

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

RECEIVED

JAN 14 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALFRED CLAY JACKSON,

APPELLANT

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Alfred Clay Jackson,) 2010-GS-42-2903
7 Defendant.) February 1 and 2, 2012
8) Spartanburg, South Carolina
9

10 B E F O R E :

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13

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

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16 SCOTT SPIVEY, ESQUIRE
17 Attorneys for the State

18 RICHARD H. WHELCHER, ESQUIRE
19 Attorney for the Defendant
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22 Linda D. Moffitt
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Jury qualification

1 (Proceedings February 1, 2012)

2 THE COURT: All right. State vs. Alfred Clay Jackson.

3 Are we ready to select a jury?

4 MR. HUNTER: Yes, Your Honor.

5 MS. WHELCHER: Yes, sir.

6 THE COURT: Okay. Bring the jury around, please.

7 Mr. Whelcher, do you have any witnesses besides those
8 listed on the state's witness list?

9 MS. WHELCHER: No, sir.

10 THE COURT: Mr. Whelcher, what is the relevance of
11 requests for voir dire No. 4?

12 MS. WHELCHER: Although this is not an assault or a
13 property crime, Your Honor, I need to know if they've ever
14 been a victim of either one of those crimes, whether or not
15 it will affect their decision-making as a juror, I believe.

16 (The following takes place in the presence of the jury
17 venire.)

18 THE COURT: Good morning, ladies and gentlemen of the
19 jury panel. My name is Derham Cole. I'm a resident judge
20 here in the 7th Judicial Circuit, and I'm presiding over
21 criminal court, just as Judge Couch is across the hall.

22 The first case that we have in this courtroom that's
23 going to require some of your participation is the case of
24 the State vs. Alfred Clay Jackson. Mr. Jackson has been
25 accused by the prosecutor by way of this indictment with

Jury qualification

1 having committed the crime of possession of cocaine.

2 The state alleges in this indictment that Mr. Jackson
3 did here in Spartanburg County on or about November the
4 6th of 2009 knowingly and intentionally possess some
5 quantity of cocaine, that being in violation of a
6 particular section of law.

7 Now, as to those allegations and as to that charge
8 he's entered a plea of not guilty. And a plea of not
9 guilty places upon the state the burden of proving the
10 allegations that they have set forth in the indictment, the
11 burden of proving each of the essential elements that makes
12 up the crime alleged against the defendant; and therefore
13 the burden is upon the state to establish the defendant's
14 guilt to the satisfaction of 12 jurors beyond a reasonable
15 doubt before a verdict of guilty could be returned.

16 So we are going to be selecting 13 of you to
17 participate in the trial of the case. And by way of your
18 participation you'll be called upon to listen to testimony
19 that will come from witnesses testifying from the witness
20 stand and to consider any other evidence that might be
21 introduced during the trial.

22 At the trial's conclusion when you go back to begin
23 your deliberations you will carefully consider all of that
24 evidence. Upon considering that evidence you will decide
25 the facts. In other words, you will determine what you

7
Jury qualification

1 believe to be -- the true facts to be as they relate to
2 these allegations contained in the indictment.

3 Once you decide the facts you'll apply the law that I
4 will have provided you, and you will determine whether or
5 not the defendant's guilt has been proven beyond a
6 reasonable doubt. And if it has, then your verdict would
7 be guilty. And if it has not, then your verdict would be
8 not guilty.

9 Now, before we begin with the actual selection of the
10 jury I'm going to ask you some questions. And the purpose
11 of the questions is to determine if there's some reason why
12 any one of you jurors should not be selected to participate
13 in the trial of this particular case, in other words, you
14 have some reason why you think you might not be able to be
15 fair and impartial.

16 The first thing I'll do is introduce some people to
17 you, and those are people that are going to be involved in
18 the trial of the case. And that will include any potential
19 witnesses.

20 The reason I'm introducing these people to you is
21 because I need to find out if you know any of these people,
22 if you have any connection with these people or any members
23 of their respective families, are you related to them by
24 blood or marriage, do you work with them, do you go to
25 church with them, do you go to school with them, do you

Jury qualification

1 socialize with them in any way or have you met them
2 somewhere, you just happen to know them.

3 So as these people are introduced to you or their name
4 is recited if you think you know that person in some
5 capacity, I'm going to ask that you please stand so that we
6 can determine that connection and whether or not it would
7 affect your judgment in the case.

8 First of all, as I told you, the defendant, the person
9 who is accused of the crime, is Alfred Clay Jackson.

10 Mr. Jackson, if you will, stand and face the jury
11 panel, please, sir.

12 (Whereupon, the defendant stood.)

13 THE COURT: Thank you. Be seated.

14 Mr. Jackson is represented by Dick Welchel, his
15 lawyer. He'll be assisting him during the trial of the
16 case. Mr. Welchel is employed in the 7th Judicial Circuit
17 Public Defender's Office.

18 Presenting the case on behalf of the state are Eddie
19 Hunter and Scott Spivey. They are both assistant circuit
20 solicitors for the 7th Judicial Circuit.

21 Potential witnesses to be called during the trial
22 include Jonathan Lawson with the Spartanburg Public Safety
23 Department; Ashley Harris with the Spartanburg County
24 Sheriff's Department; Mylnor Beach with the Spartanburg
25 Public Safety Department and Johann Cox with the

Jury qualification

1 Spartanburg Public Safety Department.

2 Are there any other potential witnesses on behalf of
3 the state?

4 MR. SPIVEY: None from the state, Your Honor.

5 THE COURT: The defendant.

6 MS. WHELCHER: Out of an abundance of caution, Your
7 Honor, add Donald Stepp to our witness list.

8 THE COURT: Donald Stepp?

9 MS. WHELCHER: Yes, sir. Our investigator.

10 THE COURT: Okay. And Donald Stepp, also employed in
11 the 7th Judicial Circuit Public Defender's Office.

12 All right. Now, does any member of the jury panel
13 know any of the people who've just been introduced for your
14 benefit? And I also need to know if they have not been --
15 their name has not been read, but if you know any other
16 person who is employed in the 7th Judicial Circuit
17 Solicitor's Office or the 7th Judicial Circuit Public
18 Defender's Office -- do you know anybody who's been
19 introduced or anybody employed in either of those two
20 offices? If so, please stand.

21 (No response.)

22 THE COURT: Nobody.

23 Yes, sir.

24 JUROR NO. 64: Derham, like I stated yesterday, Hayes
25 Holliday was my second cousin. His mother was my first

Jury qualification

1 cousin.

2 THE COURT: All right. Tell me what your number is,
3 your juror number.

4 JUROR NO. 64: Sixty-four.

5 THE COURT: Sixty-four. And you know Hayes Holliday?

6 JUROR NO. 64: He's my cousin.

7 THE COURT: He's your cousin. Would that have any
8 bearing upon your decision in the case?

9 JUROR NO. 64: No, sir.

10 THE COURT: Okay. Thank you. You may be seated.
11 Anyone else?

12 Yes, ma'am.

13 JUROR NO. 25: Juror No. 25. I know Barry Barnette in
14 the solicitor's office.

15 THE COURT: All right. Would that have any bearing?

16 JUROR NO. 25: No, sir.

17 THE COURT: Excuse me. It would not have any bearing
18 upon your decision?

19 JUROR NO. 25: No, sir.

20 THE COURT: Thank you. Be seated.

21 Anybody else?

22 (No response.)

23 THE COURT: All right. This is a case that arises out
24 of an event which the state alleges occurred back on
25 November the 6th of 2009. And it is alleged to have

Jury qualification

1 occurred here in the city of Spartanburg at or near Ricky's
2 Drive-in located on Henry Street and Church Street.

3 The state alleges that the defendant was found to be
4 in possession of cocaine unlawfully. And, as I say, those
5 are allegations he denies. But is there anything about the
6 case that would affect any juror's ability to be fair and
7 impartial? In other words, is there anything about the
8 nature of the case itself that would prevent you from being
9 fair to either side?

10 And tell me your name and your juror number, please,
11 ma'am.

12 JUROR NO. 80: Christy Beard, 80.

13 THE COURT: All right. And there's something about
14 what this case is about that would affect your judgment to
15 the extent that you could not be fair and impartial to one
16 side or the other?

17 JUROR NO. 80: Yes.

18 THE COURT: Okay. We'll excuse Juror No. 80 from
19 service in this case. But don't leave yet. Don't leave
20 yet -- don't leave yet. But you won't be serving in the
21 case.

22 Anybody else that thinks you could not be fair and
23 impartial simply based upon what the nature of the case is?

24 Yes, ma'am.

25 JUROR NO. 105: Juror No. 105.

Jury qualification

1 THE COURT: And your name?

2 JUROR NO. 105: Kathleen Mecs.

3 THE COURT: And you have some reason why you believe
4 you could also not be fair and impartial?

5 JUROR NO. 105: Yes.

6 THE COURT: Okay. We'll excuse Juror No. 105 also
7 from service in the case.

8 Anybody else?

9 Yes, sir.

10 JUROR NO. 42: Tommy Fulgham, No. 42.

11 THE COURT: All right. And you have a reason why you
12 think you couldn't be fair in this case?

13 JUROR NO. 42: Yes, sir.

14 THE COURT: All right. We'll excuse you from service
15 also.

16 Anybody else?

17 (No response.)

18 THE COURT: Does anybody think you might have been
19 exposed to some information about the case? Have you heard
20 anything about it from any person or any other source? If
21 so, please stand.

22 (No response.)

23 THE COURT: Has any member of the jury panel or any
24 member of your immediate family ever been the victim of any
25 type of criminal offense? Have you or a family member --

Jury qualification

1 and let me define a family member as a parent, a spouse, a
2 child or a sibling -- parent, spouse, child, or sibling.
3 Have you or any one of those family members ever been the
4 victim of any type of criminal offense? If so, please
5 stand.

6 (No response.)

7 THE COURT: No one's ever been the victim of any type
8 of criminal offense of any kind?

9 JUROR NO. 25: Juror 25.

10 THE COURT: Twenty-five. All right. And was it you
11 or a family member?

12 JUROR NO. 25: Family member.

13 THE COURT: And what type of an offense was it?

14 JUROR NO. 25: Rape.

15 THE COURT: And would that have any bearing upon your
16 decision in this case?

17 JUROR NO. 25: No.

18 THE COURT: Thank you. Be seated.

19 Anyone else?

20 (No response.)

21 THE COURT: All right. Has any member of the jury
22 panel ever been employed as any type of law enforcement
23 officer, whether civilian or military? Have you ever been
24 employed as a law enforcement officer?

25 That includes not only deputy sheriffs and city, town

Jury qualification

1 or municipal law enforcement officers, but it also includes
2 those who might have been employed in a detention facility,
3 a jail, a department of corrections, state law enforcement
4 division or any type of agency where you provided law
5 enforcement services. Anyone ever been so employed? If
6 so, please stand.

7 (No response.)

8 THE COURT: None responding.

9 Does anybody on the panel belong to any type of
10 organizations that might be characterized as law
11 enforcement support or victims advocate type of groups?
12 And those might include organizations such as Mothers
13 Against Drunk Drivers, Citizens Against Violent Crime, the
14 honorary sheriffs' association, the troopers' association,
15 the fraternal order of police or any other similar type of
16 organization. I need to know if you belong to any or if
17 you contribute time or money to any of those types of
18 organizations. If so, please stand.

19 All right. And tell me your name and number, please.

20 JUROR NO. 134: Crystal Robinson, 134. I have
21 contributed to Mothers Against Drunk Drivers and the state
22 troopers' association.

23 THE COURT: All right. Do you think that would in any
24 way bear upon your decision in this case?

25 JUROR NO. 134: No, sir.

Jury qualification

1 THE COURT: Thank you. Be seated.

2 Yes, ma'am.

3 JUROR NO. 87: No. 87, Karen Lawson. I contributed to
4 the troopers' association.

5 THE COURT: And would that affect your judgment in any
6 way?

7 JUROR NO. 87: No, sir.

8 THE COURT: Thank you. Be seated.

9 Yes, ma'am.

10 JUROR NO. 56: Your Honor, No. 56. I spent a year
11 working for the Cook County District Attorney's Office as a
12 law student.

13 THE COURT: All right. Would that have any bearing
14 upon your decision?

15 JUROR NO. 56: No, Your Honor.

16 THE COURT: Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 164: Jill Thrift, 164. I have contributed
19 in the past to the South Carolina Troopers Association.

20 THE COURT: And would that have any bearing upon your
21 decision?

22 JUROR NO. 164: No, sir, it would not.

23 THE COURT: Thank you. Be seated.

24 Has any member of the jury panel ever been called to
25 testify as a witness in a criminal case either by the

Jury qualification

1 prosecutor or by the defendant? Anyone ever been called to
2 testify as a witness in a criminal case? If so, please
3 stand.

4 JUROR NO. 25: Juror 25.

5 THE COURT: Twenty-five. Okay. And were you called
6 by the state or the defense -- prosecutor or defendant?

7 JUROR NO. 25: Both.

8 THE COURT: Both. Would it have any bearing upon your
9 decision?

10 JUROR NO. 25: No.

11 THE COURT: Thank you. Be seated.

12 Does any juror, any other juror, know of any reason
13 whatsoever why you think you could not be fair and
14 impartial if you were called upon to serve as a juror in
15 this particular case? If so, please stand.

16 (No response.)

17 THE COURT: Any other questions requested by the
18 state?

19 MR. SPIVEY: None from the state, Your Honor.

20 THE COURT: By the defendant?

21 MS. WHELCHER: None, Your Honor.

22 THE COURT: All right. As your -- all of y'all have
23 participated in jury selection. So you know when your name
24 is called you'll come forward and you'll be -- if either
25 side asks that you be excused, go back and have a seat

Jury qualification

1 where you are. If both agree to have you seated have a
2 seat in the jury box to your right and my left.

3 So please simply come forward as your name is called,
4 and you'll be instructed if you've been accepted for
5 service or excused from service.

6 THE CLERK: Juror No. 155, Daniel Stanley.
7 What says the state?

8 MR. SPIVEY: Please excuse this juror.

9 THE CLERK: Juror No. 152, Linda Sortor.
10 What says the state?

11 MR. SPIVEY: Please present this juror.

12 THE CLERK: What says the defense?

13 MS. WHELCHER: Please seat Ms. Sortor.

14 THE CLERK: Juror No. 27, Charlotte Crosby.
15 What says the state?

16 MR. SPIVEY: Please excuse this juror.

17 THE CLERK: Juror No. 117, John Oneill.
18 What says the state?

19 MR. SPIVEY: Please present this juror.

20 THE CLERK: What says the defense?

21 MS. WHELCHER: Please seat Mr. Oneill.

22 THE CLERK: Juror No. 96, Sherry Manry.
23 What says the state?

24 MR. SPIVEY: Please present this juror.

25 THE CLERK: What says the defense?

Jury qualification

1 MS. WHELCHER: Please seat Ms. Manly.

2 THE CLERK: Juror No. 95, Rhonda Manly.

3 THE COURT: You can come around that way if you would
4 like, Ms. Manly.

5 THE CLERK: What says the state?

6 MR. SPIVEY: Please present this juror.

7 THE CLERK: What says the defense?

8 MS. WHELCHER: Please excuse Ms. Manly from the trial
9 of this case.

10 THE CLERK: Juror No. 43, Mary Gabbert.

11 What says the state?

12 MR. SPIVEY: Please present the juror.

13 THE CLERK: What says the defense?

14 MS. WHELCHER: Please seat Ms. Gabbert.

15 THE CLERK: Juror No. 13, Ashlee Bradley.

16 What says the state?

17 MR. SPIVEY: Please present this juror.

18 THE CLERK: What says the defense?

19 MS. WHELCHER: Please seat Ms. Bradley.

20 THE CLERK: Juror No. 165, Glenda Tidball.

21 What says the state?

22 MR. SPIVEY: Please present this juror.

23 THE CLERK: What says the defense?

24 MS. WHELCHER: Please seat Ms. Tidball.

25 THE CLERK: Juror No. 60, Theresa Harrell.

Jury qualification

1 what says the state?

2 MR. SPIVEY: Please present this juror.

3 THE CLERK: What says the defense?

4 MS. WHELCHER: Please seat Ms. Harrell.

5 THE CLERK: Juror No. 48, Kenneth Gilbert.

6 What says the state?

7 MR. SPIVEY: Please excuse this juror.

8 THE CLERK: Juror No. 91, Michael Liebmann.

9 What says the state?

10 MR. SPIVEY: Please present this juror.

11 THE CLERK: What says the defense?

12 MS. WHELCHER: Please seat Mr. Liebmann.

13 THE CLERK: Juror No. 86, Tabitha Knight.

14 What says the state?

15 MR. SPIVEY: Please present this juror.

16 THE CLERK: What says the defense?

17 MS. WHELCHER: Please seat Ms. Knight.

18 THE CLERK: Juror No. 11, Margrieta Bibelnicks.

19 Sorry.

20 What says the state?

21 MR. SPIVEY: Please present this juror.

22 THE CLERK: What says the defense?

23 MS. WHELCHER: Please seat the lady.

24 THE CLERK: Juror No. 137, Holly Rogers.

25 What says the state?

Jury qualification

1 MR. SPIVEY: Please present this juror.

2 THE CLERK: What says the defense?

3 MS. WHELCHER: Please seat Ms. Rogers.

4 THE CLERK: Juror No. 24, Bobby Cox.

5 What says the state?

6 MR. SPIVEY: Please excuse this juror.

7 THE CLERK: Juror No. 111, Roland Mueller.

8 What says the state?

9 MR. SPIVEY: Please present this juror.

10 THE CLERK: What says the defense?

11 MS. WHELCHER: Please seat Ms. Mueller.

12 THE CLERK: Your Honor, this is for the 13th.

13 Juror No. 76, Sarah Howell.

14 What says the state?

15 MR. SPIVEY: Please present this juror.

16 THE CLERK: What says the defense?

17 MS. WHELCHER: Please seat Ms. Howell.

18 THE CLERK: Your Honor, the jury has been selected.

19 (Whereupon, a jury was impaneled.)

20 THE COURT: All right. Those who have been selected,

21 I'll ask you to please go with a bailiff to a jury room,

22 and I'll bring you back in just a few minutes.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Are there any matters that need to be

Jury qualification

1 addressed regarding jury selection by the state?

2 MR. SPIVEY: None from the state, Your Honor.

3 THE COURT: By the defendant?

4 MS. WHELCHER: None, Your Honor.

5 (Whereupon, the remaining jurors were excused.)

6 THE COURT: All right. Are there any matters that
7 need to be addressed regarding jury selection by the state?

8 MR. SPIVEY: Nothing from the state, Your Honor.

9 THE COURT: Anything that needs to be addressed before
10 the jury is sworn? Excuse me.

11 MS. WHELCHER: No, sir.

12 MR. SPIVEY: You don't have a motion on the video?
13 Okay.

14 THE COURT: All right. Bring the jury in. Ask
15 Ms. Gabbert -- Ms. Gabbert -- to take the foreperson's
16 seat.

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: Ladies and gentlemen, we are ready to
20 begin with the trial of the case for which each of you have
21 been selected.

