of your
9 knowledge, did Fashun Burgess ever try to conceal his
10 identity?

11 A Did he -- no, sir.

12 Q If you search down at the DMV, would you find his
13 information on file?

14 A Sure.

15 Q He's got a valid South Carolina driver's license,
16 correct?

17 A I'm assuming it's still valid. It was at the time I
18 believe, yes, sir.

19 Q The other person in the room Adrianne had, I think, I
20 believe there's a ticket there where she has no valid
21 driver's license. Do you recall that?

22 A Yeah, I mean, I think there was a ticket in her car,
23 yes, sir.

24 Q The car not registered in South Carolina?

25 A Right.

1 Q If you search for her information at the DMV or the
2 public record, you'll likely not to find it, right?

3 A I'm not sure.

4 Q Investigator Chamberlain, in your experience and
5 remind me again how long have you been with the narcotics
6 squad?

7 A I been doing narcotics related work for approximately
8 seven and a half years.

9 Q Your experience executing search warrants and things
10 like that how often do you enter a dwelling and find this
11 amount of drugs in plain view?

12 A That would depend the case we were working. Some
13 cases we go into it knowing there's going to be a large
14 amount of drugs or knowing that the drugs were after going
15 to be a high quantity. And then some we go into knowing
16 that we may not find but very little drugs but expect to
17 find our distributor.

18 Q But this was a, I guess, relatively easy bust, wasn't
19 it?

20 A Well, as I said, you know, the information we
21 received was that Mr. Burgess selling a lot of herion, a
22 lot of business in and out of the room, in and out of the
23 room, in and out of the room. We received information
24 that he would carry a gun on his side while he was doing
25 deals. And, you know, we received information he was in

1 room 119 receiving and selling loose herion. The
2 information just verifies that there are people in and out
3 of the room, in and out of the room. And the information
4 we received was that he was selling a bunch of herion to a
5 bunch of different people as far as smaller quantities,
6 but it was steady business, people steady in and out, in
7 and out. Therefore, I expected there to be -- I expected
8 there to be a decent amount of herion in the room and some
9 money.

10 Q Let me ask you a couple of followup. Now, you
11 testified earlier that the way that herion is generally
12 sold is it's cut up and placed into bindles, correct?

13 A I said that's one way it is sold, not generally.

14 Q You didn't find any bindles or smaller bags or
15 anything like that to cut up a large amount of herion and
16 distribute it, did you?

17 A I like to explain that to you. You see here on these
18 bags here ---

19 Q I didn't ask for an explanation. I ask you ---

20 THE WITNESS: Judge, may I explain?

21 THE COURT: Rephrase the question.

22 Q Yes or no ---

23 A Yes, I found baggies or bags that can be made into
24 baggies that are commonly used.

25 THE COURT: Now, that he answered yes or no and

1 he can explain.

2 MR. JORDAN: Yes, sir.

3 THE COURT: You can explain.

4 BY MR. JORDAN:

5 Q But you don't have any evidence here today to show
6 that that's what was going on there?

7 A As far as what?

8 Q You don't have any evidence here today to show ---

9 A Yes, sir, I do. I have, okay, here a black digital
10 scale with residue.

11 Q What you're testifying about is an inference; is that
12 correct?

13 A This is all evidence of a crime.

14 Q You don't have eyes on any of it? You don't know
15 when that was used, do you?

16 A When it was -- I know it was used.

17 Q Right, but you don't know when it was used?

18 A I don't understand.

19 Q Well, one you don't know whose scale that is, do you?

20 A Mr. Burgess stated everything in the room was his
21 except for the marijuana that Ms. Huffstodt claimed so all
22 can go off of what he told me.

23 Q It's amazing the things that you found from that
24 short conversation nobody else heard, isn't it?

25 A I don't understand. I have nothing to hide. There

1 was plenty more people in the room. I'm testifying to
2 what I was told.

3 Q But wouldn't procedure be to have someone else there
4 with you to verify it?

5 A There were numerous people in the room. I didn't
6 interview him just me and him in a room alone.

7 Q And nobody else is here to testify that they can
8 verify that you saw these things?

9 A No, sir.

10 Q In fact a man what 20 feet away would you say Brad
11 McDowell was if that far?

12 A Yeah, maybe.

13 Q He didn't hear a thing?

14 A Oh, yeah, he heard him yelling y'all got my shit take
15 me to my cage.

16 Q When you claimed that he made a clear admission as to
17 what in that room was his, no one else heard anything?

18 A That's a fact. We were sitting in a chair in the
19 room and there were numerous people around. I can't say
20 that they were sitting right beside me listening. All I
21 can say is he was Mirandized before and that's the
22 information he provided me with.

23 Q Now, the scale, the herion, were in the -- the scale,
24 the herion, the teal purse, the gun and Mr. Burgess' ID
25 card were all either out in the open or in common

1 compartments, correct?

2 A The herion was on the bed, the scale was on the, I
3 think, the sink if I recall right on the kitchen sink. It
4 was a gun and a purse in the dresser drawer or in a
5 nightstand drawer.

6 Q And you -- and I'm not asking you the reason why you
7 didn't do any of this, okay. You didn't fingerprint the
8 bags that the herion were in, did you?

9 A You asking or...

10 Q I'm asking you didn't fingerprint the bags?

11 A I didn't fingerprint them, no, sir.

12 Q You didn't have anybody else fingerprint them?

13 A No, sir.

14 Q You didn't fingerprint the scale?

15 A No, sir.

16 Q You didn't fingerprint the night table?

17 A No, I did not.

18 Q You merely made this case based on what you saw when
19 you entered the room and what you claimed you were told,
20 correct?

21 A No, sir. I made this case I like to explain to you.
22 I made this case based on reliable confidential informant
23 information that was...

24 Q You obtained a search warrant based on a reliable
25 confidential informant reliable information?

1 A Be part to make my case may explain I to you?

2 Q When you searched the room and you decided who to
3 charge with what, you made that decision based on?

4 A Based on prior information I've received, based on
5 the evidence that was at hand, based on the admission of
6 the defendant saying that the stuff was his, that's pretty
7 cut and dry when he admits it.

8 Q But that's -- that admission that was ---

9 A That's a fact, yes, sir. It's a fact.

10 Q So you say. Now, the official evidence log doesn't
11 mention ---

12 MR. JORDAN: It's one of these may I approach
13 real quick?

14 THE COURT: Yes..

15 BY MR. JORDAN:

16 Q I'm going to let you refer to that?

17 A Sure.

18 Q Okay. Now, the official log of things seized doesn't
19 list a purse or a bag with drug paraphernalia, does it?

20 A Doesn't list what? No, sir. No, sir, they don't.

21 Q The log doesn't mention hypodermic needles?

22 A Hypodermic needles in itself aren't illegal. No,
23 sir, it's not on the log.

24 Q Doesn't mention spoons used to cook herion?

25 A The spoons aren't illegal and, no, sir, they're not

1 on the log sheet.

2 Q But if they were used to cook herion, there could be
3 residue there, right?

4 A It's a possibility.

5 Q Now, both Adrienne and Mr. Burgess were arrested and
6 taken to the Florence County Detention Center?

7 A Yes, they were.

8 Q And they were booked and processed on herion
9 trafficking charges?

10 A Mr. Burgess was booked and processed on trafficking
11 herion charges.

12 Q What was Adrienne booked and processed on?

13 A She was booked and processed on possession of
14 marijuana charge which she claimed the bag of marijuana
15 that was located in the room.

16 THE COURT: Mr. Jordan, we're going to take a
17 recess and let the jury to refresh themselves.

18 Mr. Foreman, ladies and gentlemen of the jury,
19 I'm going to allow you to excuse yourselves return to the
20 jury room refresh yourselves. Once again, do not discuss
21 the case and I'm going to ask that you enforce that rule.
22 Everyone remain seated as the jury exits the courtroom.

23 (WHEREUPON, the jury retire to the jury room.)

24 THE COURT: Mr. Chamberlain, under these
25 circumstances, you can't discuss the case with any of the

1 lawyers. I'm going to ask that you remain on the witness
2 stand during this brief break. If you need an opportunity
3 to use the restroom, the bailiffs will help you in that
4 regard. We'll stand at ease for five minutes.

5 (WHEREUPON, a break was taken.)

6 THE COURT: Anything from the State?

7 MS. DANIELS: No, Your Honor.

8 THE COURT: Anything from defense?

9 MR. JORDAN: Not really, Your Honor, other than,
10 you know, just like the witness to be instructed once
11 again about the things that we're not to speak about.

12 THE COURT: Okay. And once again some of that
13 might depend upon the questions you ask, so you need to be
14 careful what you ask. Very good.

15 (WHEREUPON, the jury came into open court.)

16 THE COURT: Mr. Jordan, you recognize.

17 MR. JORDAN: Thank you, Your Honor.

18 BY MR. JORDAN:

19 Q Agent Chamberlain, I just have a couple final
20 questions.

21 A Yes, sir.

22 Q In going back, we're at the very end of this thing,
23 so we're going right back to the very end of it. Both
24 Mr. Burgess and Adrienne were arrested and taken to the
25 Florence County detention center, correct?

1 A That's correct.

2 Q They were both fingerprinted and photographed?

3 A That's -- I'm assuming so, that's our -- our jail
4 does that part.

5 Q And they were placed into detention, correct?

6 A Yes, they were both.

7 Q Now, Adrienne was charged with simple possession of
8 marijuana first?

9 A That's correct.

10 Q Why didn't you just write her a ticket?

11 A I don't understand what ---

12 Q It's a minor charge.

13 A Possession of marijuana is an arrestable offense
14 therefore she was arrested for possession of marijuana.

15 Q Is that -- I guess, what I'm asking is you had the
16 discretion? You could arrest her or you could have just
17 written her a ticket, correct?

18 A I could have done either one right.

19 Q But you arrested her and she's placed in detention,
20 right?

21 A She was arrested for simple possession of marijuana.

22 Q All right. And then she was released the following
23 morning; is that right?

24 A I'm not exactly sure when she was released. She
25 would have had to go before a bond judge, so I'm not

1 positive of when she was released.

2 Q So you had both of them in detention for some period
3 of time, correct?

4 A They were both arrested and transported to the
5 detention center, that's correct.

6 Q I guess, I can go back to this, Investigator
7 Chamberlain why, if you had them both detained, why didn't
8 you get a written statement from either of them?

9 A It's not required of me to get a written statement
10 and the defendant admitted to possession of the substance.

11 Q Why didn't you get a video statement?

12 A It's not required to have a video statement. I was
13 acting on information reliable, correct information that I
14 received and it was verified by Mr. Burgess.

15 Q Why didn't you test for fingerprints or DNA?

16 A I didn't have to test for fingerprints or DNA. All
17 the facts were there and the admission of possession by
18 the defendant.

19 Q The admission that no one but you heard?

20 A The admission that the defendant told me in a room
21 with numerous people, that's correct.

22 Q But only you heard it?

23 A I can't say I'm the only one that heard. I wrote it
24 down in my incident report and that was what he said
25 during the interview.

1 MR. JORDAN: Your Honor, I have no further
2 questions.

3 THE COURT: Redirect, Ms. Daniels?

4 MS. DANIELS: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. DANIELS:

7 Q Based on your training and experience in narcotics,
8 do you ever find users and dealers together?

9 A Oh, yes, ma'am, it's a very common ordeal.

10 Q And why would you find them together?

11 A Just an example in this case, the user has a car.
12 The dealer has no car. He's got a ride now. He's got ---

13 MR. JORDAN: Your Honor, I'm going to object to
14 that. It's speculation.

15 THE COURT: I'll sustain the objection.

16 BY MS. DANIELS:

17 Q Do dealers typically use heroin that they deal?

18 A The majority of them do not.

19 MR. JORDAN: Your Honor, I'm going to object to
20 that. I would say that's speculation as well.

21 THE COURT: I'll sustain the objection.

22 BY MS. DANIELS:

23 Q Based on your training and experience, the needles
24 that were found in the room are those typically used by
25 users or dealers?

1 A The herion users would use them.

2 MR. JORDAN: Your Honor, I would object.

3 THE COURT: Overrule.

4 BY MS. DANIELS:

5 Q Did you come across any information in your
6 investigation that the woman Adrienne Huffstodt was
7 dealing drugs?

8 A No, ma'am, as I state before, the information
9 received and confirmed in my opinion was that Mr. Burgess
10 was selling multiple herion to multiple multiple multiple
11 people from inside his motel room.

12 Q Was there anything in what appeared to be her
13 belongings that indicated that she was dealing?

14 A Nothing that indicated that she was dealing. As we
15 said before, some of the items located in her purse or in
16 her vehicle are definitely indicative of a drug user not a
17 dealer or a trafficker that would possess that amount of
18 herion.

19 Q Did you find a large amount of cash on Adrienne
20 Huffstodt?

21 A There was no money found on Ms. Huffstodt.

22 Q Was there any in her car?

23 A No, ma'am, there was no money found on her.

24 Q Did you find a gun on Adrienne Huffstodt?

25 A No, no, ma'am.

1 Q And did you find a gun in her car?

2 A No, ma'am, nothing of that nature.

3 Q Where on Mr. Burgess did you find the cash and if you
4 don't remember that's fine?

5 A I can't say specifically. I can't say which specific
6 pocket it was in, but he did have money on his person.

7 Q Do you not remember?

8 A No, I'm not sure which pocket it was in, but it was
9 on his person the cash was.

10 Q And as far as the log sheet for the evidence, what
11 individual was that log sheet for specifically?

12 A As far as...

13 Q Was it for Mr. Burgess, the evidence log sheet or was
14 it for Adrienne?

15 A Yes, it was for the subject Fashun Burgess as it was
16 on the top.

17 MS. DANIELS: Thank you no further questions,
18 Your Honor.

19 THE COURT: All right. You may step down, Mr.
20 Chamberlain. Ms. Daniels, you may call your witness next.

21 MS. DANIELS: Your Honor, at this time the State
22 would rest.

23 THE COURT: Mr. Foreman, ladies and gentlemen of
24 the jury, at this time we're required to take up matters
25 of law outside of your presence. I'm going to ask that

1 you return to the jury room. And once again do not
2 discuss the case. Mr. Foreman, I'm going to ask that you
3 enforce that rule. Everyone remain seated as the jury
4 exits the room.

5 (WHEREUPON, the jury retire to the jury room.)