22 And don't be concerned. I'm well aware that it's time
23 for lunch, and we are going to take break for lunch in a
24 few minutes. But I've got some remarks I'd like to make to
25 you before we take that break and also need to appoint the

1 foreperson and explain some duties that you have.

2 Ms. Gabbert, I'm going to ask you to serve as the
3 foreperson of the jury. As the foreperson you're going to
4 have three duties that none of the other jurors will have.

5 No. 1, you'll be asked to serve as the spokesperson
6 for the jury. And that just means that if something comes
7 up during the course of the trial that needs to be brought
8 to my attention -- you or one of your fellow jurors has
9 some difficulty, problem or question -- if you'll let me
10 know of that fact either through the bailiff or directly,
11 and I'll address those issues or answer those questions.

12 Secondly, you'll be called upon to preside over jury
13 deliberations when that times at the end of trial. In
14 other words, after all of the evidence has been received
15 and I've instructed you on the law that's applicable in
16 this case, when you go back to begin your deliberations you
17 will preside over that process in the jury room simply to
18 ensure that those deliberations are carried out in some
19 orderly fashion.

20 And, thirdly, you'll be asked to actually write the
21 verdict or the decision of the jury. And you'll that on a
22 verdict form that I'll provide you at the trial's
23 conclusion on which you will indicate the jury's unanimous
24 decision.

25 Now, the foreperson has those duties that I've just

1 indicated. That does not however mean that she is any more
2 important than any of you other jurors, and that's because
3 the decision of a jury panel is the unanimous consensus
4 opinion of all 12 jurors. And so each of you will have an
5 equal say and an equal vote in what the ultimate decision
6 will be in the case.

7 Someone simply has to be delegated those
8 responsibilities that I have just indicated, and I have
9 delegated those to Ms. Gabbert in appointing her as the
10 foreperson. But all of you jurors are equally important so
11 far as the ultimate decision is concerned, because as I
12 have stated the verdict has to be unanimous. All of you
13 must be in agreement.

14 Now, Ms. Howell, you have been selected as an
15 alternate juror. And the function of an alternate juror is
16 to take the place of one of the original 12 jurors if
17 during the trial one of these 12 cannot continue to serve
18 for some reason.

19 And so if one is called away because of an illness or
20 an emergency or some other reason and they cannot continue
21 to serve as a juror you would be called upon to take that
22 person's place. In that event you become the 12th juror.
23 And in that event you participate throughout the course of
24 the trial including the jury deliberations at the trial's
25 conclusion.

1 If however when the time for deliberations begins the
2 original 12 are able to participate your service would end.
3 And that's because the verdict of a jury is that of 12, and
4 no more than 12 can participate in that deliberation
5 process.

6 But it is important that you pay just as careful
7 attention as we ask of all the jurors in this case because
8 it does occur from time to time for one reason or another
9 one of these 12 may not be unable to continue. In that
10 event you become the 12th.

11 So we do appreciate your participation as an alternate
12 juror, just as we appreciate the participation of each of
13 you jurors who have been selected for the purpose of
14 deciding the verdict in this particular case.

15 You may swear the panel.

16 (Whereupon, the jury was duly sworn.)

17 THE COURT: Ladies and gentlemen, as you know, this is
18 a criminal case. And all criminal cases that are brought
19 into this court are brought here by way of the document
20 that I referred to prior to your selection. That's the
21 indictment. The indictment sets forth the charge that has
22 been brought against a defendant.

23 It's not evidence of anything; it's not proof of
24 anything; it does not establish anything. But it is the
25 means by which any person charged with a crime where the

1 jurisdiction lies in this court is brought to this court
2 and formally accused of a crime. And of course it serves
3 to put the defendant on notice as to what crime the state
4 claims that they have submitted.

5 The indictment, as I say, is not evidence of anything.
6 It will be in the jury room when you go back to begin
7 deliberations, because it is on the back of the indictment,
8 Madam Forelady, that you're going to be asked to indicate
9 the jury's decision. And you'll insert the verdict in the
10 space provided, sign your name as the foreperson. But
11 other than serving as the verdict form the indictment
12 serves no purpose so far as you jurors are concerned.

13 Now, as you know, in this case the defendant has
14 entered a plea of not guilty to the charge. And that plea
15 of not guilty, as I told you, places upon the state the
16 burden of proving the allegations that they have made by
17 way of the indictment, the burden of proving each of the
18 essential elements of the crime alleged against the
19 defendant; and therefore the burden is upon the state to
20 establish the defendant's guilt to the satisfaction of you
21 12 jurors beyond a reasonable doubt before any verdict of
22 guilty could be returned.

23 Every person who is accused of a crime -- and it does
24 not matter how serious the offense might be for which that
25 person stands charged -- every person accused of a crime is

1 presumed to be innocent of the charge.

2 That presumption of innocence remains with any
3 defendant, as it does with this defendant, from the time
4 that he is placed under arrest and throughout the course of
5 the criminal process and even throughout the course of the
6 actual trial in the case.

7 That presumption of innocence will be with this
8 defendant even as you go back at this trial's conclusion to
9 begin with your deliberations in the case. That
10 presumption of innocence will be with him in that jury
11 room, and it'll be with him forever unless you 12 jurors
12 unanimously determine that he's no longer entitled to that
13 presumption of innocence.

14 In other words, after you've carefully considered all
15 of the evidence, and from that evidence you have decided
16 what you believe to be the truth facts, and once you decide
17 those facts you apply the law that I will have provided
18 you, if you 12 jurors unanimously determine that his guilt
19 has been proven beyond a reasonable doubt, then he's no
20 longer entitled to the presumption of innocence. But it's
21 only if, unless and until you are satisfied of his guilt
22 beyond a reasonable doubt that the presumption of innocence
23 would no longer be applicable.

24 Now, the way the trial will proceed is that after
25 lunch we will begin with the lawyers addressing you in what

1 are called opening statements.

2 There are two occasions in the trial of a case where
3 lawyers are permitted to address the jury, and that is at
4 the beginning of the trial before any evidence has been
5 introduced, then again at the conclusion of the trial after
6 all of the evidence has been received.

7 But as I've just indicated, keep in mind that the
8 evidence upon which you will base your decision comes in
9 between the opening and the closing statements of the
10 lawyers.

11 So what the lawyers tell you in their statements is
12 not to be considered by you as any evidence upon which you
13 will base your decision, and that's because the lawyers
14 don't know anything about this case of their own personal
15 knowledge or perception like witnesses will be testifying
16 to.

17 They're not going to take the witness stand. They're
18 not going to testify under oath. They won't be subjected
19 to direct and cross-examination like each of the witnesses
20 will be. And so what they tell you in their statements is
21 not to be considered by you as any evidence in the case,
22 but you should listen to what they have to say because
23 those statements do serve a purpose.

24 The opening statements serve to provide you with a
25 basic understanding as to what this case is about from both

1 the perspective of the state and of the defense so that
2 you'll have some context in which to place the evidence
3 that we will be receiving shortly thereafter.

4 The closing statements occur after all of the evidence
5 has been received. And, again, while those statements are
6 not evidence it does afford the lawyers an opportunity to
7 discuss with you the evidence that you have seen and heard
8 during the trial of this case. And through that discussion
9 each will have an opportunity to try to persuade you or to
10 convince you that that evidence does or does not support a
11 particular decision.

12 And, as I've said, it's in between the opening and the
13 closing statements that we actually receive the evidence
14 upon which you will base your decision.

15 The state, as I've told you, has the burden of proof.
16 That's because they brought the accusation, they brought
17 the charge. And because they brought the charge they have
18 the burden of proving that charge. And so they will go
19 forward first in their presentation of evidence.

20 Once they have concluded with that presentation a
21 defendant in a trial has an opportunity to testify, to call
22 witnesses, to present evidence if he or she wishes to do
23 so. But a defendant in a criminal trial is never under any
24 obligation to testify or to present evidence. And that's
25 because the burden is on the state to prove a defendant

1 guilty beyond a reasonable doubt.

2 The burden is never upon a defendant to prove that he
3 or she is not guilty or to prove that he or she is innocent
4 of a charge because in some cases that might not even be
5 possible.

6 So while the state does have the burden of proof and
7 therefore must present evidence, a defendant has no
8 obligation to present any evidence in the case. But a
9 defendant is afforded that opportunity in the event he or
10 she wished to do so.

11 In any event, after all of the evidence has been
12 received in the case and after you've heard the final
13 summations of the lawyers I will then instruct you fully on
14 the law as it relates to the criminal law generally and as
15 it relates to this particular crime specifically.

16 After that you'll be asked to go back into your jury
17 room and to begin with your deliberations. Through that
18 process you're simply going to be called upon through the
19 exercise of good judgment and common sense conscientiously
20 applied to the testimony and the evidence in the case to
21 decide what you believe to be the true facts as they relate
22 to these allegations. And then once you decide those facts
23 you simply apply the law that I will have provided you.

24 You determine whether or not the defendant has been
25 proven guilty beyond a reasonable doubt. If he has, then

1 your verdict is guilty. If he has not, then your verdict
2 is not guilty.

3 Now, all that we're going to ask for you to do in this
4 case, as in any case, is to pay careful attention
5 throughout the course of the trial.

6 In other words, you've got to give every witness the
7 same degree of attention as they testify, because one of
8 your prerogatives in a case in deciding the verdict and in
9 deciding the facts is to evaluate and to assess the
10 credibility and the believability of witness testimony.

11 And in doing that you're permitted to believe
12 everything that a witness testified to. You may choose to
13 reject everything that a witness testified to. You can
14 believe one portion of a witness' testimony and reject some
15 other portion of that same witness' testimony.

16 You can believe one witness as opposed to several, or
17 several as opposed to one. But in order for you to be in a
18 proper position to fairly evaluate and assess a witness'
19 credibility as to the testimony it's important that you
20 give them close attention as they testify so that when you
21 do go back to begin your deliberations you'll be in a
22 proper position to fairly evaluate that witness' testimony
23 in light of not just that witness' testimony but in light
24 of all of the testimony and all of the evidence received
25 during the trial.

1 And of course it's important that you keep an open
2 mind throughout the course of the trial. And that just
3 means that you are not to begin making up your minds or
4 formulating your opinions as to what you think the ultimate
5 decision in this case ought to be until all of the evidence
6 has been received, until I have instructed you on the law
7 that's applicable in the case and until you've been asked
8 to begin with your deliberations. That is the process that
9 is designed for you 12 jurors to arrive at a fair and just
10 decision in the case.

11 So I do want to thank you in advance for your
12 participation, as well as for your careful attention.

13 As I told you, we're going to break for lunch now.
14 We'll start back at 2:30, at 2:30.

15 So as you leave if you're not sure how to get back to
16 that jury room that you have just been introduced to be
17 sure you talk with the bailiff. He'll provide you with
18 those directions so that you can find the jury room when
19 you come back from lunch.

20 And also let me caution you that in any trial a jury's
21 decision has to be based upon the testimony and the
22 evidence received during the trial of the case. You can't
23 allow your judgment to be influenced by any outside or
24 extraneous information.

25 So during the course of the trial and during lunch and

1 any other time until you're involved in deliberations
2 you're not to discuss this case with anyone whatsoever in
3 any fashion whatsoever. And that includes your fellow
4 jurors.

5 You are also not to conduct any research or do your
6 own investigation about any issue that might arise during
7 the case. As I say, that's because you've got to base your
8 decision upon what's presented during the trial. You can't
9 supplement that knowledge by consulting outside resources
10 or talking to other people about what they think about it.
11 And, as I say, you can't even discuss the case among
12 yourselves until the case has been submitted to you for
13 your deliberations at the trial's conclusion.

14 So with that caution do have a good lunch, and please
15 report to your jury room at 2:30, 2:30 this afternoon.
16 Have a good lunch.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: Mr. Wheelchel, who is on Mr. Jackson's
20 bond?

21 MR. SPIVEY: T.R. Dawkins.

22 THE COURT: Who?

23 MR. SPIVEY: T.R. Dawkins.

24 THE COURT: Is he here?

25 MS. WHELCHEL: No, sir.

1 THE COURT: Okay. Then Mr. Jackson will have to be in
2 custody during the trial of the case.

3 Do we have any matters we are going to need to address
4 before we start?

5 MS. WHELCHER: No, sir.

6 THE COURT: Okay.

7 (Whereupon, a recess was taken.)

8 (Cocaine marked State's Exhibit No. 1 for
9 Identification; photograph marked State's Exhibit No. 2 for
10 Identification.)

11 THE COURT: All right. Are we ready for the jury?

12 MR. SPIVEY: Yes, Your Honor.

13 THE COURT: All right. Bring them in.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: Good afternoon, ladies and gentlemen.

17 As I told you when we recessed for lunch, we'll begin
18 with the lawyers' opening statements followed by the
19 reception of evidence. So please give the lawyers your
20 attention now as they give you those opening statements.

21 Mr. Hunter.

22 MR. SPIVEY: May it please the Court.

23 Ladies and gentlemen of the jury, I'm going to be very
24 brief. This is a possession of cocaine case, that on
25 November the 6th of 2009 Officer Lawson standing right here

Opening statements

1 with the city police department was right out on Church
2 Street right out here in front of the courthouse.

3 He was patrolling that area when he saw Alfred Jackson
4 on a moped. That moped was on the sidewalk. He was
5 driving down the sidewalk on the right side past the bank
6 and down that way past the federal courthouse.

7 He ran the red light at St. John Street and then
8 crossed over four lanes of traffic to turn into Boot's and
9 Sonny's. He got in Boot's and Sonny's.

10 Officer Lawson initiated a traffic stop. He
11 continually asked for Mr. Jackson to take his hands out of
12 his pockets. At one time when he took his hands out of his
13 pockets and a little baggie of white powder fell out. The
14 evidence will show that that little baggie of white powder
15 was cocaine.

16 He was then arrested. A search of his person ensued.
17 That search of his person revealed another small white
18 baggie of white powder that was also tested and is positive
19 for cocaine.

20 So please listen to both me and the defense. Please
21 use your common sense. And at the end of this trial I'm
22 going to come back before you and ask for a verdict of
23 guilty. Thank you.

24 THE COURT: Mr. Wheelchel.

25 MS. WHELCHER: Thank you, Your Honor.

Opening statements

1 Madam Forelady and ladies and gentlemen of the jury,
2 Alfred Clay Jackson, my client, is not guilty. Alfred Clay
3 Jackson has been not guilty for 27 months. It's been that
4 long since they arrested him.

5 Mr. Jackson is not guilty now -- Mr. Jackson is not
6 guilty now. Mr. Jackson is not guilty because the law says
7 he's not guilty -- because the law says he's not guilty.

8 Every citizen who is brought to trial by the state of
9 South Carolina, as the judge has already told you and will
10 tell you again, is presumed innocent. Whether it's a
11 property crime or a drug crime that's alleged, it doesn't
12 matter.

13 The burden of proof in this case lies with the state
14 of South Carolina where it's always been. Mr. Jackson or
15 any citizen of this state arrested and charged with a
16 criminal offense has no burden of proof at all, none
17 whatsoever. You need to understand that, no burden of
18 proof on Mr. Jackson's part whatsoever.

19 Because they have initiated this process by arresting
20 Mr. Jackson, the state has the burden of proving to you
21 beyond a reasonable doubt that this happened when and where
22 and how and all of that kind of thing, that this happened
23 the way they say it happened. And they have to prove that
24 to you, you and you, all of you, beyond a reasonable doubt.

25 Now, the judge is going to tell you what a reasonable

Opening statements

1 doubt is I'm sure at the conclusion of the case. Both the
2 solicitor and I will talk about reasonable doubt. But what
3 you need to understand is very plain and very simple.

4 The judge will tell you the standard for reasonable
5 doubt, and that in this kind of case it's not like an
6 automobile accident or a contract case or something like
7 that where you prove someone guilty beyond -- or by the
8 preponderance of the evidence or the greater weight of the
9 evidence. If you tip the scales one way, then they win.
10 It's not that way.

11 In order to return a guilty verdict each and every one
12 of you must have it proven to you by the state of South
13 Carolina beyond a reasonable doubt that Mr. Jackson is
14 guilty of this particular crime, not that drugs are bad,
15 people not having drugs -- cocaine stash. Not it. They
16 have got to prove to you beyond a reasonable doubt that
17 this happened when and how and where they say it happened.

18 The judge will tell you also that your verdict must be
19 unanimous, that not only does the state have to prove to
20 you beyond a reasonable doubt that this happened their way.
21 They must prove it to you individually and as a collective
22 body. So your verdict must be unanimous.

23 Mr. Jackson and any citizen of this state who is
24 charged with a criminal offense is presumed innocent. The
25 judge will tell you later it's likened to a cloak of

Opening statements

1 innocence that wraps around Mr. Jackson and surrounds him.
2 And in order to remove that cloak of innocence the state
3 must prove to you today or during this trial with evidence
4 so strong and so convincing as to remove that cloak of
5 innocence in order for the 12, the collective body, to say
6 guilty.

7 That's the burden on the state. Again, there is no
8 burden whatsoever on Mr. Jackson.

9 The facts will come out through the testimony. You
10 get to decide what you believe, what's credible. And what
11 you use when you decide that is not anything magic. That's
12 why we have got 12 other faces.

13 You use that same common sense or horse sense,
14 whatever you want to call it, that you use every day when
15 you're talking to your husband or wife or brother or sister
16 or coworker or a child. And they tell you something and
17 you go that doesn't sound quite right, I don't know whether
18 to believe it or not.

19 If you've got a doubt the judge will tell you -- and
20 it's fundamental that you understand this -- if you have a
21 doubt that doubt must be resolved in Mr. Jackson's favor,
22 because the burden of proving to you that this happened the
23 way they say it happened is, once again, here.

24 Mr. Jackson was not guilty when he was arrested. All
25 of these months and years in between, not guilty.

Jonathan Lawson
Direct examination by Mr. Spivey

1 Throughout the course of this trial he's not guilty.
2 Cannot be found guilty unless and until that presumption of
3 innocence is removed by strong and sufficient evidence so
4 strong and so sufficient as to remove that cloak of
5 innocence. That's their burden. Thank you.

6 THE COURT: Mr. Hunter.

7 MR. SPIVEY: The state would call Officer Jonathan
8 Lawson.

9 JONATHAN LAWSON, having been
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. SPIVEY

12 Q Make sure you speak up loud enough so the court
13 reporter beside you can hear you, and the jury as well.
14 Okay?

15 A Yes, sir.

16 Q Please introduce yourself to the jury.

17 A Jonathan Lawson.

18 Q And please give a brief overview of your law
19 enforcement experience.

20 A I am currently assigned to special operations unit of
21 the Spartanburg Public Safety Department's K-9 division.
22 So I'm actually a K-9 handler.