6 THE COURT: Be happy to entertain motions at
7 this time.

8 MR. JORDAN: Your Honor, at this point in time,
9 the defense would move both for a directed verdict and a
10 mistrial.

11 THE COURT: Be glad to hear from you in that
12 regard.

13 MR. JORDAN: Yes, sir. Your Honor, as to the
14 directed verdict, it's our position that the State did not
15 present evidence sufficient to warrant the juries
16 consideration of these facts beyond a reasonable doubt.
17 And we would ask that you direct a verdict in favor of
18 Mr. Burgess. As to the mistrial, Your Honor ---

19 THE COURT: Let's deal with it one at a time.
20 Let me hear from Ms. Daniels about the directed verdict
21 motion.

22 MS. DANIELS: Judge, certainly there was direct
23 evidence that was presented in this case. The drugs were
24 found in the room that the defendant Mr. Burgess was found
25 in when a lawful search warrant was executed upon that

1 hotel room. They were within -- I mean, in the same room.
2 I don't even know if it makes since to say close proximity
3 because they were there present together, so based on that
4 under the statute of the drug trafficking statute, I would
5 certainly be constructive possession of the facts would be
6 present, the evidence would be present to demonstrate
7 that.

8 THE COURT: Given the evidence that's been
9 presented and the fact that there's clearly evidence of
10 constructive possession and the alleged statement of the
11 defendant, that certainly rises beyond the standard for
12 directed verdict and the matter is a question of fact for
13 the jury to resolve.

14 MR. JORDAN: Thank you, Your Honor. In regard
15 to mistrial motion, Your Honor, Investigator Chamberlain
16 was clearly instructed prior to the beginning of this
17 trial as to what he could and could not talk about or
18 allude to and several times during cross-examination was
19 very clear not only to me but to the jurors that
20 Investigator Chamberlain was alluding to information or
21 some other -- something that he just wanted to testify
22 about that would negatively impact our defense in this
23 matter, something that he been told not to testify about
24 and were precluded from alluding to, several times we had
25 to approach the bench. It was one point in time where

1 Investigator Chamberlain even asked on the stand he said I
2 need to ask a question about that. And I believe it
3 certainly calls this jury to wonder what he would have a
4 question about if there was his investigation why would he
5 have a question about what he could and couldn't say about
6 it and I believe that's tainted the jury. And I believe
7 that a mistrial should be found at this time.

8 THE COURT: Ms. Daniels, what do you have to say
9 about that?

10 MS. DANIELS: Judge, I don't think that he went
11 into any of the issues that Your Honor advised him not to
12 discuss. He didn't mention the marked funds. He didn't
13 mention the arrest warrant that he had outstanding for
14 him. He did say, I think, he arrested him for a warrant,
15 but I certainly don't think it was clear to the jury
16 having no knowledge of any prior arrest warrants to what
17 specifically he was referring to. I mean, beyond that
18 even, Your Honor, he was responding to the questions that
19 Mr. Jordan was asking him on cross-examination. I was
20 listening very closely too because I certainly didn't want
21 him to get into the testimony of anything he didn't need
22 to testify about or was advised not to testify about. And
23 I was ready to object if it broached that subject, so it's
24 not to taint the jury. Judge, I think he was being
25 cautious in his answers. I think his caution was

1 demonstrated in the fact was when he paused and said I
2 actually have a question about that because that indicated
3 he didn't want to go into any matters that he wasn't
4 suppose to go into, even the questions kind of were
5 tinkering on the edge of requiring him to go into those
6 matters.

7 THE COURT: All right. Well, your motion for a
8 mistrial is noted for the record. However, it's denied.
9 At this time Mr. Burgess I'm going to ask if you could to
10 stand and raise your right hand as the clerk administers
11 the oath.

12 THE CLERK: Do you swear to tell the truth, the
13 whole truth, and nothing but the truth so help you God?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Mr. Fashun Burgess, how you doing
16 today?

17 THE DEFENDANT: I'm doing all right. How about
18 yourself?

19 THE COURT: You can put your hand down. At this
20 time I'm going to explain certain of your rights to you.
21 If you do not understand anything I say, please let me
22 know and I will explain it further. Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. We have reached the
25 stage in the trial where you may present your defense.

1 You have the right to claim the protections given to you
2 by the Fifth Amendment to the Constitution to the United
3 States. This amendment provides in relevant part no
4 person shall be compelled in any criminal case to be a
5 witness against himself. This means that you cannot be
6 required to testify in this case. You have the right to
7 testify on your own behalf. However, no one can make you
8 testify. This is a personal right and no one can waive
9 this right except you. If you decide to testify, you will
10 be subject to the same rules that govern other witnesses
11 and you may be examined and cross-examined on any relevant
12 issue in this case.

13 In addition, if you have any convictions
14 involving dishonesty or false statements or for crimes
15 punishable by imprisonment for more than one year, this
16 court determines that the probative value of admitting
17 this evidence outweighs its prejudicial effect to you.
18 The Solicitor will be able to introduce your record to
19 attack your credibility. If you decide to testify, this
20 decision on your part must be freely, voluntarily and
21 intelligently made with knowledge of the protections given
22 to you by the Fifth Amendment and the consequences of your
23 decision to testify.

24 If you decide not to testify, I will instruct
25 the jurors they that cannot give the fact that you did not

1 testify any consideration whatsoever and that there is to
2 be absolutely no prejudice to you because of the fact that
3 you did not testify. I'll specifically instruct the
4 foreman of the jury that they're not even to discuss that
5 in the jury room and he's to enforce that rule. It's left
6 up to you entirely as to whether or not you testify. You
7 may talk with your attorney, your family members, friends
8 or anyone else, but the final decision will be left
9 entirely up to you. Do you understand what I've explained
10 to you, Mr. Burgess?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Do you have any
13 questions about what I've explain to you, Mr. Burgess?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Have you discussed with
16 your lawyer whether or not you should or should not
17 testify?

18 THE DEFENDANT: Testify, I mean, go up and tell
19 my behalf what happened?

20 THE COURT: Yes.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You've talk with him about that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Do you wish to talk with
25 him in greater detail?

1 THE DEFENDANT: Yes, sir, I mean, it really
2 would ---

3 THE COURT: Sure, you can have a seat and talk
4 with him right now if you would like.

5 THE DEFENDANT: Thank you.

6 THE COURT: All right. Now, is the time for you
7 to do it. I'm going to ask you about whether or not you
8 going to testify. You need to talk with your lawyer.

9 (WHEREUPON, a pause in the proceedings.)

10 THE DEFENDANT: I'm going to testify, Your
11 Honor.

12 THE COURT: All right. And you've discussed
13 that with your lawyer?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You've had adequate time to do that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And it's your decision to testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Very good. Anything
20 from the State? Anything further?

21 MS. DANIELS: Nothing further, Your Honor.

22 THE COURT: With regard to his criminal record,
23 do you intend -- do you have any record that would be
24 admissible and impeachment?

25 MS. DANIELS: No, Your Honor.

1 THE COURT: Very good. All right. We ready for
2 the jury.

3 (WHEREUPON, the jury came into open court.)

4 THE COURT: Ladies and gentlemen of the jury,
5 you have heard all of the State's evidence in their case
6 in chief. At this time the defense has recognized,
7 Mr. Jordan.

8 MR. JORDAN: Thank you, Your Honor. May it
9 please the Court. Your Honor, at this time we call the
10 Defendant Fashun Burgess.

11 THE COURT: Mr. Burgess, please come forward if
12 you would please, sir. Come around if you could please,
13 sir. I'm going to ask if you could to place your left
14 hand on the Bible and raise your right hand as the clerk
15 administers the oath.

16 THE CLERK: Do you swear the testimony you give
17 in this case to be the truth, the whole truth, and nothing
18 but the truth so help you God?

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Please be seated and state your full
21 name for the record.

22 THE COURT: Mr. Burgess, have a seat in the
23 witness chair there, pull up real close to that
24 microphone. I'm going to ask if you could to speak
25 loudly, clearly and slowly in order that we can hear

1 everything that you have to say. Let's start with your
2 full name and spell it please.

3 THE DEFENDANT: My name is Fashun Burgess
4 F-A-S-H-U-N last name is Burgess B-U-R-G-E-S-S.

5 THE COURT: Very good. Mr. Jordan.

6 MR. JORDAN: Thank you, Your Honor.

7 WHEREUPON,

8 Fashun Burgess,
9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. JORDAN:

12 Q Mr. Burgess, where are you from?

13 A From Olanta, South Carolina Florence.

14 Q And where did you last reside? Where did you last
15 live?

16 A Tara Village.

17 Q Was that on Pitty Pat Lane?

18 A Yes, sir.

19 Q You live with your sister there, didn't you?

20 A Yes, sir.

21 Q And she has since passed away?

22 A Yes, sir.

23 Q How did she die?

24 A She was born with an open spin, so she always having
25 surgeries in and out of the hospital.

1 Q All right. And you spent a good portion of your time
2 caring for her?

3 A Yes, sir.

4 Q Okay. Other than caring for your sister before she
5 passed away, what did you do for a living?

6 A Landscaping.

7 Q All right. What else did you do?

8 A Drive U-Haul trucks, furniture moving.

9 Q Now, when did you meet Adrienne Huffstodt?

10 A I meet Adrienne Huffstodt I can't quite remember when
11 I met Adrienne. I met her at a friend's house.

12 Q But you'd known her about a year prior to August of
13 2016?

14 A Yes, sir, something like that.

15 Q Do you find her attractive?

16 A Yeah, pretty much.

17 Q All right. Have you had any sort of physical or
18 romantic relationship with her?

19 A Yes, sir.

20 Q Okay. Now, you and Adrienne drove or Adrienne drove
21 you to the Florence Inn and Suites?

22 A Yes, sir.

23 Q All right. The weekend in question when did y'all
24 check in?

25 A I can't quite remember when we checked in.

1 Q You went in and got the room, correct?

2 A Yes, sir.

3 Q All right. And y'all were there a few days?

4 A Yes, sir.

5 Q All right. Now, you said you lived in Tara Village
6 here in Florence, South Carolina, right?

7 A Yes, sir.

8 Q All right. Is that -- can that be a rough
9 neighborhood?

10 A Somewhat.

11 Q Right. And prior to you and Adrienne going into the
12 Florence Inn and Suites, have you been in an altercation
13 with anyone?

14 A Yes, sir, about some equipment, yeah.

15 Q Do what now?

16 A Yes, sir.

17 Q All right. And so you didn't want to stay at home?

18 A No, sir.

19 Q In fact, the night of the altercation you actually
20 stayed at Adrienne's home; is that correct?

21 A Yes, sir.

22 Q All right. And then the two of you went to the
23 Florence Inn and Suites together?

24 A Yes, sir.

25 Q Okay. Your only means of transportation out there

1 was Adrianne, right?

2 A I mean, I had other transportation, but...

3 Q But at the Florence Inn and Suites?

4 A Yeah, yes, sir.

5 Q What were you doing out there?

6 A Basically resting, trying to get me some rest for
7 work.

8 Q You and Adrianne were just hanging out?

9 A Yes, sir.

10 Q All right. I mean, did y'all -- I mean, did you
11 leave the room often?

12 A No, sir.

13 Q All right. Did Adrianne leave the room?

14 A On and off she kept...

15 Q Did you keep track of where she was going?

16 A No, sir, I really wasn't paying her attention.

17 Q But, I mean, she did bring back food for you to eat,
18 right?

19 A Yes, sir.

20 Q Waffle House, McDonald's those sorts of things?

21 A Yes, sir.

22 Q All right. Admittedly, you were using marijuana?

23 A Yes, sir.

24 Q Had you been using marijuana on August 24th of 2016?

25 A Yes, sir.

1 Q Okay. Had you been using it shortly before law
2 enforcement arrived?

3 A Yes, sir.

4 Q All right. I believe ever since the first time you
5 and I talked you told me -- were you high when law
6 enforcement came in?

7 A Yes, sir.

8 Q All right. So you were intoxicated?

9 A Yes, sir.

10 Q And you were agitated?

11 A Yes, sir.

12 Q Do you have any idea that law enforcement would be
13 raiding your room?

14 A No, sir.

15 Q Do you remember talking with Jake Chamberlain?

16 A Yes, sir.

17 Q All right. Do you remember him reading you your
18 Miranda rights?

19 A Not right off when he came in.

20 Q But do you remember him at some point in time reading
21 you your Miranda rights?

22 A Yes, sir.

23 Q All right. And do you remember what you told him?

24 A Yes, sir.

25 Q And what did you tell him?

1 A I told him the marijuana was mines which I thought
2 was marijuana, but evidently not.

3 Q All right. Now, you've heard testimony that when
4 they came in you were agitated and you shouted you got my
5 stuff, take me to my cage, let me lie done down; is that
6 correct?

7 A Yes, sir.

8 Q What stuff were you referring to?

9 A Marijuana.

10 Q At any point in time did you tell Investigator
11 Chamberlain or any other officer anything different?

12 A No, sir.

13 Q When law enforcement made entry into your room,
14 Mr. Burgess, what happened?

15 A I was sitting down at the table next to the window
16 smoking. So I got up to move, the glass came out. I
17 heard a bunch of people yelling get down, get down, get
18 down, get down, get down. Then Ms. Huffstodt saying get
19 down, get down, get down, so I get down. And Jake
20 Chamberlain he came in, he came in laughing. The other
21 dude then had me handcuff by then. It was this one dark
22 skin fellow I don't know his name. He had me handcuff.
23 Ms. Huffstodt was still moving around. As he was talking
24 to me, Ms. Huffstodt placing items behind his back. And
25 then he asked me -- he never came in read the Miranda.

1 Then ask me was that my stuff, you know, which I didn't
2 know what it was.

3 Q All right. Fashun, did you intend to possess any
4 herion?

5 A No, sir.

6 Q Do you use herion?

7 A No, sir.

8 Q Did you know about there being any herion?

9 A No, sir.

10 Q Okay. Were you surprised that there was herion in
11 your room?

12 A Yes, sir.

13 MR. JORDAN: Your Honor, I don't have any
14 further questions.

15 THE COURT: Ms. Daniels, you recognized for
16 cross-examination.

17 MS. DANIELS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. DANIELS:

20 Q Good afternoon.

21 A Good afternoon.

22 Q You stated you known Adrienne you think about a year?

23 A A year.

24 Q About a year. You said you met her at friend's
25 house?

- 1 A Yes, ma'am.
- 2 Q What friend's house did you meet her at?
- 3 A I can't recall. I can't recall.
- 4 Q You don't remember?
- 5 A No, ma'am, it's so long ago.
- 6 Q Where did Adrianne live?
- 7 A On Harvey Road.
- 8 Q You said stayed with her at her house sometimes?
- 9 A Sometimes.
- 10 Q Okay. You said -- when did you check into the hotel?
- 11 A I guess it was the 22nd, 21st, I guess, something
- 12 like that. I can't quite remember.
- 13 Q You're not sure when you checked into the hotel?
- 14 A No, ma'am.
- 15 Q But you checked into the hotel room, right?
- 16 A Yes, ma'am. She said she didn't have her ID. She
- 17 usually keep an ID on her, but she said she didn't have an
- 18 ID.
- 19 Q She told you she didn't have an ID?
- 20 A Yeah, yes, ma'am.
- 21 Q So you paid for the room?
- 22 A Yes, ma'am.
- 23 Q You paid for the room in cash?
- 24 A Yes, ma'am.
- 25 Q How long did you plan on staying there?