23 I've been doing this since two thousand -- the end of
24 2008. Prior to that I spent time working with our
25 narcotics/organized crime unit, which in that time I was

Jonathan Lawson
Direct examination by Mr. Spivey

1 assigned to the F.B.I. drug task force.

2 Prior to that I served as a uniform patrol officer in
3 the north side of the city of Spartanburg.

4 Q How long have you been a law enforcement officer?

5 A Going on approximately ten years.

6 Q Did you happen to come in contact with Mr. Jackson on
7 November 6th of 2009?

8 A Yes, I did.

9 Q Can you briefly describe those events?

10 A Yes, sir. That date and time, or that date, I was
11 traveling on North Church Street, south on North Church
12 Street. I was at the intersection of Daniel Morgan Avenue
13 and North Church Street in the city limits of Spartanburg,
14 which is in Spartanburg County.

15 In the process of that while going through the red
16 light at Daniel Morgan I observed a green Robot moped with
17 a black male driver on it riding on the sidewalk. At that
18 point --

19 Q Hold on a second. Is that illegal?

20 A Yes, it is.

21 Q Continue.

22 A Further on that observing -- after observing him on
23 the moped I continued to travel down Church Street and was
24 unable to get over due to the traffic.

25 Got to the intersection right before you get to St.

Jonathan Lawson
Direct examination by Mr. Spivey

1 John at North Church Street. I observed the same gentleman
2 on the same moped proceed straight through the red light
3 that was clearly red and then weave into traffic and weave
4 back out onto the sidewalk, which at that time the red
5 light changed and I was able to finally catch up to that
6 moped right about -- I think it's Kennedy Street.

7 The moped once again come off the sidewalk and went
8 across all four lanes of traffic, back upon the sidewalk
9 into the parking lot of Boot's and Sonny's restaurant,
10 which is at 120 East Henry Street in the city limits of
11 Spartanburg.

12 At that time I initiated a traffic stop because I was
13 able to get behind the vehicle at this point, or moped.
14 Upon approaching that moped I spoke with the gentleman over
15 to my right, Mr. Alfred Clayton Jackson. He was identified
16 through his South Carolina I.D. card that he gave me. I
17 advised Mr. Jackson why he was being stopped. In the
18 process of that attempting to check Mr. Jackson's
19 license --

20 Q Let me stop you right there. We need to go back a
21 little bit.

22 A Yes, sir.

23 Q So you observed him on the sidewalk on a moped?

24 A Yes, I did.

25 Q Okay. And he ran the red light at St. John and North

Jonathan Lawson
Direct examination by Mr. Spivey

1 Church Street?

2 A Yes.

3 Q And then he also crossed over four lanes of traffic
4 turning from the sidewalk on the right side of North Church
5 Street into Boot's and Sonny's?

6 A Yes, sir.

7 Q And all three of those actions are illegal?

8 A Yes, sir.

9 Q Okay. What did he hand you when you asked him for --
10 what county was this in as well?

11 A Spartanburg County.

12 Q When you approached who was driving that moped?

13 A Mr. Jackson.

14 Q When you approached him, what did you ask him?

15 A I asked him for his driver's license. However, he
16 didn't have a driver's license. So he handed me his South
17 Carolina I.D. card, which is how I verified it was him --
18 Mr. Jackson.

19 Q And what did you do with that I.D. card? Where did
20 you go from there?

21 A At that point I stepped away from Mr. Jackson, which
22 is a common routine that I do for officer safety
23 purposes -- stepped back to the back of my -- or stepped
24 back to the driver's side front door of my patrol vehicle,
25 which I have a mobile data terminal in my car that I can

Jonathan Lawson
Direct examination by Mr. Spivey

1 run driver's license and tags and things like that on.

2 At that point I went to check Mr. Jackson for
3 warrants -- possible have any warrants. I also went to
4 check the I.D. to see if he was able to be driving the
5 moped.

6 Q Were there any non -- were there any civilian persons
7 around at this time?

8 A The only civilian persons that were there were most
9 likely inside the restaurant and of course --

10 Q Were there any in the parking lot?

11 A Not that I recall seeing any in the parking lot.

12 Q Okay. And did you notice anything about Mr. Jackson's
13 posture after you went back to your patrol car to check his
14 license and warrants?

15 A At that point Mr. Jackson started putting his hands in
16 his coat pockets. He had on a coat which was -- underneath
17 the coat was a brown sweater similar to what he's wearing
18 today, and a pair of jeans.

19 I asked him several times to take his hands out of his
20 pockets.

21 At that point I went and asked Mr. Jackson if I could
22 pat him down for weapons due to the fact he continuously
23 kept putting his hands back in his pockets. I wasn't sure
24 if he had a weapon on his person.

25 At that point in time I conducted a pat for weapons

Jonathan Lawson
Direct examination by Mr. Spivey

1 only about his person, which is basically no more than a
2 pat of the outside of the clothing. I did not locate a
3 weapon.

4 Stepped back again to my vehicle. Mr. Jackson, once
5 again, put his hands inside of his coat pockets while I'm
6 waiting on the information to come back for a warrant check
7 through our records division. It takes a little while.

8 Q I am going to show you what's been premarked State's
9 Exhibit 2. Do you recognize that picture?

10 A Yes, sir. I took that photo.

11 Q Does it fairly and accurately depict the scene as you
12 remember it that day?

13 A Yes, sir, it does.

14 Q And what is that photo of?

15 A This is a picture of Mr. Jackson wearing a blue and
16 yellowish jacket with a red and black do-rag, wearing a
17 brown hooded sweatshirt.

18 Of course to the right is a patrol vehicle, which is
19 the patrol vehicle that had to transport Mr. Jackson in
20 that day.

21 Q All right.

22 A And it shows the parking lot of where it says Boot's
23 and Sonny's here at 126 East Henry.

24 MR. SPIVEY: Your Honor, at this time the state would
25 offer Exhibit 2 into evidence.

Jonathan Lawson
Direct examination by Mr. Spivey

1 MS. WHELCHER: No objection.

2 THE COURT: It's admitted.

3 (Photograph marked State's Exhibit No. 2.)

4 Q In fact, looking at that sweatshirt, what does it
5 appear that the defendant is wearing today?

6 A It appears to be the same exact sweatshirt.

7 Q Can you describe the jacket that he was wearing over
8 that sweatshirt?

9 A It was not a real thick coat, but it was kind of like
10 I guess you'd call a windbreaker, bluish, blue and yellow,
11 had pockets on both sides.

12 Q And what was he doing with his hands in that jacket?

13 A He just kept fiddling around with it inside his coat
14 pocket as if he was trying to move something around, the
15 way it appeared to me at that time.

16 Based on that I asked him once again to remove his
17 hands. After the second time of asking him that
18 Mr. Jackson become extremely nervous acting about why I was
19 asking him to take his hands out of his pockets.

20 In the process of that when Mr. Jackson took his hands
21 out of his pockets for the third or fourth time, that's
22 when I observed from his right hand a small white looking
23 item fall out onto the ground.

24 Q Did you pick that item up?

25 A Yes. I immediately walked up to see what the item

Jonathan Lawson
Direct examination by Mr. Spivey

1 was. I retrieved what I believed at the time to be powder
2 cocaine.

3 Q And was that item on the ground before? Where did you
4 see that item come from?

5 A I saw it come from the right side of Mr. Jackson's
6 right hand where he was facing back towards his moped.

7 Q Okay. I'm going to ask you. Do you know what a field
8 test is?

9 A Yes, I do.

10 Q Would you briefly explain what a field test is?

11 A A field test is nothing more than a presumptive test
12 that us law enforcement officers use if we're out on a
13 location and recover any type of drug from marijuana,
14 cocaine, heroine, what not, that we can test to see if it
15 shows that it's showing a field presumptive test that it is
16 positive for that type of drug.

17 Q Did you perform a field test on this item?

18 A I did, yes, indeed.

19 Q And what was the results of that field test?

20 MS. WHELCHER: Objection, Your Honor. He's not been
21 qualified in any way to perform this test.

22 THE COURT: All right. Lay the foundation.

23 Q At that point did you place him under arrest?

24 A At that point I, I recovered the item and placed him
25 under arrest for it, yes, sir.

Jonathan Lawson
Direct examination by Mr. Spivey

1 Q Okay. What did you do after you placed him under
2 arrest?

3 A I searched incident to arrest.

4 Q Okay. And explain what that is.

5 A After you're placed under arrest we conduct what we
6 call a search incident to arrest, which by law is legal.

7 Search your person to make sure you have no contraband
8 or weapons or anything like that that can be taken into a
9 detention facility.

10 At that point the search incident to arrest, located
11 in right front coat pocket of Mr. Jackson was another small
12 bag that contained an amount of white powder substance,
13 which to me believed to be cocaine, that was consistent
14 with the same baggie that was located on the ground that
15 contained the white powder residue.

16 Q Let me show you what's been premarked State's
17 Exhibit 1. Do you recognize that item?

18 A Yes, I do.

19 Q And how do you recognize it?

20 A These are actually the, the white powder substance
21 that was located on the ground and on Mr. Jackson.

22 This is also the clear plastic baggie that the item
23 was in. The blue plastic or blue zip-lock is what I placed
24 it into. I transferred it over to evidence.

25 Q What's the big blue bag in here?

Jonathan Lawson
Direct examination by Mr. Spivey

1 A That is what is called a BEST envelope. It's what we
2 put any controlled substance other than marijuana in, which
3 that is to be sent off through our evidence technicians to
4 Lieutenant Ashley Harris with the Spartanburg County
5 Sheriff's Office to do a chemical analysis test on it.

6 Q Did you place these items in that BEST bag?

7 A Yes, I did.

8 Q And what did you do with them after that?

9 A After that point in time of putting them in the BEST
10 envelope, making sure it was completely sealed, I placed it
11 into -- what we have is a drop box which is in a secured
12 area for our evidence technician to take out and place into
13 an actual evidence holding area. These are just temporary
14 evidence holding areas.

15 Q Did you do that in this case?

16 A Yes, I did.

17 Q Would you please just explain a little bit what the
18 temporary evidence holding thing is?

19 A It's just where officers, all officers, will have to
20 put -- whether in a locker area if the items are a lot
21 bigger, or we'll place it in what we call a drop box, which
22 is a -- basically a big postal mailbox that's completely
23 secured.

24 Q And did you that in this case?

25 A Yes, I did.

Jonathan Lawson
Cross-examination by Mr. Wheelchel

1 Q Please answer any questions Mr. Wheelchel may have for
2 you.

3 A Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. WHEELCHEL

6 Q Mr. Lawson, when you first saw someone you were at the
7 intersection of North Church Street and Daniel Morgan
8 Avenue, is that correct?

9 A Yes, sir. That's the intersection I was at when I
10 observed Mr. Jackson.

11 Q Heading south towards the city police department.

12 A Right. Towards Henry Street, yes, sir.

13 Q So were you the -- were you stopped at the light?

14 A At the time of the actual when I observed the moped
15 coming by me I was getting ready to pull off from the red
16 light.

17 Q Okay. So the light didn't -- had it just changed or
18 was it about to change or --

19 A I don't recall if it had just changed or if it was
20 about to or what. I know it was green or we wouldn't have
21 been going through the intersection.

22 Q Were there cars in front of you at the intersection,
23 or were you the first car?

24 A No. I had other cars in front of me.

25 Q How many cars were there in front of you, sir?

Jonathan Lawson
Cross-examination by Mr. Welchel

- 1 A I couldn't tell you, sir.
- 2 Q which lane were you in?
- 3 A I was on the right-hand lane, which would be lane No.
- 4 2.
- 5 Q Next to the sidewalk?
- 6 A Next to the sidewalk, yes, sir.
- 7 Q Okay. How far down North Church Street was this
- 8 person on a moped that you observed?
- 9 A When I observed him he had passed right by on the
- 10 right side of my patrol vehicle, which is the sidewalk's to
- 11 your right. I was in this lane. He went right by me.
- 12 Q So he came right by you --
- 13 A Yes, sir.
- 14 Q -- on North Church Street.
- 15 A Yes, sir.
- 16 Q And that's how you got the green color and the name of
- 17 the --
- 18 A Yes, sir. It was Robot, red in color, on the side of
- 19 the moped.
- 20 Q I understand. This is in November.
- 21 A Yes, sir.
- 22 Q Do you remember if it was cold or warm outside?
- 23 A The way the weather is now I couldn't -- I can't
- 24 remember back to 2009 if it was cold or not.
- 25 Q Person had on a jacket, right?

Jonathan Lawson
Cross-examination by Mr. Welchel

1 A Right.

2 Q In addition to a sweatshirt hoody?

3 A Right.

4 Q Okay. Do you remember if the hood was up?

5 A It was not up.

6 Q Okay. Now, how far down North Church Street was it
7 that this person traveled before you say he jumped up on
8 the sidewalk?

9 A He was on the sidewalk the entire time when he passed
10 by me originally on -- right at Daniel Morgan and North
11 Church --

12 Q Okay.

13 A -- until we got to the intersection of St. John and
14 North Church Street, which at that point come off the
15 sidewalk to run through the red light and then drove across
16 some traffic again, which is St. John and North Church
17 Street where he -- we had to cross traffic, backed up on
18 the sidewalk.

19 Q Okay. Where were you when you observed this running
20 of the red light at St. John and North Church?

21 A I believe it's Rudisal Street right before you get to
22 where the federal courthouse would be on your right. That
23 street right -- there's some lawyers' offices. I think
24 it's Rudisal Street, but I can't recall the actual name of
25 that street name.

Jonathan Lawson
Cross-examination by Mr. Welchel

- 1 Q The lawyer office is the Johnson building.
- 2 A Okay. It's right across from the Montgomery building.
- 3 Q I understand. Okay. And that's where the red light
- 4 running occurred according to you?
- 5 A Yes, sir.
- 6 Q Okay. And you were at that next intersection up or
- 7 back from that red light, is that right?
- 8 A Right, which is I think Rudisal Street, once again.
- 9 Q I think you're right.
- 10 A Okay.
- 11 Q Okay. Were there other automobiles out there at that
- 12 time?
- 13 A Yes, sir, there were other vehicles out there. It's,
- 14 I think, approximately around 1:00, maybe 1:00 and
- 15 3:00 o'clock. I can't recall the actual time. I have to
- 16 refer back to my notes.
- 17 Q Well, if you've got them with you, go ahead.
- 18 A Yes, sir. It was actually at 1:52 in the afternoon.
- 19 That's a major thoroughfare. So, yes, I'm more than
- 20 positive there were other vehicles out there.
- 21 Q Okay. How far ahead of you did this person get on the
- 22 moped when you got caught up in the traffic?
- 23 A Mostly four -- four or five car lengths at the most.
- 24 Q Okay.
- 25 A That I recall.

Jonathan Lawson
Cross-examination by Mr. Welchel

1 Q So you never lost sight of this person.

2 A No, sir, not until the point where I even pulled up to
3 him in the parking lot of the Boot's and Sonny's. I never
4 lost visual of the -- of the moped or the subject on it.

5 Q And how far is it from the intersection of North
6 Church and Daniel Morgan to Boot's and Sonny's, is it, sir?

7 A I don't know exactly. I never measured it out.

8 Q Okay. If I told you it was two-tenths of a mile from
9 North Church and Daniel Morgan to North Church and St.
10 John, you wouldn't have any reason to disbelieve that or
11 dispute it, would you?

12 A I don't -- I mean, like I say, I don't know exactly.
13 So I can't tell you for sure.

14 Q Do you have any idea using that as a value how far it
15 is from where you originally saw this person to where you
16 stopped my client?

17 A Like I say, I don't have an idea of exactly how far
18 it's going to be.

19 Q Okay, okay. You stopped. You pulled into the parking
20 lot at Boot's and Sonny's?

21 A Yes, sir. 120 East Henry Street.

22 Q Okay. And the person on the moped who you later
23 learned was my client had already parked and was walking
24 into Boot's and Sonny's, is that right?

25 A No, sir. I initiated the traffic stop. When I

Jonathan Lawson
Cross-examination by Mr. Welchel

1 observed him cut across, all the way across, the other lane
2 of traffic I was trying to catch up with that moped and
3 that driver, which turned out to be your client, the entire
4 time without being unsafe, which I was able to do so of
5 course. And that's when I initiated the blue lights then.
6 And Mr. Jackson pulled into an empty parking spot in front
7 of the building.

8 Q Look at your incident report, please, sir, the first
9 page of your incident report, that one.

10 A Yes, sir. I've got it.

11 Q Could you read the next -- start the next to the last
12 line.

13 MR. SPIVEY: Objection, Your Honor. He can testify.
14 He can't just read off the incident report.

15 THE COURT: The report is not in evidence.

16 Q Did you observe Mr. Jackson cross four lanes of
17 traffic and turn onto the parking lot at East Henry Street?

18 A Yes, I did at the time where I -- which I said I
19 initiated the traffic stop.

20 Q And that's the Boot's and Sonny's.

21 A That's correct.

22 Q Okay. And you can check your incident report if you
23 need to.

24 At that point he moved his moped into a parking spot,
25 is that right?

Jonathan Lawson
Cross-examination by Mr. Welchel

1 A Correct. He did move in once I -- as I activated my
2 blue lights, yes, sir.

3 Q Okay. And then you activated your blue lights.

4 A Okay.

5 Q Correct?

6 A Activated blue lights to stop him, yes, sir.

7 Q Well, he's already pulled in the parking spot, is that
8 right, according to your report?

9 A That's according to my report, yes, sir.

10 Q Okay.

11 A He just pulled into a parking spot.

12 Q And when you asked him for his driver's license he
13 gave you an I.D. that showed him to be Alfred Clay Jackson.

14 A Right. South Carolina identification card, yes, sir.

15 Q Okay. You asked Mr. Jackson if you could pat him down
16 at that point?

17 A No, sir, not at that point, I didn't. It was after.

18 Q Check your incident report and see.

19 A Yeah. I asked him to step away from, from his --
20 excuse me. I apologize on that. After the point of when I
21 stopped him on the vehicle stop and asked him for his
22 driver's license, he was asking if I -- if he could be
23 patted down for weapons, yes, sir.

24 Q Okay. I just wanted to make sure I got --

25 A Right.

Jonathan Lawson
Cross-examination by Mr. Welchel

1 Q -- what happened first and second and third and all of
2 that kind of stuff. So I don't need it. Okay. You asked
3 him if you could pat him down for weapons, and he said yes.

4 A Correct.

5 Q Okay. And you patted him down.

6 A Yes, sir, for weapons.

7 Q I understand. After you patted him down you didn't
8 find anything.

9 A I didn't feel a weapon on him at that time, no, sir.

10 Q That's what I'm asking you. You didn't feel a weapon.

11 A Correct.

12 Q And if you had felt a weapon you could have arrested
13 him, correct?

14 A I could have removed the weapon for safety.

15 Q And arrested him if he didn't.

16 A If he wasn't allowed to possess it, yes, sir.

17 Q All right.

18 A But that's not the case here.

19 Q All right. So after you patted him down and there's
20 no weapons on him, you stepped away from him to your
21 vehicle or the rear of your vehicle, or where, sir?

22 A To the -- where my driver's-side front door is -- if I
23 could draw a picture I would, but his moped was right in
24 front of me. My patrol vehicle was directly behind him.

25 Q You used your vehicle to block him from leaving?

Jonathan Lawson
Cross-examination by Mr. Welchel

- 1 A Correct.
- 2 Q I understand.
- 3 A I used it as a way when you pull a vehicle over -- you
- 4 have ways to pull a vehicle over, and that's one of the
- 5 ways I did it.
- 6 Q Yeah. We understand that.
- 7 A And I was at the driver's-side front door of my
- 8 vehicle on the outside of my vehicle.
- 9 Q Okay. So you were standing by the driver's door.
- 10 A Correct, with the door open.
- 11 Q Let's assume for the moment that you're sitting in the
- 12 driver's -- this is the driver's seat. Okay?
- 13 A Okay.
- 14 Q So you'd be standing approximately right where I am?
- 15 A Probably, yeah. I would assume so.
- 16 Q About right here.
- 17 A Yes, sir.
- 18 Q And you've already patted Mr. Jackson down, correct?
- 19 A That's correct.
- 20 Q Where is Mr. Jackson?
- 21 A He'll be standing approximately where that cord is for
- 22 that laptop computer right there from the front of my
- 23 actual police car, which would be another couple of feet
- 24 out in front of us. It would probably be a little bit
- 25 closer than that because you've got the front of the actual

Jonathan Lawson
Cross-examination by Mr. Whelchel

1 patrol car itself, the hood.

2 Q Stop me.

3 (Whereupon, Mr. Whelchel demonstrated.)

4 A About right there.

5 Q Okay.

6 A If you added on the extra amount of the patrol
7 vehicle.

8 Q Yeah. We're all pretending there's a car in between
9 us. All right.

10 A Okay.

11 Q What kind of car was it?

12 A What kind of what?

13 Q Car.

14 A It was a moped.

15 Q No, no, no. Your car.

16 A Oh. It was a Ford Crown Victoria.

17 Q Okay. Was it marked?

18 A Yes. It was clearly marked, had Spartanburg city
19 police on the side.

20 Q With the lights and the blue writing.

21 A Correct.

22 Q What were you wearing?

23 A I was wearing the same type of uniform I have on now,
24 same color says -- clearly marked police on it.

25 Q Okay. But not one of the light blue uniforms that

Jonathan Lawson
Cross-examination by Mr. Welchel

- 1 most of the other N.B.O.'s wear.
- 2 A No, sir.
- 3 Q Okay. All right. When you go back to your vehicle
- 4 are you -- do you get in your vehicle and start to write
- 5 the ticket for the reckless, or what?
- 6 A No, sir, I don't right away, no, sir.
- 7 Q Okay. So.
- 8 A Like I said, I was checking for warrants.
- 9 Q Oh, you're on the radio?
- 10 A Yes, sir. I've already checked with our records
- 11 division.
- 12 Q One of the shoulder jobs that y'all have?
- 13 A Actually I have a microphone I was trying to grab.
- 14 I've got a microphone right in front of me right here with
- 15 an ear piece.
- 16 Q Okay. So you're checking to see if there are any
- 17 outstanding warrants and things of that nature.
- 18 A Correct.
- 19 Q Okay. Did you happen to look if it was stolen?
- 20 A Yes, I did actually.
- 21 Q Okay. Turned out the moped was not stolen.
- 22 A That's correct. It was not.
- 23 Q All right. So you're at your car and he's standing
- 24 approximately right here. Is he facing toward you, away
- 25 from you?

Jonathan Lawson
Cross-examination by Mr. Welchel

1 A As I testified to a moment ago, you turn yourself and
2 face towards the right there.

3 Q Okay.

4 A That's exactly in the same position that Mr. Jackson
5 was right beside his moped.

6 Q Okay. All right. You're in the car. I'm
7 Mr. Jackson. Just so I'll know and the jury can know,
8 where is Boot's and Sonny's, that way or this way?

9 A Boot's and Sonny's would be back here to your left.

10 Q Okay. Did all of this take place on the North Church
11 Street side of Boot's and Sonny's or on the Henry Street
12 side of Boot's and Sonny's?

13 A It was more of the Henry Street, I guess you would
14 say.

15 Q Okay. So --

16 A Right across from Bethel United Methodist.

17 Q The door to Boot's and Sonny's would be somewhere
18 behind it.

19 A Yes, sir. It would be back.

20 Q All right. That's what I need to know. All right,
21 sir. How long were you on the radio?

22 A From the time I stopped the actual moped until I --
23 you know, when I approached him a couple of minutes, four
24 or five minutes, six minutes at the most.

25 Q Okay. And it was November, but you don't remember

Jonathan Lawson
Cross-examination by Mr. Welchel

1 what the weather was like?

2 A No, sir. I don't recall the actual temperature that
3 day. I don't.

4 Q Is it possible it could have been cold?

5 A More than likely it was cool if it was November.

6 Q Colder if you're riding a moped than if you're -- if
7 you're in a police car.

8 A Correct.

9 Q Okay. So my client's putting his hands in his
10 pockets, correct?

11 A Correct, after I've asked him not to several times.

12 Q Okay. But he's already been patted down, and there
13 are no weapons, correct?

14 A Correct.

15 Q Okay. Any other police officers there that day?

16 A Sergeant Mark Hillers was actually with me that day.

17 Q Okay.

18 A And the transport officer that took him, which is
19 officer Hayes, arrived on the scene afterwards.

20 Q Okay. Sergeant Mark Hillers was there that day --

21 A Yes, sir.

22 Q -- and observed all of this?

23 A Yes, sir.

24 Q Where does it say that in the incident report, sir?

25 A I have it down at the bottom of my incident report if

Jonathan Lawson
Cross-examination by Mr. Welchel

1 you'll look on the very bottom of it. It's on yours as
2 well.

3 Q Let me get my glasses out.

4 A See, as you can see here -- Mark Hillers.

5 Q Okay. So he was there. And he's not the one that
6 approves that.

7 A Right.

8 Q Okay.

9 A He was not the actual one that approved the report if
10 that's what you're asking.

11 Q Yeah. That's what I am saying.

12 A No. He was not. It was actually approved by Sergeant
13 Mabry. It's at the very end of the narrative.

14 Q Okay. Which pocket?

15 A Referring to what, sir?

16 Q Which pocket did these items fall out of that you say
17 fell out?

18 A Right front coat pocket.

19 Q Right front?

20 A Right coat pocket. If you were turned this way it'd
21 be this pocket on the side of him, yes.

22 Q Closest to you.

23 A Yes, sir.

24 Q Okay. Now, was there anything blocking your vision of
25 my client?

Jonathan Lawson
Cross-examination by Mr. Wheelchel

1 A No, sir.

2 Q At any time during this process had you gotten in the
3 car and started to write the ticket --

4 A No, sir, I had not.

5 Q -- for the reckless driving?

6 A I had not yet, no, sir.

7 Q Did you go to the back of the car at any time during
8 this process?

9 A Not until after Mr. Jackson was placed under arrest.
10 I used the trunk of my car to fill out all the paperwork on
11 so I could give it to Officer Hayes, which was parked
12 approximately like this beside me.

13 Q This other officer that was with you, he was riding in
14 the car with you?

15 A Sergeant Hillers was riding in the vehicle with me.

16 Q Okay. Did Hillers get out or did he stay in the car?

17 A I'm assuming he got out.

18 Q You don't --

19 A Common reaction when you stop.

20 Q When all of this was going on, do you remember whether
21 he got out or stayed?

22 A I'm more than positive he got out of the vehicle.

23 Q Okay. He needs to do that for both of your safety, is
24 that correct?

25 A Correct. It's a common practice.

Jonathan Lawson
Redirect examination by Mr. Spivey

1 Q Okay. Yeah. All right. And it was -- how long was
2 my client standing out there in the cold before you say
3 this cocaine fell out of his pocket?

4 A Six to eight minutes at the most.

5 Q Okay. And while he was standing out there you had
6 told him several times not to put his hands in his pocket.

7 A That's correct.

8 Q Okay.

9 A I tell that with everyone that I'm out with. It
10 doesn't matter if I pat them down or not.

11 Q Okay.

12 A The way that weapons are nowadays you can't fill them
13 on pat-downs a lot of times because they're small. And we
14 still don't know if they have some type of instrument or
15 weapon that can used against us.

16 Q But you hadn't found one.

17 A I didn't search him. I patted him down for a weapon.

18 Q Okay. Thank you, sir.

19 MR. SPIVEY: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. SPIVEY

22 Q So you just testified you were -- were you in your car
23 or standing next to your car when you saw the cocaine fall
24 out of his pockets?

25 A I was standing outside of my car on the driver's-side

Mylnor S. Beach
Direct examination by Mr. Spivey

1 front door of the vehicle.

2 Q And he was facing this way?

3 A Yes, sir.

4 Q And his right pocket was right here.

5 A That'd be correct.

6 Q And what did you see fall out of that pocket?

7 A A clear plastic baggie containing a white powder
8 substance which I believed to be cocaine.

9 Q Thank you.

10 THE COURT: You may step down.

11 MR. SPIVEY: Your Honor, the state calls Mylnor Beach.

12 MYLNOR S. BEACH, having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. SPIVEY

15 Q Please remember to speak loudly and clearly for the
16 jury.

17 A Okay.

18 Q Please state your full name for the record.

19 A I'm Mylnor S. Beach.

20 Q Where are you employed?

21 A I'm employed by the city of Spartanburg. I'm with the
22 public safety department.

23 Q Mr. Beach, how long have you worked for the public
24 safety department?

25 A In April will be six years.

Mylnor S. Beach
Direct examination by Mr. Spivey

1 Q And what is your job title there?

2 A I'm a property and evidence technician.

3 Q And you've been the property and evidence technician
4 for six years?

5 A Yes, sir.

6 Q What type of training do you receive to become an
7 evidence technician?

8 A Well, on-the-job training. And I've been certified
9 through the international association of property and
10 evidence.

11 Q Thank you.

12 Now, in terms of your job duties in general as an
13 evidence technician, what are your duties?

14 A Primarily to receive any property and evidence that's
15 been turned in by any of the officers with the city police
16 department. We have to verify the evidence.

17 At this particular time we had a log book that the
18 officers would sign their evidence in before they dropped
19 it in the drop box of the lockers.

20 We would come in in the morning and my partner -- I
21 have one partner. And we alternate weekly. I take in
22 evidence one week; he takes in evidence the next week.

23 When we come in in the morning all of the evidence is
24 pulled out of the lockers in the drop box. And at that
25 time the system we were on, we would compare it to the log

Mylnor S. Beach
Direct examination by Mr. Spivey

1 and sign off on the log for each piece of evidence.

2 At that time it was brought into our office which is
3 in a secured part of the police department. We would
4 verify at that time the evidence sheets. I would sign the
5 evidence sheet that I received it, which was our paper
6 copy. I would sign the evidence envelope or evidence tag
7 stating that I had received it from the drop box or the
8 locker area.

9 we would sign what is called a bar code. And on the
10 evidence sheet here that's a little -- just a little small
11 sticker that's bar coded electronically.

12 we would then enter that into the computer with the
13 necessary information on that particular case, assign a
14 location to it and then put it up.

15 After that we would maintain the integrity of the
16 evidence there at the end of the property and evidence
17 room. That's the most highly secured area of the police
18 department.

19 To reach the area where the officers drop the evidence
20 themselves you either have to go through one or two
21 electronically locked doors. And you only can have access
22 by a card, depending on which entrance they are in at city
23 hall. And then our evidence -- just to get into the
24 evidence room and where the drugs are kept you have to go
25 through four locked doors.

Mylnor S. Beach
Direct examination by Mr. Spivey

1 Q And, Mr. Beach, when -- let's talk about this drug
2 evidence for a second.

3 when it's turned in into the drop box is it packaged
4 in any sort of way?

5 A In this particular incident the drugs were turned in
6 what is called a BEST envelope. Do you have it?

7 Q Okay.

8 A well, it's in a sealed plastic envelope which is
9 inside the evidence envelope. And then there's a bigger
10 envelope that it all goes in. Once we get that --

11 Q Mr. Beach, hold on a second. We'll get there in a
12 second.

13 A Okay.

14 Q When you handle drug evidence just in general, not
15 this case, if it's not in one of those BEST bags do you
16 take it or do you reject it?

17 A It's rejected.

18 Q Okay. And that just -- you just tell the officer
19 we're not going to take this until you put it in one of
20 those bags.

21 A well, we have a place to keep it secured until they
22 can come down and collect it.

23 Q All right. Now, let's talk more about this particular
24 case.

25 A Okay.

Mylnor S. Beach
Direct examination by Mr. Spivey

1 Q Did you seize any alleged drug material in connection
2 with this case against Alfred Jackson?

3 A Yes, I did.

4 Q Okay. And how did you get those drugs?

5 A I received it in an evidence envelope, and inside the
6 evidence envelope was the BEST envelope, as we call it,
7 which the drugs were down inside of it. I received the
8 form. And all of that is sealed.

9 There's also what we call a form A that the officer
10 themselves -- or form B that the officer has to sign. Then
11 I fill out -- if everything's correct there is a form B
12 that I sign stating that I received it from whatever
13 officer, and date it and time it. We verify the case
14 number and we verify the BEST envelope number. All of
15 that's done --

16 Q Do you remember what date you received those drugs in
17 this case?

18 A Yes, sir. I received them on November the 9th of 2009
19 at 7:00 o'clock in the morning.

20 Q I'm going to hand you what's been premarked as State's
21 Exhibit No. 1. Take a look at that for me. Do you
22 recognize that bag?

23 A Yes, sir. This is the envelope, the BEST envelope,
24 that I received from Officer Lawson. The number is
25 S162660. And that's, that's the one I received for this

Mylnor S. Beach
Direct examination by Mr. Spivey

1 case.

2 Q Is it in the same or substantially the same condition
3 as when you received it?

4 A The BEST envelope itself is, yes, sir.

5 Q All right. Did you or anyone else inside of the
6 evidence room -- excuse me. Once you received that, what
7 did you do with that bag?

8 A Well, like I said, I filled out the form C. I signed
9 the evidence envelope. I signed the evidence sheet. I
10 logged it in the computer.

11 After all of that was done it was assigned a location.
12 I took it and put it in the drug room to the assigned
13 location until an appointment was made with the county for
14 me to deliver it to them to be tested.

15 Q Before you took it to be tested did you or anyone else
16 tamper with that evidence?

17 A No, sir.

18 Q Talk to me a minute -- you said a second -- you made
19 an appointment and turned them into the county anal -- an
20 analyst, is that correct?

21 A Yes, sir. We, we keep a count on the number of
22 envelopes that we get.

23 We tried to call the county anywhere from -- when we
24 have anywhere from eight to ten cases to take over we'll
25 call the office and talk to Lieutenant Harris, set a time

Ashley Harris
Direct examination by Mr. Spivey

1 up. Any drug that's to be tested by them that I brought
2 in, I will deliver them to the county myself. Any drugs
3 that my partner takes in and receives, he will deliver
4 those himself. So we only deliver to the county the drugs
5 we actually receive ourselves.

6 Q Who do you deliver that evidence to?

7 A This was delivered to Lieutenant Ashley Harris.

8 Q What date did you provide them?

9 A December the 16th of 2009.

10 Q Thank you, Mr. Beach. If you will, please answer any
11 questions defense counsel may have for you.

12 A Yes, sir.

13 MS. WHELCHER: I don't have any questions of
14 Mr. Beach, Your Honor.

15 THE COURT: You may step down.

16 MR. SPIVEY: Your Honor, may Mr. Beach be excused?

17 THE COURT: He may be.

18 (Whereupon, the witness was excused.)

19 MR. SPIVEY: The state would call Lieutenant Ashley
20 Harris.

21 ASHLEY HARRIS, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. SPIVEY

24 Q Will you please introduce yourself to the jury?

25 A Yeah. My name is Ashley Harris.

Ashley Harris
Direct examination by Mr. Spivey

1 Q Can you give a brief overview of your law enforcement
2 experience, Lieutenant Harris?

3 A Yes, sir. I was hired by the state law enforcement
4 division, SLED, in Columbia in 1997 as a forensic drug
5 analyst.

6 After working there for a little over two years
7 Spartanburg got a federal grant to open their own lab. And
8 I came up to Spartanburg and started working for the
9 Spartanburg County Sheriff's office in 1999. I have been
10 there since then.

11 Q Okay. Can you please go over an overview of your
12 educational experience?

13 A Yes, sir. I have a bachelor's degree in chemistry
14 from Wofford College here in Spartanburg, South Carolina.

15 After graduating from Wofford in 1996 I went on to --
16 took the job at SLED after a short term working on my Ph.
17 D. in analytical --

18 Q Okay.

19 A After a short term working with -- toward my Ph. D. in
20 analytical chemistry -- but the person I was doing my
21 research under left, so I got a job at SLED.

22 After being there for approximately two years and
23 coming back to Spartanburg I actually completed my master's
24 degree from Furman University in analytical chemistry.

25 Q And what type of certifications or training have you

Ashley Harris
Direct examination by Mr. Spivey

1 had in regards to the chemical analysis in regards to
2 controlled substances?

3 A I started at SLED in 1997. I went through the
4 training program that SLED had in place for forensic drug
5 analysts.

6 I took approximately five months to complete that.
7 And then I have continuing education. I'm required to get
8 at least 40 hours of recertification training every year in
9 forensic drug analysis.

10 Q And approximately how many years have you been going
11 through that annual training?

12 A I just rolled over 15 earlier this month.

13 Q Okay. How many times have you testified in court as
14 an expert in the chemical analysis of narcotics and
15 controlled substances?

16 A In excess of 100 -- 103, 104 or somewhere in that
17 range.

18 Q And how many -- how many actual substances over your
19 career have you tested?

20 A I'd say I'm in -- I'm in excess of 12,000 cases and
21 19,000 to 20,000 individual items within cases.

22 MR. SPIVEY: Your Honor, at this time the state would
23 offer Lieutenant Ashley Harris as an expert in the chemical
24 analysis of narcotics and controlled substances.

25 MS. WHELCHER: No objection.

Ashley Harris
Direct examination by Mr. Spivey

1 THE COURT: He is so qualified.

2 Q Lieutenant Harris, you've got State's Exhibit 1 in
3 front of you. Do you recognize that item?

4 A Yes, sir. This was an item logged into the lab as
5 L091049, which is a case I assigned.

6 Q Where did you receive that item?

7 A This was brought by Evidence Technician Beach from the
8 city on December the 16th of 2009.

9 Q Would you have received this item if it had been
10 tampered with in any way?

11 A No, sir. Our standard operating procedure when
12 evidence is brought in by any agency, including the
13 sheriff's office -- or the city in this case -- the first
14 thing we do is we look at the BEST bag, this inner bag that
15 has the Spartanburg County Sheriff's Office seal on it.