1 A Day or two.

2 Q Day or two?

3 A Yes, ma'am.

4 Q You weren't sure exactly how long you were going to
5 stay there?

6 A No, ma'am, time for me to go to work.

7 Q When were you going to go to work?

8 A Whenever, you know, I get back out there and go to
9 work.

10 Q But you didn't know exactly when you were going to go
11 back to work?

12 A No, ma'am, I was just resting. You know, I had an
13 altercation.

14 Q You didn't know exactly how long you were going to
15 stay at the hotel?

16 A No. No, ma'am.

17 Q Did Adrienne know long she was going to stay?

18 A I don't know.

19 Q What were y'all doing while y'all were there?

20 A I was just resting.

21 Q Did you ever leave the room?

22 A No, ma'am.

23 Q You never left the room whole time you were there?

24 A No, ma'am.

25 Q Okay. You were resting the whole time you were

1 there?

2 A Basically.

3 Q Were you sick?

4 A No, got into a little altercation.

5 Q You ---

6 A Had a head concussion that's about it.

7 Q You had a head concussion after the altercation you
8 had?

9 A Yes, ma'am.

10 Q So you weren't feeling well?

11 A Yeah, basically.

12 Q Now, you were present when law enforcement executed
13 the search warrant in your room?

14 A Yes, sir.

15 Q And you said when you were detained you were down on
16 the floor; is that correct?

17 A Yes, ma'am.

18 Q Now, how exactly were you down on the floor when you
19 were detained?

20 A I was on my stomach.

21 Q You were on your stomach?

22 A Yes, ma'am.

23 Q How long were you down on your stomach for?

24 A Five seconds, six seconds, ten seconds, I guess.

25 Q What happened after you weren't on your stomach?

1 A Pick me up and they pick me up. He went to talking,
2 you know.

3 Q So as soon as got up you were talking to Investigator
4 Chamberlain?

5 A No, Chamberlain was talking.

6 Q Chamberlain was talking?

7 A He ask me did I have anything in this room. I told
8 him no, no, sir.

9 Q Now, you said earlier that while you were down that
10 you said you were able to see Adrienne hiding items in the
11 room?

12 A When I was up and he picked me up, they never subdued
13 her -- whenever they stormed in the room, she was loose,
14 she ain't had no handcuffs on her or nothing. And she
15 reach -- I don't know where she was grabbing from, but she
16 reach somewhere off her body and she threw something
17 behind her which I thought was the marijuana, you know,
18 because she went out and got some marijuana.

19 Q But you know that there were multiple investigators
20 and SWAT team members in the room?

21 A It was only two people in the room. The rest of the
22 people were on the outside.

23 Q Sir, say that again?

24 A There was only two people in the room. The rest of
25 the people was on the outside.

1 Q Who was in the room?

2 A Mr. Jake Chamberlain and I don't know the other guy.

3 Q But you heard testimony that there were other people
4 in the room; is that right?

5 A Yes, ma'am.

6 Q Okay. And you heard the testimony that herion was
7 found in plain view on the bed?

8 A Yes, ma'am.

9 Q And you also you heard testimony that there was cash
10 found on you; is that right?

11 A Yes, ma'am.

12 Q And the gun that also belong to you that was found in
13 the room?

14 A Yes, ma'am.

15 Q And that was your license that was next to the gun in
16 the room?

17 A Yes, ma'am.

18 Q And Ms. Huffstodt she didn't have a gun, did she?

19 A No, ma'am.

20 Q And she didn't have any cash on her, did she?

21 A No, ma'am.

22 Q And the drugs ---

23 A I didn't know she didn't have any cash, that's what
24 they say. You know, that's what he said. I don't know.

25 I can't speak upon that whether she had any cash on her or

1 not.

2 Q Well, you said that you had to purchase the room,
3 right, because she ---

4 A Yeah, I purchase the room, but I don't know if she
5 had any cash on her or not.

6 Q But she wasn't able to purchase the room isn't that
7 what you just told me?

8 A No, I don't know what she had in her pockets.

9 Q You don't know, okay. And you spoke with
10 Investigator Chamberlain; is that right?

11 A Yes, ma'am.

12 Q And you heard the testimony that you told him that
13 everything in the room was yours?

14 A Yes, ma'am.

15 Q And you heard the testimony that all the ammo in the
16 room that was also yours?

17 A Yes, ma'am.

18 Q And you were wearing a holster in fact when they
19 detained you; is that correct?

20 A Yes, ma'am.

21 MS. DANIELS: No further questions at this time,
22 Your Honor.

23 THE COURT: Any redirect?

24 MR. JORDAN: No, sir, Your Honor.

25 THE COURT: All right. You may call your next

1 witness.

2 MR. JORDAN: That's the defense case, Your
3 Honor.

4 THE DEFENDANT: Can I present something?

5 THE COURT: Mr. Foreman, ladies and gentlemen of
6 the jury, at this time we required to take up matters of
7 law outside of your presence. I ask that you return to
8 the jury room, but do not discuss the case.

9 (WHEREUPON, the jury retire to the jury room.)

10 THE COURT: Mr. Burgess, you had mention right
11 as we were dismissing the jury you said can I say
12 something. The answer to that question is no and the
13 reason for that is that you can't spontaneously talk to
14 the jury. It has to be in response to questions.

15 THE DEFENDANT: Okay. Well, can I present some
16 evidence?

17 THE COURT: Well, at this time your lawyer has
18 rested, so -- might counsel approach the bench.

19 (WHEREUPON, a bench conference was held.)

20 THE COURT: Mr. Jordan, be glad to hear from
21 you.

22 MR. JORDAN: Your Honor, at this point I believe
23 that all the evidence has been concluded. Mr. Burgess had
24 some question about some pictures. And I was explaining
25 to him that the pictures that he was talking about

1 actually have been presented actually through the State's
2 case.

3 THE COURT: Okay, very good. One of the things
4 that you know in -- for the reflection, of course, when
5 you're questioning your client you're required to open in
6 full and ask all of the relevant information. The State
7 has wide range to cross-examine on anything, wide open
8 cross-examinations, but you were given the opportunity to
9 redirect. And it's objectionable for you to bring up
10 anything that she did not bring up in cross-examination.
11 So naturally for him to want to reintroduce evidence in
12 redirect is inadmissible. And for that reason, I deny any
13 request made sua sponte from the defendant to introduce
14 any evidence at this juncture in the trial, so you may be
15 seated. Thank you very much.

16 (WHEREUPON, the witness leaves the witness
17 stand.)

18 THE COURT: All right. At this time I think it
19 would be most appropriate for us to have a charge
20 conference and take an opportunity to look at the verdict
21 form. I'm going to charge the fact that the indictment is
22 not evidence. I'm going to charge the law with regard to
23 multiple charges and the fact that each need to be
24 evaluated separately and distinctly. I charge the general
25 law with regard to the presumption of innocence. I'm

1 going to charge reasonable doubt. I'm going to charge the
2 short version of it. A reasonable doubt is the kind of
3 doubt that would cause a reasonable person to hesitate to
4 act and the lengthy one we're all familiar with. I'm
5 going to charge the divergent -- the law with regard to
6 the divergent duties of the jury and the trial judge. I'm
7 going to charge direct and circumstantial evidence, charge
8 credibility of witnesses, charge expert witnesses and how
9 the jury is to evaluate that. I'm going to charge mere
10 presence. I'm going to charge the hand of one is the hand
11 of all, prior inconsistent statements, charge the general
12 law with regard to that. I'm going to charge the law with
13 regard to the statement of the defendant and all of the
14 law concerning Miranda and the voluntariness and the fact
15 that that is a question of fact for the jury to resolve.
16 I'm going to charge the law -- the substitutive law with
17 regard to trafficking. And this is specifically the law
18 that I'm going to charge and ask that you all pay very
19 close attention. The defendant is charged with
20 trafficking in heroin. The State must prove beyond a
21 reasonable doubt that the defendant knowingly sold,
22 manufactured, cultivated, delivered, purchased, brought
23 into this state, provided financial assistance or
24 otherwise aided, abetted, attempted or conspired to sell,
25 manufacture, cultivate, deliver, purchase or bring into

1 the state was knowingly in actual or constructive
2 possession, knowingly attempted to become an actual or
3 constructive possession of herion. The State must also
4 prove beyond a reasonable doubt the amount of herion or
5 any mixture containing herion. And in this instance, the
6 State must prove 28 grams or more.

7 I'm going to charge the law with regard to
8 possession of a weapon during the commission of a violent
9 crime. I'm going to charge that trafficking in herion is
10 indeed a violent crime and any -- certainly you all are
11 going to have an opportunity to object after my full
12 rendition of the charge. At this juncture is there
13 anything that you would like to request or add, Ms.
14 Daniels?

15 MS. DANIELS: No, Your Honor.

16 THE COURT: Any objection to what I've outlined
17 so far?

18 MS. DANIELS: No, Your Honor.

19 THE COURT: Mr. Jordan, any additional request
20 to charge?

21 MR. JORDAN: No, Your Honor.

22 THE COURT: Any objection to what I've outlined
23 so far?

24 MR. JORDAN: No, Your Honor.

25 THE COURT: All right. I'm going to ask each of

1 you to come forward and take a look at the verdict form.
2 Mr. Jordan, have you had an opportunity to review the
3 verdict form?

4 MR. JORDAN: I have, Your Honor.

5 THE COURT: Is it acceptable?

6 MR. JORDAN: It is.

7 THE COURT: Ms. Daniels, have you had an
8 opportunity to review the verdict form?

9 MS. DANIELS: I have, Your Honor.

10 THE COURT: Is it acceptable?

11 MS. DANIELS: It is.

12 THE COURT: Very good. All right. Anything
13 from the State before we recess for the evening?

14 MS. DANIELS: Nothing from the State.

15 THE COURT: Anything from defense?

16 MR. JORDAN: Nothing from the defense, Your
17 Honor.

18 THE COURT: We will argue and charge in the
19 morning. And the State as I understand the most recent
20 development in state law is that the State is required to
21 open in full and then the defense is going to have an
22 opportunity to go second and present any arguments that
23 they have. And then the State since they have the burden
24 of proof are entitled to reply and only address matters
25 that were brought out by the defendant, but no new

1 arguments is that your understanding of the law, Ms.
2 Daniels?

3 MS. DANIELS: Yes, Your Honor.

4 THE COURT: And is that your understanding, Mr.
5 Jordan?

6 MR. JORDAN: Yes, Your Honor.

7 THE COURT: All right. Well, we will proceed
8 starting at 9:30, 9:30 sharp in the morning and everyone
9 remain seated as we bring the jury back out.

10 (WHEREUPON, the jury comes into open court.)

11 THE COURT: Mr. Foreman, ladies and gentlemen of
12 the jury, you have heard all of the evidence that's going
13 to be presented in this case. We going to recess for the
14 evening. We're going to ask that you be back at 9:30. We
15 will have closing arguments and the charge on the law and
16 then I'll give you instructions on how and when to begin
17 deliberations, that time has not come yet. Do not discuss
18 the case amongst yourselves or with anyone else. Do not
19 do any independent investigation. And I'll ask that you
20 be back at 9:30, 9:30 sharp in the morning. Thank you for
21 your time and your patience. Everyone remain seated as
22 the jury exits the courtroom.

23 (WHEREUPON, the jury was excused for the day.)

24 THE COURT: Anything additional from the State,
25 Ms. Daniels?

1 MS. DANIELS: No, Your Honor.

2 THE COURT: Anything from defense?

3 MR. JORDAN: Your Honor, just briefly; I've
4 renewed my motion for directed verdict and for mistrial,
5 Your Honor.

6 THE COURT: All right. And your motions are
7 noted but denied. And we will reconvene at 9:30, 9:30
8 sharp in the morning.

9 END OF REQUESTED TRANSCRIPT

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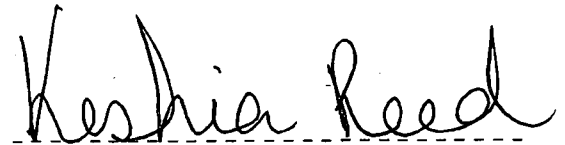
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 190, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Florence County, South Carolina, on the 9th and 10th days of October, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 3rd day of April 2018.

A handwritten signature in cursive script that reads "Keshia Reed". The signature is written in dark ink and is positioned above a dashed horizontal line.

Keshia Reed, Court Reporter

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2017-GS-21-00157

State of South Carolina	)
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Plaintiff,	)
------------	---

-vs-	)
------	---

Transcript of Record
(Final Day of Trial Only)

Fashun Burgess,	)
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Defendant.	)
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October 11, 2017

Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge; and a jury

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

Angel Daniels, Esquire
Attorney for the Plaintiff

Daniel Jordan, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 OCTOBER 11, 2017

2 (WHEREUPON, the proceedings began for the day at 9:43
3 a.m. The defendant was present with his counsel of
4 record.)

5 THE COURT: Please be seated. Is there anything from
6 the State before we proceed forward with closing arguments?

7 MS. DANIELS: Nothing from the State, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. JORDAN: Nothing from the defense, Your Honor.

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

11 (WHEREUPON, the jury entered the courtroom at 9:44 a.m.)

12 THE COURT: Mr. Foreman and ladies and gentlemen of the
13 jury, good morning. Thank you all for being here and being
14 here on time.

15 We have completed all of the presentation of evidence in
16 this case and, as I had mentioned earlier in preview, that
17 this is the time where we engage in closing arguments, and
18 closing arguments are very similar in form to the opening
19 statements. They're going to be given to you in summary
20 fashion and -- but the closing arguments are very important
21 in that all of the evidence has already been presented into
22 the record, you've heard all of the evidence, and these very
23 fine lawyers are going to be able to point to the evidence
24 that supports their relative theory.