16 BEST stands for best evidence sample testing. It was
17 an idea that was come up with by SLED back in the 80's so
18 that everyone would submit their evidence the exact same
19 way since they dealt with 46 counties.

20 Since we deal with 13 municipalities within the county
21 we thought it would was a good idea. We sort of followed
22 the same pattern having an individual evidence bag that's
23 the same for every agency no matter who's submitting.

24 And it's a tamper-evident bag. It doesn't keep anyone
25 out. Anybody with a pocket knife can get in, but it has

Ashley Harris
Direct examination by Mr. Spivey

1 markings and striations across it that will show if someone
2 tampers with it.

3 So the first thing we do when that piece of evidence
4 comes in is we look at the bag to see if it's been tampered
5 with in any way -- the glue strip, the outer markings --
6 see if they're all intact.

7 Once we do that we'll see that it has not been
8 tampered with and it's properly sealed, we'll assign it a
9 lab number and we'll take custody of it.

10 And then basically it goes in a box and waits its turn
11 to be tested. When it's its turn we pull it out, and,
12 again, we'll look over it one more time to make sure that
13 we didn't miss anything that first time and make sure it's
14 properly sealed and make sure that it hasn't been tampered
15 with.

16 Q Was this item -- did it appear to be tampered with
17 when you received it?

18 A No, sir, it didn't. And the way I'm a hundred percent
19 sure of that is I place -- I'm very original. I write the
20 letters OK on the outside of the bag if it hasn't been
21 tampered with -- my initials and the lab number.

22 Everything that's touched inside the bag or everything
23 that's touched related to the case will have my initials,
24 the date in which I analyzed it and the lab number on it.

25 Q All right. On December the 18th this bag, it was its

Ashley Harris
Direct examination by Mr. Spivey

1 turn to be tested, is that correct?

2 A That's actually -- it was opened on the 17th and was
3 actually ran on the instrument that evening. And so on the
4 18th the paperwork would have came up.

5 Q Okay. What type of tests would you run if the
6 substance is cocaine?

7 A If something is thought to be cocaine we run a
8 presumptive test on it. It's basically drop a few
9 chemicals and look for a color test. A positive color test
10 for the presence of cocaine is a blue-color change.

11 Q Excuse me. Is that the same as the field test?

12 A It's very similar. The field test that officers carry
13 is actually -- we actually manufacture that in the lab.
14 And it's actually a mix of the two chemicals we use in the
15 lab in one solution.

16 The field test that officers use actually turns blue
17 for the presence of crack or cocaine either one. The test
18 that we use in the lab is those two chemicals split, will
19 turn only blue upon the addition of the second if it's
20 crack cocaine. It'll turn blue upon the addition of the
21 first and the second if it's powder cocaine or cocaine
22 hydrochloride.

23 Q Did you perform that test on the substances provided
24 to you?

25 A Yes, sir, I did.

Ashley Harris
Direct examination by Mr. Spivey

1 Q And what were the results of that test?

2 A The presumptive test that was -- presumptively tested
3 positive for the presence of cocaine. It turned blue upon
4 the initial addition of the first chemical and stayed blue
5 upon the addition of the second.

6 Q And at that time if it had not turned blue what would
7 you have done?

8 A I would performed another series of color tests, of
9 chemical tests, to determine if I could get an idea what I
10 thought it might be -- again, presumptive test only. And
11 the reason those are done is to make sure that you can
12 choose the proper extraction so that you can place it on
13 the instrument to determine its exact identity.

14 Q But in this case it presumptively tested as cocaine?

15 A That's correct, sir.

16 Q What next test did you run to identify that it was, in
17 fact, cocaine?

18 A Well, after the presumptive test gives you an identity
19 of what you think it might be you determine what extraction
20 to use. And then it's placed on an instrument in the lab
21 called a GC mass spec.

22 Q And did you run that test?

23 A Yes, sir, I did.

24 Q And you -- were you able to form an expert opinion as
25 to what this substance was?

Ashley Harris
Direct examination by Mr. Spivey

1 A Yes, sir. Based on the color test, the presumptive
2 test, and the confirmatory test, the GC mass spec, based on
3 the fact that they agreed with each other, I determined it
4 to be powder cocaine or cocaine hydrochloride.

5 Q Were you able to weigh the substances?

6 A Yes, sir. All samples are taken out prior to
7 obtaining a weight. I took all the presumptive test
8 samples and the confirmatory test samples. And after that
9 was done the weight was obtained after those samples were
10 removed. It was found to have a total weight of .19 grams.

11 MR. SPIVEY: Your Honor, at this time the state would
12 offer State's Exhibit 1 into evidence.

13 MS. WHELCHER: No objection.

14 THE COURT: It's admitted.

15 (Cocaine marked State's Exhibit No. 1.)

16 Q I want you to look at this bag.

17 A Yes, sir.

18 Q What is actually in the BEST bag? It appears that --
19 there's the BEST bag, and then there appears to be a blue
20 bag and a bigger white bag.

21 A Yes, sir. The heat-sealed envelope on the outside is
22 actually what I place the enve -- the evidence in after I
23 have tested it.

24 The folded bag or the inside that has the Spartanburg
25 County seal on it and the blue markings down the side is

Ashley Harris
Direct examination by Mr. Spivey

1 the actual BEST bag.

2 There's a small -- there's a clear zip-lock on the
3 outside, and that is the zip-lock that I placed everything
4 in after I analyzed it.

5 All of the items were found within the blue zip-lock,
6 the smaller blue zip-lock, that's inside there. And there
7 were two small corner baggies or plastic bags tied closed
8 of a white powder substance inside the blue zip-lock.

9 Q So when you received it, where was the cocaine
10 located?

11 A It was within the inner -- the plastic bags inside
12 that blue zip-lock bag.

13 Q Within the two clear plastic baggies there? Excuse
14 me. If you want to, it's kinda hard to see. It's within
15 the two plastic baggies there within this smaller plastic
16 baggie?

17 A Yes, sir, yes, sir. They're basically right behind
18 the blue zip-lock bag. It's just like pieces of a sandwich
19 bag or pieces of light-weight plastic.

20 Q Please answer any questions Mr. Wheelchel might have
21 for you.

22 A Yes, sir.

23 MS. WHEELCHEL: None, Your Honor.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you, sir.

1 MR. SPIVEY: Your Honor, at this time the state rests.

2 THE COURT: That is all of the evidence that the state
3 is going to offer, at least in their case in chief.

4 Before we can go further I've got some matters I'll
5 need to address with the lawyers. So I'll ask you to
6 please go to your jury room. Do not yet discuss the case.
7 I'll bring you back in just a few minutes.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Any motions or other matters we need to
11 address?

12 MS. WHELCHER: No, sir.

13 There is the matter of my client's testimony, Your
14 Honor. He tells me he's planning on testifying, and I told
15 him that the Court would have to inquire of him about his
16 testimony.

17 THE COURT: Okay. Mr. Jackson, Mr. Whelchel tells me
18 that he's talked to you about your right to testify and not
19 testify and that you've indicated to him that you are going
20 to take the witness stand and testify in this case. Is
21 that true?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you had plenty of time to talk with
24 Mr. Whelchel about your right to testify, as well as not
25 testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you understand it's your decision,
3 only you can make it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has he explained to you that if you take
6 the witness stand and testify you are going to have to
7 answer all of the questions that are asked, not just from
8 your lawyer but from the prosecutor, even if the answers to
9 those questions might tend to prove you guilty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did he also tell you that if you don't
12 testify I'm going to tell the jury as I already have -- but
13 I'll tell them again -- that they can't hold that against
14 you? They can't consider that in any way, because the
15 burden's not on you to prove anything. The burden's on the
16 state to prove your guilt.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And have you and Mr. Welchel discussed
19 the advantages and the disadvantages of testifying, as well
20 as not testifying?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you appreciate what those
23 advantages and disadvantages are?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And have you had time to reflect upon your

1 decision?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And have you reached a decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And what is that decision?

6 THE DEFENDANT: To testify, sir.

7 THE COURT: You are going to testify?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And is that a decision that you reached of
10 your own free will?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Anybody force you into it?

13 THE DEFENDANT: No, sir.

14 THE COURT: Pressure you into it?

15 THE DEFENDANT: No, sir.

16 THE COURT: You made it on your own?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You're satisfied with it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Do we have any issues to address
21 about potential impeachment evidence?

22 MS. WHELCHER: I didn't hear the last part about --

23 THE COURT: Do we have any issues to discuss regarding
24 potential impeachment evidence?

25 MS. WHELCHER: Yes, sir.

1 MR. SPIVEY: Your Honor, the only thing that if he
2 opens the door, he has a 2006 possession of crack. But
3 that wouldn't come out unless he opened the door, Your
4 Honor.

5 THE COURT: Have you talked to Mr. Jackson about his
6 testimony?

7 MS. WHELCHER: Yes, sir.

8 THE COURT: Do you perceive that door being cracked?

9 MS. WHELCHER: I hope not, Your Honor.
10 Could we have a moment?

11 THE COURT: Yeah. Let's take 15 minutes.

12 (Whereupon, a recess was taken.)

13 THE COURT: All right. Are we ready for the jury?

14 MS. WHELCHER: Yes, sir.

15 THE COURT: Bring them in.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: As you know, the state has rested in their
19 presentation. So we will now proceed with any to be
20 offered by the defendant.

21 Mr. whelcher.

22 MS. WHELCHER: The defense calls Alfred Jackson, Your
23 Honor.

24

25

Alfred Clay Jackson
Direct examination by Mr. Wheelchel

1 ALFRED CLAY JACKSON, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WHELCHER

4 Q Mr. Jackson, I want you to in response to my questions
5 that -- the solicitor's questions should he have any -- I
6 want you to speak up so that everybody in the courtroom can
7 hear you.

8 A Yes, sir.

9 Q Especially the jury.

10 A Yes, sir.

11 Q All right. Can you hear me?

12 A Yes, sir.

13 Q All right. How old are you, Mr. Jackson?

14 A Forty-three.

15 Q Are you from Spartanburg?

16 A Yes.

17 Q Born and raised here?

18 A Yes.

19 Q Where did you go to school?

20 A Spartan -- Spartanburg High.

21 Q Is that you?

22 A Yes, sir.

23 Q Okay. Not any question that you were driving a moped
24 back in November of 2009, is that right?

25 A Yes, sir.

Alfred Clay Jackson
Direct examination by Mr. Welchel

- 1 Q Okay. Are you married, single or what, Alfred?
- 2 A Single.
- 3 Q Have any children?
- 4 A Yes.
- 5 Q How many?
- 6 A I got two boys and two girls.
- 7 Q How old are they?
- 8 A One is 14; one is 16; one is 18; and one is one.
- 9 Q Eighteen, 15, 14 and one.
- 10 A Yeah.
- 11 Q Okay. Where do you work, Alfred?
- 12 A Cracker Barrel.
- 13 Q How long have you been there?
- 14 A Five years.
- 15 Q What do you do at Cracker Barrel?
- 16 A Cook.
- 17 Q Okay. You've been cooking the entire five years
- 18 there?
- 19 A No. I was the dish washer at first.
- 20 Q Okay. You worked your way up.
- 21 A Yes, sir.
- 22 Q Okay. Have you ever been in the military or anything
- 23 like that?
- 24 A No, sir.
- 25 Q All right. Let's go back to November the 6th of 2009.

Alfred Clay Jackson
Direct examination by Mr. Welchel

- 1 You were riding a moped, is that right?
- 2 A Yes, sir.
- 3 Q Where had you been before you were going down North
- 4 Church Street there?
- 5 A I had stopped on the sidewalk.
- 6 Q Okay. But where were you coming from?
- 7 A I was coming from home.
- 8 Q And where is that?
- 9 A On Williams Street.
- 10 Q On Williams Street?
- 11 A Yes, sir.
- 12 Q Okay. You were going down North Church Street?
- 13 A Yes, sir.
- 14 Q Okay. Tell us what happened with your moped, sir.
- 15 A My throttle had broke on my moped, so I took it out of
- 16 traffic and put it on the sidewalk.
- 17 Q Okay. And then what?
- 18 A I proceeded to work on my moped to fix it. And the
- 19 throttle was already broke. So I had some string that I
- 20 had in my moped, and I had it tied to the throttle to make
- 21 it go.
- 22 Q Okay. So you repaired it as best you could, is that
- 23 what you're saying?
- 24 A Yes, sir.
- 25 Q Okay. And you got it off the sidewalk and back onto

Alfred Clay Jackson
Direct examination by Mr. Welchel

1 the street?

2 A Yes, sir.

3 Q Okay. Why did you pull it in into Boot's and Sonny's
4 there?

5 A To continue working on it because it wasn't running
6 right.

7 Q You say the throttle was messed up. Was it cutting in
8 and out on you?

9 A Yes, sir.

10 Q Okay. Do you remember how you were dressed, Alfred?

11 A It was cold that day, so I had on my jacket and my
12 sweat shirt.

13 Q Something like you've got on now?

14 A Yes, sir.

15 Q Okay. All right. Tell us what happened when you
16 pulled into the parking lot there at Boot's and Sonny's.

17 A I proceeded to get off my moped to, to continue fixing
18 on it, because it wasn't running fast enough to get on --
19 to get back in traffic. As I was fixing to fix on it a
20 police officer, Mr. Lawson, came up behind me.

21 Q Okay. What happened then?

22 A He got out of his car and asked me why I was on the
23 sidewalk. And I was going to tell him, but I was like you
24 ain't going to believe me. So I just said give me my
25 ticket and I can go ahead on to work.

Alfred Clay Jackson
Direct examination by Mr. Welchel

1 Q Okay. You were working at Cracker Barrel then too?

2 A Yes, sir.

3 Q Okay. Which Cracker Barrel is it that you worked at?

4 A I worked at the one in Spartanburg, and I transferred
5 to Duncan.

6 Q Okay. How long have you been at that one?

7 A At the Duncan one six months.

8 Q Okay. But you worked at the other one the whole time?

9 A Yes, sir.

10 Q All right. What kind of car if you remember did the
11 officer -- was the officer driving?

12 A A blue and white patrol car.

13 Q So it was a marked car.

14 A No. It was a blue and white patrol car.

15 Q I see. When I say a marked car, was it white and did
16 he have Spartanburg logos on it, Spartanburg city police
17 logos on it?

18 A Yes, sir.

19 Q Okay. All right. And how was he clothed,
20 Mr. Jackson?

21 A He had plain clothes on.

22 Q All right. Didn't have his uniform on that he has got
23 on now?

24 A No.

25 Q Did he show you a badge?

Alfred Clay Jackson
Direct examination by Mr. Welchel

- 1 A No.
- 2 Q Okay. So tell me what he said when he first
3 approached you.
- 4 A I didn't know who he was at first, but I was already
5 off my moped. So I was walking toward it in plain clothes.
6 Mr. Lawson walked up to me and asked me why I was on the
7 sidewalk, and I proceeded to explain to him. But I guess
8 he wasn't going to pay me no attention. I guess he just
9 wanted to pat me down, so.
- 10 Q Did he ask if he could pat you down?
- 11 A Yes.
- 12 Q And did he pat you down?
- 13 A Yes.
- 14 Q Okay. When he patted you down for weapons he didn't
15 find any weapons on you?
- 16 A No.
- 17 Q Okay. What did he do next?
- 18 A He asked me could he search me.
- 19 Q He's already patted you down. He asked you if he
20 could search you?
- 21 A Yes.
- 22 Q What did you say?
- 23 A I said no.
- 24 Q Okay. What happened then?
- 25 A He told me to put my hands on the car anyway.

Alfred Clay Jackson
Direct examination by Mr. Welchel

- 1 Q And then what happened?
- 2 A And he proceeded to pat me down again.
- 3 Q Okay. Searched you a second time or searched you
- 4 after the pat-down?
- 5 A That was the first initial, the pat-down right there.
- 6 when I told him no -- when I told him no -- when he asked
- 7 to pat me down when I told him no, he still proceeded to
- 8 tell me to put my hands on the car to check for weapons.
- 9 Q And patted you down.
- 10 A Yes, sir.
- 11 Q All right. And at some point after that were you
- 12 standing in the front -- in front of his vehicle?
- 13 A Yes.
- 14 Q Okay. Were you standing -- you heard his testimony
- 15 earlier, sir?
- 16 A Yes.
- 17 Q Were you standing with your back to Ricky's and
- 18 Sonny's like he said?
- 19 A No.
- 20 Q Okay. How were you standing?
- 21 A I was in front of the car.
- 22 Q Okay. Well, let's say that this is the front of the
- 23 car.
- 24 A Yes, sir.
- 25 Q Step down, please.

Alfred Clay Jackson
Direct examination by Mr. Welchel

1 (Whereupon, the witness left the stand.)

2 Q Now, remember you're going to have to speak up when I
3 ask you questions because we've got --

4 A Yes, sir.

5 Q Show the jury where you were standing.

6 A I was -- when he pulled up I was standing over here by
7 my moped. I was right here. And I was walking towards --
8 walking towards Boot's and Sonny's.

9 Q Okay.

10 A And as I was walking his car was right in front of me,
11 and I seen it and I stopped. And that's when he came out
12 with plain clothes on and told me I was on the sidewalk.

13 So I proceeded to walk up to him. He asked for my
14 I.D.

15 Q Okay.

16 A So I showed him my I.D. And then he told me to step
17 to the side of the car.

18 Q Okay. Stay right there. So you were standing at the
19 front of the car.

20 A Uh-huh.

21 Q Okay. He told you to come around to the side of the
22 car.

23 A Uh-huh.

24 Q Okay. And then what did you do?

25 A He proceeded to check out my I.D. He got --

Alfred Clay Jackson
Direct examination by Mr. Welchel

- 1 Q You gave him an I.D.
- 2 A Yes, sir.
- 3 Q Okay. It wasn't a driver's license.
- 4 A No, sir.
- 5 Q It was just -- it was an I.D. that you get from D --
- 6 from the department of motor vehicles, is that right?
- 7 A Yes, sir.
- 8 Q And had your name and address on it?
- 9 A Yes, sir.
- 10 Q Okay. Go ahead, sir.
- 11 A And then he gets in his car and he calls it in.
- 12 Q Okay.
- 13 A As he was sitting in his car I thought he was writing
- 14 me out a ticket, but he was calling for backup.
- 15 Q All right. Now, let me ask you something. If this is
- 16 the front end of his car --
- 17 A Uh-huh.
- 18 Q -- where were you standing?
- 19 A Right here.
- 20 Q Right at the front end.
- 21 A Yeah. That's where he told me to stand.
- 22 Q Okay. And where was he?
- 23 A He was in his car.
- 24 Q Okay. So he would be a little farther back this way.
- 25 A Yeah. He was inside of his car, yes.