25 You and I have only been dealing with this case for a

1 day or so, and these lawyers have been dealing with it for an
2 extended period of time, and their view of the evidence and
3 their arguments will aid you immensely in your deliberation
4 process.

5 Once again, you've taken a solemn oath to listen to the
6 evidence, find out what the truth is, and apply it to the
7 law. So pay very close attention. This is an important
8 case.

9 The way we will proceed in closing argument under these
10 circumstances is that Ms. Daniels, the solicitor who has the
11 burden of proof, will go first. Then Mr. Jordan will have an
12 opportunity to give his closing argument and, since the State
13 has the burden of proof, they will be allowed to reply to Mr.
14 Jordan's closing argument.

15 Ms. Daniels, you're recognized.

16 MS. DANIELS: May it please the Court.

17 THE COURT: Yes, ma'am.

18 MS. DANIELS: Mr. Jordan.

19 CLOSING ARGUMENT ON BEHALF OF THE STATE

20 MS. DANIELS: Ladies and gentlemen of the jury, drugs, a
21 gun, money. I told you at the beginning of this case this is
22 a classic drug trafficking case, and we have the three key
23 components of a drug trafficking case here. His drugs, his
24 gun, his money.

25 The main issue you have to decide here today is were the

1 drugs that were found in Room 119 at the Florence Inn &
2 Suites -- did those drugs belong to the defendant, Fashun
3 Burgess? And the answer is absolutely.

4 And now I just want to go through with you the reasons
5 why the answer is absolutely. So let's get right to the
6 evidence and I want to explain to you what it means and what
7 we learned in this case.

8 So what really happened? So we got the search warrant
9 that Inv. Chamberlain talked to you about that he executed on
10 Room 119 at the Florence Inn & Suites, and he explained to
11 you the reason he got that search warrant was because he had
12 received a tip from a confidential informant who told him
13 that there was drug activity involving Fashun Burgess that
14 was going on in Room 119.

15 So he got a search warrant to search that room, and he
16 was leading the investigation. So he was advising the SWAT
17 team members when to enter that room. He was advising the
18 other investigators where they should be, where they should
19 be stationed. And when the SWAT team entered that room, what
20 did they find? They found Fashun Burgess in that room. They
21 found the heroin, which was on the bed in plain view, and
22 there was also another woman in that room as well, Adrienne
23 Huffstodt. That's what they found.

24 Now, as soon as the SWAT team got in that room, they
25 detained both the defendant, Mr. Burgess, and Adrienne

1 Huffstodt immediately. And you heard Inv. Chamberlain tell
2 you that he came in right after the SWAT team and, at that
3 point, he was attempting to Mirandize the defendant.

4 And what happened as he was attempting to Mirandize the
5 defendant? And by Mirandize, I mean he was attempting to
6 read the defendant his rights and tell him he had the right
7 to remain silent. He had the right to speak with a lawyer
8 without speaking with the investigator.

9 But before Inv. Chamberlain could get through going
10 through those rights, the defendant blurted out loudly. Of
11 his own volition, he said y'all got me and my shit. You can
12 take me to my fucking cave so I can lay down. Y'all got me.
13 That's what he said to the investigator.

14 You also heard testimony from Inv. McDowell, who said
15 that he heard the defendant say that, and he testified that
16 he heard him say it that time and he testified that the
17 defendant said it continuously, several times during the
18 course of the interview and the process of being Mirandized.

19 What else do we know about that interview in that room?
20 You heard from Inv. Chamberlain, who told you that he gave
21 the defendant a few moments to calm down so that he could
22 finish going through his Miranda rights, and Inv. Chamberlain
23 was able to get through them. It didn't take too long, and
24 the defendant indicated that he wished to speak with the
25 investigator.

1 And what he told the investigator was the heroin is
2 mine. There's a gun in here. That gun is mine, and
3 everything else in this room that is not part of a purse or
4 part of a handbag, that's mine. That's what the defendant
5 told the investigator. And that's what we know. He chose to
6 tell him that. So we've got the defendant's own statement
7 that the drugs were his.

8 And what else did we find when law enforcement searched
9 the room? They found the gun. The gun was in the nightstand
10 in the hotel room. What was next to the gun? The
11 defendant's license was right next to the gun. The defendant
12 told the investigator that you're going to find a gun in
13 here, and they found the gun that belonged to him.

14 What else do we know? When the defendant was arrested,
15 what was he wearing? He was wearing a holster that was for
16 the gun, that fit that gun perfectly.

17 What else was in that room? Ammunition that went with
18 the gun. And why is that significant? That's significant
19 because you have to ask yourself why would a drug dealer have
20 a gun and ammunition. What's the purpose? The purpose is to
21 protect the product. It's a risky business selling drugs;
22 so, of course, a drug dealer needs a gun to protect himself,
23 to protect the product. It's not exactly a straight and
24 narrow business. It's risky.

25 So that's why the gun and the ammunition are

1 significant. That goes to show you that Fashun Burgess was
2 selling drugs. He was protecting his product.

3 Now, the drugs that they found on that bed -- you heard
4 the investigator testify that that was valued at
5 approximately \$6,500 worth of heroin. That's a lot of drugs.
6 That's a lot of drugs that you would need to protect.

7 What else did they find in the room? They found digital
8 scales, which digital scales are what drug dealers use when
9 they're measuring out quantities of the heroin, the powder,
10 to sell to users. So that's why that's significant.

11 And what was found on Mr. Burgess' person? Over \$700 in
12 cash. Now, why would he have cash? Because he was selling
13 drugs. So he needed -- he was getting cash as he sold the
14 product.

15 Let's talk now too about Adrienne Huffstodt, who was in
16 that room. Inv. Chamberlain spoke with her as well, and he
17 described what her demeanor was like to you. He said that
18 she had a submissive demeanor, that she seemed like she was a
19 user based on his experience and training in narcotics
20 investigations.

21 Now, he had a chance to speak with Adrienne and she told
22 him that the marijuana was hers, and Inv. Chamberlain
23 actually arrested her for the possession of marijuana. And
24 she had to -- she was booked in the jail for that arrest.

25 Now, what did the defendant in this case -- what didn't

1 he say? What he didn't say when he had a chance during that
2 interview -- he didn't say the marijuana is mine. He didn't
3 say she planted the heroin. She put it out. The heroin was
4 hers. No, he didn't say those things. He certainly had an
5 opportunity to say those things.

6 He told the investigator that he wished to speak with
7 him and, when he spoke with him, he said the heroin was mine.
8 So what he didn't tell him was that the marijuana was his or
9 that she planted the heroin.

10 So how do we know that the heroin belonged to the
11 defendant? Just to sum it up briefly for you, we've got his
12 own statement to law enforcement and we've got the gun and
13 the ammunition in the room. We've got the fact that the room
14 was registered to Fashun Burgess. You heard Inv. Brad
15 McDowell testify that he spoke with the hotel owner, who told
16 them that Room 119 was registered to Fashun Burgess. We've
17 got Fashun Burgess' license in the room. So that's how we
18 know the drugs were his.

19 Now, I want to talk with you too about what is the
20 defense going to say. What are they going to claim that has
21 happened in this case? And what they're going to try and
22 tell you is that the drugs belonged to Adrienne Huffstodt,
23 but I just want to explain to you why this doesn't make sense
24 and why it can't be true.

25 So all the evidence that we heard in this case points to

1 the fact that she is a user. She's not a drug dealer. All
2 the drug paraphernalia that was found, the needles, the
3 spoons, that was found in her purse, and there was also a
4 spoon that was found in the glove compartment of her car.

5 Those are items that users use, not what dealers use.
6 There was no cash found on her. There's no cash in her
7 purse. There's no cash in her car. There was no gun found
8 on her, no gun in her car, in her purse. Nowhere. Why not?
9 Because she wouldn't need that because she was using. She
10 was doing whatever she could to get the heroin to use for
11 personal use. You also heard Inv. Chamberlain's statement
12 that she told the investigators that the marijuana was hers.
13 So . . .

14 Now, I want to talk with you about the defendant's
15 testimony. You had an opportunity to hear the defendant
16 testify in this case and what he told you, to sum it up, was
17 that Adrienne was his girlfriend and that the heroin was
18 hers. Now, I just want to go through with you things that
19 don't quite add up in the defendant's testimony.

20 He told you that Adrienne was his girlfriend, but when I
21 asked him when he met her, he couldn't remember when he met
22 her. He couldn't remember what friend's house it was that he
23 met her at. So there's a lot of things about her he couldn't
24 remember, even though she was his girlfriend.

25 He also told us that he couldn't remember when he

1 checked into the hotel. He said that he wasn't sure how long
2 he was planning on staying at the hotel, which is kind of
3 hard to understand because it seems to me when you're
4 checking into a hotel, you need to know how long you planned
5 on staying because you need to know how much you had to pay
6 for it. You also would know when you needed to go back to
7 work and exactly when that was going to happen.

8 But if you're dealing drugs out of that room, it doesn't
9 matter how long you stay, and you don't need to leave the
10 room that much if you're dealing drugs from it because people
11 are coming to you to buy the drugs from you in that room. So
12 it doesn't make sense the defendant was staying there just to
13 rest, and the reason it doesn't make sense is because he
14 can't give us these specific details about when he arrived
15 and when he was planning on leaving.

16 We do know that the defendant himself was the one who
17 registered the room. He was the one who paid for the room,
18 and he told me on cross-examination that he paid for that
19 room in cash.

20 And then with the evidence that we have that a wad of
21 cash was found in his pocket, he knew he had enough cash to
22 keep paying for that room and he wasn't worried about it
23 because he was dealing drugs from that room. So he already
24 had his product, which was found, the \$6,500 worth of heroin
25 on the bed. So that's what he was selling from; so he knew

1 he was going to continue to receive cash. So that's why he's
2 telling us he doesn't remember the specific dates.

3 Now, the defendant also told us that Adrienne somehow
4 was able to take the heroin, kind of behind everybody's back,
5 and place it on the bed in the hotel room. Now, you heard
6 the testimony that the SWAT team entered that room because of
7 the inherent nature of such a large quantity -- the inherent
8 dangerous nature of such a large quantity of drugs.

9 Now, the SWAT team comes in. Inv. Chamberlain comes in.
10 You heard the testimony that Adrienne and the defendant were
11 both detained immediately by the SWAT team, but somehow,
12 according to the defendant, Adrienne was able to go behind
13 everybody's back and place the heroin on the bed? That just
14 doesn't logically add up. That just doesn't -- it doesn't
15 make sense feasibly. Even just logistically the way that
16 that plan played out, there's no way she would have had the
17 opportunity to somehow get the heroin that was hidden -- I
18 guess it would have to be hidden inside her purse or
19 something like that -- and place it on the bed in such plain
20 view.

21 And you've got the picture in evidence of the heroin
22 that was on -- the heroin that was on the bed where you can
23 see that, as soon as the officers came in, it was right there
24 in plain view. It couldn't have been in anymore plain view
25 than it was when they came in.

1 Now, the defendant also told us that he said what he
2 meant in his statement to the investigators when he said
3 you've got me and my shit or me and my stuff, he said what he
4 meant then was by stuff was that the marijuana was the stuff
5 that he meant that he was trying to claim.

6 But I just ask you to think about this. So he spoke
7 with Inv. Chamberlain, as you know, and Inv. Chamberlain told
8 you he tried to give him his Miranda rights at first, but
9 wasn't unable to get through to him. He gave the defendant
10 time to calm down and then was able to read the Miranda
11 rights, and then had a conversation with the defendant about
12 what was in the room and about what belonged to the
13 defendant.

14 So I ask you to ask yourselves wouldn't the defendant
15 have had many opportunities at that point to explain to the
16 investigator what he meant by stuff? He certainly could've
17 said the marijuana was mine and he told -- he told the
18 investigator the gun was his. He told the investigator the
19 heroin was his.

20 So it just comes across as too convenient now to say
21 that what he meant was the marijuana because he could've said
22 it then. He had every opportunity, but he's saying it now.

23 I just ask you when you go back and you're deliberating
24 -- and the judge is going to instruct you on the law in a
25 little while and he is going to explain to you that it's your

1 job to assess the credibility of witnesses. I just ask that
2 you consider your common sense when you're thinking about
3 credibility and when you're thinking about what actually
4 makes sense that happened in this situation.

5 Now, as I told you just a second ago, the judge is going
6 to instruct you on the law, and the judge is going to explain
7 to you that for somebody to be found guilty of trafficking
8 heroin of 28 grams or more, that would be any person who
9 knowingly sells, manufactures, cultivates, delivers,
10 purchases, or brings into this state or provides financial
11 assistance or otherwise aids, abets, attends, or conspires to
12 sell, manufacture, cultivate, deliver, purchase, or bring
13 into this state or who is knowingly in actual or constructive
14 possession or who knowingly attempts to become in actual or
15 constructive possession of heroin, 28 grams or more.

16 So that's what the State has proved to you yesterday and
17 today that the defendant was in possession of 28 -- or more
18 than 28 grams of heroin, approximately 43.77 grams of heroin.

19 The judge is additionally going to instruct you on the
20 law for the other charge, which is the possession of a weapon
21 during the commission of a violent crime, and the judge will
22 explain to you that trafficking in heroin is considered by
23 our state law as a violent crime and that a firearm is a
24 weapon. So if you find that the defendant did possess the
25 weapon, then the defendant would be guilty of the possession

1 of a weapon during the commission of a violent crime.

2 His drugs, his gun, his money. I just ask that you
3 carefully consider all of the evidence that's before you
4 today and, if you do, I would ask you to return a verdict of
5 guilty. Thank you.

6 THE COURT: Thank you, Ms. Daniels. Mr. Jordan, you're
7 recognized.

8 MR. JORDAN: Thank you, Your Honor. May it please the
9 Court. Ms. Daniels.

10 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

11 MR. JORDAN: Good morning, ladies and gentlemen. I know
12 you all are as excited as I am for this thing to be just
13 about over.

14 In my opening statement, I told you that this was a case
15 about people jumping to conclusions. It was a case about
16 folks hearing and believing only what they wanted to believe.

17 Through the testimony, Agent Chamberlain says that a
18 confidential informant contacted him and told him that my
19 client was selling drugs out of Room 119 at the Florence Inn
20 & Suites. That's what Agent Chamberlain believed. He wrote
21 up an affidavit, he sought out a judge, and he got a search
22 warrant for that very thing.

23 Agent Chamberlain and other agents with the Florence
24 County Sheriff's Office and SLED entered that room. They
25 raided that room, and what were they looking for, Jury? One

1 thing. They were looking for drugs and they were looking for
2 my client. They weren't looking to answer any other
3 questions. They weren't looking to answer any other
4 questions because they weren't expecting anyone else to be in
5 the room, but there was someone else in the room. Adrienne
6 Huffstodt.