Alfred Clay Jackson
Direct examination by Mr. Welchel

1 Q Okay. And you were facing him?

2 A No. I was facing towards that way, where the front
3 end, to this way.

4 Q I'm confused.

5 A Okay. He was in his car and --

6 Q Let me ask questions.

7 A -- looking that way.

8 Q This is the front end of the car.

9 A Uh-huh.

10 Q Headlights, grill, everything like that.

11 A Uh-huh.

12 Q You're standing right there.

13 A On the side, yes.

14 Q He's inside the vehicle.

15 A Yes.

16 Q Behind the driver's wheel.

17 A Yes.

18 Q Up this way from you.

19 A Yes, sir.

20 Q Okay. I just want to make sure. All right. Is
21 this -- were you taking your hands in and out of your
22 pockets at that point, sir?

23 A No.

24 Q Was it cold out?

25 A Yes.

Alfred Clay Jackson
Direct examination by Mr. Welchel

1 Q So you just stood there?

2 A Yes. The, the time that I did go in my pockets is
3 when I got me a cigarette.

4 Q Okay. And a lighter, I assume.

5 A Yes, sir.

6 Q Okay. What did the officer do? How long was the
7 officer in the car while you stood there?

8 A I'd say about ten minutes, about eight to ten minutes.

9 Q Okay. Could you hear what he was saying to whoever it
10 was he was talking to?

11 A No, because he acted like he was waiting on someone.

12 Q Okay.

13 THE COURT: Do you need him to stand right there any
14 more, because he's got his back to the jury.

15 MS. WELCHEL: I'm sorry, Your Honor.

16 A I am sorry.

17 (Whereupon, the witness returned to the stand.)

18 Q So after you stood there about eight or ten minutes,
19 what happened next?

20 A Three other officers came up.

21 Q Where was Mr. Lawson?

22 A He was still by his patrol car.

23 Q Okay. These other officers, were they in uniform, in
24 marked cars?

25 A Marked cars.

Alfred Clay Jackson
Direct examination by Mr. Whelchel

1 Q Okay. Did they approach you or did they approach him,
2 or what did they do?

3 A He initially told them about the moped, and they
4 proceeded to ask me was it stolen.

5 Q Okay. Was the moped yours?

6 A Yes.

7 Q Okay. And it wasn't stolen.

8 A No.

9 Q How many times did they ask you if the moped was
10 stolen?

11 A About three or four times.

12 Q Did you have papers or whatever?

13 A Yes.

14 Q Okay. Did you give them those papers?

15 A No. I couldn't -- he wouldn't let me get back to my
16 moped.

17 Q Okay. The papers for the moped were in some storage
18 compartment, is that right?

19 A Yes.

20 Q Okay. What did Officer Lawson do next after these
21 other officers showed up?

22 A He proceeded to watch the other officers ask me the
23 questions about my moped.

24 Q Okay. I'm assuming at some point they -- they were
25 convinced that your moped wasn't stolen?

Alfred Clay Jackson
Direct examination by Mr. Welchel

- 1 A Yes.
- 2 Q Okay. Well, then what happened?
- 3 A The officer asked me for the key. There was a Mexican
- 4 officer. He asked me for the key to look inside my moped.
- 5 Q Okay. Did you give him the key?
- 6 A Yes.
- 7 Q Did he look inside the moped?
- 8 A Well, I didn't give him the key. I'm the one that
- 9 opened up the moped, but he asked me about a key.
- 10 Q So you opened up the moped for him.
- 11 A Yes.
- 12 Q And they looked inside there.
- 13 A Yes.
- 14 Q Did they then get the paperwork out for the moped?
- 15 A They was looking for it, but he still asked me is the
- 16 moped stolen.
- 17 Q Did you ever get the paperwork out and give it to him,
- 18 Alfred?
- 19 A No.
- 20 Q They just quit asking about it?
- 21 A Yes.
- 22 Q Okay. While all of this is going on are your hands in
- 23 your pocket, or out?
- 24 A Out.
- 25 Q Okay. Did you ever take your hands out of your

Alfred Clay Jackson
Cross-examination by Mr. Spivey

- 1 pockets and drop cocaine on the ground?
- 2 A No, sir.
- 3 Q Did you ever have cocaine in your pocket?
- 4 A No, sir.
- 5 Q So you didn't have any cocaine that day at all.
- 6 A No, sir.
- 7 Q The cocaine that was found was not yours.
- 8 A Yes, sir.
- 9 Q Yes, it was?
- 10 A No. It wasn't mine, sir.
- 11 Q All right. I want to make sure I understand
- 12 correctly.
- 13 A Yes.
- 14 Q Anybody search you other than this officer?
- 15 A Yes.
- 16 Q One of the other officers?
- 17 A Yes.
- 18 Q Okay. Answer any questions the prosecutor might have,
- 19 sir.
- 20 CROSS-EXAMINATION
- 21 BY MR. SPIVEY
- 22 Q Where did you live at the time of this incident?
- 23 A 80 Williams Street.
- 24 Q 80 Williams Street.
- 25 A Uh-huh.

Alfred Clay Jackson
Cross-examination by Mr. Spivey

- 1 Q 80 Williams Street?
- 2 A Uh-huh, yes, sir.
- 3 Q Do you recognize that item?
- 4 A Yes, sir.
- 5 Q And what is it?
- 6 A Which?
- 7 Q Well, is that your traffic ticket you received that
- 8 day, or a copy of it, for the reckless driving?
- 9 A No. I didn't -- let me see. Yes, yes.
- 10 Q Okay. Can you look at the address portion of that?
- 11 A 700 Saxon Avenue.
- 12 Q Well, which residence do you live at?
- 13 A I just moved to 80 Williams Street before I can change
- 14 my I.D.
- 15 Q Okay. Which Cracker Barrel did you work at?
- 16 A The one in Spartanburg.
- 17 Q The one in Spartanburg. Where is it?
- 18 A On Fairforest Road.
- 19 Q Okay. You said you were headed to work that day?
- 20 A I was going to get something to eat, and then I was
- 21 heading to work.
- 22 Q I believe you testified earlier you were going to work
- 23 on your moped.
- 24 A No. I can't be going to work going up in Boot's and
- 25 Sonny's.

Alfred Clay Jackson
Cross-examination by Mr. Spivey

- 1 Q well, that's exactly my point.
- 2 A Yes.
- 3 Q It works the other way.
- 4 A Yes. I, I didn't have to be at work until
- 5 5:00 o'clock.
- 6 Q Okay. Now, this cocaine, you say it's not yours.
- 7 A Yes.
- 8 Q It wasn't found on the ground next to you.
- 9 A No.
- 10 Q It wasn't found in the pocket.
- 11 A No.
- 12 Q And that's your jacket.
- 13 A Yes.
- 14 Q whose is it then?
- 15 A whose what?
- 16 Q whose cocaine is it?
- 17 A I don't understand what you're saying.
- 18 Q whose cocaine is that?
- 19 A He say he found it on the ground. I don't know whose
- 20 it is.
- 21 Q And he also found some in your pocket.
- 22 A He didn't find nothing in my pocket.
- 23 Q He didn't find anything. That officer didn't find
- 24 anything in your pocket.
- 25 A No, sir.

Alfred Clay Jackson
Cross-examination by Mr. Spivey

- 1 Q Your moped wasn't working that day?
- 2 A No, sir. It was working but it was -- it popped on me
- 3 that day.
- 4 Q It popped on you that day?
- 5 A Yes, the throttle.
- 6 Q Okay. So you decided the best -- the best course of
- 7 action was to drive the sidewalk.
- 8 A No. I parked it on the sidewalk.
- 9 Q You parked. You never drove it on the sidewalk.
- 10 A Yes, I did.
- 11 Q Okay. Well, you just said, no, I parked it on the
- 12 sidewalk.
- 13 A With the history that --
- 14 Q Which one is it?
- 15 A To fix it I put it on the sidewalk to get it out of
- 16 the traffic. When I tried -- when I thought I had it fixed
- 17 I was putting it back in the traffic.
- 18 Q Okay. But you were driving on the sidewalk.
- 19 A Not, not really driving on the sidewalk, sir.
- 20 Q Did the moped ever move on the sidewalk with you on
- 21 it?
- 22 A Yes.
- 23 Q So you were driving on the sidewalk.
- 24 A Yes.
- 25 Q Okay. And then you cross over four lanes of traffic

Alfred Clay Jackson
Cross-examination by Mr. Spivey

1 to go in Boot's and Sonny's, is that correct?

2 A No, no.

3 Q Well, then how did you get in Boot's and Sonny's if
4 you're on the sidewalk?

5 A Well, initially, I was waiting on the traffic to go by
6 before I could put it back in that -- in that traffic. It
7 was a bunch of cars on the road that day. And I was -- it
8 wasn't going as fast as I thought it would be. So I stood
9 right there. And as I was -- cars was going by me I was
10 trying to get back in the traffic. And they was passing
11 me. And as soon as they got past me, I put it back in
12 traffic.

13 Q Okay. But you -- you then had to cross four lanes of
14 traffic into Boot's and Sonny's.

15 A No. I did not go four lanes of traffic.

16 Q There are four lanes on that road, correct?

17 A Yes.

18 Q And you were on the sidewalk, correct?

19 A Yes.

20 Q So you crossed four lanes of traffic to go into Boot's
21 and Sonny's.

22 A No. I was closer than -- I was closer than -- he's
23 saying that it was four lanes of traffic.

24 Q Okay.

25 A I was closer than that.

Alfred Clay Jackson
Cross-examination by Mr. Spivey

- 1 Q What's the building right before Boot's and Sonny's?
2 A Wes -- wild wings.
3 Q wild wings is right before Boot's and Sonny's.
4 A Yes.
5 Q Are you sure about that?
6 A Yes.
7 Q Okay. Thank you. In fact, isn't Goodyear right next
8 to Boot's and Sonny's?
9 A Yes.
10 Q Right there at Kennedy Street.
11 A Yes.
12 Q wild wings is back up at Main Street.
13 A Yes.
14 Q Okay. So you're having an issue with your moped, and
15 instead of pulling into Goodyear you pull into Boot's and
16 Sonny's.
17 A No.
18 Q No.
19 A I don't understand what you're saying.
20 Q You have an issue with the moped, with your -- what
21 you're going to say with your car that day, with your
22 moped, it's getting stuck.
23 A Okay.
24 Q And instead of pulling into a place that could fix it,
25 you pull into Boot's and Sonny's.

Alfred Clay Jackson
Cross-examination by Mr. Spivey

- 1 A They don't fix mopeds.
- 2 Q Do you know that?
- 3 A Yes.
- 4 Q They don't fix automobiles and motor vehicles.
- 5 A They don't fix mopeds.
- 6 Q Okay. So let me just make sure. Your testimony here
- 7 today here is that you were just barely on the sidewalk.
- 8 You didn't drive on it for very long. Is that your
- 9 testimony today?
- 10 A Yes.
- 11 Q Okay. And that your moped was broken. Yes or no?
- 12 A Yes.
- 13 Q And then you had to cross over Church Street to get to
- 14 Boot's and Sonny's.
- 15 A If that's by wild wings, yes.
- 16 Q wild wings and Boot's and Sonny's are at least two
- 17 blocks apart.
- 18 A I know. That's where I was.
- 19 Q And it's your testimony that you didn't have any
- 20 cocaine in your pocket.
- 21 A Yes.
- 22 Q So when he says you had cocaine in your pocket, did he
- 23 plant it on you?
- 24 A He, he wasn't the one that got -- he's the one that --
- 25 he's the one that said I had it, but he wasn't the one that

Alfred Clay Jackson
Redirect examination by Mr. Wheelchel

1 was initially saying I had it.

2 Q You testified earlier you were standing right here.

3 Facing this way?

4 A At first, in the front of the car first.

5 Q The car's right here.

6 A Okay.

7 Q And he's in his driver's seat kind of less than 3 feet
8 away, correct?

9 A Yes. He was sitting in his car.

10 Q So he would have seen you drop something out of your
11 pocket, correct?

12 A Yes, when he patted me down.

13 Q He would have seen you drop something out of your
14 pocket.

15 A Yes.

16 Q Okay.

17 MR. SPIVEY: No further questions.

18 REDIRECT EXAMINATION

19 BY MR. WHELCHER

20 Q So did you or did you not drop something out of your
21 pocket?

22 A No. I didn't, sir.

23 Q You didn't have cocaine in your pocket.

24 A No.

25 MS. WHELCHER: That's all I have, Your Honor.

1 THE COURT: You may step down.

2 MS. WHELCHER: The defense rests, Your Honor.

3 THE COURT: Any reply?

4 MR. SPIVEY: Nothing, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, that's
6 all of the evidence that's going to be received in the
7 case. And therefore what remains to be done are the
8 lawyers' final summations, after which I'll instruct you on
9 the law that's applicable.

10 We're not going to do that this afternoon. We'll do
11 that starting in the morning at 9:30.

12 So keep in mind the caution I've provided you before
13 lunch. You do not discuss the case with anybody. Don't
14 conduct any research. Don't do your own investigation into
15 any issue. Base your decision solely upon what you've seen
16 and heard during the trial.

17 Do have a good evening, and please report to your jury
18 room at 9:30 in the morning, at 9:30 in the morning.

19 (The following takes place outside the presence of the
20 jury.)

21 THE COURT: All right. Court is in recess until
22 9:30 in the morning.

23 END OF PROCEEDINGS FEBRUARY 1, 2012

24

25

closing arguments

1 (Proceedings February 2, 2012)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready for the jury?

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

6 MS. WHELCHER: Yes, sir.

7 THE COURT: All right. Bring them in.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Good morning, ladies and gentlemen.

11 As you know, all of the evidence has been received.

12 We're going to hear from the lawyers, and then I'll

13 instruct you on the law and you can begin deliberations.

14 So please give the lawyers your attention now as they
15 give you their final summations.

16 Mr. Whelcher.

17 MS. WHELCHER: May it please the Court, Your Honor.

18 THE COURT: Yes, sir.

19 MS. WHELCHER: Have you got the indictment?

20 (Pause.)

21 MS. WHELCHER: Thank you, sir.

22 Madam Forelady, ladies and gentlemen of the jury,

23 we've reached that stage of the trial obviously where we

24 have, as the judge told you, the closing arguments. That's

25 the chance that I have and Mr. Hunter will have to sum up

Closing arguments

1 what we think is important in this case.

2 Now, on the initial blush you might say officer said
3 he saw him on the sidewalk, saw him run a red light, did
4 this, he did this, found cocaine, the rest is done, that's
5 the end of the case. You might say that.

6 But let me ask you these questions or let me talk to
7 you about what's reasonable and about what questions you
8 may have.

9 Now, the state through its indictment has alleged that
10 Mr. Jackson did in Spartanburg County -- and, you know, we
11 don't contest it was Mr. Jackson. No question it was him
12 on the moped that day. This is not an identity case or
13 anything like that.

14 On November the 6th of last year -- I think we all
15 know that in November it can be cold. It can be chilly.
16 And you can want to put your hands in your pockets if
17 you're the one who's riding a moped as your means of
18 transportation.

19 But here's what must be proven to you beyond a
20 reasonable doubt. That a perfectly sane, rational human
21 being, Mr. Jackson -- and when I say that, if there's
22 something wrong with his decision-making ability, then the
23 state's got to prove that to you. I mean, we're not
24 claiming insanity or anything like that. So I don't guess
25 they are either. But let's look at what he did that day.

closing arguments

1 He's driving down the street, and his mode of
2 transportation, which happens to be a moped, starts acting
3 up. There seems to be a great problem with the state
4 because he drove the moped on the sidewalk.

5 Well, what makes sense? If you're on a moped and the
6 throttle is messing up do you stop it in the middle of the
7 lane and make repairs there and risk getting run over by a
8 much bigger car and/or truck? Do you stop it in the lane
9 and then move it to the sidewalk? No.

10 The reasonable thing to do is to drive it up on the
11 sidewalk in one of those places in the corner where you can
12 get up on the sidewalk and make what repairs you can make
13 if you can and continue your journey, which apparently is
14 what he did. And he was able to do this in the roughly
15 half mile or more from the intersection of North Church and
16 Daniel Morgan and Ricky's and Sonny's.

17 You heard the officer testify I was sitting at the
18 light, he came beside me, he came up beside me. So we know
19 he's ahead of him. I had to go through traffic to get it,
20 but the blue light didn't come on until he gets into that
21 parking lot.

22 Don't you think it was odd? My client is on the
23 sidewalk stopped making repairs, but the car much more
24 powerful can't catch up to him through the traffic until he
25 gets to Boot's and Sonny's. Do you have questions about

Closing arguments

1 that?

2 They would also have you believe that later on after
3 all of the stops are made my client's -- already been
4 searched once -- he's standing in front of the automobile
5 in full view of not only one but as we found out in my
6 cross-examination two officers. We'll talk about that in a
7 minute. But he's standing there according to them facing
8 this way, Boot's and Sonny's behind him, and he keeps
9 taking his hands in and out of his pockets.

10 This is a fellow who according to the state knowingly
11 or intentionally possesses a quantity of cocaine, who's
12 already been searched.

13 Thank you, sir.

14 Already been searched now at this pat-down.

15 MR. SPIVEY: Objection, Your Honor. He is stating
16 facts not in evidence. I believe it's called a pat-down.
17 It's not a search.

18 THE COURT: Overruled.

19 MS. WHELCHER: As I was saying, they call it a
20 pat-down.

21 According to them my client, already having been
22 searched and is going to receive a ticket, a ticket for
23 reckless driving, is going in and out of his pockets this
24 far from a marked police car in broad clear daylight at
25 2:00 o'clock in the afternoon. That's what they must prove

closing arguments

1 to you. That's what they are saying.

2 Remember I told you when we were talking in the
3 opening you get to choose who and what you believe, and you
4 get to use your common sense to do that.

5 And notice some of the testimony. They asked him
6 continually is the moped stolen, is the moped stolen, is
7 the moped stolen. No, it's not. And if it was you would
8 have heard about it. They keep asking him about it. They
9 continue to keep giving that.

10 My client is outside in the cold. He's inside where
11 it's nice and warm writing a ticket and calling people. I
12 don't know. And he's already been searched, but he can't
13 put his hands in his pockets. Remember what he said? It's
14 for my safety. It wasn't our safety.

15 Remember what you heard yesterday because it's
16 important. All throughout the direct examination of that
17 officer you heard about what he did, who did what, what my
18 client did or didn't do. And not until I started asking
19 questions did we find out that there was another fellow in
20 that car. You never heard about it on direct.

21 My father -- actually both of us -- worked at Wofford
22 College in football and basketball games years ago. I ran
23 the scoreboard for Spartan High and sold popcorn at Andrews
24 Field House.

25 My father used to say what did you learn new today

Closing arguments

1 every once in a while. We would laugh about the stuff that
2 we learned new that was sometimes worthwhile and sometimes
3 not so big officially enlightening in some ways.

4 And I tell you that to explain this. I learned
5 yesterday after reading incident reports since 1980 -- I
6 was a law clerk in the solicitor's office in Columbia and
7 later became assistant solicitor. Worked at that office
8 for five years and worked as a prosecutor here for two.
9 Private practice for 20 years and been a public defender
10 now for over five. Been practicing for almost -- well,
11 will be 30 years in April.