7 Now, in the room, they found a quantity of heroin, which
8 is over here somewhere. It's about the size of two golf
9 balls. They found marijuana. They found marijuana
10 cigarettes. They found money. They found two individuals.
11 They found drug paraphernalia.

12 Did my client holler when they came in? Sure. I'm not
13 going to lie to you about that. I'm not even going to try to
14 tell you that he didn't do it. I haven't tried to tell you
15 that he didn't holler when they came in. He sat right there
16 on that stand and he told you that that day he had been
17 smoking marijuana. I have no reason to doubt him and I don't
18 think any of you should have any reason to doubt him.

19 Through the search, like I said, there was drug
20 paraphernalia located in a purse and located in Ms.
21 Huffstodt's car and located in another purse. Everything to
22 do with using heroin, everything to do virtually with heroin
23 other than the heroin itself, is admittedly attributed to
24 Adrienne Huffstodt.

25 There's nothing other than an alleged statement or an

1 alleged admission by my client that alludes that he had
2 anything to do with the heroin. He was in that room.

3 Now, the State's witnesses testified that they believe
4 -- they firmly believe that there were numerous people coming
5 and going from this room. They don't know who was in the
6 room while the folks were coming and going. They don't know
7 what was going on. There was no surveillance inside the
8 room. There was no surveillance in the parking lot.

9 The State has the burden of proving to you all beyond a
10 reasonable doubt the elements, each and every element, of the
11 crimes for which Mr. Burgess is charged with committing. The
12 most important element, in my opinion, is whether or not Mr.
13 Burgess was in knowing possession of this quantity of heroin.

14 As Ms. Daniels indicated and as the judge has indicated,
15 the judge is going to charge you on the law. And when it
16 comes to the law in South Carolina, there are two types of
17 possession: actual possession, physical possession, and
18 constructive possession.

19 Constructive possession -- I'm sure probably most people
20 have heard of what's called the hand of one is the hand of
21 all. If you're all involved in something, if y'all are
22 hanging out, y'all know that there's marijuana or heroin
23 sitting on the table, y'all know that. Y'all are using it.
24 Y'all are exercising control of it.

25 Obviously, actual possession is somebody is caught

1 holding it. It's in their pocket.

2 In those situations, it's clear people know about the
3 drugs. They know about the illegal substances.

4 In this case, Agent Chamberlain and the State want you
5 to believe that my client admitted that the heroin was his,
6 that the gun was his, that everything in the room, other than
7 the marijuana that he was smoking, was his. Now, that
8 statement was allegedly made to Inv. Chamberlain. This hotel
9 room is probably not much larger than your jury room. There
10 are two beds and a table, along with a television, table, and
11 all that good jazz.

12 Now, Agent Chamberlain says in testimony -- I'm sorry.
13 Inv. Chamberlain and the testimony of Inv. McDowell says that
14 there were -- I don't know -- eight to ten investigators in
15 this room or nearby, and when my client made this alleged
16 admission, he and Adrienne Huffstodt were sitting right here
17 at this table, right here together. Probably less than ten
18 feet away was Inv. Brad McDowell.

19 Now, there are eight or ten investigators in that room.
20 Inv. McDowell was ten feet away. Adrienne Huffstodt was
21 three feet away, and I imagine that Inv. Chamberlain wasn't
22 more than about three feet away himself. But Inv. McDowell
23 hears nothing. He sees them talking. He has no idea what
24 they're talking about.

25 Adrienne Huffstodt is not here to testify. Adrienne

1 Huffstodt is in rehab for heroin addiction. She could have
2 been brought here to testify, but she wasn't.

3 There's no one to confirm that my client specifically
4 admitted that he knew about the heroin located on the bed.
5 You know, it's bothered me that there's, you know, testimony
6 that both my client and Adrienne Huffstodt were calm. They
7 were rational during this supposed questioning. They were
8 willing to cooperate with law enforcement. They were both
9 detained.

10 They were both taken to the Florence County Detention
11 Center. They were held there, and there's absolutely no
12 follow-up investigation. There's no follow-up statement
13 taken from either of them. Just a simple written statement
14 from either of them. If they're willing to cooperate, if my
15 client is willing to admit that these things are true, why
16 not take a written statement? Why not take a recorded
17 statement?

18 Every phone nowadays has a -- you know, a recorder.
19 Every phone has a video camera. Why not do everything that
20 you can when you know, as a law enforcement officer, that
21 you've got to come into court and you've got to prove to a
22 jury beyond a reasonable doubt that a person is guilty of a
23 crime?

24 When you base the entirety -- virtually the entirety of
25 your case on a supposed admission, why not make sure that you

1 can back up that admission? Why not grab one of the other
2 six -- eight officers in that room and say, come listen to
3 what this guy is saying? It's unbelievable. He's admitting
4 to it right now. Come listen to him. Why not have someone
5 there who can come into this courtroom and tell you
6 absolutely one hundred percent, I was standing there, I
7 overheard it, that's exactly what he said?

8 It's important, ladies and gentlemen, because Inv.
9 Chamberlain and this particular unit with the Florence County
10 Sheriff's Office are charged with rooting out narcotics
11 dealers, finding narcotics, and having them -- having those
12 folks prosecuted for possession, distribution, and
13 trafficking.

14 And as we talked about yesterday with Agent Chamberlain,
15 he has every reason to get on that stand and tell you that my
16 client admitted it because that, ladies and gentlemen, is the
17 only evidence in this case that shows or would go to show
18 that my client knew of the existence of that heroin.

19 I told you you wouldn't hear any evidence about DNA
20 analysis. I told you you wouldn't hear any evidence about
21 fingerprint analysis. There was none of that. I also told
22 you -- I'm pretty sure I told you you wouldn't hear anything
23 about formal statements, and you didn't, other than those
24 things weren't done.

25 The most important thing, in my opinion, is the element

1 of whether or not my client knew about the drugs and meant to
2 possess them. The State has got to come up here and they've
3 got to do everything they can to show you that my client
4 knew. They've got to come through and they've got to take
5 away any reasonable doubt that any of you have. It's not my
6 job to prove that my client is innocent; it's their job to
7 prove that he is guilty and to prove to you all beyond a
8 reasonable doubt every single element.

9 I have no idea whether those drugs were Adrienne
10 Huffstodt's. I didn't intend to come up here and tell you
11 all that they were. Based on the testimony, they're saying
12 any number of people went into that room. I have no idea
13 whose drugs they were. They don't know if somebody had been
14 in there two minutes before they went in.

15 I have no idea how those drugs got there, and I don't
16 think any of you do either. I don't think there's been any
17 testimony elicited that shows without a doubt how the drugs
18 got there.

19 They're in the middle of the bed. Everything else in
20 this room, the gun, ammunition, drug paraphernalia,
21 everything else is in a book bag or a nightstand drawer. Why
22 on earth would there be \$6,500 worth of drugs sitting on a
23 bed? It doesn't make any sense, if everything else is put
24 up.

25 And the one thing that -- you know, if law enforcement

1 comes by and sees what costs you 25 to 40 years of your life
2 is sitting right there on the bed, that makes no sense. I
3 don't know how those drugs got there and I don't know why
4 they were there.

5 We talked yesterday about confidential informants and
6 the pool of confidential informants and, generally, those are
7 folks who are involved in the drug community. They've got
8 some connection, brother, sister, cousin. They're involved
9 personally themselves. I don't know whether Adrienne
10 Huffstodt was a confidential informant or not. I think we
11 can all agree that using and possessing heroin is a crime
12 and, generally, people who commit crimes over and over and
13 over again are going to get caught.

14 We talked yesterday about the fact that she did have
15 pending criminal charges. We talked about the fact yesterday
16 that she's on probation for those charges. They're fairly
17 serious, but she's on probation. We talked about the fact
18 that I mean the drugs are in the middle of the room and she's
19 not even charged with possessing them. She's not charged
20 with simple possession of heroin. She's not charged with
21 anything to do with heroin. She's only charged with the
22 marijuana.

23 Folks, there's no follow-up investigation. There is no
24 evidence to show that my client knew about that heroin being
25 around. There's no -- there's no evidence to show that he

1 intended for that heroin to be in the room, and there's no
2 evidence to show how that heroin got there. The placement of
3 those drugs in that room is just -- is far too odd under the
4 circumstances here.

5 You know, Ms. Daniels talked about my client having cash
6 on him. Sure, he had cash on him. I mean he works
7 landscaping. He works, you know, for guys driving a U-Haul
8 truck, you know, moving furniture. There's no debit cards
9 found. There's no credit cards found. He was paying for the
10 room in cash.

11 He never said that Adrienne Huffstodt was his
12 girlfriend. He said it was someone he had had a physical
13 relationship with in the past and it's likely he was having a
14 physical relationship with her. She's a cute, young white
15 girl. She drove him out there in her Mercedes SUV. She's
16 strolling around with a Coach purse. I don't know what she
17 does for a living.

18 I don't know how she pays for the things that she has,
19 but I know my client lives in Tara Village. It's not a
20 particularly affluent area of Florence. He works odd jobs to
21 get by. Until his sister died, he was caring for her as
22 well. He's got no convictions for anything to do with heroin
23 on his record and yet they want to make him out to be some
24 sort of big-time heroin dealer, but there's no evidence of
25 any distribution other than a supposed CI saying there was.

1 Ladies and gentlemen, this is still a case about people
2 jumping to conclusions. It's a case where if things had been
3 done properly, we may have no questions.

4 If there was anyone who could testify and back up Agent
5 -- I mean Inv. Chamberlain's assertion that my client
6 admitted specifically to knowing about and possessing that
7 heroin, it would be open and shut. You know, we probably
8 wouldn't be here.

9 If they had done fingerprint analysis to show whether or
10 not he had ever physically possessed it, if they had checked
11 for DNA on any evidence to see whether or not he had ever
12 physically possessed it, we would know. There would be no
13 question, and that's their job, ladies and gentlemen. That's
14 what they've got to do. They've got to do everything they
15 can to make sure that you all have no reasonable doubt.

16 I told you in my opening this is not a case about
17 whether you like me, Ms. Daniels, if you like Agent
18 Chamberlain or any of the other investigators, or whether you
19 like my client or not. It's about the evidence that was put
20 forth.

21 Now, I believe that through the testimony that was
22 elicited here in this courtroom and through the evidence
23 that's being presented, it's clear my client was in
24 possession of a gun. I don't deny that. It's clear that gun
25 was in the bedside table. His ID was there. He rented the

1 room in his own name. He was paying for that room in cash.

2 It's clear that he was there with a young, attractive
3 white female, who was obviously addicted to heroin. It's
4 clear that this amount of heroin under South Carolina law
5 rises to the level of trafficking and is a very serious
6 offense. It's clear that this would be a huge win for the
7 Florence County Sheriff's Office.

8 What's not clear is what my client knew. What's not
9 clear is who else was in that room. It's not clear how many
10 other people went into that room. It's not clear when the
11 drugs got to that room. It's not clear, and I believe there
12 is quite a bit of reasonable doubt as to whether or not my
13 client knew those drugs were in that room, whether he
14 intended for those drugs to be in that room. It's not even
15 clear as to when those drugs ended up on that bed.

16 You look at the pictures. You'll have them back there
17 when you deliberate. I'll draw your attention to a few
18 things.

19 I want you to look at the pictures and I want you to ask
20 yourself when were these pictures taken. They were obviously
21 taken that day, but during what stage of the search? There's
22 not a picture in evidence and, frankly, I haven't seen a
23 picture showing the state of Room 119 at the Florence Inn &
24 Suites at the time of the breach.

25 There are pictures that show -- you know, investigators

1 have already removed the gloves that they were wearing to
2 give you an overview of the room. There's nothing to show,
3 there's nothing to say, there is absolutely no testimony that
4 says one hundred percent certainly that my client knew about
5 those drugs and possessed those drugs.

6 And I think I've said pretty well how that could have
7 been determined. Formal statements, either written or
8 recorded in some manner, fingerprint testing, DNA testing, or
9 had Adrienne Huffstodt here to say this is exactly what I
10 said and this is exactly what was going on. She's the only
11 other person in that room. She's the only other person that
12 was sitting close enough to have heard the supposed
13 admission.

14 Honestly, I believe that when you all think about all
15 the evidence and view all the evidence and think about all
16 the testimony, you'll return a verdict of not guilty.

17 You know, the judge instructed you all before we started
18 this case that it's up to you to determine the facts. It's
19 up to you to determine whether or not you believe the
20 witnesses. You can believe some of what a witness says, all
21 of what a witness says, or none of it.

22 What I'm asking you to do is to think about what you've
23 heard. I want you to think about what the evidence has
24 shown, and I believe you're going to return a verdict of not
25 guilty. Thank you all for your service.

1 THE COURT: Thank you, Mr. Jordan. Ms. Daniels, you're
2 recognized in reply.

3 REPLY CLOSING ARGUMENT ON BEHALF OF THE STATE

4 MS. DANIELS: Thank you, Your Honor.

5 I went to the doctor a few years ago because I was
6 having headaches, which I thought were related to my
7 allergies, but I just wanted to be sure. And I was
8 explaining my symptoms and talking to the doctor and he said,
9 Angel, if it looks like a duck, if it quacks like a duck,
10 it's a duck. And he calmed my doubts and he assured me your
11 headaches are just related to your allergies.

12 This case is similar. It's straightforward. The State
13 hasn't hidden anything from you. All the facts are there and
14 it's straightforward in this respect. There was a tip from a
15 confidential informant that there was drug activity going on
16 in Room 119. Room 119 was registered to the defendant,
17 Fashun Burgess. When the SWAT team got there, the drugs were
18 in the middle of the bed because the defendant had no idea
19 that the SWAT team was coming at that time to execute a
20 search warrant.

21 But what he did have on him indicates that he was well
22 aware there were drugs in that room because he had the
23 holster on his hip for his gun, which was found in the
24 drawer. Now, why would you be wearing a holster if you
25 weren't worried about anything in the room, if you weren't

1 worried about drugs, a large amount of drugs being \$6,500
2 worth of drugs that were in the middle of the bed. It's
3 straightforward in that respect.

4 It's straightforward in the other respect when the
5 investigators got there and they heard the defendant say this
6 is my stuff. He blurted that out. You heard testimony from
7 two different investigators who heard the defendant say this
8 is my stuff. Straightforward in that respect. That's the
9 reason that there was no DNA testing, no fingerprint testing,
10 because there was no need for it because it was
11 straightforward and to the point.

12 When you take the evidence back there to deliberate,
13 you'll have the gun, you've got the defendant's license,
14 you've heard the testimony that he had a pocket full of cash
15 due to his drug dealing. So I ask when you go back to
16 deliberate that you just consider the evidence and, if you
17 do, I'm confident that you will find a verdict of guilty.

18 THE COURT: Thank you, Ms. Daniels. Mr. Foreman and
19 ladies and gentlemen of the jury, you've heard all of the
20 closing arguments. I'm going to ask that you retire to the
21 jury room and refresh yourselves, and then we will come out
22 and I will give you a charge on the law.

23 Once again, it's not time to begin deliberations. Do
24 not discuss anything about the case. Mr. Foreman, I'm going
25 to ask that you enforce that rule.

1 Everyone remain seated as the jury exits the courtroom.

2 (WHEREUPON, the jury exited the courtroom at 10:31 a.m.)

3 THE COURT: All right. We'll stand at ease for just a
4 moment and give them an opportunity -- give them an
5 opportunity to refresh themselves, and we'll stand at ease
6 for about five minutes.

7 (WHEREUPON, there was a break in the proceedings from
8 10:32 a.m. until 10:42 a.m., after which the proceedings
9 resumed as follows.)

10 THE COURT: Please be seated. All right. We're ready
11 for the jury.

12 (WHEREUPON, the jury entered the courtroom at 10:42
13 a.m.)

14 THE COURT: Mr. Foreman and ladies and gentlemen of the
15 jury, you've heard all of the evidence, you've heard the
16 closing arguments, you have all of the tools necessary to
17 render a finding of fact and, in order for you to fulfill
18 your sworn duty, you're going to have to take that finding --
19 those findings of facts and apply it to the law.

20 I wish there was an easy, exciting way to do that, but
21 there isn't. I'm going to charge you the law. It's not the
22 most exciting thing, but these are important matters and I'm
23 going to ask that you perk up and pay very close attention so
24 you'll have all the tools necessary to do what's right in
25 this matter. So pay very close attention.

CHARGE ON THE LAW

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, the indictments charge the defendant with trafficking in heroin and possession of a weapon during the commission of a violent crime. I remind you that the fact the defendant was arrested, charged, and indicted is not evidence and cannot be considered by you as evidence of guilt, nor does it create any presumption or inference of guilt.

This document is simply the formal written instrument which contains the charges made against the defendant. It is the formal document by which this case is brought into court.

The indictment alleges two different offenses against the defendant. The charges are trafficking in heroin and possession of a weapon during the commission of a violent crime.

Each indictment charges a separate and distinct defense. You must decide each indictment separately on the evidence and the law applicable to it, uninfluenced by your decision as to the other indictment. The defendant may be convicted or acquitted on any or all of the offenses charged. You'll be asked to write a separate verdict of guilty or not guilty for each indictment.

Ladies and gentlemen of the jury, the defendant has pled not guilty to this indictment, and that plea puts the burden on the State to prove the defendant guilty. A person charged

1 with committing a criminal offense in South Carolina is never
2 required to prove himself innocent.

3 I charge you that it is an important rule of law that
4 the defendant in a criminal trial, no matter what the serious
5 of -- seriousness of the charge may be, will always be
6 presumed to be innocent of the crime for which the indictment
7 was issued unless guilt has been proven by evidence
8 satisfying you of that guilt beyond a reasonable doubt.

9 This presumption of innocence does not end when you
10 begin your deliberations, but it accompanies the defendant
11 throughout the trial until you reach a verdict of guilt based
12 on evidence satisfying you of that guilt beyond a reasonable
13 data. The presumption of innocence is like a robe of
14 righteousness placed about the shoulders of the defendant
15 which remains with the defendant until it has been stripped
16 from the defendant by evidence satisfying you of the
17 defendant's guilt beyond a reasonable doubt.

18 The presumption of innocence is not a mere legal theory.
19 It's not just a legal phrase. It's a substantial right to
20 which every defendant is entitled unless you, the jury, are
21 satisfied from the evidence of the defendant's guilt beyond a
22 reasonable doubt.

23 What is reasonable doubt in the eyes of the law? A
24 reasonable doubt is the kind of doubt that would cause a
25 reasonable person to hesitate to act.

1 The State has the burden of proving the defendant guilty
2 beyond a reasonable doubt. Some of you may have served on a
3 jury in a civil case where you were told that it was only
4 necessary to prove that a fact is more likely true than not
5 true, such as by the greater weight or preponderance of
6 evidence.

7 In criminal cases, the State's proof must be more
8 powerful than that. It must be beyond a reasonable doubt.
9 Proof beyond a reasonable doubt is proof that leaves you
10 firmly convinced of the defendant's guilt.

11 There are very few things in this world we know with
12 absolute certainty and, in criminal cases, the law does not
13 require proof that overcomes every possible doubt. If, based
14 on your consideration of the evidence, you are firmly
15 convinced the defendant is guilty of the crime charged, you
16 must find the defendant guilty. If, on the other hand, you
17 think there's a real possibility that the defendant is not
18 guilty, you must give the defendant the benefit of the doubt
19 and find him not guilty.

20 Mr. Foreman and ladies and gentlemen of the jury, I
21 remind you that during this trial you and I have certain
22 duties to perform. As the trial judge, it is my
23 responsibility to preside over the trial. I also have the
24 duty to rule on the admissibility offered -- admissibility of
25 the evidence offered during this trial.

1 You are to consider only the competent evidence before
2 you. You are to consider only the testimony which has been
3 presented from this witness stand, any exhibits which been
4 made a part of the record, and any stipulations of counsel.

5 I have the additional duty to charge you the law. As
6 the presiding judge, I am the sole judge of the law, and it
7 is your duty as jurors to accept and apply the law as I now
8 state it to you. If you already have an idea as to what the
9 law is or what the law ought to be and it does not agree with
10 what I now tell you the law is, you must abandon this idea
11 because you are sworn to accept and apply the law exactly as
12 I state it to you.

13 In every case tried in this court before a jury, the
14 jury becomes the sole and exclusive judge of the facts in the
15 case. A trial judge cannot intimate, state, comment on, or
16 make any statement to a trial jury about the facts in the
17 case.

18 Since you, the jury, are the sole judge of the facts in
19 this case, you are not to infer from what I have said during
20 the progress of this trial in ruling upon the admissibility
21 of evidence or otherwise or anything that I say now during
22 the course of this instruction to you that I have any opinion
23 about the facts. The law simply does not allow me to have an
24 opinion about the facts.

25 This is a matter solely for you, the jury, to determine.

1 As jurors, it is your duty to determine the effect, value,
2 weight, and truth of the evidence presented during this
3 trial.

4 Mr. Foreman and ladies and gentlemen of the jury, there
5 are two types of evidence which are generally presented
6 during a trial: direct evidence and circumstantial evidence.
7 Direct evidence directly proves the existence of a fact and
8 does not require deduction. Circumstantial evidence is proof
9 of a chain of facts and circumstances indicating the
10 existence of a fact.

11 Crimes may be proven by circumstantial evidence. The
12 law makes no distinction between the weight or value to be
13 given to either direct or circumstantial evidence.

14 However, to the extent the State relies on
15 circumstantial evidence, all of the circumstances must be
16 consistent with each other and when taken together point
17 conclusively to the guilt of the accused beyond a reasonable
18 doubt. If these circumstances merely portray the defendant's
19 behavior as suspicious, the proof has failed.

20 The State has the burden of proving the defendant guilty
21 beyond a reasonable doubt. This burden rests with the State
22 regardless of whether the State relies on direct evidence,
23 circumstantial evidence, or some combination of the two.

24 Ladies and gentlemen of the jury, necessarily, you must
25 determine the credibility of witnesses who have testified in

1 this case. Credibility simply means believability. It
2 becomes your duty as jurors to analyze and to evaluate the
3 evidence to determine which evidence convinces you of its
4 truth.

5 In determining the believability of witnesses who have
6 testified, you may believe one witness over several witnesses
7 or several witnesses over one witness. You may believe a
8 part of the testimony of a witness and reject the remaining
9 part of the testimony of that same witness. You may believe
10 the testimony of a witness in its entirety or reject the
11 testimony of a witness in its entirety.

12 You may consider whether any witness has exhibited to
13 you any interest, bias, prejudice, or other motive in this
14 case. You may also consider the appearance and manner of the
15 witness while on the witness stand, their demeanor.

16 The rules of evidence ordinarily do not permit witnesses
17 to testify to opinions or conclusions. An exception to this
18 rule exists for witnesses we call expert witnesses. A
19 witness who by education and experience has become expert in
20 some art, science, profession, or calling may state an
21 opinion as to relevant material matter in which the witness
22 claims to be an expert and may also state the reasons for the
23 opinion.

24 You should consider any expert opinion received into
25 evidence and, like any other evidence, give it the weight you

1 think it deserves. If you decide that the opinion of an
2 expert is not based on sufficient education and experience or
3 if you conclude that the reasons given in support of the
4 opinion are not sound or that the opinion is outweighed by
5 other evidence, you may disregard the opinion entirely.

6 An expert witness's testimony is to be given no greater
7 weight than that of other witnesses simply because the
8 witness is an expert. Further, you are not required to
9 accept an expert's opinion, even though it is not
10 contradicted.

11 Mr. Foreman and ladies and gentlemen of the jury, mere
12 presence at the scene is not sufficient to prove someone
13 guilty of a crime. A defendant's presence where a crime is
14 being committed or mere association with a person who commits
15 a crime does not make a defendant an accomplice or an aider
16 and abettor of the person committing the crime.

17 The burden is on the State to prove every element of the
18 crime charged. If you find after reviewing all of the
19 evidence that the State has proved that the defendant was
20 only present at the scene of the crime, that they have not
21 proved beyond a reasonable doubt any other participation in
22 the crime, then you must find the defendant not guilty. The
23 law is that proof of one being at the scene of a crime is not
24 sufficient to find someone guilty.

25 If a crime is committed by two or more people who are

1 acting together or committing a crime -- in committing a
2 crime, the act of one is the act of all. A person who joins
3 with another to commit an unlawful act is criminally
4 responsible for everything done by the other person which
5 happens as a probable or natural consequence of the acts done
6 in carrying out a common plan and purpose.

7 For example, two people can be guilty of killing another
8 person when only one of the two had a gun, there was only one
9 bullet, and only one of the two fired the shot that caused
10 the death. If two or more people are together acting
11 together, assisting each other in committing the offense, the
12 act of one is the act of all or, as it is sometimes said, the
13 hand of one is the hand of all.

14 Prior knowledge that a crime is going to be committed
15 without more is not sufficient to make a person guilty of
16 that crime. Mere knowledge that another person is going to
17 commit a crime, even if the defendant is present when the
18 crime is committed, is not sufficient to convict the
19 defendant as a principal.

20 Guilt as a principal is shown by actual or constructive
21 presence at the scene as a result of prior arrangement.
22 Therefore, a finding of a prior arranged plan or common
23 scheme is necessary for a finding of guilt as a principal.
24 The State must prove beyond a reasonable doubt by competent
25 evidence the theory of the hand of one is the hand of all.

1 A principal in a crime is one who either actually
2 commits the crime or who is present aiding, abetting, or
3 assisting in committing the crime. When a person does an act
4 in the presence of and with the assistance of another, the
5 act is done by both. Where two or more are acting with a
6 common plan or intent or present at the commission of a
7 crime, it does not matter who actually commits the crime.
8 All are guilty. The hand of one is the hand of all.

9 Present at the commission of a crime means to be
10 sufficiently near to aid and abet in the commission of the
11 crime. However, mere presence at the scene of a crime is not
12 sufficient to convict one as a principal on the theory of
13 aiding and abetting.

14 Intent is also a necessary element for there must have
15 been a common design or intent to commit the crime, the crime
16 must have been committed pursuant thereto, with the person
17 aiding and abetting by some overt act. Intent means
18 intending the result which actually occurs, not accidentally
19 or involuntarily.

20 Intent may be shown by acts and conduct of the defendant
21 and other circumstances from which you may naturally and
22 reasonably infer intent. The State must prove these elements
23 beyond a reasonable doubt.

24 There's been evidence presented that witnesses have made
25 prior statements which are not consistent with the witness'

1 present testimony. You may use this evidence to decide
2 whether to believe the witness. You may also use evidence of
3 the earlier contradictory statements to determine the truth
4 of those statements. It is up to you to decide whether to
5 believe the earlier statements or the testimony given at
6 trial.

7 If a witness is shown to have knowingly testified
8 untruthfully concerning any material matter, you may consider
9 this in determining whether to trust the witness' testimony
10 as to other matters. You may reject all of the testimony of
11 that witness or give all or part of the testimony the weight
12 you think it deserves.

13 A statement alleged to have been made by the defendant
14 has been admitted into evidence in this case. While the
15 Court has determined that the statement is admissible, I
16 instruct you that you make the ultimate decision of whether
17 or not the defendant made the statement.

18 If the defendant did make the statement, you must
19 determine whether the statement was made by the defendant
20 voluntarily and of his own free will. This means -- means
21 that the statement was not caused by pressure, force, fear,
22 threats, coercion or intimidation or by hope or a promise of
23 leniency or a reward of any kind.

24 In determining whether a statement was voluntary, you
25 should consider both the characteristics of the defendant and

1 the details of the questioning. Some of the factors you must
2 consider are the age of the defendant, the defendant's
3 education or lack of education, the defendant's mental
4 ability or capacity, the defendant's IQ or intelligence, the
5 defendant's background and environment, the place and length
6 of the detention, the nature of the questioning, the advice
7 or lack thereof to the defendant of his constitutional
8 rights, including but not limited to the right to remain
9 silent, that any statement could be used against him in a
10 court of law, the right to have a lawyer present, that if he
11 could not afford a lawyer, a lawyer would be appointed to
12 represent him without any cost, and that he could stop making
13 a statement at any time.

14 You must carefully consider all of the surrounding
15 circumstances before you give any weight to an alleged
16 statement. The State has the burden of proving beyond a
17 reasonable doubt that the alleged statement was voluntary.
18 If you determine it was, you may give the statement any
19 further consideration that you deem proper.

20 You must decide what weight, if any, should be given to
21 the alleged statement. If you determine the alleged
22 statement was not the free and voluntary statement of the
23 defendant, you should not consider the statement at all.

24 I'm going to charge you the substantive law with regard
25 to trafficking. The defendant is charged with trafficking in

1 heroin.

2 The State must prove beyond a reasonable doubt that the
3 defendant knowingly sold, manufactured, cultivated,
4 delivered, purchased, or brought into this state, provided
5 financial assistance or otherwise aided, abetted, attempted,
6 or conspired to sell, manufacture, cultivate, deliver,
7 purchase, or bring into this state, or was knowingly in
8 actual or constructive possession or knowingly attempted to
9 become in actual or constructive possession of heroin.

10 The trafficking statute goes on to establish that the
11 State must also prove beyond a reasonable doubt that the
12 amount of heroin or any mixture containing heroin was 28
13 grams or more.

14 The heroin trafficking statute contemplates the concept
15 of possession of a drug. I want to define for you what
16 possession means.

17 Actual possession means that the heroin was in the
18 actual physical custody of the defendant. Constructive
19 possession means that the defendant had dominion and control
20 or the right to exercise dominion and control over either the
21 heroin itself or the property on which the heroin was found.

22 Mere presence at the scene where the drugs were found is
23 not enough to prove possession. Actual knowledge of the
24 presence of the heroin is strong evidence of the defendant's
25 intent to control its disposition or use.

1 The defendant's knowledge and possession may be inferred
2 when a substance is found on the property under the
3 defendant's control. However, this inference is simply an
4 evidentiary fact to be taken into consideration by you, along
5 with other evidence in the case, and to be given the weight
6 you decide it should have. Two or more persons may have
7 joint possession of a drug.

8 I'm going to charge you the substantive law with regard
9 to possession of a weapon during the commission of a violent
10 crime. The defendant has -- has been charged with possession
11 of a weapon during the commission of a violent crime.

12 The State must prove beyond a reasonable doubt that the
13 defendant was in possession of a firearm or visibly displayed
14 what appeared to be a firearm. A firearm means any machine-
15 gun, automatic rifle, revolver, pistol, or any weapon which
16 will, is designed to, or may be readily converted to expel a
17 projectile.

18 In order to find the defendant guilty of possession of a
19 weapon during the commission of a violent crime, you must
20 first find the defendant guilty of either committing a
21 violent crime or attempting to commit a violent crime.
22 Ladies and gentlemen of the jury, trafficking in heroin is,
23 indeed, a violent crime. The State must prove beyond a
24 reasonable doubt that the weapon furthered, advanced, or
25 helped in the commission of the crime.

1 Mr. Foreman, I'm going to come forward and share with
2 you the verdict form. Bear with me.

3 (WHEREUPON, the Court left the bench and approached the
4 jury box.)

5 THE COURT: Mr. Bunch, I'm going to ask if you could
6 stand up. I'm going to review this verdict form with you.

7 (WHEREUPON, the foreman complied.)

8 THE COURT: It's a one-page document. State of South
9 Carolina, County of Florence, State of South Carolina versus
10 Fashun Burgess. We are in General Sessions Court, Twelfth
11 Circuit, Florence and Marion County. And the indictment
12 number and the indictment is the type of verdict form.

13 There are two different counts, as I had mentioned in my
14 jury charge. There's trafficking in heroin.

15 It says as to the count of trafficking in heroin, we,
16 the jury, find the defendant either not guilty or guilty.
17 It's completely within your province as jurors to make that
18 determination.

19 If you find the defendant not guilty of trafficking in
20 heroin, discontinue deliberations because, obviously, a
21 prerequisite to the second offense is that he be guilty of a
22 violent crime. Obviously, if they're not guilty of
23 trafficking in heroin, they can't be guilty of possession of
24 a weapon during the commission of a violent crime.

25 It says as to count -- but if you find him guilty of

1 that in your deliberations, then it says as to the count of
2 possession of a weapon during the commission of a violent
3 crime, we find the defendant guilty or not guilty.

4 There is a place for you to sign, print your name, and a
5 place for you to date it. And the document itself tells you
6 to contact the bailiff upon reaching a verdict, and the
7 verdict must be unanimous. It can't be 11-1, 6-6, 8-4.
8 Everyone has to agree.

9 Mr. Foreman, I'm going to ask if you could hold on to
10 that document and have a seat.

11 (WHEREUPON, the foreman complied.)

12 THE COURT: Mr. Foreman, you are going to be charged
13 with the responsibility of presiding over the deliberation
14 process, and that essentially means that you're going to
15 ensure that everybody's voice is heard. Make sure that
16 everybody participates. That's going to be your job and your
17 responsibility.

18 Additionally, if there are questions that develop
19 amongst the jury, I'm going to ask that you reduce it to
20 writing, give it to the bailiff and, if it's a question I can
21 answer, I'll be happy to do that. Because you've paid
22 attention to the law -- if it's a question of fact, that's a
23 very difficult question that you all are going to have to
24 answer. If it's a question concerning a fact, I can't answer
25 that. That's your province. If it's a question about the

1 law, I'll be in -- be in a position to assist you in that
2 regard.

3 But I don't anticipate there are going to be any
4 questions because y'all paid very close attention to the
5 evidence. I've watched you throughout the trial. When the
6 lawyers would ask a question, you would look at them. When
7 the witness would answer, you would look at them. Clearly,
8 y'all have the tools necessary to resolve those factual
9 issues.

10 If a question were to come up and you don't know whether
11 it's a factual question or a legal question, write it down.
12 If I can help you, I will.

13 I am going to ask that Ms. Bradshaw and Ms. Chandler --
14 y'all are alternates. I'm going to ask that you all remain
15 in the jury box, but do not return to the jury room. I'll
16 speak with you momentarily.

17 Mr. Foreman, as I've excused you from the courtroom
18 previously, I've told you not to begin deliberations. Once
19 again, I'm going to tell you not to do that. We're getting
20 in the short rows, but we aren't there yet.

21 When you return to the jury room, I'm going to talk with
22 these very fine lawyers and determine whether or not they
23 have an objection as to the manner in which I charged you the
24 law. If I inadvertently left something out or stated
25 something incorrectly, I'll bring you back in and we'll

1 address those issues.

2 However, if there is no objection to my jury charge,
3 then we'll gather up all the documentary evidence and we'll
4 ask the bailiff to give it to you, along with some paper and
5 pencils to aid you in the deliberation process, and tell you
6 to begin deliberations, but do not do that until you receive
7 instructions from the bailiff to do so.

8 I'm going to ask that everyone remain seated as the jury
9 exits the courtroom, and I'm going to ask the alternates to
10 remain with us. You can return to the jury room.

11 (WHEREUPON, the jury exited the courtroom at 11:08 a.m.)

12 THE COURT: Ms. Bradshaw, Ms. Chandler, thank you so
13 much for your time and participation. Y'all look kind of
14 disappointed. Y'all -- y'all sort of feel like y'all have
15 been invited to a dance and didn't get to dance, but you --
16 you know, this is a public forum. If you'd like to stay here
17 and find out what the results are, you're welcome to do that.
18 It's a public forum. You can do that.

19 However, if there are things that you would like to do
20 and you were interested in the results, you can call the
21 clerk's office and they will tell you what the verdict was.
22 But you're welcome to do that.

23 I always like to ask jurors, number one, is have you
24 ever participated on a jury before?

25 THE ALTERNATE JURORS: No, sir.

1 THE COURT: You haven't? Well, hopefully, it's been a
2 learning experience and, hopefully, you see a little bit
3 about how our judicial system works. I hope it's been a good
4 experience for you.

5 Do y'all -- my second question is do y'all have any
6 questions about the procedure?

7 THE ALTERNATE JURORS: No, sir.

8 THE COURT: Any comments or anything?

9 THE ALTERNATE JUROR: It's been very interesting. I'm
10 anxious to know what the outcome is.

11 THE COURT: All right. Well, you're welcome to stay.
12 We've got plenty of room out there. So you're welcome to
13 stay with us, and thank you so much and we're going to ask
14 that you call the clerk's office tonight --

15 THE CLERK: I've got the number.

16 THE COURT: Okay. And she's going to give you the
17 number. Just follow the instructions. It very well might be
18 that there is not a need for you to return, but we don't know
19 that yet. So once again, pay close attention and follow the
20 instructions left on the voicemail after six. Thank you so
21 much.

22 THE ALTERNATE JUROR: Okay. Thank you.

23 (WHEREUPON, the alternate jurors were released at 11:10
24 a.m.)

25 THE ALTERNATE JUROR: So we can sit out there?

1 THE COURT: Sure, you can.

2 THE CLERK: Let me give you this number first.

3 THE ALTERNATE JUROR: Thank you.

4 THE CLERK: You're welcome.

5 (WHEREUPON, there was a pause in the proceedings, after
6 which the proceedings resumed as follows.)

7 THE COURT: All right. Is there any objection to the
8 jury charge from the State?

9 MS. DANIELS: No, Your Honor.

10 THE COURT: Any objections from the defense?

11 MR. JORDAN: Judge, I don't know that it's so much of an
12 objection, but I would ask for a clarification in terms of
13 the portion of the charge where you charged the jury on the
14 statements or the prior inconsistent statements that were
15 made by or allegedly made by Mr. Burgess.

16 I think you said there was one that you found to be
17 admissible, and I think there was testimony actually
18 regarding two of those statements. I mean based on the
19 wording of that, I can't -- I honestly can't remember whether
20 or not you told them, well, if you find that true, then
21 you've got to believe it. I hope that they don't have any
22 confusion as to what you were talking about in terms of those
23 statements.

24 THE COURT: Well, I'm a little bit confused about what
25 you're saying, but that was a correct statement of the law.

1 MR. JORDAN: Right. And I agree with that.

2 THE COURT: All right. Well, very good. Do you have
3 any written request to charge in that regard?

4 MR. JORDAN: No, sir.

5 THE COURT: All right. Well, very good. All right.
6 Let's come forward and we'll gather up all of the evidence.

7 THE COURT REPORTER: I thought the ammunition needs to
8 stay.

9 THE COURT: Right.

10 MS. DANIELS: Yeah.

11 THE COURT: That's correct.

12 (WHEREUPON, there was a pause in the proceedings to
13 check the evidence, after which the proceedings resumed
14 as follows.)

15 THE COURT: Mr. Cain, you've used -- operated a gun.
16 Could you make sure that this doesn't have one in the
17 chamber?

18 THE DEPUTY: Yes, sir.

19 THE COURT: It doesn't appear as if there is.

20 THE DEPUTY: We certainly don't want to find out the
21 hard way.

22 THE COURT: I'd probably get fired if we get somebody
23 shot.

24 THE DEPUTY: No pun intended. The chamber is clear,
25 sir.

1 THE COURT: All right. Okay. Very good. All right.
2 Now, we're going to keep all of the ammunition up here. Are
3 we certain that there's no ammunition anywhere in the
4 evidence other than over here? Are we certain of that?

5 MS. DANIELS: I will double check, but I'm pretty
6 certain, Your Honor.

7 THE COURT: Okay. Let's look and make sure.

8 THE DEPUTY: There may be one loose round unless it's in
9 that bag there.

10 MS. DANIELS: It's in that bag.

11 THE DEPUTY: Okay.

12 THE COURT: Very good.

13 THE DEPUTY: And as long as this plastic tab stays on
14 the weapon, it can't be loaded.

15 THE COURT: Very good. All right.

16 MS. DANIELS: I don't see any.

17 THE COURT: All right. And I'm going to ask is this all
18 of the evidence, Madam Court Reporter?

19 THE COURT REPORTER: It is.

20 THE COURT: All right. Ms. Daniels, have you had an
21 opportunity to look at all of the evidence and make sure that
22 everything in that pile is in evidence and there's not
23 anything in the pile that is not in evidence?

24 MS. DANIELS: Those are not in, yeah.

25 THE COURT: Those are not in? And with the exception of

1 the ammunition, is everything in evidence?

2 MS. DANIELS: Let me double check.

3 (WHEREUPON, there was a pause in the proceedings, after
4 which the proceedings resumed as follows.)

5 THE COURT: Ms. Daniels, is everything in that pile in
6 evidence?

7 MS. DANIELS: Yes, Your Honor.

8 THE COURT: Is there anything in the pile that is not in
9 evidence?

10 MS. DANIELS: No. Your Honor, we're not sending back
11 the ammunition, any of the ammunition.

12 THE COURT: That's correct.

13 MS. DANIELS: So that's not in the pile.

14 THE COURT: All right. Mr. Jordan, is that your -- Ms.
15 Daniels and his is -- yes, I have to think about it. Mr.
16 Jordan, is everything in that pile in evidence?

17 MR. JORDAN: Yes, sir.

18 THE COURT: Is there anything in the pile that is not in
19 evidence?

20 MR. JORDAN: No, sir.

21 THE COURT: All right. Let's -- I'm going to ask the
22 bailiff if he could gather all of the evidence together, and
23 I'm going to ask that we bring the foreman out and I'm going
24 to talk to him about the issue concerning the ammunition.

25 So if you can just hold onto that and I'm going to speak

1 to him and, when I get finished speaking to him, you can give
2 him the evidence. Okay?

3 THE BAILIFF: All right.

4 THE COURT: Very good.

5 THE COURT REPORTER: Do you want this back in the bag or
6 not?

7 THE COURT: I don't think it's necessary.

8 MS. DANIELS: No.

9 THE BAILIFF: Do you want me to call him out, Judge?

10 THE COURT: Just the -- just the foreman.

11 (WHEREUPON, the jury foreman entered the courtroom.)

12 THE COURT: Mr. Foreman?

13 THE FOREPERSON: Yes, sir.

14 THE COURT: We're going to present all the documentary
15 evidence there, but we do have a weapon and it has been
16 cleared of all ammunition and it has a safety guard on there,
17 a plastic guard.

18 THE FOREPERSON: Uh-huh.

19 THE COURT: And it can't be loaded as long as that
20 plastic guard is in there, but do not allow anybody to tamper
21 with the plastic guard.

22 THE FOREPERSON: Yes, sir.

23 THE COURT: In evidence are clips with ammunition, and
24 there's some other ammunition that's in evidence. Y'all have
25 a right to see these if you do that, but in order to see

1 these, we've got to have the gun back.

2 THE FOREPERSON: Right.

3 THE COURT: Okay?

4 THE FOREPERSON: Okay.

5 THE COURT: For safety purposes. All right. And I'm
6 going to ask the bailiff to give you these -- the documentary
7 evidence.

8 THE FOREPERSON: Do we need the gun unless we ask for it
9 or --

10 THE COURT: Well, you don't, but we can -- we're going
11 to send one --

12 THE FOREPERSON: One or the other?

13 THE COURT: One or the other back.

14 THE FOREPERSON: Well, send it in. That's fine.

15 THE COURT: Very good. All right. And if anybody
16 requests to see the ammunition, they are entitled to see it.

17 THE FOREPERSON: Okay. Yes, sir.

18 THE COURT: They know -- they know and saw that it was
19 introduced into evidence, but you can explain to them why I'm
20 keeping it out.

21 THE FOREPERSON: Understood.

22 THE COURT: Very good.

23 (WHEREUPON, the jury foreperson exited the courtroom and
24 jury deliberations began at 11:18 a.m.)

25 MR. JORDAN: Did you tell him they could begin?

1 THE COURT: We -- yes. Yes. I'll -- I think that's
2 clear, but let me make sure. Did you tell them to begin
3 deliberations?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Very good. All right. And it is 11:18, and
6 let's stay right here in case they have a question. I don't
7 want to be running down lawyers; so y'all stay here so we can
8 do that very quickly.

9 In every county in the state, quite often, lawyers
10 scatter like a covey of quail when the jury goes out and then
11 I have to round them up. So y'all stay right here and enjoy
12 each other's company. How about that?

13 (WHEREUPON, a bench conference was held with the clerk
14 off the record regarding lunch, after which the
15 proceedings resumed as follows.)

16 THE COURT: All right. We'll stand at ease and I'm
17 going to allow the clerk to go ahead and distribute the
18 menus.

19 Anything from the State before we recess for a moment?

20 MS. DANIELS: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. JORDAN: No, Your Honor.

23 THE COURT: All right.

24 (WHEREUPON, there was a break in the proceedings from
25 11:19 a.m. until 12:24 p.m., after which the proceedings

1 resumed as follows.)

2 THE COURT: All right. They've asked for clarification
3 on the reasonable doubt charge. I'm going to charge that.
4 And they've also asked for a clarification on possession,
5 constructive possession, and I will define that for them
6 again.

7 The next question is -- is were written statements and
8 fingerprints required? And my initial impression would be to
9 say that these are matters -- are factual matters that I
10 cannot comment on, but I want to hear what the State has to
11 say in that regard. Ms. Daniels, what is your position on
12 that?

13 MS. DANIELS: Judge, I think that would be the correct
14 position.

15 THE COURT: Okay. What would you think about -- the
16 only other alternative would be to say that there is no law
17 requiring a written statement or fingerprints? There is no
18 law that makes that required.

19 MR. JORDAN: Judge, I mean the only -- the only thing
20 that I would say is that I agree with your first statement.
21 I think that's a factual matter for them to take up. There
22 was testimony about it. I know --

23 THE COURT: I think that's probably really a more
24 accurate way to do it. I think it certainly --

25 MS. DANIELS: How was the question worded again?

1 THE COURT: It says were written statement -- singular
2 -- and fingerprints required. All right.

3 All right. We're ready for the jury.

4 THE BAILIFF: Okay, sir.

5 THE COURT: I'm going to make these questions a part of
6 the record. I'll do that momentarily.

7 (WHEREUPON, the jury entered the courtroom at 12:28
8 p.m.)

9 THE COURT: Mr. Foreman and ladies and gentlemen of the
10 jury, a question has been posed. Clarification of law
11 pertaining to reasonable doubt. Pay very close attention.

12 What is reasonable doubt in the law? A reasonable doubt
13 is the kind of doubt that would cause a reasonable person to
14 hesitate to act.

15 The State has the burden of proving the defendant guilty
16 beyond a reasonable doubt. Some of you may have served as
17 jurors in civil cases where you were told it was only
18 necessary to prove that a fact is more likely true than not
19 true, such as by a greater weight or preponderance of the
20 evidence.

21 In criminal cases, the State's proof must be more
22 powerful than that. It must be beyond a reasonable doubt.
23 Proof beyond a reasonable doubt is proof that leaves you
24 firmly convinced of the defendant's guilt.

25 There are very few things in this world that we know

1 with absolute certainty and, in criminal cases, the law does
2 not require proof that overcomes every possible doubt. If,
3 based on your consideration of the evidence, you are firmly
4 convinced the defendant is guilty of the crime charged, you
5 must find the defendant guilty. If, on the other hand, you
6 think there's a real possibility that the defendant is not
7 guilty, you must give the defendant the benefit of the doubt
8 and find him not guilty.

9 You've asked for clarification with regard to
10 possession, actual and constructive.

11 Actual possession means that the heroin was in the
12 actual physical custody of the defendant. Constructive
13 possession means the defendant had dominion and control or
14 the right to exercise dominion or control over either the
15 heroin itself or the property on which the heroin was found.

16 Mere presence at the scene where the drugs were found is
17 not enough to prove possession. Actual knowledge of the
18 presence of the heroin is strong evidence of the defendant's
19 intent to control its disposition or use.

20 The defendant's knowledge and possession may be inferred
21 when a substance is found on the property under the
22 defendant's control. However, this inference is simply an
23 evidentiary fact to be taken into consideration by you, along
24 with other evidence in the case, and to be given the weight
25 you decide it should have. Two or more persons may have

1 joint possession of a drug.

2 The question has been posed were written statements and
3 fingerprints required. Those are factual matters that y'all
4 will need to resolve.

5 I'm going to ask that you return to the jury room and
6 resume deliberations.

7 (WHEREUPON, the jury exited the courtroom at 12:31 p.m.)

8 THE COURT: I'll make the note a part of the record.
9 All right.

10 As soon as the food gets here, I think it would be
11 appropriate for y'all to go and get something quick to eat in
12 case the -- and leave your cell phones with Nicole -- cell
13 phone numbers with Nicole so she can reach you, but get
14 something kind of to go and bring it back with you, if you
15 could. Thank you.

16 MR. JORDAN: And, Your Honor, I think the food is here.

17 THE DEPUTY: Yeah, it's here.

18 THE COURT: Okay. Y'all can go.

19 (WHEREUPON, the jury note was marked as Court's Exhibit
20 Number 2.)

21 (WHEREUPON, there was a break in the proceedings from
22 12:32 p.m. until 1:48 p.m., after which the proceedings
23 resumed as follows.)

24 THE COURT: Please be seated. I understand that the
25 jury returned a verdict. Is there anything from the State

1 before we receive the verdict?

2 MS. DANIELS: No, Your Honor.

3 THE COURT: Anything from the defense?

4 MR. JORDAN: No, Your Honor.

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

6 (WHEREUPON, the jury entered the courtroom at 1:49 p.m.)

7 THE COURT: Mr. Foreman, have you reached a verdict?

8 THE FOREPERSON: Yes, we have, Your Honor.

9 THE COURT: Is it, indeed, unanimous?

10 THE FOREPERSON: Yes, it is, Your Honor.

11 THE COURT: I'm going to ask if you could give the
12 verdict form to the clerk.

13 (WHEREUPON, the foreperson complied.)

14 THE COURT: All right. The verdict seems to be in
15 proper order, and I'm going to allow the clerk to publish the
16 verdict. I'm going to ask the defendant to rise.

17 (WHEREUPON, the defendant complied.)

18 VERDICT

19 THE CLERK: State of South Carolina, County of Florence,
20 in the Court of General Sessions, Twelfth Judicial Circuit,
21 Indictment Number 2017-GS-21-157, State of South Carolina
22 versus Fashun Burgess.

23 Count I. Trafficking in heroin. As to the count of
24 trafficking in heroin, we, the jury, find the defendant
25 guilty.

1 As to the count of possession of a weapon during the
2 commission of a violent crime, we, the jury, find the
3 defendant guilty.

4 Signed Julius Bunch, foreperson. Dated October the 11th,
5 2017.

6 Members of the jury, if this is your verdict, please
7 raise your right hand.

8 (WHEREUPON, all jurors complied.)

9 THE CLERK: That's everyone.

10 THE DEFENDANT: Straight up framed.

11 THE COURT: Mr. Foreman and ladies and gentlemen of the
12 jury, I want to thank you for your time and your
13 participation and your deliberation in this matter. You've
14 been able to do what nobody in this courtroom has been able
15 to do is to bring finality to this matter and for that I'm
16 grateful.

17 I need to ask the Solicitor's Office is there going to
18 be another trial or do we know that yet?

19 MR. JEPERTINGER: No, sir.

20 THE COURT: Okay. The good news is that you don't have
21 to report back. You've concluded your service. You're going
22 to be paid handsomely for your service. Madam Clerk, how
23 much is that?

24 THE CLERK: It's \$10 a day and \$0.10 a mile.

25 THE COURT: Hardly -- hardly good compensation, but it's

1 a small token of appreciation on behalf of the State of South
2 Carolina and Florence County.

3 The additional good news is that if you're called to
4 participate in this courtroom within the next three years,
5 you can tell them that you served this week. You can tell
6 them that I presided and tell them a little bit about the
7 case and, if you exercise that exemption, you will not be
8 required to serve that week.

9 That exemption is good for the next three years. It
10 does not apply for municipal court, magistrates court, or
11 federal court. But if subpoenaed to participate in this
12 court system within the next three years, you've earned an
13 exemption.

14 I told you throughout this case not to discuss the case
15 with anyone else, and I'm releasing you from that order. You
16 can talk to anybody you want to about it. On the other hand,
17 if someone were to try to talk to you and you tell them you
18 don't want to talk to them about it, tell them so and, if
19 they persist in their efforts to talk with you about the case
20 against your will, identify them as best you can, report it
21 to me, and I'll deal with them accordingly. It would be
22 inappropriate to do that.

23 You have discharged your duty. Part of my
24 responsibility is to sentence individuals who are convicted
25 of a crime. You're welcome to stay to view that if you would

1 like. It's a public forum. Anybody from the public can stay
2 and participate in that.

3 However, if you have other things you'd rather do, your
4 duty has been discharged. Thank you so much for your time
5 and consideration, and everyone remain seated and you can be
6 seated, Mr. Burgess. Everyone remain seated as the jury
7 exits the courtroom.

8 Those of you who would like to view the sentencing
9 proceedings, you can just have a seat in the audience. Very
10 good.

11 (WHEREUPON, the jury was released and exited the
12 courtroom at 1:54 p.m.)

13 THE COURT: Madam Solicitor, do you have a sentencing
14 sheet?

15 MS. DANIELS: I do, Your Honor.

16 THE COURT: Okay. Might I see that?

17 MS. DANIELS: Yes, sir.

18 (WHEREUPON, a bench conference was held off the record,
19 after which the proceedings resumed as follows.)

20 THE COURT: All right. I'm going to ask Mr. Burgess if
21 he could come forward with your lawyer and, before we proceed
22 forward with sentencing, I'm going to allow the State to
23 offer any -- anything that they might want to offer with
24 regard to sentencing.

25 MS. DANIELS: Judge, I have nothing to offer. I could

1 give you his criminal record, which we went over briefly in
2 trial.

3 THE COURT: Very good.

4 MS. DANIELS: He's got a simple possession of marijuana
5 in 2000, a breach of peace in 2009, and a public disorderly
6 conduct in 2010.

7 THE COURT: All right. I'll be glad to hear from you,
8 Mr. Burgess, and your lawyer with regard to sentencing.

9 THE DEFENDANT: Can I speak?

10 THE COURT: Mr. Burgess, I'll be glad to hear from you
11 if you would like to say anything.

12 THE DEFENDANT: I mean -- I mean I really couldn't talk
13 during the whole -- during the whole trial. I mean you can
14 see from the pictures I mean that I mean the scene been
15 framed, you know, pour blood on everywhere. You know what I
16 mean? But I ain't -- you know, I guess it's too late now. I
17 can't -- you know, but that's what it is.

18 THE COURT: All right.

19 THE DEFENDANT: That's what happened.

20 THE COURT: All right. Well, Mr. Burgess, you
21 understand that this is a minimum mandatory 25 to 40. I've
22 got to give you 25. If I wanted to give you less, you know I
23 can't do that. You understand that, don't you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And you understand this is a

1 violent offense. It adversely affects your custody status.

2 And it's a serious offense, subject to the two- and the
3 three-strike rule.. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right.

6 THE DEFENDANT: (Unintelligible.)

7 THE COURT: Very good. And I'll be glad to hear from
8 your lawyer, Mr. -- Mr. Jordan.

9 MR. JORDAN: Thank you, Your Honor. May it please the
10 Court.

11 Your Honor, as you said, this is a mandatory minimum
12 sentence conviction. I mean there's nothing that you can do
13 about it, Your Honor.

14 He has spent the past 267 days in the Florence County
15 Detention Center on bench warrants for this charge. I would
16 ask that he be given credit for that.

17 Your Honor, if the sentencing range is 25 to 40 years,
18 then I would ask that you sentence him to the absolute
19 minimum based on his prior record. I mean he has no prior
20 convictions for drug offenses other than a simple possession
21 back in 2000.

22 Your Honor, he's 36 years old. As he told the Court, he
23 grew up in Olanta. He's got two children.

24 Your Honor, I would ask that you be as lenient as you
25 possibly can based on the parameters that you have to go by.

1 (WHEREUPON, the proceedings ended at 2:00 p.m.)

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--- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)
2) Certificate
3 County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 66, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 11th day of October, 2017.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

17 s/ Krystal J. Smith

18 Court Reporter

20 | Florence, South Carolina

21 | January 19, 2017

WITNESSES

Jake Chamberlain

Florence County Sheriff

Angel I. Daniels

ARREST WARRANT NUMBER

2016A2110200866

2016A2110200867

ACTION OF GRAND JURY

TRUE BILL

Hridi Ocaso

Foreperson of Grand Jury

Date: 1-5-17

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-21-00157

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

January

TERM

2017

THE STATE

vs.

FASHUN BURGESS

Indictment for

TRAFFICKING IN HEROIN,
28 GRAMS OR MORE

&

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

FILED
2017 JAN -5 PM 4:26
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR

TRAFFICKING IN HEROIN, 28 GRAMS OR MORE &
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on January 5, 2017 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- TRAFFICKING IN HEROIN, 28 GRAMS OR MORE

CDR: 0149

44-53-0370(e)(3)(c)

That FASHUN BURGESS did in Florence County on or about August 24, 2016, sell, deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was knowingly in actual or constructive possession of a quantity of Heroin in an amount of twenty-eight grams or more, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(e)(3), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

COUNT TWO- POSSESSION OF A WEAPON DURING A VIOLENT CRIME

CDR: 0549

16-23-0490

That FASHUN BURGESS did in Florence County, on or about August 24, 2016, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

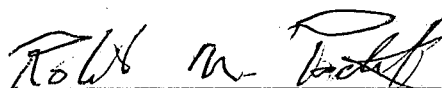


E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

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,



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 5th day of July, 2018.

RECEIVED
JUL 05 2018
SC Court of Appeals