12 I learned yesterday that when a name appears at the
13 bottom of an incident report that means that person was a
14 witness. Where was he? I learned that yesterday. Been
15 reading those things for about 32 years now. Didn't know
16 that.

17 Do you think in this discussion we've had here about
18 who did what and what happened and who got searched, think
19 it might have been beneficial to have that other person
20 here? Could that help you? Well, we found out about it
21 yesterday.

22 As I told you before, the burden of proving to you
23 that this happened this way and for the reasons they say it
24 happened lies with the state. Do you believe that a
25 seemingly intelligent rational man standing in front of one

closing arguments

1 or two police officers, not to mention the others who
2 showed up later -- remember the testimony about them going
3 to his moped, other officers on the search under the seat
4 or wherever the search unfolded on the moped this close to
5 the officers or officer. In and out, knowing there's
6 cocaine in there. According to that indictment, according
7 to what they've got to prove to you, knowing it's there he
8 did that.

9 I think there was testimony of Mr. Lawson, special
10 officer with details, with the F.B.I. and worked on drug
11 cases and stuff like that, low and behold a simple reckless
12 driving turns into a drug case.

13 The former chief public defender, a friend of mine by
14 the name of Mike Bartosh, used to have a saying. I don't
15 know if he made it up himself or if he heard it somewhere,
16 but the saying goes like this: If you're holding a hammer
17 everything looks like a nail.

18 From a simple driving moped on the sidewalk we get to
19 today. The question you have concerning it is this, and I
20 told you earlier who do you believe and what do you
21 believe.

22 Now, obviously I think you'll probably hear from the
23 solicitor that somebody here's got a reason to shade the
24 truth. They might. But that cuts both ways.

25 what you must remember is this. I told you this to

Closing arguments

1 begin with. Alfred Jackson and every citizen of this state
2 charged with a criminal offense is not guilty. Alfred
3 Jackson is not guilty.

4 Alfred Jackson is not guilty unless and until they
5 prove to you with evidence so strong and so convincing as
6 to remove the presumption of innocence -- and, I mean,
7 that's not just a legal theory. The judge will tell you.
8 He'll talk to you about the presumption of innocence and
9 about the burden of proof and about reasonable doubt.

10 And I'm going to tell you this. You can base your
11 decision on what you've heard and who testified and who
12 didn't testify and who we didn't find out about until
13 yesterday at the trial -- the only presumption that exists
14 in the law in this state -- the only -- why is that? Ask
15 yourself that question. Why is that?

16 Imagine if you had to prove yourself innocent rather
17 than them having to prove you guilty, and guilty beyond a
18 reasonable doubt. There are those who believe that they
19 were arrested by the police and they must be guilty of some
20 kind of criminal offense committed. That's not true.
21 Cases get dismissed all of the time.

22 And the fact that we are here and the case hasn't been
23 dismissed doesn't mean a thing, because ultimately the only
24 persons here that can judge the facts of this case are you.
25 Nobody else. Nobody else gets to be the judge of the

Closing arguments

1 facts.

2 When you consider the testimony that's been given to
3 you, the testimony that's not been given to you -- and the
4 state has the chance to rebut what my client says. They
5 get rebuttal testimony. Did you hear any?

6 What's necessary in this trial and in any trial is
7 simply this. You must be proven individually and
8 collectively.

9 It must be proven to you that my client possessed
10 cocaine knowingly and intentionally and that he kept this
11 going in and out of pockets within full view of one or two
12 officers, and maybe more when the second group got there
13 this close to him after the search -- must be proven to you
14 beyond a reasonable doubt with evidence so strong and so
15 convincing as to remove the cloak of innocence, the
16 presumption of innocence, that is given to any citizen
17 hauled into court in this state, evidence so strong and so
18 convincing that you could return this same verdict of
19 guilty if that were your brother or husband.

20 MR. SPIVEY: Objection, Your Honor. He's putting the
21 jury in the place of a defendant, Your Honor.

22 THE COURT: Sustained.

23 MS. WHELCHER: They must prove to you with evidence
24 that would remove that presumption of innocence. They must
25 prove to you all with evidence so strong and convincing

Closing arguments

1 that he is guilty, and they've got to do that beyond a
2 reasonable doubt.

3 Ask yourself this question. With what you heard and
4 what you didn't hear and who you didn't hear from do you
5 have a doubt? And the judge will tell you if you have a
6 reasonable doubt that doubt -- that doubt must be given to
7 Mr. Jackson or anybody sitting at that table. But the
8 burden of proving that it happened this way lies here.

9 We submit to you a proper verdict in this case, a
10 unanimous verdict, should be not guilty. Thank you.

11 THE COURT: Mr. Hunter.

12 MR. SPIVEY: May it please the Court.

13 He spent 20 minutes up here. Did you hear him one
14 time say that Alfred Jackson didn't have cocaine in his
15 pocket? I didn't. Alfred Jackson had cocaine in his
16 pocket.

17 MS. WHELCHER: Your Honor, may we approach?

18 THE COURT: Okay.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 THE COURT: You may continue.

22 MR. SPIVEY: I want to talk to you about three things.
23 First, talk to you about the law. He's gone over it. Talk
24 about the facts that we both agree to. And also I want to
25 talk to you about credibility.

Closing arguments

1 I'm not going to talk about the substantive law of
2 possession. Judge Cole will announce that to you and give
3 you an instruction after I sit down as to what constitutes
4 possession. But he hit on the burden of proof, reasonable
5 doubt and the presumption of innocence.

6 When he got up here earlier yesterday and he said that
7 his client was not guilty, he was right. At that point in
8 the trial he was not guilty. He is presumed not guilty
9 until we present evidence. When he got up here we hadn't
10 presented any evidence.

11 We have the burden to present to you evidence. We
12 presented that to you in the form of testimony from Lawson,
13 from Mylnor Beach, from Ashley Harris. And then you heard
14 him speak. And now is the point in the trial where you can
15 find him guilty or you can remove that presumption of
16 innocence. And I submit to you we have met our burden of
17 reasonable doubt.

18 And let's talk about facts that we both agreed to.
19 This substance in this blue bag right here is .19 grams of
20 cocaine. A chemist that's tested over 12,000 items, he has
21 got a master's degree, worked in law enforcement for 13
22 years or so -- that is cocaine.

23 We also agree that up on North Church Street, Alfred
24 Jackson was driving his moped on the sidewalk. Can't drive
25 your moped on the sidewalk. That is reckless driving.

Closing arguments

1 You heard from Mylnor Beach that evidence was never
2 tampered with. It went from Lawson to the evidence locker,
3 from the evidence locker with Mr. Beach to Lieutenant
4 Harris who tested it. Never tampered with.

5 We also agree that that was Mr. Jackson on that moped
6 that day. In fact, you could tell he was wearing that same
7 shirt yesterday that he was wearing November the 6th of
8 2009, that same hoody. We agree that that is his jacket.
9 He testified on the stand saying that's my jacket, and yet
10 he still wants you to believe that he didn't have any
11 cocaine.

12 Finally I want to talk about credibility. I want to
13 first talk about high school. Mr. Welchel asked his
14 client what high school did you go to. Uh, Spartanburg.
15 He had to think about his answer.

16 You're sitting on the stand and you know you're about
17 to be cross-examined and you have to think about your
18 answer where you went to high school. I went to
19 Eastside -- Camden, Dorman, Dorman, Spartanburg. It is an
20 easy question, not something you need to think about.

21 Same with geography. Mr. Welchel asked Mr. Jackson.
22 You grew up here all of your life. Yes. Lives on
23 Williams Avenue or Williams Street. I'm not sure if you
24 all are familiar with Williams Street. It's actually
25 behind the fairgrounds over on the north side of

closing arguments

1 Spartanburg, close to downtown though.

2 Boot's and Sonny's is right behind wild wings. That's
3 what the defendant's answer was. No, it's not. It's three
4 blocks down on the other side of the road.

5 And then this is where it really gets mixed up.
6 Mr. Whelchel asked him what he was doing that day. He said
7 he was going to work.

8 Well, we know he lives on Williams Street over behind
9 the fairgrounds. We know he works at the Cracker Barrel
10 over near Business 85. And yet he is driving a moped the
11 opposite way.

12 And he wants you to believe that that moped was
13 breaking down so that's why he had to get on the sidewalk.
14 If his moped is breaking down why does he continue going
15 the opposite way from his work and from his house? Is that
16 reasonable? Is that credible? Do you believe that?

17 He also testified that these drugs weren't his. We
18 heard from Officer Lawson. He stopped him in the Boot's
19 and Sonny's parking lot and got out to him. He did do a
20 pat-down. He didn't find any weapons, what he believes to
21 be weapons. He didn't feel a gun. He didn't feel a knife.

22 Look how small this is. You're not going to feel that
23 in a pocket. He continually asked him to take his hands
24 out of his pocket. He did that he said for his own safety.
25 He wanted to make sure there was nothing small in there

Jury charge

1 that could hurt him. He can ask him to take his hands out
2 of his pocket. And he saw a bag, one of these bags right
3 here, fall out of the pocket, one of these small bags right
4 here.

5 Now, Mr. Jackson testified that's not his, it was on
6 the ground. All right. Let's believe him. Let's assume
7 his argument is right that there are drugs just lying in
8 the streets of Spartanburg. Does that explain the drugs
9 found in his pocket? Cocaine is found in his pocket.

10 Mr. Whelchel got up here and asked you to use your
11 common sense, and I'm going to do the same thing. This
12 case is about credibility. Who do you believe? The
13 officer with ten years of experience -- Mylnor Beach,
14 Lieutenant Harris? Do you believe their story or do you
15 believe his? It's that simple.

16 He's guilty of possession of cocaine. He had it in
17 his pocket. It doesn't get simpler than that. Thank you.

18 THE COURT: Madam Forelady and ladies and gentlemen of
19 the jury, you of course have heard and seen all of the
20 evidence and now the final summations of the lawyers.

21 And so I'm going to instruct you on the law that's
22 applicable in the case. And then you'll be asked to go
23 back and begin with your deliberations.

24 Through that process you'll examine the evidence,
25 you'll decide the facts, apply the law and arrive at a fair

Jury charge

1 and just decision, whatever that decision may be.

2 It is your exclusive duty to determine what the facts
3 are. You do that through your own common sense examination
4 and evaluation of all of the testimony and the other
5 evidence received during the trial of this case.

6 You 12 jurors alone will decide what weight, value and
7 effect to give to any particular testimony or other
8 evidence in the case. Your sole objective is to simply
9 reach the truth in the matter, and by doing that you will
10 have fulfilled your obligations as jurors, and that is to
11 simply give both the state and the defendant a fair and
12 impartial trial.

13 In this case, as you know, the defendant has been
14 accused by the state with the crime of possession of
15 cocaine. The charge is set forth in the indictment that I
16 referred to prior to and after your selection.

17 As I've also told you, the indictment will be in the
18 jury room. But it's not evidence of anything. It doesn't
19 establish anything.

20 But it will serve as the verdict form, Madam Forelady,
21 because it will be on the back of that indictment that
22 you'll indicate the jury's unanimous decision, whatever
23 that decision may be. And you'll sign your name as the
24 foreperson. You are the only juror that needs to sign the
25 verdict form. And you'll place the appropriate date.

Jury charge

1 But as to the charge contained in that indictment the
2 defendant has entered a plea of not guilty. And as you
3 know, that plea of not guilty has placed upon the state the
4 burden of proving the allegations that they have set forth
5 in that indictment, the burden of proving each of the
6 essential elements of the crime alleged; and therefore the
7 burden is upon the state to establish the defendant's guilt
8 to the satisfaction of you 12 jurors beyond a reasonable
9 doubt before any verdict of guilty could be returned.

10 It is a vital, important and cardinal rule of law that
11 every defendant in a criminal trial, and it doesn't matter
12 how serious the offense might be for which that person
13 stands charged -- a defendant is always presumed innocent
14 of the charge.

15 That presumption of innocence, as I told you, remains
16 with any defendant as it does with Mr. Jackson from the
17 time he is arrested, throughout the course of the criminal
18 process, even throughout the course of the trial.

19 That presumption of innocence will be with him even as
20 you go back to begin with your deliberations in this case.
21 And it'll be with him in that jury room, and it'll with him
22 forever unless you 12 jurors determine that he's no longer
23 entitled to the presumption of innocence.

24 In other words, after you've carefully considered all
25 the evidence in that case, and from that evidence you've

Jury charge

1 decided the facts, and upon deciding the facts you apply
2 the law that I will have provided you, if you 12 jurors
3 unanimously determine that his guilt has been proven beyond
4 a reasonable doubt, then he's no longer entitled to the
5 presumption of innocence. But it's only if, unless and
6 until you are satisfied of his guilt beyond a reasonable .
7 doubt that the presumption of innocence would no longer be
8 applicable.

9 Now, while the state does have the burden of proving
10 the defendant's guilt beyond a reasonable doubt, that
11 doesn't mean that they have to prove his guilt beyond all
12 doubt or beyond any possible doubt. But it does require
13 the state to prove his guilt to your satisfaction beyond a
14 reasonable doubt.

15 The term reasonable doubt should be given its plain
16 and ordinary meaning. A reasonable doubt is the kind of
17 doubt that would cause a reasonable person to hesitate to
18 act upon the information provided.

19 A defendant in a criminal trial is entitled to any
20 reasonable doubt that arises from the evidence or lack of
21 evidence in a case. And if upon any factual issue
22 essential to a finding of a verdict of guilty you have some
23 reasonable doubt as how that issue should be resolved, it
24 would be your duty to resolve that reasonable doubt in
25 favor of the defendant. And therefore if upon your

Jury charge

1 consideration of the whole case you have a reasonable doubt
2 as to his guilt it is your duty to resolve that doubt in
3 his favor and to return a verdict of not guilty.

4 And, at the same time, after you've carefully
5 considered all the evidence in this case and you've decided
6 those facts and you've applied the law, if you have no
7 reasonable doubt as to his guilt, then it would be your
8 corresponding duty to find him guilty of the crime where
9 you have been so convinced beyond a reasonable doubt.

10 The same law that provides that you are the judges of
11 the facts also provides that I am the judge of the law.
12 And that simply means that nobody is going to tell you how
13 to arrive at your determination of facts in this case.

14 You do that, as I've already stated, through the
15 exercise of good judgment and the application of common
16 sense to the evidence that has been presented during the
17 course of the trial.

18 You 12 jurors alone will decide what weight, value and
19 effect to give to any particular testimony or other
20 evidence in the case. Again, your sole objective is to
21 simply reach the truth in the matter, and it should not
22 matter from what source that truth may come, whether it be
23 from the state or the defendant or a combination of
24 testimony and evidence received.

25 However, you must accept the law as I provide it to

Jury charge

1 you as being the law that you are to apply. In other
2 words, you're not ever to concern yourself with what you
3 thought the law was before you came to serve as a juror
4 this week or what you think the law ought to be.

5 You must simply accept the law under your oath as I
6 provide it to you as being the law that you are to apply in
7 the case. And then you take that law and you apply it to
8 the facts as you 12 jurors have determined those facts to
9 be based upon your own common sense examination of all of
10 the testimony and evidence received during the trial.

11 Because you are the sole judges of the facts in this
12 case you are therefore also necessarily the sole judges of
13 the credibility and the believability of any witness that
14 has testified during the course of the trial.

15 And, as I have told you, you have to assess and
16 evaluate a witness' testimony and credibility in order to
17 arrive at your determination of fact in this case. There
18 are several factors which you should take into
19 consideration in arriving at your assessment as to a
20 witness' credibility, and I'm going to list those factors
21 for you.

22 You should consider the demeanor of the witness, that
23 is how the witness appeared to you as the witness testified
24 from the witness stand. Was the witness straightforward in
25 responding to questions, or was the hesitant or evasive in

Jury charge

1 responding to questions that were asked of the witness?

2 Simply put, did the witness appear to you to be
3 telling the truth and to have knowledge of the facts to
4 which that witness has testified.

5 You should also consider whether or not the testimony
6 of a witness is consistent, or is it inconsistent with that
7 witness' own testimony or with other testimony or other
8 evidence received during the course of the trial?

9 You should consider how the witness came to know the
10 facts to which a witness has testified. In other words,
11 what was that particular witness' opportunity and ability
12 to perceive the existence of those facts to which that
13 witness has testified by having previously used his or her
14 senses. And then what is that witness' ability to be able
15 to come into court and to accurately recollect to you as
16 what they have previously perceived.

17 You should also consider and take into consideration
18 any bias or prejudice or interest that a witness might have
19 with regard to the case.

20 In other words, do you find some reason that a
21 particular witness would come into court and would testify
22 one way or another to help or to hurt one side or the
23 other.

24 You may consider any interest that a witness might
25 have in the outcome of the case if you determine that a

Jury charge

1 witness does have such an interest and you find that that
2 interest would bear upon that particular witness'
3 credibility.

4 You should also consider whether or not the testimony
5 a witness is strengthened, or is it weakened by other
6 testimony or other evidence received during the course of
7 the trial.

8 Now, because you are the judges of the facts and
9 because you are the judges of the credibility of each
10 witness you are permitted to believe as much or as little
11 of what a witness has testified to as you deem is
12 appropriate in the exercise of your discretion and the
13 application of common sense.

14 So you can believe everything that a witness testified
15 to. You may choose to believe none of it. You may believe
16 one portion of a witness' testimony and reject some other
17 portion of that same witness' testimony.

18 You may believe one witness as opposed to several, or
19 several as opposed to one. But whatever your good judgment
20 and common sense tells you is the most believable and
21 credible testimony is the testimony you should accept. And
22 you should reject any testimony or other evidence that you
23 find not to be credible or believable.

24 Again, as I've said, your sole objective is to simply
25 reach the truth in the matter. And by doing that you will

Jury charge

1 have fulfilled your obligations as jurors, and that is to
2 give both sides a fair and impartial trial.

3 while there are various forms of evidence such as
4 testimony, photographs, documents, charts and other types
5 of physical exhibits, there are really only two types of
6 evidence, and either or both of those types of evidence may
7 be used to prove any fact in issue. But the two types of
8 evidence are direct evidence and circumstantial evidence.

9 Direct evidence is the testimony of a person who
10 testifies from actual knowledge of the fact. It is
11 testimony by a person who has perceived the existence of
12 some fact by means of his or her senses, and then come into
13 court and they testify as to what they have previously
14 perceived.

15 Circumstantial evidence, on the other hand, is the
16 proof of some other fact or set of facts which taken either
17 singly or collectively may prove the existence of a fact in
18 question as a necessary consequence, that is through an
19 inference.

20 An inference is simply a deduction of fact that may
21 logically and reasonably be drawn from the proof of some
22 other fact or set of facts. In other words, you may infer
23 that a particular event occurred or that a particular fact
24 exists based upon the proof of sufficient factual
25 circumstances which would reasonably warrant your arriving

Jury charge

1 at a particular conclusion.

2 The law however makes absolutely no distinction
3 between the weight or value to be given to direct evidence
4 as opposed to circumstantial evidence, nor is a greater
5 degree of certainty required of circumstantial evidence as
6 opposed to direct evidence.

7 whatever the type of evidence used to prove any fact
8 in issue, you should consider all of the evidence received
9 during the course of this trial. And if after carefully
10 considering that evidence and weighing it in your minds, if
11 that evidence does not prove the defendant guilty of the
12 crime alleged beyond a reasonable doubt, then you must
13 resolve that doubt in his favor and return a verdict of not
14 guilty.

15 Now, in this case, as you know, the state is charging
16 the defendant with the crime of possession of cocaine.
17 Possession of cocaine is a statutory offense, and it's
18 forth in section 44-53-370 of the South Carolina Code of
19 Laws.

20 The legislature meets every year from January to June.
21 They started a couple of weeks ago. Sometimes they pass
22 or -- well, every session they pass rules and laws and
23 regulations that govern our conduct in a variety of ways.
24 Some of those laws are criminal penalty statutes. And that
25 just means that the legislature prohibits us in engaging in

Jury charge

1 certain types of conduct. They declare it to be a criminal
2 offense. And where a person is found to have engaged in
3 that conduct in a violation of that statute, then it
4 provides that the person may be subject to some form of
5 punishment or penalty which is prescribed.

6 Please understand however that you as jurors are never
7 to be concerned with punishment or penalty. That's not
8 something that you decide.

9 Your oath requires you solely to determine whether or
10 not a defendant has been proven guilty beyond a reasonable
11 doubt. And you do that without regard to any consequence
12 of that decision.

13 But the section that the state does accuse the
14 defendant of having violated is set forth in section
15 44-53-370, particularly subsection C of that section.

16 That section of law provides that it shall be unlawful
17 for any person to knowingly or intentionally possess a
18 controlled substance unless obtained directly from or
19 pursuant to a valid prescription or order from a
20 practitioner who is authorized by law to dispense a
21 controlled substance while acting in the course of his
22 professional practice.

23 Before a person may be found guilty of the possession
24 of a controlled substance it must be proven beyond a
25 reasonable doubt that the defendant did knowingly or

Jury charge

1 intentionally have in his actual or constructive possession
2 the controlled substance which is alleged to have been
3 possessed.

4 You are instructed that section 44-53-210 of the code
5 of laws provides that cocaine is classified as a Schedule
6 II narcotic drug and therefore is declared to be a
7 controlled substance under the law.

8 Knowingly within the meaning of the statute is defined
9 as having knowledge of the fact. It is an act done
10 wilfully, purposefully and consciously.

11 The term intentionally is defined as purposefully,
12 that is by aim or design and not by accident, mistake or
13 inadvertence.

14 Actual possession of a substance occurs when the
15 substance is proven to have been in the actual physical
16 custody or control of the person charged with possession so
17 long as it is also shown he had knowledge of its presence.

18 Constructive possession of a substance occurs when a
19 person, although not in actual physical custody of the
20 substance, exercises dominion and control over the
21 substance or has the right to exercise dominion and control
22 over that substance.

23 A person has possession of a substance within the
24 meaning of the law when he has both the power and the
25 intent to control the disposition or use of that substance.

Jury charge

1 The act of possession, as well as the elements of knowledge
2 and intent, may be proven by either direct evidence or
3 circumstantial evidence or by a combination of both types
4 of evidence.

5 You are permitted to infer the act of possession of a
6 substance, as well as the elements of knowledge and intent,
7 from evidence of acts, declarations or conduct of the
8 person charged with possession, as well as any other
9 circumstances established by the evidence in the case from
10 which you might reasonably draw such an inference or
11 conclusion.

12 You are instructed however that proof of mere presence
13 of the defendant at or near a location where a controlled
14 substance is found is not sufficient by itself to prove the
15 defendant possessed that substance within the meaning of
16 the law.

17 A defendant's mere presence where a substance is
18 located even with knowledge of its presence is not
19 sufficient standing alone to prove the crime of possession.

20 If, after your review of the evidence presented in the
21 case, you determine that the state has only proven that the
22 defendant was merely present at or near a place where a
23 controlled substance was located but the state has failed
24 to prove the elements of possession beyond a reasonable
25 doubt, then you must find the defendant not guilty of the

Jury charge

1 charge in the indictment.

2 If, after your review of all of the evidence in the
3 case, you find that the state has proven beyond a
4 reasonable doubt that the defendant did possess a
5 controlled substance with knowledge of its presence, then
6 your verdict would be guilty as to possession of that
7 substance.

8 So in this case the state has the burden of proving to
9 your satisfaction beyond a reasonable doubt that the
10 defendant did actually or constructively possess a
11 controlled substance and in this case that that controlled
12 substance was cocaine.

13 Now, ladies and gentlemen, I am not in any way
14 concerned with what your decision is. But, as I've already
15 told you, the verdict has to be unanimous. All 12 of you
16 must be agreement before any decision can be reached.

17 So, Madam Forelady, you're going to be presiding over
18 the jury deliberations in the jury room so that they will
19 be carried out in some orderly fashion.

20 But, as you know, all of you should participate in
21 those deliberations, because the decision has to be
22 unanimous. And it's intended to be the consensus opinion
23 of all 12.

24 So after the deliberations have concluded, Madam
25 Forelady, and you and your fellow jurors have reached your

Jury charge

1 unanimous decision, on the back of this indictment in the
2 lower left-hand corner you'll see the word verdict. And
3 it's beneath that word that you're going to indicate the
4 jury's decision.

5 In this case you have two potential verdict forms.
6 Those two forms are guilty and not guilty. So whatever
7 that decision is, insert it in the space provided. Sign
8 your name as the foreperson. You're the only juror that
9 needs to sign the verdict form. And also place the
10 appropriate date.

11 If during your deliberations you have a question about
12 the facts of the case, I am never permitted to comment upon
13 the facts or to answer questions that you might have about
14 the facts of the matter. You have to resolve those
15 questions based upon the deliberations among your fellow
16 jurors.

17 If you think or you wonder if there's some other
18 evidence out there that you could have that you think might
19 help you resolve the case, no additional evidence can be
20 received now that you are going back to begin with your
21 deliberations.

22 So even if there was some other evidence and it does
23 exist, you can't have it because the case is closed and
24 you're going back to deliberate. So don't inquire about
25 other evidence, because even if it exists you can't have

Jury charge

1 it. And, as I say, I cannot respond to questions of fact
2 or questions about the evidence in the case.

3 If you should have some question about testimony
4 that's been provided and you think that having that
5 testimony reheard can help you resolve the question about
6 it, we can bring you back into the courtroom to have the
7 testimony of a witness replayed in whole or in part.

8 I do not have transcripts, so I can't send a
9 transcript back. But if you would like to have testimony
10 replayed we can bring you back to have a witness' testimony
11 reheard.

12 If you ever have a question about the law that you are
13 to apply, I am permitted to answer those questions. So if
14 you need to be reinstructed or you need an explanation or a
15 clarification of the law I've already provided to you, I am
16 permitted to provide those additional instructions,
17 explanations or clarifications.

18 During the course of your deliberations, Madam
19 Forelady, if there's ever a time that there's something
20 that needs to be addressed to me, if you will write it on a
21 piece of paper, give it to the bailiff, he'll provide it to
22 me, and I'll respond to that question or try to resolve
23 that issue for you.

24 I think that covers everything. If it doesn't I'm
25 sure one of these lawyers will tell me that I have left

Jury charge

1 something out.

2 So right now what I'm going to ask you to do, if
3 you'll please go to your jury room, but do not begin your
4 deliberations until I send you word to do so.

5 I'll discuss some matters with them. And if I don't
6 need to bring you back for any reason, then I'll send word
7 by way of the bailiff that you may begin your
8 deliberations. In that event he'll bring to the jury room
9 all of the exhibits that have been introduced.

10 And to you, Madam Forelady, he'll also bring the
11 indictment which will serve as the verdict form.

12 So, Ms. Howell, you can stay with me.

13 I'll ask the 12 primary jurors to please go back to
14 your jury room, but await my instruction as to when to
15 begin.

16 (Whereupon, the jury retired to deliberate at
17 10:30 a.m.)

18 (Whereupon, the alternate juror was excused.)

19 THE COURT: Are there any exceptions taken to the
20 instruction or requests for additions to the instruction by
21 the state?

22 MR. SPIVEY: Nothing from the state, Your Honor.

23 THE COURT: The defendant?

24 MS. WHELCHER: No, sir.

25 THE COURT: Let me ask y'all to verify the exhibits

Verdict

1 please before they go back.

2 (Pause.)

3 MR. SPIVEY: Evidence is verified.

4 THE COURT: Okay. Send the evidence back and tell the
5 jury to begin deliberations and notify us when they have
6 concluded.

7 (Whereupon, a recess was taken.)

8 THE COURT: All right. The jury has reached a
9 decision. Are we ready to receive it?

10 MR. SPIVEY: Yes, Your Honor.

11 MS. WHELCHER: Yes, sir.

12 THE COURT: Okay. Bring them in.

13 (Whereupon, the jury returned to the courtroom at
14 11:32 a.m. to report its verdict.

15 THE COURT: Madam Forelady, have you and your fellow
16 jurors reached a unanimous decision?

17 THE FOREPERSON: Yes, Your Honor.

18 THE COURT: And have you indicated on the verdict form
19 as requested?

20 THE FOREPERSON: Yes, sir.

21 THE COURT: Did you sign it?

22 THE FOREPERSON: Yes, sir.

23 THE COURT: Please hand that up by way of the bailiff.
24 You may publish the verdict.

25 THE CLERK: In the State of South Carolina, in the

Verdict

1 County of Spartanburg, in the Court of General Sessions,
2 the State of South Carolina vs. Alfred Clay Jackson, as in
3 Indictment No. 2010-GS-42-2903 for possession of cocaine,
4 the jury unanimously finds the defendant guilty.

5 Ladies and gentlemen of the jury, is this your verdict
6 and still your verdict? If so, please raise your right
7 hand.

8 (Whereupon, all jurors responded in the affirmative.)

9 THE CLERK: So say you all.

10 THE COURT: Does the defendant wish to have the jury
11 polled?

12 MS. WHELCHER: Yes, sir.

13 THE COURT: Okay. Poll the jury, please, ma'am.

14 THE CLERK: Ladies and gentlemen of the jury, I will
15 pose a question to you after which I will ask you to stand
16 individually and respond to my question, the question being
17 is this your verdict and still your verdict.

18 Juror No. 152, is this your verdict and still your
19 verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 117, is this your verdict and
22 still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror No. 96, is this your verdict and
25 still your verdict?

Verdict

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 43, is this your verdict and
3 still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Juror No. 13, is this your verdict and
6 still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Juror No. 165, is this your verdict and
9 still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Juror No. 60, is this your verdict and
12 still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Juror No. 91, is this your verdict and
15 still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Juror No. 86, is this your verdict and
18 still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Juror No. 11, is this your verdict and
21 still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Juror No. 137, is this your verdict and
24 still your verdict?

25 THE JUROR: Yes.

Verdict

1 THE CLERK: Juror No. 111, is this your verdict and
2 still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Your Honor, the jury has been polled.

5 THE COURT: All right. Thank you.

6 Any other matters we need to address with the jury
7 present?

8 MS. WHELCHER: No, Your Honor.

9 THE COURT: Thank you, ladies and gentlemen, for your
10 participation.

11 That's going to conclude your service not just for
12 this case, but it will also conclude your service for the
13 week. So I do want to take this opportunity to sincerely
14 thank you for your willingness to serve as jurors this week
15 and of course for your actual service in the trial of the
16 case.

17 I do sincerely hope that that experience has been an
18 educational and a beneficial experience for you. And I do
19 hope that it has not posed to much of a hardship or
20 inconvenience on you.

21 You will receive a pay voucher for your service this
22 week. It will be mailed to you at the addresses that
23 appear on your juror summons.

24 So if that address is not correct and you've not
25 already provided the clerk with a different address, be

Sentence

1 sure you do that before you leave so that you'll be certain
2 to get the pay voucher.

3 Okay. Thank you again for your participation.

4 (Whereupon, the trial jury was excused.)

5 THE COURT: All right. Any other matters we need to
6 address prior to the imposition of sentence?

7 MS. WHELCHER: No, sir.

8 THE COURT: Okay. Anything further on behalf of the
9 state?

10 MR. SPIVEY: Nothing, Your Honor.

11 THE COURT: This is a second offense. We're in
12 agreement?

13 MS. WHELCHER: Yes, sir.

14 THE COURT: All right. Mr. whelchel.

15 MS. WHELCHER: Your Honor, as you've already heard
16 during his testimony, Alfred is 43. He's been working at
17 Cracker Barrel for the last five years. He's a cook there.
18 And he has four children. The youngest -- you said was one
19 and the oldest is 18.

20 THE DEFENDANT: Yes, sir.

21 MS. WHELCHER: Born and raised in Spartanburg and
22 lived here all of his life, Your Honor.

23 I would ask that the Court be as lenient as possible.
24 He has prior convictions for possession of cocaine, and
25 there are some other convictions that are of a minor

Sentence

1 nature.

2 THE COURT: Mr. Jackson, how far did you go in school?

3 THE DEFENDANT: I graduated, sir.

4 THE COURT: Have you got anything you want to add to
5 what your lawyer has told me?

6 THE DEFENDANT: That I just -- I got -- I'm just hurt
7 right now. That's all.

8 THE COURT: You what?

9 THE DEFENDANT: I'm just hurt right now. So it ain't
10 nothing I can't deal with, so.

11 THE COURT: What's his previous history?

12 MR. SPIVEY: A 1994 simple possession of marijuana,
13 possession of ball tickets, no driver's license, '97 simple
14 possession of marijuana, driving under suspension, driving
15 an expired tag, 1999 breaking arrest, open container and no
16 driver's license, driving under suspension, and 2006
17 possession of crack.

18 MS. WHELCHER: Your Honor, that youngest child is
19 still living with him.

20 THE DEFENDANT: Yes. I take care of her, so.

21 THE COURT: What kind of work are you doing,
22 Mr. Jackson?

23 THE DEFENDANT: Cook, sir, and dish washer. I was
24 working another job, but I had to come to court so I had to
25 let it go.

Sentence

1 THE COURT: Where were you working?

2 THE DEFENDANT: Skillet restaurant. They had let me
3 go because I had to come to court at the time that I was
4 going to work. And Cracker Barrel, yes, sir. I was
5 working two jobs trying to maintain paying my bills and
6 helping my daughter out and everything, because my
7 girlfriend -- she don't work. So I pay all of the bills
8 and everything.

9 THE COURT: All right. On Indictment 2010-2903, an
10 indictment for possession of cocaine second offense,
11 wherein you've been found guilty by the jury, Sentence of
12 is you, Alfred Clay Jackson, be confined to the Department
13 of Corrections for a period of five years and pay a fine of
14 \$7,500.

15 However, that sentence is suspended upon the service
16 of 18 months.

17 Placed on probation for three years. Conditions of
18 probation, perform 100 hours of public service employment,
19 complete a substance abuse program, submit to random drug
20 and alcohol testing, pay \$500 for your appointed lawyer.

21 THE DEFENDANT: Thank you, Mr. Cole.

22 THE COURT: You have a right to appeal the verdict of
23 the jury and the Sentence of the Court. You must file any
24 notice of your intention to appeal within ten days of
25 today's date.

Sentence

1 THE DEFENDANT: Yes, sir.

2 MS. WHELCHER: Thank you, Your Honor.

3 THE COURT: Okay.

4 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 1st and 2nd days of February 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 12, 2012

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

Spartanburg County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Cole, J. Derham

TRIAL TYPE : Criminal

PANEL ID : 2010GS4202903

COURTROOM JAR

DESCRIPTION : ALFRED CLAY JACKSON

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Stanley, Daniel T	155	W	M	☒	()	()	
2 Sortor, Linda C	152	B	F	☒	☒	()	
3 Crosby, Charlotte A	27	B	F	☒	()	()	
4 Oneill, John G	117	W	M	☒	☒	()	
5 Manry, Sherry H	96	W	F	☒	☒	()	
6 Manly, Rhonda M	95	W	F	☒	☒	()	
7 Gabbert, Mary H	43	W	F	☒	☒	()	
8 Bradley, Ashlee R	13	W	F	☒	☒	()	
9 Tidball, Glenda S	165	W	F	☒	☒	()	
10 Harrell, Theresa C	60	W	F	☒	☒	()	
11 Gilbert, Kenneth W	48	W	M	☒	()	()	
12 Liebmann, Michael F	91	W	M	☒	☒	()	
13 Knight, Tabitha A	86	W	F	☒	☒	()	
14 Bibelnicks, Margrieta	11	W	F	☒	☒	()	
15 Rogers, Holly P	137	W	F	☒	☒	()	
16 Cox, Bobby J	24	W	M	☒	()	()	
17 Mueller, Roland	111	W	M	☒	☒	()	
18 Howell, Sarah M	76	W	F	☒	☒	()	
19 Wilbanks, Susan K	175	W	F	()	()	()	
20 Gilliam, Rory M	49	W	M	()	()	()	
21 Hovelsrud, John P	74	W	M	()	()	()	
22 Gidaro, Rose M	47	W	F	()	()	()	
23 Hammett, James C III	59	W	M	()	()	()	
24 Bryant, Ronnie B	19	W	M	()	()	()	

WITNESSES

SPTG DEPT PUBLIC SAFETY

James W. Smith

ARREST WARRANT NUMBER

M117399

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *5/6/10*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **10-GS-42-2903**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 17 2010

TERM

THE STATE
vs.

ALFRED CLAY JACKSON

Indictment for

POSSESSION OF COCAINE

SC Code: 44-53-370

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 6 6 2010

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

POSSESSION OF COCAINE

That Alfred Clay Jackson did in Spartanburg County on or about November 6, 2009, knowingly or intentionally possess a quantity of Cocaine, a Schedule II controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

147

COUNTY OF SPARTANBURG

STATE VS.

Alfred Clay Jackson

AKA:

Race:

Address:

City, State

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Drugs / Possession of cocaine 2nd offense 10-5 + 10-7,500

in violation of § 44-53-0370 (of the S.C. Code of Laws, bearing CDR Code # 3012

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

HUNTER JAMES EDWARD

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years

and/or to pay a fine of \$ 7,500 ; provided that upon the service of 18 days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$500.00

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$100.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ \$21.90

TOTAL \$751.90

INDICTMENT/CASE#: 2010GS4202903

A/W#: M117399

Date of Offense: 11/6/2009

S.C. Code § : 44-53-0370 (

CDR Code #: 3012

SENTENCE SHEET

☒ CONVICTED OF or ☒ LEADS

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years

and/or to pay a fine of \$ 7,500 ; provided that upon the service of 18 days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

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3% to County (if paid in installments) \$ \$21.90

TOTAL \$751.90

PTUP

100 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☒ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2053

February 2, 2012

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 14th, 2013

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line.

David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT