

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KELVIN JONES,

APPELLANT

APPELLATE CASE NO 2016-001835

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

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

J. CLAYTON MITCHELL
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
DEFENDANT'S MOTION TO SUPPRESS.....	1
ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS.....	10
MOTION FOR CHANGE OF VENUE TRANSCRIPT DATED AUGUST 11, 2014	14
TRIAL TRANSCRIPT DATED FEBRUARY 17-19, 2015	28
<u>JACKSON V. DENNO</u> HEARING.....	38
MARTIN E. SAWYER	
Direct examination by Mr. Ross	38
Cross-examination by Mr. Sellers.....	49
OPENING STATEMENT BY MR. ROSS	100
OPENING STATEMENT BY MR. SELLERS.....	105
TESTIMONY	
MARTIN E. SAWYER	
Direct examination by Mr. Ross	110
Cross-examination by Ms. Benevento	154
Redirect examination by Mr. Ross.....	165
Recross examination by Ms. Benevento	169
CARLOS COLINDRES	
Direct examination by Mr. Ross	171
Cross-examination by Mr. Sellers.....	185
CRAIG S. BURGESS	
Direct examination by Mr. Ross	187
Cross-examination by Mr. Sellers.....	197
Redirect examination by Mr. Ross.....	199
DAVID FLANDERS	
Direct examination by Ms. Burchstead.....	200
Cross-examination by Ms. Benevento	209

JOHN C. MEDLIN	
Direct examination by Ms. Burchstead.....	215
Cross-examination by Ms. Benevento	245
Redirect examination by Ms. Burchstead	251
Recross examination by Ms. Benevento.....	253
MELISSA ODENTHAL	
Direct examination by Mr. Ross	257
AMBER COLLINS	
Direct examination by Ms. Burchstead.....	268
M. CLAY ADAMS	
Direct examination by Mr. Ross	281
Cross-examination by Mr. Sellers.....	288
Redirect examination by Mr. Ross.....	290
Recross examination by Mr. Sellers	291
JAMES STROM THURMOND	
Direct examination by Ms. Burchstead.....	295
Cross-examination by Mr. Sellers.....	302
MARTIN E. SAWYER	
Direct examination by Mr. Ross	312
Cross-examination by Ms. Benevento	335
Redirect examination by Mr. Ross.....	339
Recross examination by Ms. Benevento.....	341
MOTION FOR DIRECTED VERDICT.....	344
CLOSING ARGUMENT BY MS. BURCHSTEAD.....	405
CLOSING ARGUMENT BY MR. SELLERS.....	414
VERDICT	458
MOTION FOR NEW TRIAL	467
ADDENDUM TRANSCRIPT DATED FEBRUARY 19, 2015.....	470
MOTION FOR MISTRIAL TRANSCRIPT DATED APRIL 16, 2015	474
TESTIMONY	
MARTIN SAWYER	
Examination by the Court.....	482

Cross examination by Mr. Sellers	484
ORDER SIGNED BY JUDGE MCINTOSH JUNE 11, 2015	494
ORDER DISMISSING APPEAL WITHOUT PREJUDICE FILED NOVEMBER 25, 2015	497
MOTION FOR A NEW TRIAL SIGNED APRIL 4, 2016	498
VOLUME II	500
TRANSCRIPT DATED JULY 6, 2016	500
POST-TRIAL MOTIONS	
TESTIMONY	
CHRIS BARFIELD	
Direct examination by Mr. Sellers	503
Cross-examination by Mr. Burchstead	510
Redirect examination by Mr. Sellers	513
Recross examination by Mr. Burchstead	516
ORDER OF MOTIONS FOR MISTRIAL AND MOTION FOR NEW TRIAL FILED JULY 27, 2016	550
REISSUED ORDER FOR MOTIONS FOR MISTRIAL AND MOTION FOR NEW TRIAL FILED AUGUST 29, 2016	553
LETTERS FROM COURT REPORTER	560
STIPULATION	562
SEARCH WARRANT	587
INDICTMENTS AND SENTENCING SHEETS	602
CERTIFICATE OF COUNSEL	613

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

State of South Carolina

v.

Kelvin Jones,

Defendant

IN THE COURT OF GENERAL SESSIONS
FOR THE SECOND JUDICIAL CIRCUIT

**DEFENDANT'S MOTION AND
MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS**

MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS

Defendant, by and through his undersigned counsel of record, file this Motion to Suppress evidence seized in violation of the Fourth and Fourteenth Amendments. In this Motion, Defendant challenged the state's search warrant for [REDACTED] Morgan St NW, as the affidavit supporting the search warrant did not establish probable cause to believe that anyone at the premises was currently engaged in criminal activity or that any contraband would be found at said residence.

Statement of the Facts

On April 19, 2011, Detective John C. Medlin of the Aiken Department of Public Safety approached Judge McKinney, a recorder or magistrate in Aiken County, for a warrant authorizing a search of the at [REDACTED] Morgan Street NW, in Aiken, South Carolina. The residence was described as a split level home with red brick veneer, gray siding, black shutters, and a gray shingle roof. In a sworn affidavit, Detective Medlin reported to Judge McKinney the following:

Det. Sawyer received complaints of short-term traffic at [REDACTED] Morgan St NW that is consistent with the sale of narcotics. On April 18, 2011 Det. Medlin coordinated with Bill Martin, Solid Waste Supervisor with the Aiken Department of Public Works, to collect trash from [REDACTED] Morgan St NW. Mr. Martin did not on Monday, April 18, 2011, which is the normal trash collection day for that residence. Mr. Martin found the can and contents at the curb beside the driveway in a manner consistent with the trash being ready for collection. Mr. Martin brought the can and the contents

to Det. Medlin at the ADPS headquarters. Det. Medlin and Det. Sawyer searched the contents of the can and found the following items: 1-the burnt remains of a cigar that contained a green leafy material believed to be marijuana; 2-numerous twisted and torn baggies (indicating the packaging of marijuana for resale); 3-empty cigar tube wrappers; 4-cigars that had been torn open to remove the tobacco (a common tactic for smoking marijuana covertly); 5-mail addressed to ■ Morgan St NW Aiken, SC. Based on my experience and training, the items listed indicate the use and repackaging of narcotics for resale. Detective Royster, a certified marijuana analyst, tested the plant material found in the trash and confirmed it to be marijuana. This officer verily believes that probable cause exists as to the presence of narcotics at this residence. See Attachment B for photographs of the items found.

(Affidavit and Warrant attached as Exh. A.) Based solely on the information contained in this Affidavit, Judge McKinney authorized a broad search warrant to allow for the search of ■ Morgan Street NW, Aiken SC for the following items:

All illegal narcotics, to include but not limited to marijuana, cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. All paraphernalia that may be used in the manufacturing, storage, use, or distributions of illegal narcotics. All monies in close proximity to illegal narcotics. Any documentation showing activity of drug use or distribution.

(Affidavit and Warrant attached as Ex. A.)

Discussion and Citation of Authority

Defendant's Motion to Suppress is based on the Fourth Amendment, which provides, in part:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause. . .

U.S. Const. amend. IV. The Fourth Amendment protects the reasonable expectation of privacy by prohibiting unreasonable searches and seizures. Rawlings v. Kentucky, 448 U.S. 98, 104,

100 S. Ct. 2556, 2561, 65 L. Ed. 2d 663 (1980). The search and seizure “golden rule” for any law enforcement officer is to obtain a search warrant before conducting any searches or seizures because a search or seizure conducted pursuant to a search warrant is deemed to be reasonable whereas a warrantless search or seizure is considered to be unreasonable under the Fourth Amendment unless a judicially recognized exception applies. Mincey v. Arizona, 437 U.S. 385, 390, 98 S. Ct. 2408, 2411, 57 L. Ed. 2d 290 (1978); Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576 (1967).

I. Defendant Has Standing to Challenge the Search Warrant.

Following the decisions of the United States Supreme Court, the South Carolina Supreme Court has definitively held that an overnight guest has a reasonable expectation of privacy, the legal prerequisite to confer standing on an individual. State v. Missouri, 361 S.C. 107, 603 S.E.2d 594 (2004) (citing Minnesota v. Olson, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990)). Here, Detective Medlin (identified as Investigator Medline at the preliminary hearing) testified that Detective Sawyer had information that Defendant “either lived there [REDACTED] Morgan St NW] or spent lots of time there.” (Transcript at 11.) This testimony is sufficient to establish a reasonable expectation of privacy, triggering Defendant’s right to challenge the search warrant as unreasonable under the Fourth and Fourteenth Amendment.

II. Detective Medlin’s Affidavit Is Deficient Because It Fails to Demonstrate the Reliability of Detective Sawyer’s Sources.

All search warrants must (1) be based on facts that establish probable cause; (2) particularly describe the place to be searched; (3) particularly described the things to be seized; and

(4) be issued by a neutral and detached officer. The issuing magistrate must make a practical, common sense decision whether, given all circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in the place. Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527 (1983). Generally speaking, officers present the facts providing probable cause in an affidavit.

When an officer uses an affidavit citing an unnamed source or confidential informant, the officer must provide the magistrate the circumstances behind why the officer concludes that the confidential informant or unnamed source is worthy of belief. The Supreme Court explained that a magistrate's "practical, common sense decision whether probable cause exists" must include information based upon the "veracity" and the "basis of the knowledge" of persons supplying hearsay information. Gates, 462 U.S. at 238, 103 S. Ct. at 2332. In every case where a police officer relies on a confidential informant, he should allege the following: (1) the facts from which the informant concluded that the thing to be searched for is probably on the person or premises to be searched **and** the facts from which the officer concluded that (i) the informant is credible; or (ii) the information furnished by the informant is reliable. Gates, 462 U.S. at 231, 103 S. Ct. at 2328 (emphasis added). To demonstrate that an informant is reliable, an officer may present evidence that the informant has given reliable information in the past; that the informant is a private citizen known by the officer and the informant has a reputation for truthfulness; that the informer himself participated in criminal activity; or that the information is corroborated by another informant or by police surveillance.

In this case, Detective Medlin failed to identify any facts which show the basis for relying on the confidential statements made to Detective Sawyer sufficient to show a reasonable basis for relying on such statements. Detective Medlin offered no evidence from which the magistrate

could conclude that the anonymous complaints were reliable. Additionally, there is no indication as to whether the complainants stated that the short term traffic was consistent with the sale of narcotics or whether that simply was the conclusion of Detective Medlin. Thus, these alleged statements should be excised from the warrant affidavit in this Court's independent review to determine if probable cause existed.

Moreover, there was no time-frame regarding this short-term traffic for the magistrate to make a determination as to whether those complaints were current or stale. In order for an affidavit to support probable cause, "it must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time." State v. Winborne, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979) (internal quotation marks omitted). "An affidavit which fails altogether to state the time of the occurrence of the facts alleged is insufficient." Id. The lack of any time frame for the alleged complaints of short term traffic, or the number and frequency of the short term traffic, renders this statement inadequate to be considered in the determination of probable cause.

III. The Search Warrant Fails to Establish Probable Cause to Believe that Criminal Activity Was Occurring at [REDACTED] Morgan St NW or that Contraband Was Located There at the Time the Search Warrant Was Signed.

A reviewing court's inquiry is whether the magistrate had a substantial basis to conclude that probable cause existed to issue a search warrant. United States v. Blackwood, 913 F.2d 139, 142 (4th Cir. 1990). To determine whether probable cause exists, a magistrate must make a practical determination, based upon the facts presented before him or her, whether "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527 (1983); Robinson v. State, 407

S.C. 169, 190, n. 11, 754 S.E.2d 862, 873 (2014). The facts must “warrant a man of reasonable caution” to believe that evidence of a crime will be found for a magistrate to issue a search warrant. Texas v. Brown, 460 U.S. 730, 742, 103 S. Ct. 1535, 1543, 75 L. Ed. 2d 502 (1983); State v. Geer, 391 S.C. 179, 197, 705 S.E.2d 441, 450 (Ct. App. 2010).

The crucial element is not whether the target of a search warrant committed a crime, but whether it is reasonable under the facts presented to the magistrate that the items to be seized will be found in the place to be searched. Zurcher v. Stanford Daily, 436 U.S. 547, 556 & n. 6, 98 S. Ct. 1970, 1976-77 & n. 6, 56 L. Ed. 2d 525 (1978). In United States v. Anderson, 851 F.2d 727, 729 (4th Cir. 1988), *cert. denied*, the Court of Appeals adopted the rule that “the nexus between the place to be searched and the items to be seized may be established by the nature of the item and the normal inferences of where one would likely keep such evidence.” Anderson, 851 F.2d at 729. In United States v. Lalor, this Court held that an affidavit that failed to describe any circumstances from which a magistrate could infer that evidence of drug crimes would be stored at defendant’s residence failed for want of probable cause. United States v. Lalor, 996 F.2d 1578, 1582-83 (4th Cir. 1993), *cert denied*, 502 U.S. 833, 112 S. Ct. 111, 116 L. Ed. 2d 80 (1991).

Here, the only evidence that gave rise to the search warrant was discovered in a single trash pull from the trash collector on April 18, 2011, which revealed, as set forth in Detective Medlin’s affidavit, the following:

...1-the burnt remains of a cigar that contained a green leafy material believed to be marijuana; 2-numerous twisted and torn baggies (indicating the packaging of marijuana for resale); 3-empty cigar tube wrappers; 4-cigars that had been torn open to remove the tobacco (a common tactic for smoking marijuana covertly); 5-mail addressed to [REDACTED] Morgan St NW Aiken, SC.

(Affidavit and Warrant attached as Exh. A.) With respect to the “numerous twisted and torn

baggies, Detective Medlin fails to identify how many baggies were torn open that were likely used as a supply to smoke marijuana. Moreover, Detective Medlin fails to explain how a single incident of marijuana use on or before April 18, 2011 would indicate that there would be any additional contraband located at the residence at any time thereafter. In Raulerson v. State, 714 So.2d 536, 537 (Fl. App. 1998), the Florida Court of Appeals held that evidence from a single trash pull that found evidence that tested positive for cannabis, without other sufficient material facts, could not result in a fair probability to conclude that cannabis would be found in the home. Likewise, the evidence here is insufficient to conclude that there was a fair probability that marijuana, or any other substance outlined in the affidavit or warrant, would be found upon a search.¹ In Raulerson, the Florida Court of Appeals distinguished cases that involved multiple trash pulls and cases with additional reliable information regarding patterns of continuous drug activity, none of which exists here.

Likewise, the South Carolina Court of Appeals previously concluded that information regarding the names of the people involved in a crime and the specific location of the activity, could be sufficient to support reliability of an informant that could be used in conjunction with a trash pull to satisfy probable cause. State v. Rutledge, 373 S.C. 312, 317, 644 S.E.2d 789, 791 (Ct. App. 2007). Additionally, the Court of Appeals further allowed a search warrant to stand where the evidence consisted of an anonymous tip confirmed by evidence that the defendant lived at the address, defendant's prior marijuana convictions, and marijuana found in a trash pull. State v. Lecroy, 2011 WL 11735691, *1 (Ct. App. 2011). Again, Detective Medlin provided no supplemental information other than a one-time trash pull that exhibited evidence of marijuana use

¹ In his affidavit, Detective Medlin fails to explain how finding a mere trace of marijuana with other evidence consistent with marijuana use gave him or anyone sufficient facts to conclude that he might find cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. In this regard, the warrant is overbroad.

on or before April 18, 2011. Such evidence is insufficient to support probable cause to search the residence, and all evidence recovered should be suppressed.

IV. The Good Faith Exception to the Warrant Requirement Does Not Apply.

The purpose of the exclusionary rule is to deter unreasonable searches and seizures by police and not to punish judges and magistrates. United States v. Leon, 468 U.S. 897, 917, 104 S. Ct. 3405, 3417, 82 L. Ed. 2d 677 (1984). In executing the warrant, an officer is permitted to reasonably rely on a judicial determination that the warrant is supported by probable cause. Leon, 468 U.S. at 923, 104 S. Ct. at 3421. This is the good-faith exception to the exclusionary rule which provides that evidence illegally seized due to an invalid search warrant will only be suppressed if "the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." Leon, 468 U.S. at 926, 104 S. Ct. at 3422. In State v. Johnson, 302 S.C. 243, 249, 395 S.E.2d 167, 170 (1990), the South Carolina Supreme Court interpreted Leon as precluding application of the good-faith exception when an affidavit fails to provide a magistrate with a substantial basis for finding probable cause. In State v. Weston, 329 S.C. 287, 292, 494 S.E.2d 801, 803-04, (1997), the South Carolina Supreme Court explained that "[s]uppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" Weston, 329 S.C. at 292, 494 S.E.2d 803-04 (quoting Leon, 468 U.S. at 923, 104 S.Ct. at 3421).

As demonstrated *supra*, Detective Medlin was reckless in preparing his affidavit because he provided no evidence of why Detective Sawyer's sources were reliable and because the only evidence he presented was from a one-time trash pull that indicated, at best, use of

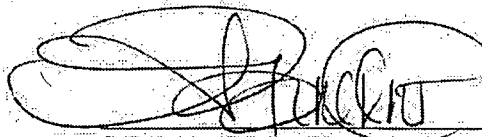
marijuana which had taken place prior to trash collection. Detective Medlin offered no evidence to establish any likelihood that contraband would be present at the time he request the search warrant. In fact, this is basic legal knowledge needed by police officers in applying for a search warrant. Further, instead of vigorously scrutinizing the Detective Medlin's affidavit, Judge McKinney operated merely as a rubberstamp to law enforcement. This Court need only look at the actual search warrant to see that Judge McKinney authorized a search for not only marijuana for personal use, she also authorized a search for cocaine, crack cocaine, methamphetamines, heroin, and ecstasy. If Judge McKinney scrutinized the affidavit and warrant, she would have seen the affidavit and warrant as flawed and lacking in probable cause. Thus, the good faith exception in Leon does not apply to this case.

Conclusion

For the above reasons, the evidence seized and the statements made as a result of the defective warrant application and warrant should be suppressed. Defendant prays for an Order suppressing all evidence as fruit of the poisonous tree stemming from this unlawful search warrant.

RESPECTFULLY SUBMITTED, this 11th day of August, 2014.

Columbia, South Carolina



J. Preston Strom, Jr.
 Mario A. Pacella
 Bakari T. Sellers
 Alexandra M. Benevento
 STROM LAW FIRM, LLC
 2110 Beltline Boulevard
 Columbia, South Carolina 29204
 (803) 252-4800
 ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
State of South Carolina,)
v.)
Kelvin Jones,)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
FOR THE SECOND JUDICIAL CIRCUIT

Indictment Nos.: 2014-GS-02-01182
2012-GS-02-00133
2012-GS-02-00134

**ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS**

The Defendant moved to suppress evidence seized pursuant to the execution of a search warrant at a home in Aiken on April 21, 2011. This Court held a pre-trial suppression hearing on August 11, 2014. At the hearing, the Defense argued that the magistrate lacked probable cause to issue the warrant. After considering the evidence and legal arguments presented to the Court, the Defendant's Motion to Suppress is denied for reasons stated below.

FINDINGS OF FACT

In April 2011 narcotics officers with the Aiken Department of Public Safety received tips of short term traffic at [REDACTED] Morgan St. Northwest. Acting on these tips, the officers conducted a "trash pull" at the house on April 18, 2011. The trash collector picked up the trash from the curb as usual at the normal time of collection and gave it to the officers to inspect. The officers found torn and twisted baggies, remains of a suspected marijuana cigar, and mail addressed to the home. Later that day, a marijuana analyst confirmed that the cigar did in fact contain marijuana.

After confirming the presence of marijuana, one of the officers, Detective John Medlin, requested a search warrant from a magistrate on April 19, 2011. The affidavit in support of the warrant reads:

1/3 ~~2~~

Det. Sawyer received complaints of short-term traffic at [REDACTED] Morgan St. NW that is consistent with the sale of narcotics. On April 18, 2011 Det. Medlin coordinated with Bill Martin, Solid Waste Supervisor with the Aiken Department of Public Works, to collect the trash from [REDACTED] Morgan St NW. Mr. Martin did so on Monday, April 18, 2011 which is the normal trash collection day for that residence. Mr. Martin found the can and contents at the curb beside the driveway in a manner consistent with the trash being ready for collection. Mr. Martin brought the can and contents to Det. Medlin at ADPS headquarters. Det. Medlin and Det. Sawyer searched the contents of the can and found the following items: 1- the burnt remains of a cigar that contained a green leafy material believed to be marijuana; 2- numerous twisted and torn baggies (indicating the packaging of marijuana for resale); 3- empty cigar tube wrappers; 4- cigars that had been torn open to remove the tobacco (a common tactic for smoking marijuana covertly); 5- mail addressed to [REDACTED] Morgan St NW Aiken, SC. Based on my experience and training, the items listed indicate the use and repackaging of narcotics for resale. Detective Royster, a certified marijuana analyst, tested the plant material found in the trash and confirmed it to be marijuana. This officer verily believes that probable cause exists as to the presence of narcotics at this residence. See Attachment B for photographs of the items found.

Detective Medlin did not supplement the affidavit with sworn verbal testimony.

Finding probable cause existed, the magistrate authorized the search warrant. Law enforcement officers executed the search warrant two days later on April 21, 2011 and found a large amount of cocaine and several ecstasy pills.

RULINGS OF LAW

"The task of a magistrate when determining whether to issue a warrant is to make a practical, common sense decision as to whether, under the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place." State v. Philpot, 454 S.E.2d 905 (Ct. App. 1995). In this case, probable cause existed for the magistrate to issue the warrant. Although the reliability of the tipsters was never established, the officers corroborated the tip by finding twisted, torn baggies and the remnants of marijuana cigars in the trash. See State v. Rutledge, 644 S.E.2d 789 (Ct. App. 2007)(Finding

probable cause for a search warrant where a trash pull corroborated a tip). Therefore, probable cause existed for the magistrate to issue the warrant.

ORDER

For the reasons stated above, the Defendant's Motion to Suppress is hereby respectfully **DENIED.**

AND IT IS SO ORDERED.



The Honorable Edgar W. Dickson
Presiding Judge
Court of General Sessions

Aiken, South Carolina,
10/20, 2014.



State of South Carolina
The Circuit Court of the First Judicial Circuit

Edgar Warren Dickson
Judge

Post Office Box 1949
151 Docket St., Suite 207
Orangeburg, SC 29116-1949
Phone: (803) 535-2187
Fax: (803) 535-2188
edicksonj@sccourts.org

MEMORANDUM

To: Michael Ross
From: Judge Dickson
Subject: Enclosed Order signed by Judge Dickson
Date: 10/21/14

Please have the enclosed Order that has been signed by Judge Dickson filed in the appropriate Clerk of Court's Office and serve copy(ies) on opposing counsel or pro se defendant(s).

RECEIVED

OCT 22 2014

STATE GRAND JURY
PROS SECTION

State of South Carolina
 County of Aiken

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2012-GS-02-132, 133, 134
	)	
Kelvin Jones	)	
	)	
<u>Defendant.</u>	)	

August 11, 2014
 Aiken, South Carolina

B E F O R E:

The Honorable Edgar Dickson, Judge.

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

Megan Burchstead, Assist. Attorney General
 Attorney for the State

Mario Pacella, Esquire
 Attorney for the Defendant

Alexandra Benevento, Esquire
 Attorney for the Defendant

Bakari Sellers, Esquire
 Attorney for the Defendant

Bethanie K. Creppon
 Circuit Court Reporter

1 (The following proceedings were held on August
2 11, 2014.)

3 THE COURT: This is *State of South Carolina vs.*
4 *Kelvin Jones*. There are a number of charges against
5 him. And I've got a motion to seek a change of
6 venue. And we had a brief discussion in chambers
7 and I had indicated to the attorneys involved that
8 that is the motion that I would like to hear now.
9 So Mr. Pacella?

10 MR. PACELLA: Yes, Your Honor. Thank you, Your
11 Honor. I will go through the bullet points for the
12 Court.

13 THE COURT: Thank you, sir.

14 MR. PACELLA: Your Honor, the motion is made
15 pursuant to 15-7-100 of the South Carolina Code of
16 Change of Venue, Section (a)(2), that there is
17 reason to believe that a fair and impartial jury
18 cannot be had there; that is, here in Aiken County.
19 And with respect to this motion, we are asking that
20 the venue be changed to be somewhere outside of this
21 entire judicial circuit.

22 And the purpose and the basis for that is that
23 there is a material witness in the case who is also
24 the elected solicitor of this judicial circuit,
25 Strom Thurmond, Jr. And we're asking the Court to

1 change venue. The reason -- the basis for our
2 reasoning is that when we do voir dire, we're going
3 to ask the Court to ask if -- ask each juror if they
4 voted for Mr. Thurmond and, if so, if they voted for
5 Mr. Thurmond, do they believe -- did they vote for
6 him because they believed him to be honest and
7 truthful. We believe that that -- those questions
8 would be necessary for us to make a decision on
9 whether to seat jurors, to seek jurors to be removed
10 for cause, or use preemptory challenges.

11 But the South Carolina Constitution, Article
12 II, Section (1), The Right of Suffrage, states that
13 elections are to be by secret ballot, and then
14 there's the protection of right of suffrage. And
15 the Constitution says: All elections by people
16 shall be by secret ballot, that the ballots shall
17 not be counted in secret. The right of suffrage, as
18 regulated with this Constitution shall be protected
19 by the laws regulating elections and prohibiting,
20 under adequate penalties, all undue influence from
21 power, bribery, tumult or improper conduct.

22 And that free action --

23 THE COURT: Hold on one second.

24 Okay. Go ahead.

25 MR. PACELLA: And then Section (2) of Article

1 II says: The free exercise right of suffrage. No
2 power, civil or military, shall at any time
3 interfere or prevent the free exercise of the right
4 of suffrage in the state. And it's our contention
5 that the Constitution would prohibit the Court from
6 actually inquiring of a juror who they voted for,
7 and he's certainly asking for those questions to be
8 asked.

9 As we noted in chambers, I found an old case
10 out of Nebraska. It's not a criminal case, but the
11 case is *Dean vs. Miller*. And the quotation from the
12 case, I just want to read it to the Court for the
13 record because I think this really lends support to
14 our argument that the Court shouldn't be asking
15 jurors who they voted for.

16 On the other hand, it is the policy of this
17 country to protect the secrecy of the ballot. The
18 voter cannot be compelled to disclose the nature of
19 his vote and, as said in one of the cases, the
20 protection thus given him implies the right to
21 deceive a prying neighbor who tries to learn his
22 secret. And it has also been said in one of the
23 cases we shall cite: It would be useless to protect
24 the voter from disclosing the nature of his vote if
25 at the same time should be -- he encouraged a system

1 of extrajudicial espionage to discover the secret.
2 The competency of such evidence has been denied in
3 strong and, to our minds, conclusive opinions. And
4 it cites a number of out-of-state opinions as well.

5 In this case, there is a danger that we cannot
6 have a fair and impartial jury empaneled. Merely
7 attempting to empanel the jury, have voir dire and
8 then -- would require the Court to ask that specific
9 question, did you vote for Mr. Thurmond, and then
10 ask the question, did you vote for him because you
11 believed him to be honest and truthful, is going
12 to -- is really going to taint the entire
13 jury-selection process and is going to require the
14 venue be changed at that time.

15 When you're really just kind of weighing this
16 case and weighing the interest of justice, it would
17 be an abundance of caution this Court would transfer
18 this case to a different venue just to preserve and
19 protect the process and make sure there's no
20 appearance of impropriety, as Mr. Thurmond is the
21 chief law enforcement officer, makes decisions on
22 which cases to prosecute and which ones not to
23 prosecute that come from the sheriff's department
24 and other law enforcement entities in the county and
25 as well as the surrounding counties. Thank you,

1 Your Honor.

2 THE COURT: Thank you, sir. I appreciate it.

3 Ms. Burchstead?

4 MS. BURCHSTEAD: Good morning, Your Honor.

5 Megan Burchstead from the Attorney General's Office.

6 My response will be fairly brief. We did hand up to

7 Your Honor the written opposition to the defendant's

8 request of change of venue.

9 The State's position is really very simple,
10 Your Honor, relying primarily on *State v. Manning*,
11 329 SC 1 (1997) and *State v. Woods*, 382 SC 153
12 (2009) case that really what we need to do here in
13 this case and that the -- the just thing to do would
14 be to attempt to seat a jury before ruling on a
15 motion to change venue.

16 The defendant has a right to a trial by jury of
17 competent and impartial jury, not any jury of his
18 choosing. And the cases I just cited stand for the
19 proposition, I believe, while they were certainly
20 publicity-type cases following that rationale, the
21 State submits they stand for the proposition of
22 attempting to seat a jury first. And the issue is
23 that we would need to have adequate and appropriate
24 voir dire of the jury panel. And the State's
25 position is that we do not need to ask who they

1 voted for and all the specifics of what happened or
2 didn't happen in the voting booth, but merely ask,
3 could you be fair and impartial knowing Solicitor
4 Thurmond may be a witness in this case. And really,
5 Your Honor, that's the extent of the State's
6 response.

7 THE COURT: Okay. Thank you.

8 MR. PACELLA: Your Honor, I do not intend to
9 make another argument, but I owe you a case, *State*
10 *v. Sullivan*, Your Honor. If I may pass that up.

11 THE COURT: Yes.

12 And, Ms. Burchstead, you've got a copy of this
13 case; is that correct?

14 MS. BURCHSTEAD: No, sir, I do not. But that's
15 all right.

16 MR. PACELLA: I can give you a copy.

17 THE COURT: All right. Thank y'all. I believe
18 y'all told me in chambers that there are no cases
19 directly on point with this. Is that correct?

20 MS. BURCHSTEAD: Not to my knowledge, as to
21 this specific issue.

22 THE COURT: All right. Well, I appreciate you
23 being able to decide a novel issue. And I'll get
24 back to y'all. What we'll do is I'm going to think
25 about that this morning and I'll get back to you and

1 we'll decide where we can go with this in probably
2 about an hour or so. Okay?

3 MS. BURCHSTEAD: Yes, sir. Would you like our
4 witnesses to come back this afternoon potentially
5 for suppression or would you like them to hang out?

6 THE COURT: No. If they can come back this
7 afternoon, that would be fine. Just make sure you
8 have phone numbers to call so we can have them come
9 in.

10 MS. BURCHSTEAD: Thank you, Your Honor.

11 THE COURT: All right. Thank y'all.

12 (Hearing reconvened at 3:07 PM.)

13 THE COURT: All right. Regarding *State of*
14 *South Carolina vs. Kelvin Jones*, I'm going to go
15 over the Motion to Suppress first. As the reviewing
16 Court, I'm looking at whether or not the Magistrate
17 had a substantial basis for probable cause. And
18 I've looked back over the affidavit and the search
19 warrant. The affidavit provided that there were
20 complaints of short-term traffic and listed all of
21 the different things, the things that I realize
22 you've made the issue about everything according to
23 marijuana about, I believe, the baggies. And the
24 twisted baggies also used indicate other types of
25 narcotics could also be there; there was probable

1 cause to believe that. Looking at it from a
2 practical and common-sense prospective, I believe
3 that the search warrant was proper in this situation
4 and I'm going to deny your Motion to Suppress.

5 Now, the other issue is the issue of change of
6 venue. And this is one that has had the Court's
7 attention for most of the day and has taken the
8 Court quite a while to decide. The defendant has
9 the right to be tried in the county where he
10 resides. For the defendant to wish to give up this
11 very basic right because of the defendant's concern
12 about his ability to receive a fair -- to pick a
13 fair and impartial jury is of great concern to this
14 Court. This is a situation where the Solicitor and
15 Assistant Solicitor are taking part in a ride-along.
16 The Court believes this to be a very commendable
17 policy and practice, and the Court additionally
18 believes that is helpful to the solicitors in
19 understanding the duties and problems that are faced
20 by law enforcement in their day-to-day actions.

21 But, as a result of this ride-along, there's a
22 strong possibility that both the Solicitor and the
23 Assistant Solicitor could be called on to testify in
24 this matter. The dilemma before this Court is
25 whether a fair and impartial jury can be chosen, as

1 is so crucially important in any criminal case. It
2 also creates a dilemma as to how to fashion a
3 sufficient voir dire if these jurors are to be
4 questioned.

5 The cases cited by the State all recommend
6 questioning the jurors to determine if they can be
7 fair and impartial before ruling on the motion to
8 change venue. This Court notes that all of these
9 cases involve pretrial publicity and its effects on
10 the jury. These cases note that venue may be
11 changed without questioning the jury although that
12 is not the preferred method.

13 The main issue, as this Court sees it, is the
14 impact of the Solicitor testifying in the circuit in
15 which he is elected. The Court notes that the
16 Solicitor has run unopposed in both 2008 and 2012,
17 and according to the Court's cursory review of the
18 voting records, the Solicitor has received
19 overwhelming support. To question the jurors
20 effectively would require inquiries into whether the
21 possible juror voted for the solicitor and perhaps
22 additional follow-up questions.

23 This presents a number of problems: First is,
24 our Constitution protects a person's right to vote
25 in secret. And this Court is aware of no authority

1 by which this Court could compel one to verify their
2 vote, which leads to the second issue of whether the
3 juror would rightfully refuse to answer or not
4 answer truthfully. The defendant has produced a
5 Nebraska case protecting the secrecy of the ballot
6 which provides supporting cites from other states.
7 Our Constitution, these cases, and this Court's own
8 aversion to questioning voters about their vote
9 leads this Court to conclude that such a voir dire
10 would be improper and unnecessary.

11 In balancing the rights of both the State and
12 the defendant to an impartial and fair jury, it is
13 apparent to this Court that the State may obtain a
14 fair jury and a fair trial in any other appropriate
15 venue in this state. How the defendant is willing
16 to give up one basic right, the right to be tried in
17 the county of his residence, to secure a basic
18 right, the unquestioned seating of a fair and
19 impartial jury.

20 Since this case may require the testimony of a
21 popular-sitting solicitor, this Court is inclined to
22 follow the case of *State vs. Sullivan*. There, the
23 sheriff, acting properly in attempting to comply
24 with contingencies not anticipating by statute, was
25 involved in picking a jury in the murder of his

1 brother, and venue was changed to another county.
2 Here, the Solicitor and Assistant Solicitor have
3 acted properly; but to avoid any appearances of
4 impropriety and to ensure a fair and impartial jury,
5 this Court is changing venue from the Second
6 Judicial Circuit to an appropriate venue as
7 determined by statutes and case law. Okay? Thank
8 you. Any questions?

9 MS. BURCHSTEAD: Just for clarity, I did not
10 get a copy of the Nebraska case; is that the *State*
11 *v. Sullivan* case, Judge?

12 THE COURT: That is -- and I'm sorry --

13 MS. BURCHSTEAD: If I could just get a copy of
14 that.

15 THE COURT: -- *Dean vs. Miller*.

16 MS. BURCHSTEAD: Thank you.

17 THE COURT: Okay. And as is the other case
18 cited by the Court in this case, *State vs. Sullivan*,
19 we're dealing with 19th Century cases.

20 MS. BURCHSTEAD: Thank you. And just in terms
21 of jurisdiction, are you inclined to retain
22 jurisdiction or should we get with Judge Early? How
23 should we move -- I don't mean to put you on the
24 spot, Judge, but we would need some guidance on how
25 to proceed from here.

1 THE COURT: I will do whatever the
2 Administrative Judge for the Second Judicial Circuit
3 and case law wants done. But I'm not by any of it
4 telling you I'm going to retain jurisdiction.

5 MS. BURCHSTEAD: Understood. Thank you.

6 THE COURT: Thank y'all.

7 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second 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 the evidence introduced in the captioned cause, relative to appeal in the General Sessions Court for Aiken County, South Carolina, on the 11th of August, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 22, 2014

/s/Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF AIKEN	)	IN THE COURT
-----	)	OF GENERAL SESSIONS
		2014-GS-02-01182
		2012-GS-02-00133

STATE OF SOUTH CAROLINA,	)	
PLAINTIFF	)	
V.	)	TRANSCRIPT OF RECORD
	)	
KELVIN JONES,	)	
DEFENDANT	)	
-----	)	

FEBRUARY 17, 18, & 19, 2015
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH PRESIDING

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

MEGAN B. BURCHSTEAD, ESQUIRE
MICHAEL ROSS, ESQUIRE
ASSISTANT ATTORNEY GENERAL

ALEXENDRA BENEVENTO, ESQUIRE
BAKARI SELLERS, ESQUIRE
ATTORNEYS FOR DEFENDANT

SHARON VIZER,
CIRCUIT COURT REPORTER

I N D E X

OPENING STATEMENTS BY STATE . . . 462

OPENING STATEMENTS BY DEFENSE . . . 471

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS

MARTIN E. SAWYER

BY MR. ROSS

95

BY MR. SELLERS

106

MARTIN E. SAWYER

BY MR. ROSS

167

BY MS. BENEVENTO

211 222

226

CARLOS COLINDRES

BY MR. ROSS

228

BY MR. SELLERS

242

CRAIG S. BURGESS

BY MR. ROSS

244

BY MR. SELLERS

254

DAVID FLANDERS

BY MS. BURCHSTEAD

257

BY MS. BENEVENTO

268

JOHN C. MEDLIN

BY MS. BURCHSTEAD

272

BY MS. BENEVENTO

302 308

310

MELISSA ODENTHAL

BY MR. ROSS

314

AMBER COLLINS

BY MS. BURCHSTEAD

325

M. CLAY ADAMS

BY MR. ROSS

338

BY MR. SELLERS

345 346

348

WITNESSES

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
JAMES STROM THURMOND				
BY MS. BURCHSTEAD	352			
BY MR. SELLERS		359		
MARTIN E. SAWYER				
BY MR. ROSS	369		396	
BY MS. BENEVENTO		392		398
JURY CHARGE	434			
CLOSING BY STATE	462			
CLOSING BY DEFENSE	471			
VERDICT	517			

EXHIBITS:

STATES EXHIBITS:	
1. Poster Board . . .	139/187
2. Poster Board . . .	139/187
3. Poster Board . . .	139/188
4. Photograph . . .	139/191
5. Photograph . . .	139/191
6. Photograph . . .	139/191
7. Photograph . . .	139/191
8. Photograph . . .	139/191
9. Photograph . . .	139/191
10. Photograph . . .	139/191
11. Photograph . . .	139/191
12. Photograph . . .	139/191
13. Photograph . . .	139/191
14. Photograph . . .	139/191
15. Photograph . . .	139/191
16. Photograph . . .	139/191
17. Photograph . . .	139/191
18. Withdrawn	
19. Withdrawn	
20. Bag/backpack . . .	201
21. Withdrawn	
22. Cocaine . . .	342
23. Gun . . .	291/302
24. Form B . . .	294/295
25. Evidence Forms . . .	316
26. Withdrawn	
27. Form A . . .	330
28. Drug Analysis . . .	332

EXHIBITS:

COURT'S EXHIBITS

- 1.. Note from Jury . . . 97
- 2.. Note from Jury . . . 487
- 3.. Note from Jury . . . 500
- 4.. Note from Jury . . . 514

1 * * * P R O C E E D I N G S * * *

2 FEBRUARY 17, 2015

3
4 (Whereupon, the jury panel enters the courtroom
5 at approximately 10:50 a.m.)

6 THE COURT: Good morning, ladies and gentlemen.
7 Can you hear me okay? My name is Lawton McIntosh. I
8 am actually from Anderson, South Carolina, what we
9 affectionally refer to as the cultural part of the
10 state of South Carolina.

11 But it's my pleasure to be with you here in
12 Dorchester County this week. This is a term of General
13 Sessions or criminal court. I'll tell you, that the
14 last time I was here, I had brown hair and I was
15 clerking for a judge named Luke Brown out of Beaufort
16 County. That was 1986. So it's been a long time for
17 me to be here, but it's a pleasure to be back down here
18 again.

19 Before we get started, I'm going to ask the
20 clerk to swear the panel and call the role, please,
21 ma'am.

22 THE CLERK: Yes, sir. Thank you.

23 (Whereupon, the role was called.)

24 THE COURT: Thank you, ma'am. All right. Ladies
25 and gentlemen, it's funny, my mother was born in.

1 You are excused.

2 (Whereupon, the panel was dismissed.)

3 THE COURT: Okay. Any reason at this juncture to
4 sequester any potential witnesses?

5 MR. SELLERS: Yes, yes, Your Honor. Now that the
6 jury is impaneled, we believe that would be proper.

7 THE COURT: Okay. Would you, from behalf of the
8 defense, and on behalf of the State, look around the
9 courtroom to see if you see any witnesses here?

10 MS. BURCHSTEAD: We do have witnesses in here,
11 Your Honor.

12 THE COURT: Okay. I'm going to ask any potential
13 witnesses to step out of the courtroom. Is there a
14 place, Madam Clerk, which they can -- is there a
15 general lobby out there?

16 THE CLERK: They do have some conferences rooms
17 right outside the courtroom, each side.

18 THE COURT: Okay. And there are general
19 conference rooms out there, so if you'd like to take
20 residence in a conference room, that will be fine.
21 We'll look you down if we need you.

22 MR. SELLERS: And, Your Honor, for the record, we
23 did agree to allow Officer Medlin and Sawyer to be --
24 remain present in the courtroom at all times.

25 THE COURT: Right. And that was -- there were two

1 chief investigative officers essentially, so instead of
2 just one, you have both of them here; is that correct?

3 MR. SELLERS: That's fine, Your Honor.

4 THE COURT: Thank you for your cooperation.

5 MS. BURCHSTEAD: Thank you, Judge.

6 THE COURT: All right. Let's go over a list of
7 matters. I think that the sequestering is fine.

8 The first on my list is the matter of the -- the
9 offers made in this case. Do you want to put something
10 on the record about that, please?

11 MS. BURCHSTEAD: Yes, Your Honor. Would you like
12 me or Mr. Sellers to do that?

13 THE COURT: Well, --

14 MR. SELLERS: I think the -- if the State can
15 state the offer, and then we can respond with what our
16 response would have been.

17 THE COURT: And the State, when it was made,
18 please, if you can.

19 MS. BURCHSTEAD: Yes. I don't know if I have
20 dates, I can pull my file out. But I can say when we
21 were ready to try this case last August, the offer that
22 had been on the table at that time, that was put on the
23 table again about a month ago, Judge, was possession
24 with intent to distribute cocaine first offense, with a
25 request for incarceration. I believe we were going to

1 go in and be a straight-up type plea, ask for a
2 significant incarceration.

3 The first time I put it on the table, we were
4 going to ask for the 15. The second time I put it on
5 the table, significant incarceration, Judge.

6 Most recently, we made the offer about a couple
7 of weeks ago of possession with intent to distribute
8 cocaine second offense, which would carry a four or
9 five years, but we do understand that could be
10 suspendible. Of course, the State was not going to ask
11 for it to be suspendible. We would have put a cap of
12 15 on that. Again, requesting significant
13 incarceration. Everyone -- with the understanding that
14 law enforcement wants him to do it at a prison, Judge.
15 But that was the offer as of last week. That is no
16 longer on the table. And we are ready to try this
17 case, Judge.

18 THE COURT: All right. Mr. Sellers?

19 MR. SELLERS: Your Honor, to both of those offers,
20 it must be stated that Judge Early retained
21 jurisdiction over this case through its pendency, so
22 both of those offers and subsequent pleas, it had been
23 our understanding, would have been made in front of
24 Judge Early.

25 We, after consulting with our client on numerous

1 occasions, even going through memorandums and having
2 him sign off, we -- we declined both offers. And we're
3 here today ready to proceed to trial.

4 THE COURT: Mr. Jones, do you mind raising your
5 right hand?

6 KELVIN JONES, after having
7 been duly sworn, testified as follows:

8 THE COURT: Okay. My question is strictly limited
9 to your response to the offers. Okay, sir? I don't
10 want you saying anything else. But you heard the
11 history of offers from the State and your rejections of
12 those offers as outlined by your attorney; is that
13 correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you have any disagreement with
16 the facts as recited by Mr. Sellers on the record?

17 THE DEFENDANT: No, sir.

18 THE COURT: He correctly recited your rejections
19 of those offers?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay, sir. Thank you very much.
22 Anything with regard to the offers in this matter?

23 MS. BURCHSTEAD: Nothing from the, State, Judge.

24 MR. SELLERS: Nothing from the defense, Your
25 Honor.

1 THE COURT: Okay. There were prior orders issued
2 in this case. I have, as one, an order granting
3 defendant's motion for change of venue, which was a
4 seven page order signed by Judge Dickson, it appears on
5 November 5, 2014. I have an order, which appears to be
6 a three page order, also signed by Judge Dickson on
7 October 20, 2014, which is an order denying the
8 defendant's motion to suppress evidence in this case.

9 Is -- are there any other orders, Mr. Sellers,
10 from your perspective?

11 MR. SELLERS: There are not any other orders, Your
12 Honor. But as you're aware, we will be restoring our
13 objection, and especially when it deals with the
14 suppression issue -- or only the suppression issue
15 throughout the pendency of this --

16 THE COURT: I think if you don't, you'll waive
17 them.

18 MR. SELLERS: Correct.

19 THE COURT: All right. All right. From the
20 State, any other orders that you can think of?

21 MS. BURCHSTEAD: No, sir.

22 THE COURT: Okay. That leads us up to potentially
23 a Jackson/Denno hearing. Do you have your witnesses
24 ready for that hearing?

25 MR. ROSS: Yes, Your Honor.

M. SAWYER -- DIRECT BY MR. ROSS

1 MS. BURCHSTEAD: We do.

2 THE COURT: Would you call your witness, please,
3 ma'am.

4 MS. BURCHSTEAD: Mr. Ross is going to direct his
5 testimony, Your Honor.

6 THE COURT: Okay.

7 MR. ROSS: The State would call Detective Sawyer
8 to the stand.

9 MARTIN E. SAWYER, JR., after
10 having been duly sworn, testified as follows:

11 THE CLERK: State your full name for the record.

12 THE WITNESS: Martin Earl Sawyer, Jr.

13 **DIRECT EXAMINATION BY MR. ROSS:**

14 Q. Detective Sawyer, you were present when the
15 search warrant in this case was executed; is that
16 correct?

17 A. That's correct.

18 Q. And you were one of the lead investigating
19 officers in this case; is that correct?

20 A. That's correct.

21 Q. And the defendant made some statements in your
22 presence during the execution of this search warrant;
23 is that also correct?

24 A. That's correct.

25 Q. Before we talk about those statements, can you

M. SAWYER -- DIRECT BY MR. ROSS

1 tell judge a little bit about your background in law
2 enforcement, please?

3 A. Your Honor, I started in 1989 working the road
4 patrol as most police officers do. I transferred to a
5 special operations, run the blood hounds, fugitive task
6 force, whatever else the chief needed done. Then I
7 transferred to narcotics.

8 I was assigned to narcotics for 12 years, where
9 for six of those years I was on a federal task for ATF.
10 I was promoted in September of 2012 to Captain over
11 investigations, which includes investigations,
12 narcotics, victim services and evidence.

13 Q. And your duty --

14 THE COURT: Just one second. Let me do something.
15 I'm sorry to get you started and stop you. I think the
16 jury is coming back; is that correct? Let me get them
17 in and out, and then that will be a little bit more
18 efficient, I think.

19 MR. ROSS: Certainly, Your Honor.

20 THE COURT: I'm going to let you step down. But
21 you can't speak with anybody during the break, sir.

22 THE WITNESS: Okay.

23 (Note from jury.)

24 THE COURT: Thank you. Juror 196 will be the
25 foreperson. And Madam Forelady -- Madam Clerk, there's

M.. SAWYER -- DIRECT BY MR. ROSS

1 a request for 14 pads and pencils in this matter.

2 Juror number 196 is the foreperson.

3 Let me see the attorneys up here and this is for
4 purposes of logistics of when to bring the jury back.

5 (WHEREUPON, a bench conference was held.)

6 (Court's Exhibit No. 1, jury note, marked.)

7 THE COURT: Bring the jury in, please.

8 (WHEREUPON, the jury enters the courtroom at
9 approximately 1:16 p.m.)

10 THE COURT: Okay. You are our foreperson; is that
11 correct, sir?

12 MR. FOREMAN: Yes, sir.

13 THE COURT: And you two are our alternates back
14 there; is that correct?

15 JUROR: Yes, sir.

16 JUROR: Yes, sir.

17 THE COURT: Good bailiffs always get you set up
18 where you need to be. But just keep in mind, each time
19 we come in and out the courtroom, Mr. Foreman, if you
20 would stay in that seat or use that seat. And our
21 alternates, if you would use the seats you're in now,
22 that would help us keep up with some matters here.

23 The rest of you, each time we come in and out of
24 the courtroom, you can sit where you'd like, other than
25 those three seats. Okay.

M. SAWYER -- DIRECT BY MR. ROSS

1 Now, what I'm about to do is give you a brief
2 charge on things that you can't do. And I hate to be
3 negative, but that's just the way it goes.

4 We are going to excuse you and ask you to be
5 back in your jury room a few minutes before 3:00. We
6 hope to resume trial at 3:00 this afternoon. Okay.

7 But from this point forward, it will be improper
8 and you would be in dereliction of your duties as
9 jurors if you were to speak amongst yourselves about
10 this case. Even during a break, if something happened
11 in the courtroom, and one of your fellow jurors said,
12 man, did you see that, or how about this, or how about
13 what happened there; that's the kind of communications
14 that you may not have and you shall not have.

15 You may not speak with anybody over the phone,
16 by tweeter, or e-mail, or any form of communication
17 that I'm not sophisticated enough to understand.
18 Bottom line is, we want you to listen to the testimony,
19 listen to the evidence, to listen to the law as I give
20 it to you, and make your decision in this case solely
21 based upon that testimony and evidence you hear here in
22 the courtroom, unaffected by any communications outside
23 of this courtroom whether it be amongst yourselves or
24 someone else.

25 I'm married. I have a daughter. And I can

M. SAWYER -- DIRECT BY MR. ROSS

1 assure you that if I went home and I told her I was on
2 a jury, they would be questioning me about the case and
3 about what I'm hearing during the case.

4 After the case is over, after you have been
5 dismissed, you can speak with anyone to your heart's
6 content about this case. But until that time, just
7 tell anyone, significant other, spouses, fellow jurors,
8 that you may not speak about the case until it's over
9 with.

10 Likewise, each morning in the event this case
11 happens to somehow get in the media, whether it be on
12 the TV, radio, or some other form of communication
13 about the media, blogs, you may not hear, read, or see
14 anything about this case. I don't know that it will
15 be. I'm just -- I tell jurors that in every case.

16 I want you -- if you start to hear it, walk
17 away. If you see something, put it down and don't
18 listen to it. Each morning when you come in during
19 this trial, I'm going to ask you, has anyone read,
20 heard or seen anything about this case or spoke with
21 anyone about this case. Okay. And that is to ensure
22 that both sides of this case have fair and unbiased
23 jurors who make a determination based on what they hear
24 here. Okay.

25 With that being said, I'm about to excuse you

M. SAWYER -- DIRECT BY MR. ROSS

1 for a few minutes. Before you leave, I'm going to
2 check with these attorneys to make sure I didn't say
3 something to you that I shouldn't have said or I
4 neglected to tell you something that I should have.

5 If I don't need to bring you back, I'm going to
6 ask the bailiff to excuse you and ask you to be back in
7 your jury room a few minutes before three, and
8 hopefully we'll be starting up opening statements
9 promptly at 3:00.

10 Okay. If you'd go back with the bailiff,
11 please.

12 (WHEREUPON, the jury leaves the courtroom at
13 1:20 p.m.)

14 THE COURT: Any additions or exceptions from the
15 State?

16 MS. BURCHSTEAD: No, sir.

17 THE COURT: From the defense?

18 MR. SELLERS: No, sir, Your Honor.

19 THE COURT: Very good. Officer, would you come
20 back around please, sir. You are still under oath.

21 THE WITNESS: Yes, sir.

22 BY MR. ROSS:

23 Q. Detective Sawyer, what was your duty position
24 on the day the search warrant was executed?

25 A. I was assigned to the narcotics division.

M. SAWYER -- DIRECT BY MR. ROSS

1 Q. Okay. And what is your rank?

2 A. At that time, just investigator.

3 Q. Okay. And have you since been promoted?

4 A. Yes. I'm promoted to captain.

5 Q. Okay. Can you give the judge just a brief
6 background into how you all came to search the house in
7 question on April 21, 2011?

8 A. We received some complaints of short term
9 traffic and some -- what was believed to be drug
10 activity at the address on Morgan Street. So myself
11 and my partner talked to Bill Martin, who is over the
12 trash pickup, we done a trash pull from the house, got
13 enough evidence out of the trash can -- I think, it was
14 marijuana that was tested. And at that time, we
15 obtained the search warrant for the house.

16 Q. And when was the search warrant executed?

17 A. April 21, 2011.

18 Q. And were you present when it was executed?

19 A. Yes, I was.

20 Q. Tell me about the facts leading up to the
21 execution of that search warrant that day?

22 A. That day?

23 Q. Yes, sir.

24 A. Well, obviously, we notified our SRT team,
25 which is a proper name for our SWAT team. They were

M. SAWYER -- DIRECT BY MR. ROSS

1 notified and given a time to meet. My job that night
2 was to run surveillance on the house because we
3 obviously want to hit it when somebody is there. We
4 don't want to hit an empty house.

5 So around 7:15, 7:30, I went to a location kind
6 of catty-corner across from this house at an old
7 service station, Dunbar Service Station, started
8 running surveillance. Do you want me to go into all
9 the details from there?

10 Q. Tell me what happened after you set up across
11 the street.

12 A. Well, after we set up for a few minutes, I saw
13 a black male walk down Morgan Street across Hampton
14 Avenue. A guy I knew as Ricky Lloyd. He goes to the
15 house in question, knocks on the door, nobody answers.
16 He leaves, walks back in the direction he came from.
17 An hour or more later, C. Kelvin Jones that I know as
18 KJ, walks up to the house in question.

19 It looked -- from the best we could tell, he
20 went up on the porch, used a key to go in. A minute,
21 two minutes later, a -- a short time after that, Ricky
22 Lloyd comes back, goes to the house, goes inside. A
23 minute or two after that, Tiffany Butler and Justin
24 Butler and --

25 Q. Some other individuals?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. Some other individuals come and they all go in
2 the house at that time.

3 Q. Okay. Tell me when the SWAT team arrived?

4 A. Well, when I seen KJ go in the house, I made
5 the first call --

6 THE COURT: When you say KJ, you're referring to
7 the defendant?

8 A. Kelvin Jones.

9 THE COURT: Okay, sir.

10 A. When I seen Kelvin Jones going into the house,
11 I called the SWAT team, which was stationed at our
12 headquarters, which is half a mile away. And told them
13 go ahead and get ready, I'd let them know when to come
14 on. At that time, Ricky Lloyd showed up. I called
15 them back and said, "all right, y'all -- y'all come
16 on". And before -- right before they got there, the
17 rest -- or the family showed up and went in. The SWAT
18 team shows up and hits the house.

19 Q. Okay. And when did you enter the house?

20 A. Well, once I seen the SWAT team pull up, I
21 pulled across the street to do outside security. The
22 SWAT team, they do a quick clearance of the house, get
23 people under control. Then they go back and do a
24 secondary search, to make sure nobody is hiding in the
25 closet or under a bed they missed. I didn't go into

M. SAWYER -- DIRECT BY MR. ROSS

1 the house until after the secondary search was called
2 "all-clear" by the SWAT team commander.

3 Q. Okay. When you entered the house, did you see
4 the defendant?

5 A. I did.

6 Q. And where was he?

7 A. In the -- when you go in the front door, to
8 the right in the kitchen area.

9 Q. Okay. Now, at that time, was he under arrest?

10 A. No.

11 Q. Was he placed in an investigative detention?

12 A. Yes, he was handcuffed for our safety.

13 Q. Okay. And can you tell the judge about the
14 distinction between being placed under arrest vs.
15 investigative detention?

16 A. Well, like I say, we -- everybody in the house
17 gets handcuffed when we go in for the safety of all the
18 officers, to make sure no -- you know, until we get it
19 -- to get it searched to make sure there's no weapons
20 in the general area. At the time I went in, there had
21 been no searching of the house at all, so there was no
22 reason for anybody to be under arrest at that time.

23 Q. So at that point, you hadn't found it, the
24 cocaine that was later found in this case?

25 A. No..

M. SAWYER -- DIRECT BY MR. ROSS

1 Q. When you came in the defendant's presence, did
2 he -- was he saying anything?

3 A. I don't --

4 Q. Or did he say anything to you?

5 A. Yes. He looked at me and called me Sawyer
6 twice: "Sawyer, Sawyer, I need to talk to you. I need
7 to talk to you".

8 Q. And did he say that in response to any
9 questioning by you?

10 A. No.

11 Q. Did he say that in response to any questioning
12 by anyone from law enforcement?

13 A. No.

14 Q. Did he say anything else?

15 A. Well, when I walked over to him, he asked --
16 he said, "man, what's going on. I just got here. I
17 just walked in the door". I said, "You know what's
18 going on." We are doing a search warrant". "I don't
19 know nothing about that."

20 Q. Okay. And, again, was that statement of him
21 asking what's going on, was that in response any
22 questioning posed to him by you?

23 A. No.

24 Q. Any questioning posed to him by any other law
25 enforcement officer?

M. SAWYER -- CROSS BY MR. SELLERS

1 A. No.

2 Q. And was he under arrest at that time?

3 A. No.

4 Q. Had y'all found any drugs at that time?

5 A. At that time, no.

6 Q. Did you offer the defendant any promises to
7 speak to you?

8 A. No.

9 Q. Was he being coerced in any way?

10 A. No.

11 Q. Was he offered any promises by any other law
12 enforcement officers?

13 A. Not that I'm aware of.

14 Q. Did he appear to be of sound mind when he was
15 talking to you?

16 A. Yes.

17 MR. ROSS: Beg the court's quick indulgence.

18 (Pause.)

19 MR. ROSS: That's all the questions I have for
20 him, Your Honor.

21 THE COURT: Cross examination.

22 MR. SELLERS: I just have a few questions, Your
23 Honor.

24 **CROSS EXAMINATION BY MR. SELLERS:**

25 Q. Isn't it true -- I'm going to walk over here

1 by the podium -- isn't it true, Captain Sawyer, that
2 you knew or had interacted with Kelvin prior 4/21 of
3 2011?

4 A. Had I had interactions with him?

5 Q. Isn't it true that you -- yeah -- knew or had
6 interaction with KJ prior to 4/21/2011?

7 A. Yes.

8 Q. Isn't it true you have arrested or been
9 present at prior arrests of Kelvin Jones, KJ?

10 A. Yes. Yes.

11 Q. How many priors arrests have you been present
12 at?

13 A. Two or three, four.

14 Q. And would you say this is how you knew KJ?

15 A. Yes.

16 Q. From previous arrests and a previous search of
17 his property?

18 A. Yes.

19 Q. Just to go back to when you arrived inside the
20 home, you said that you were just doing a search and
21 that he was not under arrest; was Kelvin free to leave
22 at that time?

23 A. No.

24 MR. SELLERS: I think we're done, but one second,
25 Your Honor.

1 (Pause.)

2 MR. SELLERS: No further questions for the
3 witness, Your Honor.

4 THE COURT: Redirect?

5 MR. ROSS: I don't have anything for him, Your
6 Honor.

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

8 THE WITNESS: Yes, sir.

9 THE COURT: Any other witnesses?

10 MR. ROSS: No, sir.

11 THE COURT: Does your client wish to testify at
12 this hearing?

13 MR. SELLERS: No, sir, Your Honor.

14 THE COURT: Are you sure?

15 MR. SELLERS: Well, we can check, but I'm pretty
16 certain.

17 (Pause.)

18 MR. SELLERS: No, sir, Your Honor.

19 THE COURT: Well, let me ask the State and the
20 defense. I know when I first went on the bench, I used
21 to give folks at the Jackson/Denno hearings their fifth
22 amendment rights. I quite frankly believe that if
23 they're compelled to testify at the Jackson/Denno
24 hearing, they don't -- you can't use it against them
25 later necessarily; do you disagree with that?

1 MR. ROSS: Your Honor, I would. I think he waives
2 his right to remain silent at that point.

3 THE COURT: You think so?

4 MR. ROSS: Now, the State can't exactly cross
5 examine him on issues unrelated to what the purpose of
6 the hearing is.

7 THE COURT: Right.

8 MR. ROSS: But that could not be the State's
9 position.

10 THE COURT: Well, just for purposes of the record
11 to make sure we are clean on the record, Mr. Jones,
12 you're still under oath. Do you understand or have you
13 had explained to you, your rights under the fifth
14 amendment to the United States Constitution?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And your attorneys explained that to
17 you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And do you understand that the fifth
20 amendment in part says that no person can be compelled
21 to testify against themselves in any criminal case; do
22 you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: That means that I can't make you come
25 to the stand, your attorneys can't make you come to the

1 stand, the State can't make you testify; do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But from what I was clarifying with
5 the State and the defense, is that at this juncture of
6 the trial, your testimony -- even though it would be
7 limited to issues concerning the voluntariness of your
8 statement, if you were to take the stand, that the
9 State would be allowed to cross-examine you about those
10 statements, and what you say could be used against you
11 subsequently in the trial of this matter; do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: On the other hand, if you choose not
15 to take the stand at this juncture, I cannot use that
16 against you in any form or fashion, neither can the
17 jury if you choose not to in a subsequent trial --
18 we'll go over that later -- do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, the decision as to whether or not
21 to exercise your rights under the fifth amendment are
22 purely personal. And although you may discuss it with
23 your attorneys or somebody else who is reasonably
24 available to you here, the decision at the end of the
25 day must be made by you; okay, sir? Do you understand.

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Also, I don't know anything about your
4 record. I don't know if it would be germane to the
5 hearing in this case. However, if it is germane to a
6 Jackson/Denno hearing, if you have a criminal record
7 involving charges involving imprisonment for more than
8 one year, involving dishonesty, and I find the
9 probative value outweighs the prejudicial impact, the
10 State will be allowed to cross examine you about those
11 matters to impeach your testimony at this hearing; do
12 you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay, sir. And in order for you to
15 waive your rights to the fifth amendment, you must do
16 so freely and voluntarily and knowingly, knowing of
17 your rights and knowing of the ramifications if you
18 choose to testify; do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Any questions of your attorneys?

21 THE DEFENDANT: No, sir.

22 THE COURT: Any questions for me?

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay, sir. Now, Mr. Sellers, is it
25 still your client's position he does not wish to

1 testify at this hearing?

2 MR. SELLERS: Correct, Your Honor.

3 THE COURT: Thank you very much.

4 MR. SELLERS: Thank you.

5 THE COURT: All right. Let me just say this
6 looking at the factors involved in Jackson/Denno, I
7 think it's fairly debatable in this case whether or not
8 we have interrogation. I clearly Mr. Johnson --
9 Jones -- excuse me -- was in custody. He wasn't free
10 to leave as testified by the officer, nor would anybody
11 normally believe they were in, if they were in
12 handcuffs.

13 But at the same time, there has to be a
14 custodial interrogation. I don't think there was a
15 custodial interrogation. However, to the extent there
16 was an interrogation during the time he was handcuffed,
17 there was no evidence of any coercion, the length of
18 the interrogation as we heard, was short. The location
19 was at his home.

20 I don't have any information about the
21 gentleman's maturity, but based on his appearance in
22 court today, and the time of the prior orders, he
23 doesn't seem to be a minor during any of these things.
24 And I'm going listen to you, Mr. Sellers. But I've
25 heard nothing about his physical or mental health. I

1 don't know about his experience, but the officer said
2 they didn't misrepresent him, coerce him, or promise
3 him anything.

4 And so as far as the factors out there, I think
5 that the State has met its -- by a preponderance, the
6 statements were made freely and voluntarily by Mr.
7 Jones in this matter.

8 First, I don't think they're interrogation, but
9 to the extent they are, Jackson/Denno would not
10 prohibit it. Go ahead.

11 MR. SELLERS: Thank, Your Honor. Since you did
12 find that these statements were made voluntary, we
13 won't -- we won't recap that and go through that,
14 although we will point it out that I'm not sure -- and
15 we -- we do not believe that this will was a confession
16 of any sort. And also there was no proof as stated
17 from the stand over there, and we don't believe that
18 Mr. Jones was properly Mirandized before he made that
19 statement either. But even more --

20 THE COURT: That's a very good point. Go ahead.

21 MR. SELLERS: And we hope that as you -- as you
22 listen to these arguments, you will go back to that and
23 note that our client was not properly Mirandized before
24 he made this, quote unquote, statement.

25 As we've gone back and forth, and you just

1 advised my client, it's very apparent and -- and we
2 won't know just yet, but Mr. Jones may not choose to
3 testify in his own defense in this trial.

4 In allowing the jury to hear testimony about
5 this alleged statement would severely prejudice Mr.
6 Jones. What it did, and by me asking him that
7 question, do you have any knowledge of Mr. Jones' prior
8 to, it shows that Mr. Sawyer had arrested and had some
9 interaction with Mr. Jones.

10 What it shows the jury, is that there was some
11 interaction by Mr. Jones with a narcotic agent prior to
12 this incident. And by doing that, it allows all those
13 prior acts to come through or at least a juror -- a
14 reasonable juror to assume that my client had had some
15 interaction with Captain Sawyer, and he called him by
16 name.

17 He didn't just say, hey, yo, come in my house.
18 He actually said "Marty Marty" -- or "Sawyer Sawyer" --
19 I believe it was -- "Sawyer Sawyer" so they -- they
20 established that relationship. We believe that that
21 will severely prejudice our client.

22 And under our basic 403 analysis, we believe
23 that any statement that is made, under this 403
24 analysis, will prove to be way more prejudicial than
25 probative. And I don't -- we don't believe that by

1 denying the statement and allowing it in, you will harm
2 the state in any fashion.

3 THE COURT: Let me ask you on behalf of the State,
4 what relevance would any of that testimony have to
5 establishing the elements of trafficking cocaine 400
6 grams or more?

7 MR. ROSS: Your Honor, the heart of this case is
8 going to be that of identity. Captain Sawyer is
9 expected to testify in front of a jury that he saw --
10 not a black male fitting his description, but KJ,
11 Kelvin Jones, carrying a bag down the street.

12 THE COURT: Well, how can you escape the innuendo
13 of him having a prior record by you having him call him
14 out, and that kind of testimony?

15 MR. ROSS: Your Honor --

16 THE COURT: That's inescapable to me.

17 MR. ROSS: Our intent is to -- we -- we've prepped
18 Captain Sawyer to not get into any arrests, any
19 convictions, or exactly how he interacted with the
20 defendant.

21 He's a police officer. Police officers know
22 people in the community. That's part of their job.
23 That doesn't necessarily imply that he knows him
24 because the guy is a convicted criminal. Our intent is
25 to elicit the testimony that Captain Sawyer does

1 recognize the defendant on sight as Kelvin Jones, and
2 he recognizes him through personal interactions. That
3 doesn't necessarily imply any type of criminal behavior
4 on the part of Mr. Jones. And it's not our intent to
5 subtlety imply that anyway, sir.

6 THE COURT: What I'm going to do, while my
7 ruling -- I'm going to go back and look at the ruling
8 on Jackson/Denno. I want the State to put that up
9 in-camera again, just that little snippet. I want to
10 hear it again. Okay. Because I -- quite frankly, I
11 was looking at it under Jackson/Denno factors, and I
12 wasn't looking at it with the other factors that would
13 be -- behoove me to hear it again. I don't quite --

14 MR. SELLERS: And, Your Honor, I'm not trying to
15 interrupt you. I apologize.

16 THE COURT: No, that's okay.

17 MR. SELLERS: But I do think that going back to
18 your initial analysis under Jackson v. Denno is
19 important to understand, that under oath, there was no
20 testimony about the Mirandizing of my client. We think
21 that's very important under Jackson v. Denno.

22 And further the State will put up many witnesses
23 to talk about seeing KJ, whether or not the jury
24 believes them or not is one thing. Officer Sawyer even
25 testified that I recognized KJ coming into the house.

1 And we believe that we don't prejudice the State in any
2 fashion by excluding this statement.

3 He states already that he sees KJ. We believe
4 that it's highly prejudicial for him to go one step
5 further and enter this statement, which shows this
6 prior relationship, Your Honor.

7 THE COURT: All right. Let me go back. There
8 clearly is no evidence of Miranda. But, again, I do
9 not find -- I do not believe this was an interrogation.
10 These were spontaneous statements or statements made by
11 the defendant, which does not fall under an
12 interrogation. That doesn't mean they're admissible.
13 I'm just saying for purposes of Jackson/Denno, they
14 should be -- they are allowable.

15 Again, I want to hear, on the record, we may
16 have to do some tailoring on it and hear some of the
17 testimony, let him -- some of it may not come in. I
18 want to hear it again, quite frankly, and then I'll
19 make that call at that point.

20 MR. ROSS: And, Your Honor, the State's intent
21 would be to ask him the exact questions that we would
22 ask in front of the jury for that analysis, exactly how
23 we want to thread that needle.

24 THE COURT: Okay. Just -- just remind me. Are
25 you going to do that -- are you going to question this

1 witness?

2 MR. ROSS: Pretrial, or pre the jury being sworn,
3 yes, sir, right.

4 THE COURT: Is it -- when we bring him in here, we
5 are going to bring it up during -- during the course of
6 the trial. I don't see any reason to do it --

7 MR. ROSS: Okay..

8 THE COURT: Another pretrial hearing on this at
9 all.

10 MS. BURCHSTEAD: He's our first witness, Judge, so
11 just in terms of dealing with the jury.

12 THE COURT: Well, you know, once we get started
13 opening statements, we'll swear the jury. If we have
14 to sit him back for a little bit, I'll be glad to.

15 MS. BURCHSTEAD: Thank you, Judge.

16 THE COURT: Okay. Anything further from the State
17 with regard to the Jackson/Denno?

18 MS. BURCHSTEAD: Nothing further on the
19 Jackson/Denno, no, Judge.

20 THE COURT: Okay. From the defense?

21 MR. SELLERS: Nothing further, Your Honor.

22 THE COURT: Okay. All right. You handed me, Mr.
23 Sellers, a forthwith order where you were seeking
24 certain employment records, specified officers. In the
25 order itself it says "that after considering the

1 motion, the court finds the documents and material to
2 the movant's defense and their production is required".
3 Would you go forward and tell me how these documents
4 would be material to Mr. Jones' defense?

5 MR. SELLERS: Yes. These documents go directly to
6 the credibility and what's in them of each witness that
7 we put forth. We have officers, and we are simply
8 seeking their employment records to see. And it's by
9 no means a fishing expedition, but it will help us
10 present a defense. And, if need be, go with the
11 credibility of those witnesses.

12 And, Your Honor, we did -- we did submit a FOIA
13 request, which is proper by law, to the agencies by
14 which these individuals work for. And it's not as if
15 we got a, hey, we'll get back to you. We got
16 absolutely no response at all. And the reason we are
17 present here today is because we don't have any other
18 remedy, over than a FOIA, Your Honor.

19 THE COURT: And a FOIA wouldn't apply to
20 employment records any way, though, would it?

21 MR. SELLERS: Well, some would.

22 THE COURT: Some?

23 MR. SELLERS: FOIA is -- it's --

24 THE COURT: Who knows.

25 MR. SELLERS: It is what it is.

1 THE COURT: Ms. Burchstead, I know that you told
2 me in my conference -- in my office -- that y'all --
3 the State opposes this; is that correct?

4 MS. BURCHSTEAD: Yes, sir. And just to be clear,
5 I don't know the exact law enforcement officers we are
6 talking about, but I'll just speak blanketly for all of
7 them --

8 THE COURT: I'll tell you the names of the
9 officers that's in the proposed order.

10 It's investigator John C. Medlin.

11 MS. BURCHSTEAD: Yes, sir.

12 THE COURT: Captain Martin E. Sawyer; Sgt. Craig
13 Burgess; PSO Carolos Colindres; Sgt. Aaron Dobbs; Sgt.
14 Dave Flanders; Lt. Ricky Turner; Lt. Clay Adams;
15 Investigator Gary Benfield; Sgt. John Eagerton; Sgt.
16 Matthew Comer; Brian Griswold; PSO Josh Faulkner; Lt.
17 Brian Key; Lt. Michael Powell; Keith Herring, formerly
18 Aiken Department of Public Safety; Matthew Braxton,
19 formerly with the Aiken Department of Public Safety.

20 MS. BURCHSTEAD: Thank you, Judge. I believe the
21 argument would still be the same. However, I can say
22 we've talked to at least certain of those individuals
23 about any potential history on their records and I'm
24 not aware of anything that the defendant would be
25 entitled to.

1 And it's the State's position that this is an
2 end run around the rules of discovery, that this should
3 have been a request through discovery through me, to
4 ask for personnel files. I was never asked for these
5 files. Out of caution, I've had this happen in other
6 cases, and we did discuss it with the officers, but it
7 was never asked of the State to provide these files.
8 We were never given that opportunity to do so.

9 To that end, Judge, it is the State's position
10 the defendant cannot go on a fishing expedition. It
11 would be our suggestion that is what we have going on
12 here. It's just matter of course that's become a
13 practice I've seen more of recently. And the defendant
14 has no basis for this, other than let's just see what's
15 there. We don't have any indication that we have prior
16 reprimands on these officers.

17 And it's my understanding under, you know --
18 obviously, we would comply with any sort of Brady type
19 Giglio type material, I'm not aware of any. And it's
20 my understanding, and my position on behalf of the
21 State, that they are not entitled to just -- just look
22 for it. There needs to be some indication that you are
23 going to find impeachment type evidence, or evidence
24 where officers have -- have, you know, lost evidence or
25 something of that nature. And we just don't have an

1 indication of that here, Judge.

2 THE COURT: And what you're seeking is
3 disciplinary information; is that correct?

4 MR. SELLERS: Yes, Your Honor. Even -- I mean,
5 and this is -- I mean, this is -- I mean, part of --
6 we're trying to do this out of an abundance of caution.

7 THE COURT: Sure.

8 MR. SELLERS: And we dealt with two different
9 prosecutorial agencies in this matter. And even just
10 last Thursday we received, you know, more discovery.
11 And it's not this prosecutorial agent. It's really no
12 one's fault, but we've just been through so many.

13 THE COURT: Let me say this out of an abundance of
14 caution. Because, you know, the officers have a
15 certain amount of right to privacy in employment
16 records. And I don't think it necessarily is
17 appropriate to let people go gathering through them,
18 even though you're officers of the Court.

19 I'm going to instruct the State to make a review
20 of those records. If there's any type of disciplinary
21 matters --

22 MS. BURCHSTEAD: Yes, sir.

23 THE COURT: -- that's why I'm asking you to make
24 sure -- I want them to turn them into me. I'll look at
25 them in camera. If I feel like there may be something

1 that could be used, then I -- I will make sure it's
2 produced over to the defense.

3 Other than disciplinary, anything else?

4 MR. SELLERS: No, I think that would cover it. I
5 mean, even in our initial request, which we weren't
6 trying to end run, like my counsel -- in fact, they
7 have been a pleasure to work with -- you know, we did
8 ask for redacted files. And we -- we -- you know, we
9 understand that. But, Your Honor, we don't have any
10 problem with that process. We just --

11 THE COURT: Well, let's do it that way. That way
12 it's a little cleaner. And so, Ms. Burchstead, I'm
13 having to keep looking at your new name --

14 MS. BURCHSTEAD: That's okay, Judge.

15 THE COURT: I'm going to deny the order. But I am
16 going to find that if there's any disciplinary
17 materials --

18 MS. BURCHSTEAD: Yes, sir.

19 THE COURT: For any of the listed officers, then
20 you will provide them to me and I'll make a
21 determination as to whether they will be turned over to
22 the defense.

23 MS. BURCHSTEAD: Yes, sir. If may just have one
24 matter of clarification, we're not intending to put
25 most of those officers on the stand. Do we want to

1 look at all of them?

2 THE COURT: Well, I think that -- you know, this
3 -- you know, as a matter of course, this gentleman is
4 on trial for a lot of time.

5 MS. BURCHSTEAD: Yes, sir.

6 THE COURT: And so I'm going to give them a little
7 leeway in that regard.

8 MS. BURCHSTEAD: Yes, sir.

9 THE COURT: And even though I noticed some of the
10 officers are not on your witness list, I'm still going
11 to require that you give me the named officers. And
12 I'll give you the front page of this order --

13 MS. BURCHSTEAD: Perfect.

14 THE COURT: -- and that way you can have your
15 folks look at that --

16 MS. BURCHSTEAD: Thank you, Judge.

17 THE COURT: Okay. All right. Mr. Sellers, there
18 is a potential for a plea in this matter; is that
19 correct?

20 MR. SELLERS: Yeah, not a wide swath, Your Honor.
21 But we do intended plead guilty to the ecstasy charge.
22 We've actually signed sentencing sheets and are
23 prepared to do so at this point.

24 THE COURT: Come around, please, sir.

25 (Pause.)

1 THE COURT: All right. Mr. Jones, you have
2 previously been sworn. You're still under oath; do you
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you under the influence of any
6 medications, drugs, or alcohol today?

7 THE DEFENDANT: No, sir.

8 THE COURT: Mr. Sellers, are you still satisfied
9 Mr. Jones is competent to plead?

10 MR. SELLERS: Definitely, Your Honor. Yes, sir.

11 THE COURT: Has anybody forced, threatened, or
12 promised you anything to get you to plead to the charge
13 of possession of Ecstasy?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you doing so freely and
16 voluntarily?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And that charge carries up to three --

19 MR. SELLERS: One year, Your Honor.

20 THE COURT: One year.

21 MR. SELLERS: Zero to one year, Your Honor.

22 THE COURT: One year. Do you understand, Mr.
23 Jones, that I can sentence you to one year today?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And this is being presented to me

1 without any negotiations or recommendations. And I can
2 make that year on top of any other sentence if you are
3 found guilty to these other charges; do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you still want to go forward today
6 with your plea?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that by going
9 forward today with your plea to possession of Ecstasy,
10 you will give up your right to have a jury trial on
11 that charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: If you were to choose to go to trial
14 on this charge like the others, the State would have to
15 prove each and every element of possession of Ecstasy
16 beyond a reasonable doubt; do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Also, if you were to choose to
19 exercise your right to a jury trial, you could also
20 exercise the following constitutional rights: You'd
21 have the right to confront and cross examine the
22 State's witnesses who testify against you; you'd have a
23 right to present evidence in your own defense; you have
24 a right to subpoena people here to court to testify on
25 your behalf; and you would have a right to exercise

1 under the fifth amendment to remain silent, as we went
2 over earlier; do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If you did not testify during the
5 trial, the jury would be instructed by me that they
6 could not consider your failure to testify whatsoever;
7 do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, if you go forward today, you will
10 waive or give up your right to a jury trial and you
11 will also waive or give up the other constitutional
12 protections that we've just gone over; do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you freely and voluntarily waive
16 your constitutional rights, including your right to a
17 jury trial, freely and voluntarily?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: In favor of pleading guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you you pleading guilty to the
22 possession of Ecstasy charge because you are, in fact,
23 guilty of that charge?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you satisfied with the services of

1 your attorney with regard to that charge -- your
2 attorneys?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have they originally done all that you
5 asked them to do?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: As we stand here today, do you have
8 any complaints whatsoever with regard to the
9 representation you received in this matter?

10 THE DEFENDANT: No, sir.

11 THE COURT: None whatsoever?

12 THE DEFENDANT: No.

13 THE COURT: Under indictment 2012-134, are you
14 guilty of possession of Ecstasy?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Mr. Sellers, have you gone
17 over the elements of this charge with Mr. Jones, have
18 you explained to him the time he could get on this
19 charge, explained to him his constitutional rights, and
20 explored whether or not he has any defenses to this
21 charge?

22 MR. SELLERS: Yes, sir, we have, Your Honor.

23 THE COURT: And you agree with his decision to
24 plead guilty?

25 MR. SELLERS: Yes, sir, I do, Your Honor.

1 THE COURT: Is there a substantial factual basis
2 for his decision?

3 MR. SELLERS: Yes, sir, Your Honor.

4 THE COURT: Do you understand, Mr. Jones, that you
5 would have a right, although you're pleading to this,
6 to appeal any sentence I may impose?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. So you have ten days from the
9 date I impose the sentence to appeal that sentence; do
10 you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions of me
13 whatsoever?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Ms. Burchstead, give me
16 the facts, please.

17 MS. BURCHSTEAD: Thank you, Your Honor. Just very
18 briefly, Judge. April 21st of 2011 in Aiken County,
19 officers of the Aiken Department of Public Safety
20 executed a search warrant at [REDACTED] Morgan Street.
21 Present at that home was Kelvin Jones. Located in the
22 the kitchen, Detective Sawyer recovered some pills --
23 four pills in his front right pocket, which were --
24 later tested positive for what I'm going to call MDMA,
25 otherwise known as Ecstasy, Judge.

1 THE COURT: Now, I notice on the sentencing
2 sheet -- and I didn't go over this with you -- venue
3 has been transferred to Dorchester County for trial.
4 But for a plea, it's not. Do you waive venue for
5 you -- for purposes of your plea to this charge to
6 Dorchester County?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you do so freely and voluntarily?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Anything further from the
11 State?

12 MS. BURCHSTEAD: Nothing. I assume we'll defer
13 sentencing, Judge.

14 THE COURT: I'm going to defer sentencing to the
15 end of the trial. That way we don't have a problem
16 with him pleading now, and the jury coming back later
17 and having two different appeal times. That would be a
18 mess.

19 MS. BURCHSTEAD: Yes, sir.

20 MR. SELLERS: Yes, sir.

21 THE COURT: All right. So I'm going to accept
22 your plea as knowingly made, with advice of counsel
23 with whom you are satisfied, and find that there is a
24 substantial factual basis for the plea. I'm going to
25 defer your sentencing until after the jury verdict.

1 Okay, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. And you understand, Mr. Jones,
4 that even if you were found not guilty on the other two
5 charges, you plead guilty to this charge?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Very good. All right. Anything
8 further, Mr. Sellers?

9 MR. SELLERS: Not yet, Your Honor. Thank you.

10 MS. BURCHSTEAD: Thank you, Judge.

11 THE COURT: Okay. Let me tell you this, with him
12 pleading guilty, I don't believe the State had a right
13 to bring up the possession of those charges, those --
14 those pills on his possession?

15 MS. BURCHSTEAD: Your Honor, we would -- I don't
16 know if we want to argue that now, we just ask to be
17 heard on that. We believe it's a res gestae situation,
18 Judge.

19 THE COURT: Well, I -- it also is a 403. And --
20 and I think that it is -- once he pleads, there's
21 nothing to possession of Ecstasy that would show the
22 dishonesty on his part, which is required, although it
23 is res gestae on 403, the prejudicial impact
24 substantially outweighs any probative value in my book.
25 But -- so -- I'll be glad to let you be heard when you

1 want to be heard, but that would be my follow-up with
2 our conversation in my chambers today, after thinking
3 about it.

4 MS. BURCHSTEAD: Sure. I could be brief now if we
5 just want to knock it out, Judge.

6 THE COURT: Sure. Sure.

7 MS. BURCHSTEAD: I would -- I would just first
8 say, it's the State's position it is not a prior bad
9 act. He just pled before the trial. It was actually a
10 contemporaneous act. The pills were in his pocket at
11 the time of the search warrant, in close proximity to
12 the cocaine. And we have case law, Judge, State v.
13 Scott, which I'd be happy to pass up to you --

14 THE COURT: Please do.

15 MS. BURCHSTEAD: Which does indicate -- in that
16 particular case, there was some marijuana that was
17 relevant to -- to entering cocaine in, Judge -- and I
18 apologize. I don't have copies for counsel. I
19 actually didn't have a copy this morning.

20 THE COURT: Just give it to Mr. Sellers and give
21 me the cite.

22 MS. BURCHSTEAD: Okay. Mr. Ross has copies. And
23 that -- this particular case is specific to drugs, Your
24 Honor. And that we would say it is much akin to what's
25 going on here.

1 THE COURT: Okay.

2 MS. BURCHSTEAD: But just in general terms, we
3 believe it is a res gestae type situation and --

4 THE COURT: Let me ask you this --

5 MS. BURCHSTEAD: Yes, sir.

6 THE COURT: -- I mean, I understand -- you know --
7 I'm clearly wrong a lot of times, so I don't mind y'all
8 correcting me. But it seems to me that the purpose of
9 bringing that out is to show that he's just a bad guy.
10 He deals drugs. Therefore, those are his -- other --
11 how would possession of marijuana in the case that you
12 cited be relevant to the possession of cocaine, other
13 than people who carry marijuana sometimes carry
14 cocaine? What is the -- is that basically the --

15 MS. BURCHSTEAD: Yes, sir, it's similar.

16 THE COURT: Kind of like guns and drugs?

17 MS. BURCHSTEAD: Yes. That's exactly it. And in
18 fact, the drugs and guns are cited in that same case,
19 Judge. That's exactly it. And it's just -- we just
20 reiterate to the court, as you well know, it is the
21 State's burden. And we have to show it is not mere
22 presence, that he's there with drugs for a purpose.
23 And I believe the testimony that's going come out, is
24 it's a dope house. And we intend to show he's a drug
25 dealer.

1 And we believe you will see, Judge, that he also
2 had cash in his waistband. A lot of cash. So when
3 you -- it's a matter of presenting a full picture to
4 the jury for the jury to understand what was really
5 going on that day. And I -- again, I just echo that it
6 was not a prior bad act. It was a contemporaneous act.

7 THE COURT: Well, that's -- that's a good point.
8 Let me read the case.

9 MS. BURCHSTEAD: Yes, sir.

10 THE COURT: I don't know that I'm going to change
11 my ruling at this point, but I'm going -- I'll be glad
12 to look at it over my lunch break.

13 MS. BURCHSTEAD: Thank you, Judge. We'll
14 certainly abide by your ruling, just we ask -- I wanted
15 to be heard.

16 THE COURT: With that being said, according to my
17 checklist, we've gone almost over everything. Yes,
18 ma'am.

19 MS. BENEVENTO: Your Honor, I didn't know if you
20 wanted to hear from us, or if -- I know that you almost
21 made your ruling. But if you would like for us to be
22 heard --

23 THE COURT: If I ever cut you off, I want you to
24 have a full, complete record and so does -- I know Mr.
25 Jones does, so please let me --

1 MS. BENEVENTO: Your Honor, just in response to
2 Ms. Burchstead's argument, Your Honor, we would agree
3 with you that it is more a 403 analysis than it is a
4 prior bad act.

5 Our point, Your Honor, in trying to exclude this
6 evidence is that Mr. Jones may not take the stand and
7 testify in his own defense at this trial. His criminal
8 history would therefore be inadmissible. And we feel
9 that any reference to this ecstasy would be extremely
10 prejudicial to Mr. Jones throughout this trial.

11 When you go through the analysis, Your Honor, in
12 the -- I believe it is the State v. Gillion case, Your
13 Honor, these -- evidence of these crimes is admissible
14 when it proves a material factor element of the crime
15 charged. Your Honor, we would submit to the court that
16 possession of Ectasy does not prove a material fact or
17 element of the charge of trafficking in cocaine.

18 Your Honor, the State -- or the case goes on to
19 say that that evidence is admissible only when it tends
20 to establish certain things, such as motive, intent,
21 absence of mistake, a common scheme or plan or
22 identity. Your Honor, we would submit that it
23 establishes none of these things.

24 And, in fact, the only result of allowing this
25 evidence in -- because we don't believe that it would

1 harm the State to keep it out -- would be number one,
2 to result in unfair prejudice to Mr. Jones. Because we
3 have jurors that may not understand the distinction
4 between a few ecstasy pills and over a kilo of alleged
5 cocaine, Your Honor.

6 THE COURT: I certainly hope that they are not
7 that uninformed.

8 MS. BENEVENTO: And, Your Honor, I hope they're
9 not as well, it's just certainly a concern that we
10 have. We believe it may confuse the jury. But most of
11 all, we think that -- you know, I don't believe that it
12 harms the State to keep that record of the Ecstasy out
13 --

14 THE COURT: Well, let me -- let me ask you this:
15 How do you respond to the argument that this is really
16 a res gestae, and it's not a prior crime because it
17 happened at the same time?

18 MS. BENEVENTO: Your Honor, I would point, again,
19 to the fact that it doesn't establish a material fact
20 or element of the crime charged, and that crime being
21 trafficking in cocaine.

22 You know, I understand Ms. Burchstead's argument
23 between, you know, Ecstasy or drugs, and -- and so is
24 cocaine. However, Your Honor, we are dealing with a
25 few pills, and then a kilo of a totally different

1 substance.

2 Now, would we be in a different position if Mr.
3 Jones was found with a corner of a baggy of cocaine in
4 his pocket, yes, sir, I do believe that we would be in
5 a different situation. We have a completely different
6 substance. Yes, it's also illegal; but the presence of
7 that substance in Mr. Jones' pocket does not prove any
8 element of the State's case with regard to the
9 trafficking of cocaine. And, in fact, it -- it simply
10 would just confuse the jury, Your Honor, and result in
11 extreme prejudice to Mr. Jones.

12 THE COURT: Okay.

13 MR. SELLERS: Moreover, Your Honor, just -- just
14 briefly. I think one of the clear distinctions that
15 Mr. Jones admitted his guilt -- pled guilty to the
16 Ecstasy pills. I mean, he waived his rights in front
17 of Your Honor and pled guilty to that. This case, I'm
18 not on point when it comes to that issue that's before
19 the court today.

20 THE COURT: When you say "this case", that's the
21 case cited by the State?

22 MR. SELLERS: Yes, sir.

23 THE COURT: State vs. Scott?

24 MR. SELLERS: Yes, sir, Your Honor. And even more
25 importantly, just to back up, I think that Your Honor

1 was -- was -- you know, absolutely correct in his
2 original analysis. I mean, I -- it could have been,
3 you know, anything else in his pocket, any other type
4 of substance. He could have had prescription drugs
5 from his grandmother in his pocket, we still believe
6 that that has nothing to do with the elements of the
7 trafficking of cocaine, Your Honor. Thank you.

8 THE COURT: All right, sir. Guys, I'm going to
9 look at this over lunch. I've kept these court
10 people -- they've just been very patient. It's almost
11 2:00. Y'all ready to go at 3:00?

12 MS. BURCHSTEAD: Yes, sir.

13 THE COURT: Does that give y'all enough time?

14 MR. SELLERS: Would the courtroom be locked -- or
15 do we have to lug this around. Because, you know,
16 Allie carries all our stuff.

17 THE COURT: I don't know. What is the practice
18 here? Will the courtroom be locked, gentlemen?

19 (Discussion off-record.)

20 THE COURT: Mr. Scott, are you still being
21 detained -- Mr. Jones, are you still being detained or
22 are you out on bond?

23 MR. SELLERS: He's out on bond, Your Honor.

24 THE COURT: He's out on bond. Okay. And y'all
25 hadn't had a problem with him showing back up to any

1 hearing?

2 MR. SELLERS: Actually, Your Honor, he has
3 appeared -- we have been prepared to try this case two
4 different times. He's appeared at each one. He even
5 made his way from Aiken here this morning.

6 THE COURT: Very good. Mr. Jones, I'm going to
7 let you remain out. Do you understand, though, if you
8 do not return, then this case will go forward and will
9 be tried in your absence?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay, sir. All right. Thank you.

12 (WHEREUPON, a lunch break was taken.)

13 (Premarked State's Exhibits 1 through 19.)

14 THE COURT: Please be seated. Mr. Sellers, is the
15 defense ready to go?

16 MR. SELLERS: Yes, Your Honor. Before we brought
17 the jury in, we just wanted to restate our -- on the
18 record, restate our objection to the evidence and
19 reaffirm our motion to suppress at this point. We --
20 just out of an abundance of caution.

21 THE COURT: Okay. And with regard to which
22 particular --

23 MR. SELLERS: No, our previous motion to suppress
24 that we filed under the order --

25 THE COURT: Oh, yeah, yeah, yeah. That's right.

1 That Judge Dickson signed?

2 MS. BURCHSTEAD: Nothing new, Your Honor, correct.

3 THE COURT: I got you. And that was the trash
4 search?

5 MR. SELLERS: That was the trash search, which led
6 to the search warrant and thereby everything else that
7 we're dealing with today.

8 THE COURT: All right. Very good. I note that
9 objection. The ruling will stand as is. Are you
10 otherwise ready to go?

11 MR. SELLERS: Yes, sir, Your Honor.

12 THE COURT: Is the State ready?

13 MS. BURCHSTEAD: Yes, sir.

14 THE COURT: Before we bring in the jury, I've
15 looked up the cases that we were dealing with earlier,
16 before we broke.

17 With regard to the plea -- possession of Ecstasy,
18 I do note in the case that was handed up to me that --
19 the cases cited, the State vs. Scott, say that
20 possession of other drugs and guns is relevant because
21 it goes to drug activity. But in that case, they said
22 that -- in footnote number one, that they have had
23 abandoned their 403 argument because they didn't raise
24 it on appeal. So they analyzed the case without a 403,
25 which is really what I think is the appropriate

1 argument -- the appropriate analysis in this case.

2 I mean, although it's relevant, based on the
3 Scott case, I still believe that the probative value is
4 outweighed by the prejudicial impact. Looking at the
5 State vs. Lyles, the Court said that unfair prejudice
6 means undue tendency to suggest a decision on an
7 improper basis. In this case, while it may be relevant
8 to drug dealing, that he had possession of Ecstasy, I
9 think the tendency would be that -- to suggest that
10 because he had Ecstasy, he's also a drug dealer on the
11 other more greater amount of cocaine.

12 That being said, I know the State objects to
13 that ruling. I don't know that you need to put it on
14 the record, but that is going to be my ruling. So it's
15 -- it's prohibited by 403. Okay.

16 MS. BURCHSTEAD: Yes, sir.

17 THE COURT: All right. Anything further before we
18 bring the jury out?

19 MS. BURCHSTEAD: Nothing before the jury, no.

20 THE COURT: Would you bring the jury in, please,
21 sir.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 3:09.)

24 THE COURT: Is the State ready to proceed?

25 MS. BURCHSTEAD: Yes, Your Honor.

1 THE COURT: Is the defense ready to proceed?

2 MR. SELLERS: Yes, Your Honor.

3 THE COURT: Ms. Clerk, would you swear the jury,
4 please, ma'am.

5 (WHEREUPON, the jury was sworn.)

6 THE COURT: All right. Ladies and gentlemen, as
7 you heard, this is the State of South Carolina vs.
8 Kelvin Jones, whose been charged and indicted with
9 trafficking cocaine, 400 grams or more, and possession
10 with intent to distribute cocaine within the proximity
11 of a park or a school.

12 I remind you, ladies and gentlemen, and I will
13 again, the fact that this gentleman was arrested and
14 charged and indicted, is not evidence of guilt and it
15 does not raise the inference of guilt, nor presumption
16 of guilt.

17 These indictments are simply the charging
18 mechanisms by which the State of South Carolina brings
19 someone such as this defendant for a trial and a
20 determination of guilt or innocence. Okay. The burden
21 remains on the State to prove his guilt by proof beyond
22 a reasonable doubt, and I'll tell you more about that.

23 Now, I don't know if any of you have ever been
24 involved in a trial, whether it be a civil trial or
25 whether it be a criminal trial, whether you watched one

1 as a -- as a -- in the gallery or some other way, but I
2 would suspect that each and every one of you have
3 watched on TV, or at the movies, something that
4 purports to be a criminal trial.

5 Let me quickly dispel you, that what you're
6 about to engage in, is nothing like you've seen on TV.
7 Criminal trials are not entertainment. They're often
8 very slow. They are very methodical and very
9 deliberate, because they are a search for the truth to
10 try to make sure that justice is done. They are an
11 absolute fundamental part of our democracy.

12 Now, in this case, these attorneys are
13 experienced, good attorneys. When they were sworn in
14 as attorneys, just like all other attorneys, they take
15 an oath to zealously represent their side of the case.
16 And you can expect no less of them in that regard in
17 this case.

18 But, at the same time, they are officers of this
19 Court. What that means is, you can expect them to be
20 competent, professional and courteous to one another,
21 to me, to any witnesses who may come before you in this
22 case, and in the general dealings in this case.

23 Now, you've just taken an oath that you would
24 try to reach a fair and impartial verdict. The
25 parties, the Court, the attorneys have a right to

1 expect of you that you will be fair; that you will be
2 unbiased, and you'll be ethical in your dealings in
3 this case.

4 Now, what I'm about to tell you is not the
5 substantive law that you will apply, I will give that
6 to you at the end. This is, basically, a walk through
7 of what you can generally expect throughout the course
8 of this trial. It will be fairly brief.

9 Number one, all of you indicated that you wanted
10 to take notes. Does everyone have notepads and an
11 operational pencil or pen? (Pause.)

12 Okay. Let me make a couple of warnings to you
13 about your use of pad and pen. Some people are better
14 note takers than others. Just because something
15 appears in somebody's notes, as opposed to somebody
16 else's notes, that doesn't have that factor -- or
17 somebody's memory, doesn't mean that just because it is
18 in their notes, it trumps somebody's memory or
19 somebody's notes that doesn't have that particular
20 entry in it. That's why they call them deliberations.
21 And, Mr. Foreman, you'll just have to hash those things
22 out at the end of the case when you're instructed to
23 begin your deliberations. Okay, sir.

24 Also, in making your findings of fact, what I'll
25 tell you about, a critical part of that is, is to

1 determine the credibility of the witnesses. In other
2 words, which testimony do you want to believe vs.
3 Which testimony you do not want to believe.

4 If you're so engrossed in taking notes that you
5 missed somebody's demeanor while they're being asked a
6 question, you may miss a subtle reaction that they have
7 that indicates their credibility on the stand, so I
8 just caution you about that.

9 Now, in this case, the defendant has said, I am
10 not guilty to both of these charges. Therefore, that
11 puts the burden on the State of South Carolina to prove
12 each and every element of both charges against him by
13 proof beyond a reasonable doubt.

14 Each charge -- each charge is separate and
15 independent of the other. And at the end of the case,
16 you will be instructed to consider each charge
17 separately from one another. But the burden of proof
18 is beyond a reasonable doubt, which is the highest
19 burden we recognize in the state.

20 Let me give you a brief definition of what
21 reasonable doubt means so you will have it in your
22 mind. I will give it to you again. A reasonable doubt
23 is the kind of doubt that would cause a reasonable
24 person to hesitate to act in an important matter in
25 their own affairs.

1 Now, as I told you, the State has the burden of
2 proving the defendant guilty by proof beyond a
3 reasonable doubt. If you've ever sat on a jury before
4 in a civil case, the burden of proof in a civil case is
5 by a preponderance or the greater weight of the
6 evidence.

7 In a criminal case, the burden is much higher.
8 It's proof beyond a reasonable doubt. Proof beyond a
9 reasonable doubt is proof that leaves you firmly
10 convinced of the defendant's guilt.

11 I also tell you, ladies and gentlemen, that
12 there are very few things that we know in this life
13 that we can prove with absolute certainty. In this
14 case, absolute certainty is not required.

15 If, based on your consideration of all the
16 evidence, at the end of this case, you are firmly
17 convinced that the defendant is guilty of the crime for
18 which he has been charged -- or the crimes -- then it
19 will be your duty to find him guilty.

20 On the other hand, if you think there is a real
21 possibility that the defendant is not guilty, then it
22 will be your duty to give him the benefit of the doubt
23 and find him not guilty.

24 Now your purpose, as jurors -- if you heard me
25 touch on it -- is to be the finders of the facts. You

1 are to determine what the facts are by listening to the
2 testimony and the evidence that you hear in this
3 courtroom and nowhere else. You are, as we say, the
4 sole judge of the facts. And what that simply means
5 is, that is the verdict you are going to reach in this
6 case.

7 If I do anything throughout the course of this
8 trial that seems to indicate to you how you are to find
9 facts, the verdict you are to reach, I would instruct
10 you to disregard it. I can assure you, I have no
11 feelings one way or the other as to guilt or innocence
12 in this case. And our State constitution doesn't allow
13 any trial court level judges to have an opinion. We
14 can't make comments or express an opinion about the
15 facts. Our job is to instruct you on the law and to
16 make sure that the process is followed, to make sure
17 that both sides have a fair case and a fair trial.

18 You will not be influenced by things that you
19 hear outside of the courtroom. That's why I gave you
20 the prohibition about speaking amongst yourselves,
21 watching any kind of media or listening to anyone about
22 this case, including spouses.

23 Now, at the end of this case, and -- now, I will
24 give the instructions, just like you are the sole
25 finders of the facts, I'm the sole instructor on the

1 law. You may not like what I tell you. You may think
2 it should be something other than what it is. But it
3 will be a dereliction of your duty, as a juror, to
4 disregard any of my instructions. They are all equally
5 important.

6 I am the sole judge on the law, just like you're
7 the sole judges of the facts. I can't impede on your
8 function as finders of the fact, nor can you impede on
9 my function as being the judge of the law. Again, do
10 not begin your deliberations until I have expressly
11 given word for you to do so.

12 Now, just to let you know where you are, in
13 every single case there are five phases. Number one,
14 there's opening statements. Then you'll have the
15 presentation of the evidence. You'll have the closing
16 arguments by the attorneys. The charge on the law by
17 me, and then you'll begin your deliberations.

18 In just a minute, the State is going to open up
19 on the law. The attorneys for the State are going to
20 tell you what they contend this case is about. Let me
21 caution you, that the attorneys are not sworn. They
22 are not put up on the stand and subjected to cross
23 examination. What they tell you is designed to be
24 helpful and enlighten you about the case, and what the
25 case is about, and the law, but it is not testimony.

1 It is not evidence. The only true evidence and
2 testimony that you will hear will come from this
3 witness stand by witness testimony or exhibits that I
4 allow into evidence.

5 Now, in just a minute the defense may, but is
6 not required, to give an opening statement. The same
7 rules would apply to the defense counsel if they choose
8 to make an opening statement. Remember, the burden
9 remains on the State of South Carolina at all times to
10 prove the case, and the defendant has no burden
11 whatsoever.

12 In any single trial, there will be objections.
13 I can imagine this case will be no less. The fact that
14 there are objections, and the fact that I let you sit
15 -- stay in the courtroom and see my rulings on those
16 objections, is not proper for consideration during your
17 deliberations.

18 Mr. Foreman, during your deliberations, your
19 jury may not discuss objections or my rulings on them.
20 And prior to the time when you begin your
21 deliberations, there shall be no communications about
22 objections or my rulings.

23 Let me just say this: In every trial, that is
24 simply part of the procedure. A lawyer has an ethical
25 obligation to object any time he or she feels like the

1 process is not properly being followed.

2 In fact, sometimes you may feel like you're
3 cattle being ushered in and out of the courtroom, for
4 me to hear objections and hear the things that would
5 not be appropriate for you to hear, that goes along
6 with them while I'm hearing the objection.

7 With that being said, Mr. Foreman, if at any
8 time during the course of your trial, you need to
9 communicate with me, if you'd write a note to me, sign
10 it, give it to the bailiff. She'll give it to me.

11 This is not an endurance contest. If anyone
12 needs a break during the course of this trial, raise
13 your hand or somehow get your foreman and he will --
14 will let me know. If I ask you to come back before
15 you're ready to come back, let me know.

16 If you need anything, let the bailiff know. And
17 she, within her power, will get it to you. If not,
18 she'll let me know. Okay, sir.

19 With that being said, I'm going to send you back
20 to your jury room to make sure that I haven't said
21 something that I shouldn't have, or neglected to tell
22 you something that I should have. We'll come back with
23 opening statements in just a moment.

24 (WHEREUPON, the jury leaves the courtroom at 3:22
25 p.m.)

1 THE COURT: Any additions or exceptions from the
2 State?

3 MS. BURCHSTEAD: No, sir.

4 THE COURT: From the defense?

5 MR. SELLERS: No, sir, Your Honor.

6 THE COURT: Okay. Do you think you're going to
7 make an opening statement?

8 MR. SELLERS: Yes, sir.

9 THE COURT: Or either one of you?

10 MR. SELLERS: Yeah. It's going to be brief. But
11 yes, sir, we will.

12 THE COURT: Okay. All right. Very good. Do
13 y'all want a quick break before you do?

14 MS. BURCHSTEAD: Mr. Ross is going to handle it
15 for us, Judge. He says he's fine. I do have just one
16 clarification or question. Our first witness is
17 Investigator Sawyer. We had the matter of the
18 defendant's statement. I didn't know if we wanted to
19 start his testimony and then break, or handle it before
20 the jury comes back in.

21 THE COURT: Tell me, again -- I know there are
22 certain parts of it I thought that there may be a
23 problem with, and there may not be. Just go over with
24 me --

25 MR. ROSS: The heart of this case, Your Honor, and

1 one of the main issues that the State is going to have
2 --

3 THE COURT: I don't want to hear argument. I'm
4 not trying to be --

5 MR. ROSS: It's actually --

6 THE COURT: I just want to hear specifically about
7 the Jackson/Denno testimony, what it was he -- that was
8 said to him by the defendant.

9 MR. ROSS: He was saying "Sawyer, Sawyer, Sawyer,
10 I need to talk to you". And the State would offer that
11 to corroborate that Detective Sawyer does know him on
12 sight, and can recognize him as opposed to just seeing
13 an individual that fits the defendant's description.
14 That it is Kelvin Jones that he saw.

15 THE COURT: That part of it I have no problem
16 with. Okay. It was further down the line, that I --
17 that it sounded -- I think closer to him having a
18 criminal record, which concerned me.

19 MR. ROSS: I think -- the State wouldn't have any
20 objection just limiting it to "Sawyer, Sawyer, Sawyer,
21 I need to talk to you".

22 THE COURT: Okay.

23 MR. ROSS: I think Detective Sawyer --

24 THE COURT: I know you would object to it.

25 MR. SELLERS: We do, Your Honor. I mean he didn't

1 say, "sir, hey yo", he actually called him by name.
2 And we feel as if the State can establish that identity
3 without having to use that statement, and State
4 wouldn't be hurt by precluding that. But we do feel as
5 if the jury -- and it's highly prejudicial because of
6 the simple fact that it does establish that
7 relationship. And under testimony, under oath, even
8 Officer Sawyer testified that he had arrested my client
9 four previous times. That's how he knew him.

10 THE COURT: Right. I -- I understand that. I
11 note your objection. Let me just say this: I'm from
12 Anderson. I grew up knowing a lot of police officers
13 who still call me by my first name. They never
14 arrested me ever, at least not in recent years. All
15 right. Are you ready to proceed?

16 MR. ROSS: Judge, if I may just have a brief
17 second --

18 THE COURT: Okay.

19 (Pause.)

20 MR. SELLERS: Your Honor, we just have the issue
21 of the employment records. And actually, it's a bit
22 ironic, but the Aiken -- the Aiken Public Safety
23 Department called us while we were here, to respond to
24 our FOIA request, and said that we would actually be in
25 conversation with the Solicitor's Office, who is no

1 longer prosecuting this case.

2 But we do feel as if -- in order to have a
3 comprehensive cross, that that would -- you would need
4 to go through those records prior to, so we would know
5 if there was anything damning or damaging in those.

6 THE COURT: Is this gentleman's -- have these
7 gentlemen's employment records been brought up here to
8 the courthouse?

9 MS. BURCHSTEAD: No, Your Honor. What I
10 understand is -- I spoke with probably the same person
11 Mr. Sellers did, they are supposed to be e-mailing
12 them. There was like 4,000 pages of documents --

13 THE COURT: I'll tell you what, it's 3:30 -- let's
14 just do this -- I didn't mean to cut you off -- let's
15 do his direct. We'll break, let you have time to look
16 at it and come back and resume in the morning. Anybody
17 have a problem with that?

18 MS. BURCHSTEAD: Just -- we have three other
19 witnesses we were hoping to get to if we are not going
20 to get to them today, I'd like just a second to excuse
21 them --

22 THE COURT: I don't have a problem getting to
23 them, I don't know that we -- how long is this witness
24 going to be, very short?

25 MS. BURCHSTEAD: No, sir. And we would -- I would

1 assume --

2 THE COURT: And I know I told you I would get them
3 in --

4 MS. BURCHSTEAD: I understand. I'm assuming Mr.
5 Sellers or Ms. Benevento would like to cross Mr. Sawyer
6 before we move to our next witnesses. And we're -- as
7 I stated, we're in the process of getting this stuff.
8 I can tell you what's been verbally told to me, but I
9 have not actually seen the documents.

10 THE COURT: Which is?

11 MS. BURCHSTEAD: Disciplinary --

12 THE COURT: Do you want to say it -- or tell me at
13 the bench in a more in camera basis?

14 MS. BURCHSTEAD: Yes, sir. We could do that.

15 THE COURT: Let me just say this. If nothing
16 else, I would be willing to let him recall this witness
17 if necessary. Go ahead.

18 (WHEREUPON, a bench conference was held)

19 THE COURT: State ready?

20 MS. BURCHSTEAD: Yes, sir.

21 THE COURT: Defense ready?

22 MR. SELLERS: We are. We would like to put on the
23 record, just again out of an abundance of caution --

24 THE COURT: Sure.

25 MR. SELLERS: -- that the State has stated that

1 there is nothing in their record, and we stipulated to
2 that beforehand.

3 THE COURT: And that's with regard to which
4 particular officer, please?

5 MR. SELLERS: In regard to Captain Sawyer --

6 MS. BURCHSTEAD: Captain Sawyer --

7 MR. SELLERS: -- or personnel file -- I keep
8 saying employment record, but personnel file.

9 THE COURT: Right. And what I said to counsel at
10 the bench was that if, in fact, there is something in
11 the record, they still have to give it to me to look
12 at, then I would allow the defense to recall those
13 witnesses for the purposes of examining or cross
14 examining about those matters. Okay.

15 MR. SELLERS: Thank you, Your Honor.

16 MS. BURCHSTEAD: Yes, sir. Thank you.

17 MR. SELLERS: And we are ready -- we are ready to
18 go, Your Honor.

19 THE COURT: Okay. Very good.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 3:30 p.m.)

22 THE COURT: Is the State ready?

23 MR. ROSS: Yes, Your Honor.

24 THE COURT: Okay, sir.

25 MR. ROSS: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. ROSS: April 21, 2011, that's a day that I bet
3 none of y'all can remember. If you're like me, you
4 probably woke up, went to work, came home and watched
5 some TV before you went to bed.

6 But April 21, 2011 is a day that this man over
7 here, Kelvin Jones, will never forget. That's the day
8 that a SWAT team came knocking on the door. That's a
9 day that time ran out for him. That's the day that he
10 realized he couldn't escape from that kilo of cocaine
11 that he was carrying.

12 Ladies and gentlemen, buckle up, because this
13 case is going to expose you to a street level drug
14 investigation. You are going to hear from real cops.
15 You're going to see that kilo of cocaine Kelvin Jones
16 was carrying, and you're going to see the \$5,000 of
17 drug money that he had stuffed in his pants when he was
18 arrested.

19 Now, the facts you're going to hear, ladies and
20 gentlemen, are very simple and straight forward. In
21 April of 2011, narcotics officers with the Aiken
22 Department of Public Safety opened an investigation to
23 a suspected drug house. They followed up on this
24 investigation and they were able to obtain a search
25 warrant for this house.

1 And on April 21, 2011, with that search warrant
2 in hand, Detective Sawyer with the Aiken Police parked
3 an unmarked cop car right across the street. And he
4 sat there and he waited for the right time to search
5 that house.

6 Sitting with him in that unmarked vehicle were
7 two prosecutors at Aiken County, Solicitor Thurmond,
8 and one of his assistant solicitors. They were there
9 on a ride-along, which simply means they go out and see
10 what the cops do so that when it's their turn to
11 prosecute a case, they can have a better understanding
12 of what cops actually do. They're not just reading
13 reports, they are out in the field seeing firsthand
14 what the police are doing.

15 They were sitting in that vehicle. And about
16 7:30 in the evening, a guy named Ricky Lloyd walked by
17 the vehicle, went up to the house, knocked. Nobody
18 came to the door and he walked away.

19 About an hour later, at 9:45, Detective Sawyer
20 saw Kelvin Jones walk right past that unmarked vehicle.
21 And when Kelvin Jones was walking past that vehicle,
22 Detective Sawyer saw he had a sling bag strapped over
23 both shoulders, and the detective could tell that there
24 was something heavy in that sling bag because the bag
25 was weighted down on his backside. Kelvin Jones walked

1 right by that unmarked vehicle, went up to the front
2 door, and he went inside.

3 And at that point, Detective Sawyer called his
4 SWAT team that was standing by. Said, boys, now is the
5 time to go search that house. And it took several
6 minutes for the SWAT team to get there. And during
7 that intervening time period, those few minutes, Ricky
8 Lloyd came back to the house and went inside. Some
9 other individuals came with him.

10 The SWAT team got there, got in place, knocked
11 on the door, "Police, search warrant". And not
12 surprisingly, nobody came to the front door to answer
13 for the police, so they busted in.

14 And they found Ricky Lloyd with a small amount
15 of cocaine in his hands trying to flush it down the
16 commode. They found Kelvin Jones in the kitchen. And
17 that's when they found a Bilo bag full of drug money,
18 over \$5,000 stuffed in his pants, mainly in small
19 denominations, \$20 bills. And not far from him, they
20 found that sling bag that he was carrying. It was
21 hidden underneath the couch. And in that sling bag,
22 they found over a kilo of cocaine.

23 A kilo, ladies and gentlemen, is a kilogram.
24 That's about 2.2 pounds of cocaine in the bag Kelvin
25 Jones was carrying.

1 Now, based on that, he faces two charges today,
2 trafficking cocaine and possession with intent to
3 distribute cocaine within proximity of a school. There
4 was an elementary school just down the street from that
5 drug house.

6 And you're probably asking yourself, trafficking
7 cocaine; what does that mean? Trafficking cocaine?
8 Well, at the end of the trial, Judge McIntosh is going
9 to charge you on the law. But let me give you a brief
10 preview before we get started.

11 What distinguishes trafficking -- trafficking is
12 simply a legal term. What distinguishes trafficking
13 cocaine from possession or distribution or any other
14 type of drug offense, is the amount of drugs that
15 you're possessing or distributing.

16 So under the law, if you're in possession of a
17 gram of cocaine, that's considered possession of
18 cocaine. But the magic number for trafficking is 10
19 grams. If you have over 10 grams of cocaine in your
20 possession, that act becomes classified as trafficking.

21 Also, if you sell a gram of cocaine, that's
22 considered distribution. But if you sell ten grams,
23 that magic number, that's considered trafficking.

24 Also, under the law, if you aide, abet, assist,
25 or conspire with someone else to sell over 10 grams of

1 cocaine, you hit that magic number. That becomes
2 trafficking as well.

3 So the facts in this case are actually going to
4 show two ways that the State will prove trafficking.
5 We only have to prove one, but the facts will show two
6 ways to get to trafficking in this case.

7 Number one, that he was in possession of that
8 cocaine when he was carrying it in the house. He was
9 in possession of that cocaine when he put it underneath
10 the couch.

11 The second way is the State will show he was
12 aiding, abetting, assisting, and conspiring with those
13 other folks in the house, the gentleman that was
14 flushing that small bag of cocaine down the commode.
15 And, ladies and gentlemen, all you're going to have to
16 do is follow the money.

17 If you want to know who's in control of any
18 given group, follow the money. If you want to know who
19 controls a drug trade, follow the money. Because the
20 money rises to the top. And that's what happened in
21 this case. Follow the money and it will lead you right
22 to Kelvin Jones.

23 Now, this crime occurred in Aiken County. And
24 I'm not lost. I know I'm in Dorchester. The reason
25 we're in Dorchester County, ladies and gentlemen, is

1 because like I said earlier, the Solicitor for Aiken
2 County was actually on that ride-along, so then you got
3 changed here.

4 This will be a short trial, but it's an
5 important trial. These are very serious charges.
6 There's a lot of cocaine here.

7 But after you hear all the evidence in this
8 case, ladies and gentlemen, you are going to be firmly
9 convinced that Kelvin Jones is guilty, firmly
10 convinced. Remember those words, Judge McIntosh
11 already explained it just a second ago, firmly
12 convinced. That is a standard of proof that the State
13 has to meet. That's what proof beyond a reasonable
14 doubt means. Are you firmly convinced of the
15 defendant's guilt?

16 Well, after you hear all the evidence in this
17 case, ladies and gentlemen, you will be firmly
18 convinced. And that's why at the end of this trial, we
19 will ask that you find him guilty as charged.

20 MR. SELLERS: Thank you, Your Honor. May it
21 please the Court.

22 THE COURT: Yes, sir.

23 MR. SELLERS: Good afternoon. I guess this has
24 been a long day for most of you all. It started as
25 good morning, but good afternoon.

1 This young lady sitting at the table is Allie
2 Benevento. And she's sitting next to my client, Kelvin
3 Jones. My name is Bakari Sellers. And you'll be
4 hearing a lot from both of us. I'm from the big city
5 of Denmark, South Carolina, not too far from here,
6 where we have three stop lights and a blinking light.
7 So even being over here in St. George is pretty big.

8 But I remember what my parents always told me
9 growing up, that the two most important words in the
10 English language are the words "thank you". So I just
11 want to start by simply saying thank you to all of you
12 all for your service. It's of great importance. It's
13 the cornerstone of our democracy.

14 And as we're going through, I just want to talk
15 about three core principles. And I'm not going to bore
16 you and I'm not going to take a lot your time, but I
17 want you to remember these three core principles as we
18 move throughout the trial.

19 The first is this presumption of innocence, and
20 Judge McIntosh talked about it briefly. But this
21 presumption of innocence, just imagine yourself sitting
22 at home here in Dorchester County, and you see on the
23 news that there's been an armed robbery committed.
24 Then as the news kind of flashes a little bit forward,
25 you see an image of an individual whose been arrested.

1 And then you sit back and look at your husband
2 or your wife, or your son or daughter, and you say I'm
3 glad that person who committed that armed robbery has
4 been arrested. And what you've just done there is you
5 presumed that that person was guilty. And that's not
6 what your oath is about.

7 That is not why you are here. That is not why
8 you are sitting in those chairs. You're sitting in
9 those chairs -- and as you sit in those chairs, it's
10 not something that we just say, it's not something that
11 we take lightly, but Kelvin Jones is presumed innocent.
12 That's the first core principle.

13 The second is this burden of proof. And we've
14 talked about it, and we've kind of batted it around.
15 But even more importantly, you have to understand that
16 we don't have to prove anything to you at all. We
17 don't carry that burden of proof. In fact, Mr. Ross
18 and Ms. Burchstead, it's their burden to carry. The
19 State must prove their burden.

20 Lastly, I need you to know that -- and I need
21 you to understand that Kelvin has a fundamental right
22 to remain silent. He has it today and he has it
23 throughout the pendency of this trial, so keep that in
24 mind.

25 I want you to know that Kelvin, we don't have to

1 prove our innocence. And think about this, take it
2 back to church, or take it back to old English, but
3 understand that Kelvin, as he sits before you today,
4 he's cloaked in a robe. He's cloaked in a veil of
5 innocence, and we must remember that as we go through
6 this trial.

7 And the last thing that we have to get to is
8 this concept of beyond a reasonable doubt. You know,
9 our system, it emerged from an old English system. In
10 our old English system, you had guilty, you had not
11 guilty, and then you had a little third check box that
12 said not proven. Well, what we've done is merged those
13 last two of not proven and not guilty. So, if at any
14 point you realize, as you will throughout this case,
15 that Ms. Burchstead and Mr. Ross have not proven their
16 case -- especially proven their case beyond a
17 reasonable doubt, you have go back in that room and you
18 have to find Kelvin not guilty.

19 Beyond a reasonable doubt is not just more
20 likely than not, it's not that feeling that, oh, he may
21 have done it. Not guilty is something we hold true
22 because it's the highest legal standard we have. So I
23 know that you all are taking it seriously because this
24 man's life is on the line.

25 Remember these three core principles as you go

M. SAWYER -- DIRECT BY MR. ROSS

1 through. It's the presumption of innocence. It's not
2 something that we just say. It's the burden of proof
3 and where that burden lies. That burden doesn't lie
4 with Kelvin and I, and Ms. Benevento, that burden lies
5 at this table.

6 And the last thing I want you to remember is
7 this theory of reasonable doubt. It's not just a
8 little feeling that you may have, it's the highest
9 legal standard in the land. And at the end of this
10 trial, this week, we want to get you out of here sooner
11 rather than later, you'll find that they haven't proven
12 their case. You'll find that they haven't proven
13 Kelvin to be guilty beyond a reasonable doubt. And at
14 the end of the day, you have to go back to the back and
15 find Kelvin not guilty.

16 And now because I'm a country boy from Denmark,
17 I have to end where I began, which is by those two very
18 very simple words, just thank you. Thank you so much
19 for your service.

20 THE COURT: Would you call your first witness
21 please.

22 MR. ROSS: Thank you, Your Honor. The State calls
23 Captain Marty Sawyer to the stand.

24 MARTIN EARL SAWYER, JR.,
25 after having been duly sworn, testified as follows:

M. SAWYER -- DIRECT BY MR. ROSS

DIRECT EXAMINATION BY MR. ROSS:

Q. Captain Sawyer, how are you doing this afternoon?

A. Doing good.

Q. You were the lead investigator on this case; is that correct?

A. That's correct.

Q. And you arrested Mr. Jones on April 21, 2011; is that correct?

A. That's correct.

Q. Before we get to the facts of this case, can you tell the jury a little bit about your background in law enforcement, please?

A. I started with Aiken Department of Public Safety in 1989 like all police officers do, working the road, just answering calls. I was then promoted to special operations, which included blood hounds, fugitive apprehension and anything else the chief needed done.

And then I was promoted to narcotics, worked narcotics for 12 years. And in September of 2012, I was promoted to captain over investigations -- adult investigations, which includes investigations of narcotics, victim services and evidence.

Q. So on the day in question, April 21, 2011,

M. SAWYER -- DIRECT BY MR. ROSS

1 what was your duty position?

2 A. I was a narcotics investigator.

3 Q. And what type of crimes do you investigate as
4 a narcotics investigator?

5 A. Obviously narcotics, vice, prostitution,
6 underage alcohol. We would even do underage minors
7 buying cigarettes and tobacco if we got complaints on
8 it.

9 Q. And you've since been promoted since Mr. Jones
10 was arrested?

11 A. Yes. September of 2012, I was promoted to
12 captain.

13 Q. Before we get to what happened on April 21,
14 2011, let me ask you this: Did you know Kelvin Jones
15 prior to that day?

16 A. Yes, I did.

17 Q. And had you spoken with him face-to-face prior
18 to that day?

19 A. Yes, on several occasions.

20 Q. And how long were those interactions?

21 A. Sometimes three or four minutes, and sometimes
22 maybe up to 30, 45 minutes.

23 Q. Okay. About how many times had you had these
24 face-to-face interactions with him roughly?

25 A. Four or five times roughly.

M. SAWYER -- DIRECT BY MR. ROSS

1 Q. Okay. Is it fair to say that you would
2 recognize him on sight?

3 A. Yes, I would.

4 Q. And what did you know him by?

5 A. Well, obviously, Kelvin Jones; and then
6 nickname, KJ.

7 Q. Now, you were the lead investigator in this
8 case; is that correct?

9 A. Well, I was one of two; myself and Officer
10 Medlin.

11 Q. And this is Officer Medlin right here?

12 A. Yes, sir.

13 Q. Okay. And after y'all initiated this
14 investigation, y'all were ultimately able to obtain a
15 search warrant; is that correct?

16 A. That's correct.

17 Q. And can you tell me what happened after you
18 had that search warrant in hand on April 21, 2011?

19 A. On most of our search warrants, we use our SRT
20 team, which is our SWAT team to make the entry just
21 because of the danger that goes along with the drug
22 gangs.

23 So our SWAT team had been notified earlier in
24 the day of a briefing time, where to meet. We met at
25 our headquarters. They were briefed on where we were

M. SAWYER -- DIRECT BY MR. ROSS

1 going, what we were doing; what we would be looking
2 for. And at that point in time, I left the briefing
3 and went to start running surveillance on the residence
4 that we were going to do the search warrant on.

5 Q. Okay. What factors do you consider as far as
6 timing of a search warrant?

7 A. Well, the primary factor is when somebody is
8 home, when we know somebody is there. But, you know,
9 each situation is different. If we run surveillance,
10 we may know Thursday night is their big night, or
11 Sunday afternoon is their big day. But like I said,
12 our main focus is having somebody there.

13 Q. And April 21, 2011, what day was that on?

14 A. A Thursday.

15 Q. Okay. And how is that relevant to a drug
16 case?

17 A. Well, in Aiken, I don't know about other
18 places, Thursday night is a big party night for
19 colleges and the bars. So, you know, that's a night we
20 chose to start running surveillance on this night --
21 myself and Officer Medlin chose to serve the search
22 warrant on this house.

23 Q. Are you familiar with the term "re-up"?

24 A. Yes.

25 Q. What does re-up mean?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. Well re-up means, if I'm the drug dealer
2 dealing on the street, and I run out of drugs, I would
3 re-up. I'd go back to my supplier to get more drugs.

4 Q. How would a Thursday night play into the
5 concept over re-upping?

6 A. Well, if they're running low, and they're
7 going to clubs and all to party, then obviously people
8 are going to be buying drugs at the bar and stuff like
9 that. So Thursday night is a good night -- Thursday
10 afternoon or night is a good night to re-up, to have
11 your supply at bars to sale, or wherever they may be
12 going to party.

13 Q. So both users and sellers tend to get their
14 product right before a weekend; is that a safe
15 statement?

16 A. That would be a safe statement also, yes.

17 Q. Okay. You testified to earlier that you
18 started surveillance on this house; what time did you
19 begin surveillance?

20 A. Approximately 7:30 p.m.

21 Q. Okay. And what street address were you
22 surveilling?

23 A. [REDACTED] -- I believe it is -- Morgan Street.

24 Q. And what county is that in?

25 A. It's in the county and city of Aiken.

M. SAWYER -- DIRECT BY MR. ROSS

1 Q. Okay. Now, where were you in relation to [REDACTED]
2 Morgan Street Northwest when you started this
3 surveillance?

4 A. [REDACTED] Morgan Street is on the corner of Morgan
5 Street and Hampton Avenue. I was catty-corner across
6 the street at an old service station, which is Dunbar
7 Service Station. It used to have gas tanks and stuff.
8 It don't have any of that anymore. It's just a small
9 hometown service station.

10 Q. Okay. And who was with you?

11 A. Solicitor Thurmond and one of his assistants,
12 Beth Ann Young.

13 Q. And why were they there?

14 A. What we like to do in Aiken, is we like to
15 take them with us a lot of times so they actually get
16 to see what we are doing. They actually get to see
17 what we go through. So when they're sitting there
18 Monday morning quarterbacking about we should have done
19 this, should have done this, we like them to see what
20 we're going through. We also like them to see the
21 layout of the house, so when they are -- when we are in
22 court, they are not just looking at pictures, they've
23 seen actually what we're talking about. They've lived
24 it. They've been there.

25 Q. Okay. And were y'all in a car?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. We were in an undercover car. We don't have
2 it anymore, so I'll tell you what it is. It's a
3 Cadillac Escalade.

4 Q. Okay. And were the windows tinted or not
5 tinted?

6 A. They had on the sides -- side windows, it had
7 the factory tint, which SUVs have more of a tint than
8 cars do.

9 Q. Okay. Tell me what you saw that night?

10 A. When we first got there, we didn't see any
11 movement or anything. After being there for just a few
12 minutes, we seen a black male walk down Morgan Street
13 and -- to cross over Hampton Avenue, a guy that I know
14 as Ricky Lloyd. He walks to [REDACTED] Morgan Street, goes to
15 the front door, knocks on the door. Nobody answers.
16 He turns around and walks back where he came from.

17 What's kind of strange, he seen us sitting in
18 the parking lot. He came probably within 10 feet of
19 our car, looking to see what he could see. You know, I
20 don't know what he seen. I can't speak for him, but he
21 walked to the car to look in the car.

22 Q. And what time did you see Ricky Lloyd again?

23 A. This was probably 7:45 or so, 7:50. We'd been
24 there just a few minutes.

25 Q. Okay. Did y'all have any binoculars with you?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. We had one set.-- I had a set of binoculars
2 with me, yes.

3 Q. What about the others in the car?

4 A. They did not have binoculars.

5 Q. Okay. What happened next?

6 A. Well, nothing for the next hour, hour and a
7 half, maybe you know. There was no movement in the
8 house. I saw a black male walking that I recognized
9 immediately as -- what I'm calling -- KJ, Kelvin Jones,
10 the defendant, walking toward the house at [REDACTED] Morgan
11 Street.

12 Q. Okay. Was he carrying anything?

13 A. He had a blue backpack on. And it wasn't like
14 a school backpack, that has the tight straps and the
15 wide straps. It was a smaller backpack and it had the
16 rope straps that are real long. You can make them
17 short or long. He had them real long, hanging on his
18 back.

19 Q. Are you familiar with the term "sling bag"?

20 A. Yes.

21 Q. Did it appear to be a sling bag?

22 A. Yes.

23 Q. Was there anything inside that bag?

24 A. Well, something was inside of it because it
25 was weighted down. I mean, it was hanging down below

M. SAWYER -- DIRECT BY MR. ROSS

1 his behind. But I couldn't see what was inside the bag
2 at that time.

3 Q. If you could please, step down, and indicate
4 to the jury exactly how low that bag was hanging?

5 A. Right down in this area here (indicating).

6 Q. Okay. So the bag was like right in here
7 (indicating)?

8 A. Yes.

9 Q. Okay. And I'm not going to touch you there.

10 A. Okay. Thank you.

11 Q. So he walked by y'all's patrol vehicle; is
12 that correct?

13 A. Within probably 20 yards, 25 yards.

14 Q. Okay. And did you have any trouble
15 identifying who that was?

16 A. I did not. I immediately said to the
17 Solicitor, there's KJ.

18 Q. Okay. And he walked up to the door?

19 A. Yes, sir. He walked up to the door. As he
20 walked up to the door, the Solicitor either took the
21 binoculars or I handed them to him, to let him look
22 through the binoculars at that time.

23 Q. Okay. And tell me about the lighting in that
24 area?

25 A. There's a porch light on the house. If you're

M. SAWYER -- DIRECT BY MR. ROSS

1 facing the house, on the left hand side, is a street
2 light. It's up on a telephone pole. And across the
3 street from the house is a street lamp, which is
4 probably 14 -- 12, 14 feet high with a -- the bulb on
5 top of it.

6 Q. Okay. So you have two street lights, and the
7 light on the front porch?

8 A. Yes, that's correct.

9 Q. Would you say that that area was well lit?

10 A. Yes.

11 Q. Now, the defendant walked up to the front
12 door, did he have a key to get in?

13 A. Like I said, Solicitor Thurmond had the
14 binoculars at that time. It appeared from the best
15 that I could tell, without binoculars, that yes, he
16 used a key to get in. He was doing something with the
17 door.

18 Q. Okay. Did he have any trouble getting in?

19 A. No.

20 Q. Okay. What happened next?

21 A. I -- immediately when I seen KJ, and he went
22 in the house, I called Officer Medlin and said, "y'all
23 get ready". You know, because if they sit around, they
24 get tired. They might take a vest off or something. I
25 said, "y'all get ready to load up and come on. I'll

M. SAWYER -- DIRECT BY MR. ROSS

1 let you know when to come".

2 Just a minute or two later, Ricky Lloyd walked
3 back by, went to the front door, knocked on the door,
4 went in. He was probably in the house a minute, a
5 minute and a half. And there's some more people --
6 some females and younger males pulled up in a car.
7 They walked down the sidewalk and went in the front
8 door.

9 Q. Okay. And then what happened?

10 A. When Ricky Lloyd went in the house, I had
11 called Chris back and said, "y'all come on". They were
12 stationed at our headquarters station, which is half a
13 mile from this location. So they were in route.

14 So in the meantime, from Ricky going in and me
15 making the call, these other members -- I don't know if
16 there were family members or what, they came home and
17 was in the house real brief, maybe a minute, minute and
18 a half, before the SWAT team showed up.

19 Q. Okay. So just to be clear, when you saw Mr.
20 Jones walk in the door, you called the SWAT team, and
21 then you made a second call when you saw Ricky Lloyd go
22 in the house?

23 A. Well, yes. I called the SWAT team and said,
24 "start getting ready. I'll call you back when I want
25 you to come". And when Ricky Lloyd got there, I called

M. SAWYER -- DIRECT BY MR. ROSS

1 them and said, "y'all come on". And then the rest of
2 the people showed up before they got there.

3 Q. Okay. Did the SWAT team arrive?

4 A. They did.

5 Q. Okay. And what happened when they got there?

6 A. When they were pulling up, as they pulled up
7 and stepped out of their SWAT vehicle, I drove across
8 the street, parked on the side of the road, jumped out,
9 and provided outside security in case somebody tried to
10 come out one of the windows or back door, or something
11 like that.

12 Q. Okay. And when did you go in the house?

13 A. The SWAT team, when they go into a house, they
14 do a quick -- they clear the house real quick. If --
15 if they run into somebody, that's their guy. They
16 secure them and the rest of the team keeps on going.
17 They do a real quick clearing of the house.

18 Then they go back, and once they give the clear,
19 and do a second search slow. They check the closets
20 really good, check under the beds, the attic, wherever.
21 And then they give a second all clear. You know, all
22 narcotics guys or whoever else can come in. That's
23 when I went in the house.

24 Q. Now, what are the SWAT team members looking
25 for, are they looking for drugs or are they looking for

M. SAWYER -- DIRECT BY MR. ROSS

1 people?

2 A. They were looking to secure people and to
3 secure any weapons that may be in plain sight or in an
4 area where somebody can grab one of them.

5 Q. So is it a fair statement to say that the SWAT
6 team is there to provide security for you and narcotics
7 officers?

8 A. Their primary job is to secure the residence
9 and secure the people inside. And then once they --
10 once we start searching, they secure the outside so we
11 don't have a bunch of people coming in on us, trying to
12 come in the house.

13 Q. So approximately how long did it take for you
14 to hear that "all clear" signal for -- meaning it was
15 okay for you to go in the house?

16 A. Probably the second "all clear" -- five
17 minutes, six minutes maybe.

18 Q. Okay. What about the first all clear, how
19 long did that -- it take for that to come over?

20 A. That's normally done within a minute --

21 Q. Okay.

22 A. -- this was a pretty big house, so a minute, a
23 minute and a half maybe. Some houses they can do in 30
24 seconds.

25 Q. And what happened when you went inside the

M. SAWYER -- DIRECT BY MR. ROSS

1 house?

2 A. Well, I went in the front door and immediately
3 to the right was a -- like a dining room, kitchen area.
4 And I saw KJ and he saw me. He said, "Sawyer, Sawyer,
5 I need to talk to you".

6 Q. Okay. And what happened next?

7 A. Well, we went on about our business of
8 searching the house. Officer Medlin was the evidence
9 custodian, so he was the primary searcher. I went over
10 to Kelvin, ended up finding a bag of money stuffed in
11 his waistband, inside of his pants.

12 Q. A bag of money in whose pants?

13 A. In Kelvin Jones' pants.

14 Q. The defendant's pants?

15 A. Yes.

16 Q. Okay. What type of bag was this money
17 contained in?

18 A. It was in a -- like a little Bilo or Wal-Mart,
19 the plastic bags that you carry around.

20 Q. Plastic and not paper, right?

21 A. Yes.

22 Q. And what denominations were these bills in?

23 A. Most of them were 20s. I think there was --
24 some 50s and some hundreds, but most \$20 bills.

25 Q. Okay. And what did you do with that money?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. Well, we -- again, he was the evidence
2 custodian. He took possession of it, logged it in. We
3 counted it. We go to headquarters, count it again.
4 Then it's put into our evidence locker, where our
5 evidence custodian can take possession of it.

6 And then what we do is, we put all seized drug
7 money in an interest bearing account. We put it in the
8 bank, so we don't have several thousand dollars of cash
9 laying around our evidence room.

10 So our evidence custodian turns it into the
11 bank. we get a receipt for the paper work. And then I
12 file it now in my office, me and another captain's
13 office.

14 Q. So you found Mr. Jones in the kitchen, were
15 there any other individuals in that house?

16 A. Yes, they was seven or eight total.

17 Q. Okay. Was Ricky Lloyd in that house?

18 A. Yes. He was in the bathroom when I made it in
19 the house.

20 Q. Okay. What about a fellow by the name of
21 Justin Butler?

22 A. Yes.

23 Q. Where was he?

24 A. He was off to the left. There was a little
25 like a computer room or something to the left when you

M. SAWYER -- DIRECT BY MR. ROSS

1 go in the front door.

2 Q. Is he of age, Mr. Butler?

3 A. No.

4 Q. He was a juvenile?

5 A. Yes.

6 Q. Okay. Was anyone else in the kitchen along
7 side Mr. Jones?

8 A. There was several people in the kitchen dining
9 room area. I know there was a younger black female
10 with a baby, maybe Ms. Grimes -- Tiffany.

11 Q. Okay.

12 A. And there was some people in the same area.

13 Q. What was the defendant's demeanor like when
14 you arrived?

15 A. Nervous, excited.

16 Q. Okay. And that's when he said, "Sawyer,
17 Sawyer, Sawyer, I need to talk to you"?

18 A. Yes.

19 Q. Okay. Was Ricky Lloyd charged with any
20 crimes?

21 A. Yes.

22 Q. Okay. What was he charged with?

23 A. I don't know if -- I think it was PWID
24 cocaine.

25 Q. Okay. And tell me about the sling bag; was it

M. SAWYER -- DIRECT BY MR. ROSS

1 found?

2 A. It was found a few minutes after I went in the
3 house, underneath -- when you walk in the front door to
4 the left, it was like a little living room area. And
5 there was a couch. And it was found under the couch.

6 Q. Who took possession of all the drugs that were
7 found in that house?

8 A. Officer Medlin.

9 Q. Okay. And did he turn it into evidence as
10 well?

11 A. Yes.

12 Q. Okay. I'd like to ask you about the drugs
13 that Officer Medlin found; what were they packaged in
14 as far as packaged for safekeeping and testing?

15 A. Once we turned them into evidence -- or once
16 we took possession of them?

17 Q. Are you familiar with the term "BEST kit"?

18 A. Yes. Yes.

19 Q. What is a BEST kit?

20 A. A BEST kit is -- it's a, you know, plastic
21 envelope about like this (indicating) that you put your
22 drugs in with certain pieces of paperwork that you fill
23 out for either SLED or Aiken County Drug Lab. We used
24 Aiken County Drug Lab. So you put your drugs in there
25 and certain paper work. And once you seal it, it's --

M. SAWYER -- DIRECT BY MR. ROSS

1 it's sealed, it's yours until it gets to the lab. They
2 cut it open and they document that.

3 Q. Now, the bag in question that Officer Medlin
4 used in this case, did you subsequently check it out
5 for fingerprint processing?

6 A. Yes.

7 Q. And why did y'all decide to do that?

8 A. Well, we're getting ready, you know, for
9 trial, we wanted to try everything we could try. So
10 Clay Adams is an expert in fingerprinting -- retrieving
11 fingerprints and looking at them, so I took it to him.
12 He signed for it. I left it with him, so he could get
13 the baggies and fingerprint them.

14 Q. And when you took it, you took it out of
15 evidence?

16 A. I took it from evidence, took it to him in his
17 office. And he signed for it, and took it from me.

18 Q. And you documented that on the evidence
19 paperwork?

20 A. Yes.

21 Q. And, again, why -- why was the decision made
22 to check for fingerprints on those plastic bags?

23 A. Well, I mean --

24 Q. Is it -- has it been -- let me -- let me ask
25 it a different way. Has it been your experience that

M. SAWYER -- DIRECT BY MR. ROSS

1 defense attorneys make an issue out of that sometimes?

2 A. Yes. I worked narcotics for 12 years. Like I
3 said, I think we found fingerprints on maybe one bag,
4 maybe two, but it always comes up at trial, why didn't
5 you do it. You could have tried that. So that is one
6 reason we do it to be honest with you.

7 Q. Did they find any fingerprints off those --

8 A. They did not.

9 Q. -- bags. Okay. And did you receive the BEST
10 kit back from Lt. Adams?

11 A. I did.

12 Q. And he's with the sheriff's department?

13 A. Yes, sir.

14 Q. And when you checked it out originally from
15 evidence, and then you gave it to Lt. Adams, was it in
16 the same condition when you gave to it Lt. Adams as
17 when you originally checked it out of evidence?

18 A. Yes.

19 Q. And when did you check it out approximately?

20 A. I think it was June of 2013.

21 Q. Okay. And when you received it back from Lt.
22 Adams, did you turn it back into evidence?

23 A. I did.

24 Q. Was it in the same condition when you turned
25 it back into evidence as when you got it back from Lt.

M. SAWYER -- DIRECT BY MR. ROSS

1 Adams?

2 A. Well, I mean, he had cut it open, and then
3 sealed it back, and put his initials on there. And
4 then --

5 Q. When you got it back from him, you turned it
6 back into evidence; right?

7 A. I turned it back into evidence.

8 Q. When you put -- placed it into evidence, was
9 it in the same condition as when you received it from
10 Lt. Adams?

11 A. Yes. Yes. I'm sorry. I misunderstood your
12 question, yes.

13 Q. And was it in your care, custody and control
14 from the point you received it from Lt. Adams, to the
15 point you put it into evidence?

16 A. Yes, it was.

17 Q. And just to make sure we check the box -- was
18 it within your care, custody, and control from the
19 point -- in June of 2013, when you took it out of
20 evidence, to give it to Lt. Adams, your care, custody
21 and control the whole time?

22 A. Yes.

23 Q. And the same conditions, from the point you
24 you took it out of evidence to giving it to Lt. Adams?

25 A. Yes.

M. SAWYER -- DIRECT BY MR. ROSS

1 Q. Detective Sawyer, I'm going to show you what's
2 been marked as State's 1 through 3, and we'll get these
3 in order. First, I'm going to ask you to take a
4 chance, to look at State's 1 and 2; do you recognize
5 these aerial photographs?

6 A. Yes.

7 Q. Do those accurately reflect [REDACTED] Morgan Street
8 Northwest in the County of Aiken?

9 A. Yes, they do.

10 Q. And is that the location of the search warrant
11 in this case?

12 A. Yes, it is.

13 MR. ROSS: Your Honor, at this time, we would move
14 1 and 2 into evidence.

15 MR. SELLERS: No objections, Your Honor.

16 THE COURT: Admitted's without objection.

17 (State's Exhibits Nos. 1 & 2 admitted into
18 evidence.)

19 BY MR. ROSS:

20 Q. Now, I'm going to show you State's No. 3; do
21 you recognize this?

22 A. Yes.

23 Q. Is that an accurate reflection of the floor
24 plan to the downstairs of [REDACTED] Morgan Street Northwest?

25 A. Yes.

M. SAWYER -- DIRECT BY MR. ROSS

1 MR. ROSS: Your Honor, we would move No. 3 into
2 evidence at this point.

3 MR. SELLERS: No objection, Your Honor.

4 THE COURT: Admitted.

5 (State's Exhibit No. 3 admitted into evidence.)

6 MR. ROSS: And at this time, we would ask to
7 publish to the jury.

8 THE COURT: Certainly.

9 BY MR. ROSS:

10 Q. Detective, if you could please, step down. If
11 you would please stand right here on this side, so the
12 court reporter can hear. If you could please, point
13 out where [REDACTED] Morgan Street Northwest is?

14 A. Right here.

15 Q. Okay. Right there?

16 A. Yes, sir.

17 Q. And using the laser pointer, if you could
18 please, point to where your vehicle was parked for
19 surveillance?

20 A. Right in here.

21 Q. Okay. Now, where are these street lights?

22 A. There's one right in here. You can actually
23 see that one really good. The tree may have that one
24 covered up. I mean, that one right there.

25 Q. Okay. So you were parked right here?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. Right in this area.

2 Q. Okay. Now, where -- point out the direction
3 of Kelvin Jones' travels when he walked by your
4 vehicle?

5 A. Right here.

6 Q. So, you are right here and he walked literally
7 just down the street?

8 A. Yes.

9 Q. Okay. How far away from him were you when he
10 walked by your vehicle?

11 A. Fifteen, 20 yards.

12 Q. Okay. I'm now going to show you State's No.

13 2. And, again, if you could please, point out where
14 [REDACTED] Morgan Street Northwest is?

15 A. Right here.

16 Q. Right where it says A?

17 A. Yes.

18 Q. Okay. And now I'm to going to show you -- or
19 ask you to identify what is B right here?

20 A. Pine Crest School.

21 Q. What type of school is that?

22 A. Well, at one point it was an elementary
23 school. Now, it's now a -- people that get into
24 trouble --

25 Q. Alternative school?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. Alternative school, yes, sir.

2 Q. Okay. And on April 21, 2011, what type of
3 school was it?

4 A. Elementary school.

5 Q. A regular K through 6 public school?

6 A. It was a public school, yes, sir.

7 Q. Or K through 5?

8 A. Yeah, I think so.

9 Q. But it was a South Carolina state public
10 school?

11 A. Yes.

12 Q. Okay. And it was in business on the day in
13 question?

14 A. Yes.

15 Q. Now, how far is it from [REDACTED] Morgan Street
16 Northwest to the school you just mentioned?

17 A. Well, I drove from the front of the house,
18 down Morgan, to Pine Crest, to right in here, and it's
19 three tenths of a mile.

20 Q. Okay.

21 A. Which is basically, the front of the house to
22 just past the property line of the school.

23 Q. Okay. Now, getting into the school, is that
24 within a half mile -- is this school within a half mile
25 from the house where you found the drugs?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. Yes.

2 Q. Okay. And that's -- you know that from the
3 odometer?

4 A. I know it from driving the odometer, and it's
5 less than that the way the crow flies.

6 Q. Okay. If you would please have a seat.

7 THE COURT: Counsel, have you stipulated to the
8 admission of any exhibits?

9 MR. SELLERS: No, sir, we have not had a chance,
10 Your Honor.

11 THE COURT: Okay. That's fine.

12 (Pause.)

13 MS. BENEVENTO: No objections, Your Honor.

14 THE COURT: Thank you. You can publish those
15 numbers please.

16 MR. ROSS: Your Honor?

17 THE COURT: She said they are admitted without
18 objection.

19 MR. ROSS: Okay. These are State's 4 through 17,
20 which I just showed defense counsel.

21 THE COURT: Thank you, sir. Admitted without
22 objection.

23 (State's Exhibits Nos. 4 - 17 admitted into
24 evidence.)

25

M. SAWYER -- DIRECT BY MR. ROSS

1 BY MR. ROSS:

2 Q. Detective, did you take these pictures?

3 A. Yes. Well --

4 Q. Let me take that back, do these accurately
5 reflect the crime scene?

6 A. Yes.

7 Q. Okay. I'm showing you State's No. 4,
8 Detective, what is that a photograph of?

9 A. [REDACTED] Morgan Street.

10 Q. Okay. And that's the house that you executed
11 a search warrant on?

12 A. Yes.

13 Q. And that's where you found drugs?

14 A. Yes.

15 Q. Now, is this one of the streets lamps in
16 question?

17 A. Yes, it is.

18 Q. You testified that the defendant walked up to
19 the front door -- and I've given you a laser pointer --
20 could you point that out to the jury, please?

21 A. Right there.

22 Q. Okay. Now, I'm going to show you State's 5.
23 Again, this is light post number one, right here?

24 A. Yes.

25 Q. And is this a second light that I'm indicating

M. SAWYER -- DIRECT BY MR. ROSS

1 to you, right here?

2 A. Yes, right there.

3 Q. And this photograph was taken during the day;
4 is that correct?

5 A. Yes.

6 Q. This wasn't taken the day of the execution of
7 the search warrant?

8 A. No, it was not.

9 Q. These were taken purely for court purposes;
10 right?

11 A. That's correct.

12 Q. State's No. 6. Is this a close-up of the same
13 street light?

14 A. Yes, it is.

15 Q. Now, I'm going to get to the pictures that
16 were taken on the day of the search warrant. I'm going
17 to show you State's No. 7. What is that a photograph
18 of?

19 A. That's a photograph of the -- when you go in
20 the front door, the room to the left, that little room
21 there with a couch.

22 Q. Okay. And what is this that I'm pointing to
23 here?

24 A. It looks like a backpack.

25 Q. Okay. Right here?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. Yes.

2 Q. Is that the same backpack that you saw Kelvin
3 Jones wearing?

4 A. No.

5 Q. So this is a different traditional type of
6 book bag?

7 A. Yes, that's correct.

8 Q. And what is this right here, where my finger
9 is?

10 A. I can't tell if it's the scales or the butt of
11 a gun.

12 Q. Okay. Right here. Let me show you State's
13 No. 8. This will help you.

14 A. The butt of a gun.

15 Q. Okay. And that was found in that --
16 underneath the couch?

17 A. Yeah.

18 Q. In that front room?

19 A. Yes.

20 Q. Now, I'm going to show you State's 9. What is
21 that a photograph of?

22 A. A small pickle jar with marijuana inside of
23 it.

24 Q. Okay. What's beside that pickle jar right
25 here?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. The backpack that I seen Kelvin Jones wearing.

2 Q. That's the same backpack you saw him walk down
3 the street wearing?

4 A. Yes.

5 Q. And State's No. 10; is that the same bag?

6 A. Yes, it is.

7 Q. And it's kind of hard to see from the glare;
8 what's in that bag?

9 A. Cocaine.

10 Q. Okay. Now, State's No. 11.

11 A. Bags of cocaine and a scale.

12 Q. All these bags, were they within that blue
13 sling bag?

14 A. Yes.

15 Q. Okay. And what about the scale?

16 A. Yes.

17 Q. Okay. And Detective Medlin found these,
18 right?

19 A. Yes.

20 Q. Okay. Tell me about the relevance of digital
21 scales in a drug case?

22 A. Well, I mean, people want to buy drugs in all
23 different weights. And, you know, if -- they use them
24 to weigh -- to weigh the drugs. It's plain and simple.
25 I mean, you don't want to give too much, or you're

M. SAWYER -- DIRECT BY MR. ROSS

1 losing money. But you want -- you know, the person
2 who's selling it to you wants to make sure they're
3 getting the right weight, so most of the time they
4 weigh the drugs out in front of them so they know you
5 are getting this much drugs and this is how much money
6 you've got to give me.

7 Q. Okay. And this particular set of digital
8 scales was found in the same bag as these ziplock bags
9 of presumed cocaine?

10 A. Yes.

11 Q. Okay. Now, I'm showing you State's 12. If you
12 could tell the jury what each item here is,
13 specifically this money down here?

14 A. Well, this is -- you can see there's mostly
15 \$20 bills there. I think there's a couple of 10s and
16 there's 100s. I think it's \$5,040 -- or \$42 --
17 something like that.

18 Q. And is that the money you took off the
19 defendant, Kelvin Jones?

20 A. Yes, it is.

21 Q. Okay. And what about those weapons?

22 A. That's an -- I don't remember. I think it's a
23 38. It's a revolver. And then a semiautomatic
24 handgun.

25 Q. Where was the revolver found?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. It was under the couch. I think it was in the
2 bag.

3 Q. Okay. What about the -- the semiautomatic
4 pistol there in the picture?

5 A. It was under the couch. I mean, we seen a
6 picture of the butt of it sticking out.

7 Q. Okay. And these bags of white powder, those
8 are the same bags that were in the blue Nike sling bag
9 that you saw Kelvin Jones wearing?

10 A. Yes.

11 Q. Okay. Now, the marijuana -- or presumed
12 marijuana here, where were these found?

13 A. Well, without knowing exactly which one they
14 are, one of them was found under the couch --

15 Q. Okay.

16 A. Both of them might have been found under the
17 couch, but there was some found somewhere else in the
18 house also.

19 Q. Okay. Was someone charged for that marijuana?

20 A. The other marijuana?

21 Q. The marijuana in this picture, was somebody
22 charged for it?

23 A. Somebody was charged with marijuana. I'm not
24 sure if it was this marijuana or the other, that was in
25 the house.

M. SAWYER -- DIRECT BY MR. ROSS

1 Q. Okay. Some of those individuals that were in
2 the house, was charged with marijuana?

3 A. Yes.

4 Q. Okay. The defendant was not charged with
5 marijuana; correct?

6 A. No.

7 Q. This happened to be found in the same house,
8 right?

9 A. Yes.

10 Q. Okay. Now, I'm going to show you State's 15.
11 Do you recognize this picture?

12 A. Yes. That's the kitchen.

13 Q. Okay. And what is this sitting right here in
14 the kitchen?

15 A. A bag of money.

16 Q. Is that the bag of money you found on Kelvin
17 Jones?

18 A. Yes.

19 Q. And where did you -- where did you find that
20 bag of money?

21 A. Can I stand up?

22 Q. Please.

23 A. Stuffed down in his pants, in the front of his
24 pants, so it would be right in here (indicating).

25 Q. Okay. And, again, 16, is this a close-up of

M. SAWYER -- DIRECT BY MR. ROSS

1 that same bag of money? Whoa -- that's too close.

2 A. Yes, it is.

3 Q. Okay. Does that appear to be a CVS Pharmacy
4 bag?

5 A. Yes.

6 Q. That it's stuffed in?

7 A. Yeah.

8 Q. And No. 17, back it up a little bit. This is
9 a picture of the bag open for the camera, right?

10 A. Yes, it is.

11 Q. Now, this is important. Let me ask you this:
12 What do most of these bills appear to be? What
13 denomination?

14 A.. Most of those right there on top appear to be
15 \$20 bills.

16 Q. Okay. So you've got a 20 here, a 20 here, a
17 20 here, a 20 here, mainly \$20 bills, right?

18 A. Yes, that's correct.

19 Q. How was that relevant to a drug case, that
20 it's mainly \$20 bills?

21 A. When the -- what we call the big dealer --
22 sells to his people under him, it works its way down to
23 the street level. And most crack heads buy \$20 rocks.
24 They may run into some money and spend a \$100 or \$200
25 every now and then. But most of the time they get \$20,

M. SAWYER -- DIRECT BY MR. ROSS

1 they go buy a \$20 rock and smoke it. In turn, the
2 money has to make it back to the top.

3 Q. Has it been your experience that a crack head
4 would have a lot of money to spend on a lot of crack
5 cocaine?

6 A. No. Like I said, normally when they get \$20,
7 they spend it.

8 Q. Okay. And what is the unit of sale that crack
9 cocaine is typically sold on the streets?

10 A. The weight?

11 Q. What's -- what's the unit of sale? Are you
12 familiar with the term 20?

13 A. Yes, 20.

14 Q. What is a 20?

15 A. A 20 is a \$20 crack rock.

16 Q. What is a 40?

17 A. A \$40 crack rock, just double -- a little
18 bit -- you know, double the size.

19 Q. So when you're buying drugs on the street, are
20 they typically sold in \$20 increments?

21 A. Yes.

22 Q. And what are these bills again?

23 A. \$20 bills.

24 Q. Did you check the -- was the sling bag that
25 was seized under that couch, was it turned into

M. SAWYER -- DIRECT BY MR. ROSS

1 evidence?

2 A. Yes.

3 Q. Did you check it out and bring it to court
4 today?

5 A. Yes.

6 Q. Is it in this bag?

7 A. Yes.

8 Q. Detective, I'm showing you State's No. 20; do
9 you recognize that?

10 A. I do.

11 Q. Is that the sling bag you saw Kelvin Jones
12 carry?

13 A. It is.

14 Q. And that's a bag that you checked out of
15 evidence to bring to court?

16 A. Yes.

17 Q. Okay.

18 MR. ROSS: Your Honor, at this time, we move No.
19 20 into evidence.

20 THE COURT: Any objection?

21 MS. BENEVENTO: No objection, Your Honor.

22 THE COURT: In without objection.

23 (State's Exhibit No. 20 admitted into evidence.)

24 BY MR. ROSS:

25 Q. Just to be clear, Detective Sawyer, the bag we

M. SAWYER -- DIRECT BY MR. ROSS

1 just admitted into evidence, State's No. 20, this bag
2 right here, that's not the same bag that I'm pointing
3 to on State's No. 7; is it?

4 A. No, it is not.

5 Q. All right. Is this a bag that you typically
6 see people carry into school?

7 A. No.

8 Q. Do you see a lot of little kids carrying this
9 bag?

10 A. No.

11 Q. Now, in the bag in State's No. 7, does that
12 appear to be a traditional book bag?

13 A. Yes, sir, it does.

14 Q. Is there any possible way that you could have
15 confused these two bags?

16 A. No, sir.

17 Q. Is there any doubt in your mind that this is
18 the same bag that Kelvin Jones was carrying on his back
19 walking into that house?

20 A. No, no doubt.

21 THE COURT: Hang on for a second. Mr. Foreman,
22 I'm going to let the jury take about a five or ten
23 minute break. And if you need anything, like coffee or
24 or anything, let the bailiff know. If you need
25 anything else, let her know. Then we'll get you back

M. SAWYER -- DIRECT BY MR. ROSS

1 out here. Okay.

2 (WHEREUPON, the jury left the courtroom at
3 approximately 4:28 p.m.)

4 THE COURT: You're still under oath, so you can't
5 talk to anybody about your testimony. I'm sorry. I
6 just saw several of the jurors starting to nod their
7 heads.

8 (Discussion off-record.)

9 (WHEREUPON, a brief recess was taken.)

10 THE COURT: Defense ready?

11 MS. BENEVENTO: Yes, Your Honor.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 4:46 p.m.)

14 THE COURT: Mr. Foreman, is the jury finding what
15 it needs back there?

16 MR. FOREMAN: Yes.

17 THE COURT: Are you ready to proceed?

18 MR. ROSS: Yes, Your Honor.

19 THE COURT: Okay, sir.

20 BY MR. ROSS:

21 Q. Detective Sawyer, how many years do you have
22 in narcotics again?

23 A. I was in narcotics for 12 years.

24 Q. Based on your 12 years experience, can you
25 tell jury what the street value is of this amount of

M. SAWYER -- DIRECT BY MR. ROSS

1 cocaine?

2 MR. SELLERS: Objection, Your Honor.

3 THE COURT: Just one second. Mr. Foreman, would
4 you take your jury to the jury room, please, sir.

5 (WHEREUPON, the jury leaves the courtroom at
6 4:48 p.m.)

7 MR. SELLERS: Your Honor, the chain hasn't even
8 been established yet per se, and we don't know what
9 those drugs are -- or alleged drugs may be on the
10 screen.

11 So, therefore, we feel as though it would be
12 inappropriate for him to guess as to what the street
13 value of a white substance may be, that as of right now
14 all the jury knows that it's baking soda.

15 THE COURT: I'll sustain that objection. In
16 addition, he's not been qualified as an expert to give
17 his opinion. And so at some point, I'm not precluding
18 you from doing it, but at this stage, you have -- you
19 don't know what the substance is. It has not been a
20 chain -- a proof of chain of evidence and all -- chain
21 of custody, excuse me. And there's no foundation for
22 him being an expert. So for all three of those bases,
23 it is excluded.

24 MR. ROSS: Yes, Your Honor. If I can lay the
25 foundation for his qualifications as an expert, and

M. SAWYER -- DIRECT BY MR. ROSS

1 pose it as a hypothetical, can we revisit that?

2 THE COURT: I will certainly listen to your
3 hypothetical. That would not be inappropriate
4 procedure. I'll tell you that.

5 MR. SELLERS: And, Your Honor, I mean we would
6 still strongly object to a hypothetical. I mean, a
7 hypothetical that that is cocaine on the screen, or
8 that there is cocaine on the screen, I think that
9 severely prejudices my client.

10 THE COURT: I'll tell you this, if -- if you don't
11 -- I don't disagree with that. And I'll let you recall
12 him once you have the sufficient evidence in the record
13 if that's what you need to do.

14 MR. ROSS: As far as establishing that this is, in
15 fact, cocaine?

16 THE COURT: As far as establishing the street
17 values which you're asking him.

18 MR. ROSS: Okay.

19 THE COURT: Okay, sir. All right. Bring the jury
20 back in, please.

21 (WHEREUPON, the jury enters the courtroom at
22 approximately 4:50 p.m.)

23 THE COURT: All right, counsel.

24 MR. ROSS: Thank you, Your Honor.

25

1 BY MR. ROSS:

2 Q. Detective Sawyer, is the man who you saw
3 carrying this book bag in the courtroom today?

4 A. Yes, he is.

5 Q. Can you point him out for me, please?

6 A. At the defense table, wearing the glasses and
7 the white shirt.

8 Q. Is that the defendant you are pointing at?

9 A. Yes.

10 Q. He was the one that you saw walk into that
11 house, with this bag, slung over his shoulders?

12 A. Yes.

13 Q. And he was the individual that you found that
14 sack full of money in his pants; is that correct?

15 A. That's correct.

16 Q. That's the same individual?

17 A. Yes.

18 MR. ROSS: Your Honor, I don't have anything
19 further for this witness, but I would reserve the
20 right to call him again in the State's case in
21 chief.

22 THE COURT: Yes, sir. Cross examination will be
23 delayed until tomorrow. It's a late hour of the day.
24 Any problem with that?

25 MR. SELLERS: No, Your Honor.

1 THE COURT: Okay. Thank you. Mr. Foreman,
2 because of the late hour of the day, and because I
3 anticipate a lengthy cross examination -- or
4 potentially lengthy, I'm going to go ahead and break
5 for the day.

6 Is there any problem with any member of the jury
7 being here a little bit before 9:30 tomorrow? Say
8 9:25?

9 (No response.)

10 THE COURT: Very good. I'm going to excuse you
11 until 9:25 in the morning. Let me remind you, not to
12 speak with anybody about this case, listen, hear, or
13 read anything about this case. And I'm going to ask
14 you in the morning, with just that regard. Okay.
15 Y'all have a good evening. Leave your notes in the
16 jury room. They'll be locked up.

17 (Discussion off-record with the bailiff.)

18 THE COURT: Okay. Leave them in the seats. You
19 lock up the jury room. Very good. Thank you.

20 (WHEREUPON, the jury leaves the courtroom at
21 4:53.)

22 THE COURT: All right. The same rules, just don't
23 talk to anybody about your testimony during the break.
24 We'll see you in the morning. Okay, sir?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Anything from the State
2 before we break for the evening?

3 MS. BURCHSTEAD: Can I just verify your email
4 address, Judge?

5 (Discussion off-record.)

6 THE COURT: Anything from the defense before we
7 leave?

8 MR. SELLERS: No, sir, Your Honor.

9 THE COURT: Okay. You will remain out on bond.
10 The same rules apply. If you don't show back up, the
11 trial will go forward. Okay, sir.

12 MS. BURCHSTEAD: Judge, actually if I may -- I'm
13 glad you mentioned that. It is the State's position
14 that bond is over once the State has called their --

15 THE COURT: You're right, because he reported for
16 trial, so there is no bond.

17 MS. BURCHSTEAD: Yes, sir.

18 THE COURT: And to continue him out, would be
19 changing the terms of the bond. And I don't have the
20 bonding company here to do that.

21 MS. BURCHSTEAD: That would be the State's
22 concern, Judge.

23 THE COURT: I agree. But I'm still going to let
24 you stay out. If you don't show up --

25 THE DEFENDANT: I'll be here, sir.

1 THE COURT: All right, buddy. Take care.

2 MS. BURCHSTEAD: Thank you, Judge.

3 (WHEREUPON, the court adjourned for the day.)

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* * * P R O C E E D I N G S * * *

FEBRUARY 18, 2015

THE COURT: Please be seated. Thank you. We're just waiting on a juror.

(Pause.)

THE COURT: Otherwise, is the State ready to proceed?

MS. BURCHSTEAD: The State is ready, Your Honor.

THE COURT: The defense ready?

MR. SELLERS: Yes, Your Honor.

THE COURT: For the record, we met in chambers. I reviewed some employment records last night that was the subject of a request from the defense.

I have looked through all the -- the provided records. There's nothing that would be relevant to this case. I think I informed you of that, Mr. Sellers.

MR. SELLERS: Yes, sir.

THE COURT: Anything further with that -- with that regard?

MR. SELLERS: No, sir. Just thank you, Your Honor.

THE COURT: Thank you very much. Okay. As soon as we are ready.

1 (WHEREUPON, the jury enters the courtroom at
2 approximately 9:45 a.m.)

3 THE COURT: All right. Good morning, ladies and
4 gentlemen. Before we get started let, me ask if anyone
5 had read, heard, or seen anything about this case
6 during the break, or has spoke with anyone, including
7 your fellow jurors about this case? If so, would you
8 raise your right hand.

9 Let the record reflect that no one responded.
10 Very good.

11 Is the State ready to proceed?

12 MS. BURCHSTEAD: The State is ready, Your Honor.

13 THE COURT: The defense ready?

14 MR. SELLERS: Yes, sir.

15 THE COURT: All right. I believe we are in cross
16 examination. Officer, would you come around please,
17 sir. You are still under oath.

18 THE WITNESS: Okay. Thank you.

19 **CROSS EXAMINATION BY MS. BENEVENTO:**

20 Q. Good morning, Captain Sawyer, how are you this
21 morning?

22 A. Morning. I'm good.

23 Q. Good. Yesterday in your testimony, you
24 mentioned that you saw Kelvin Jones walk into the
25 Morgan Street house with a blue backpack; is that

1 correct?

2 A. Yes.

3 Q. And you said that this backpack was hanging
4 low on his back while he was wearing it, down around
5 his backside; is that right?

6 A. That's correct.

7 Q. And isn't it true that this backpack can hang
8 low even when there's nothing in it, the way it's
9 hanging low on me?

10 A. That is true.

11 Q. Okay. And it would also hang low if there was
12 any number of items inside the backpack, it would hang
13 low on the back?

14 A. Yes, that is true.

15 Q. Is that true?

16 A. Yes.

17 Q. Water in there?

18 A. Yes.

19 Q. And isn't it true that you testified yesterday
20 that you, in fact, did not know what was inside the
21 backpack at that time?

22 A. That's correct.

23 Q. Okay. And just to be clear, this backpack is
24 solid in color, so there was no way that you could have
25 seen through the backpack at that point?

M. SAWYER -- CROSS BY MS. BENEVENTO

1 A. That's correct.

2 Q. Okay. All right. So you don't know what was
3 inside the backpack at that time, but you saw Kelvin
4 walking into the house with the backpack?

5 A. Yes, that's correct.

6 Q. But you don't know whether the backpack had
7 gym clothes in it, food, books, any items?

8 A. At the point in time that I seen him, no, I do
9 not.

10 Q. Okay. And you don't know if the white powder
11 that you later testified that you found inside this
12 bag, that you and SWAT found inside this bag, was in
13 that backpack at the time that you saw it on Mr. Jones'
14 back?

15 A. I do not.

16 Q. Okay. All right. And isn't it true that
17 between the time that you saw Kelvin Jones walk into
18 the house, and the time that SWAT entered the home and
19 you entered the home, several minutes elapsed?

20 A. Yes, about five to seven minutes.

21 Q. Okay. So five to seven minutes. And during
22 that time, I believe, you testified you had a few phone
23 conversation with Detective Medlin, and there were some
24 procedures that you had to put in place to get SWAT to
25 actually enter the home?

M. SAWYER -- CROSS BY MS. BENEVENTO

1 A. That's correct.

2 Q. Okay. So during these five to seven minutes,
3 Kelvin Jones and that backpack were out of your sight;
4 isn't that right?

5 A. That's correct.

6 Q. Okay. And you testified that when SWAT
7 arrived in the house, when you arrived, Mr. Jones was
8 not the only one that was in the house; isn't that
9 correct?

10 A. That's correct.

11 Q. Okay. In fact, you testified there were at
12 least four or five other adults and possibly a few
13 juveniles in the home; is that right?

14 A. That's correct.

15 Q. Okay. All right. And all of these
16 individuals, these other four to five adults, and these
17 possible couple of juveniles, would have been present
18 in that house during the five to seven minutes that you
19 said elapsed, where you could not see Kelvin or the
20 backpack?

21 A. Well, no, all of them wouldn't have been there
22 for five to seven minutes. Rick Lloyd come in a couple
23 of minutes after Kelvin Jones did. And then a couple
24 minutes after Rick Lloyd went in, the rest of the
25 people came in. They were in there a minute, maybe a

M. SAWYER -- CROSS BY MS. BENEVENTO

1 minute and a half before the SWAT team hit the house.

2 Q. Okay. So for a couple of minutes, there was a
3 large group of people in the house with the person you
4 say was Kelvin Jones and with the backpack?

5 A. Yes, that's correct.

6 Q. But you're not in the house and SWAT's not in
7 the house at that time?

8 A. That's correct.

9 Q. And you have no eyes on Kelvin and no eyes on
10 this backpack?

11 A. Not -- when he walked in the door, I lost
12 sight of him, yes.

13 Q. Okay. All right. And several of these
14 individuals that were in the house, they were also
15 later arrested for various things; isn't that correct?

16 A. Yes. I believe three others were arrested.

17 Q. Okay. All right. And you actually testified
18 that one of those individuals, Ricky Lloyd, who I
19 believe you just mentioned a couple of minutes ago, was
20 in the bathroom when SWAT entered; isn't that right?

21 A. Yes.

22 Q. Okay. And he was actually flushing a white
23 powder substance down the toilet at that time?

24 A. Attempting to, yes.

25 Q. Okay. So isn't it true that the only person

M. SAWYER -- CROSS BY MS. BENEVENTO

1 in the home, who was actually found to be in possession
2 of a white powder substance --

3 MR. ROSS: We would object, Your Honor. If I may
4 approach?

5 THE COURT: Yes, sir.

6 (WHEREUPON, a bench conference was held.)

7 BY MS. BENEVENTO:

8 Q. Captain Sawyer, isn't it true that the person
9 who was present inside the home when you and SWAT
10 arrived, that was actually in possession of a white
11 powder substance, was Ricky Lloyd; isn't that correct?

12 A. He had it in his hand trying to flush it down
13 the commode. In my opinion -- well, I mean, I think
14 other people were in constructive possession of some
15 cocaine.

16 Q. But the only person that had white powder was
17 Ricky Lloyd?

18 A. That's true.

19 Q. Okay. And when you arrived, Kelvin wasn't
20 wearing or holding this backpack, was he?

21 A. No, he was not.

22 Q. Okay. And you don't know who touched that
23 backpack after Kelvin Jones walked into the house and
24 the others walked into the house, you don't know who,
25 if anyone, or how many people touched that backpack?

M. SAWYER -- CROSS BY MS. BENEVENTO

1 A. I do not.

2 Q. Okay. And isn't it possible, then if you
3 don't know who touched the backpack, that someone --
4 one of these individuals inside the house did have
5 contact with that backpack while you could not see it?

6 A. (Pause.)

7 Q. Could somebody have --

8 A. At --

9 Q. -- touched the backpack?

10 A. Yes.

11 Q. Okay. All right. So you testified that this
12 backpack was found under the couch?

13 A. Yes.

14 Q. Okay. And that couch is -- if I can use the
15 State's Exhibit here, the layout of the house that
16 you've seen, that's been entered into evidence -- that
17 couch is actually outside of the bathroom, and Kelvin
18 was found in the kitchen; isn't that right?

19 A. When I entered the house, he was in the
20 kitchen, yes.

21 Q. Okay. So the -- the white powder substance in
22 the backpack was found under the couch, which is
23 actually closer to the bathroom where Ricky Lloyd was,
24 than it is to Kelvin?

25 A. Yes.

M. SAWYER -- CROSS BY MS. BENEVENTO

1 Q. Okay. At some point in your testimony
2 yesterday, you mentioned that it was common for defense
3 attorneys to raise the issue of fingerprinting with
4 regard to drug packaging --

5 A. Yes.

6 Q. -- is that right -- okay. But you did test
7 the baggies in this case; didn't you?

8 A. We -- I had them tested by Lt. Adams of the
9 Sheriff's Office. Personally, I didn't do it.

10 Q. Excuse me. I apologize. It was a poorly
11 worded question.

12 A. That's fine.

13 Q. The baggies were submitted for testing?

14 A. Yes, that's correct.

15 Q. All right. But Kelvin Jones' fingerprints
16 were not found on any of the baggies; isn't that right?

17 A. Right. There were no fingerprints found on
18 the baggy.

19 Q. Okay. And you submitted items for testing
20 that were found nearby; isn't that correct?

21 A. Yes. There were other items, yes.

22 Q. Okay. A gun and I believe a scale or two were
23 submitted for testing?

24 A. Yes.

25 Q. And no fingerprints were found on those items

M. SAWYER -- CROSS BY MS. BENEVENTO

1 either, were they?

2 A. That's correct.

3 Q. So Kelvin Jones' fingerprints were not on
4 those items?

5 A. That's correct.

6 Q. And you did testify yesterday that you
7 believed that one or more of those items was also
8 inside the bag where you found the white powder?

9 A. Yes.

10 Q. Okay. So there's really no physical evidence
11 linking Kelvin Jones to this white powder; is there?

12 A. No physical evidence.

13 Q. Okay. Captain Sawyer, I think you mentioned
14 yesterday that you've been -- you've been in law
15 enforcement for a long time? I think you said over 20
16 years; is that right?

17 A. Twenty five years.

18 Q. Okay. And during that time, you've been
19 working in narcotics for quite a long time as well?

20 A. That's correct.

21 Q. Okay. And during those many years of working
22 in narcotics, I would imagine that you've probably had
23 occasion to perform surveillance on various occasions?

24 A. That's correct.

25 Q. Okay. And on this particular day, when you

1 were performing surveillance at the Morgan Street
2 house, you didn't take any photos or videos of what you
3 saw; isn't that right?

4 A. I did not.

5 Q. Okay. And you never took any photos or video
6 of Kelvin walking with the backpack into the house?

7 A. I did not because I didn't want to give away
8 who we were with flash on cameras or lights on video,
9 or anything like that. We were trying to be covert.

10 Q. Okay. But you did testify that you used
11 binoculars?

12 A. I did use binoculars, but they don't put off
13 light.

14 Q. Okay. So you used binoculars, but you didn't
15 use a video camera of any kind?

16 A. I did not.

17 Q. Okay. And you didn't take out your cell phone
18 or record any part of the surveillance on a phone, the
19 way we can pull out an iPhone and record something?

20 A. I did not.

21 Q. Okay. So you didn't see Kelvin Jones with
22 white powder?

23 A. I did not.

24 Q. Okay. And I believe you testified a few
25 minutes ago, that there was a period of time when both

M. SAWYER -- CROSS BY MS. BENEVENTO

1 the backpack and Kelvin Jones were out of your sight,
2 five to seven minutes?

3 A. That's correct.

4 Q. Okay. And during those five to seven minutes
5 that you did not have the backpack or Kelvin in your
6 sight, it's true that you testified a few minutes ago
7 that multiple people had access to that backpack,
8 inside the house?

9 A. That's correct.

10 Q. Okay. So, again, there's no physical evidence
11 linking my client, Mr. Jones, to that white powder;
12 isn't that correct?

13 A. No physical evidence, that's correct.

14 MS. BENEVENTO: I beg the Court's indulgence for
15 one moment, Your Honor.

16 (Pause.)

17 BY MS. BENEVENTO:

18 Q. And, Captain Sawyer, just to be clear, there
19 were no statements taken from any of the other
20 individuals in the home that may have linked Mr. Jones
21 to this white powder --

22 MR. ROSS: Objection, calls for hearsay.

23 THE COURT: Sustained.

24 MS. BENEVENTO: No further questions, Your Honor.

25 THE COURT: Redirect.

M. SAWYER -- REDIRECT BY MR. ROSS

1 MR. ROSS: Yes, Your Honor.

2 REDIRECT EXAMINATION BY MR. ROSS:

3 Q. You saw Kelvin Jones with this bag walking in
4 that house; right?

5 A. Yes, sir.

6 Q. And this is the same bag that you found over a
7 kilo of cocaine; right?

8 A. Yes, sir.

9 Q. And while he was carrying this bag over his
10 shoulders, it appeared that it had something in it;
11 right?

12 A. Yes, sir.

13 Q. It wasn't just floating in the breeze; was it?

14 A. No, sir.

15 Q. And within minutes, over a kilo of cocaine was
16 found in this very bag; isn't that true?

17 A. Yes.

18 Q. Now, you testified to -- the distinction
19 between constructive possession and actual possession?

20 A. Yes, sir.

21 Q. You're trained on the distinction between the
22 two; right?

23 A. Yes, sir.

24 Q. You've been in narcotics for over 12 years;
25 right?

M. SAWYER -- REDIRECT BY MR. ROSS

1 A. Yes, sir.

2 Q. That's kind of drugs 101, is the distinction
3 between constructive possession and actual possession;
4 right?

5 A. Yes, sir.

6 Q. So if I'm carrying this bag right now, is this
7 in actual possession or constructive possession?

8 A. Actual possession.

9 Q. Okay. If I set it down, and I'm right over
10 here, am I in constructive possession or actual
11 possession?

12 A. Constructive.

13 Q. Okay. So you're still -- I'm still in
14 possession of this very bag regardless of whether it's
15 in my hands, or if I retain dominion and control over
16 it right here; correct?

17 A. Yes, sir.

18 Q. Now, you testified that there were no
19 fingerprints found on the plastic bags or any of the
20 other items in that house that you had tested?

21 A. That's correct.

22 Q. Does that mean that those plastic bags simply
23 dropped out of the sky?

24 A. No, sir.

25 Q. I mean, could they have gotten there without a

M. SAWYER -- REDIRECT BY MR. ROSS

1 human being physically touching them and putting them
2 there?

3 A. I guess it's possible, but probably not. I
4 mean, they had -- the drugs had to be wrapped up.

5 Q. Is it common in your experience to -- for a
6 plastic bag for fingerprint -- fingerprints to be
7 developed off those plastic bags?

8 A. No, sir. In my years of law enforcement, I've
9 -- two or three times we've gotten prints off plastic
10 baggies, just because they get all crumbled up, then
11 expanded back up and crumbled up again. So, no, we
12 don't find them very often.

13 Q. So, two or three times out of how many cases
14 have you worked in your law enforcement experience?

15 A. I mean, I've worked over a thousand cases or
16 more, but I haven't sent that many for fingerprints.
17 But probably, you know -- I don't know -- a couple
18 hundred, I would imagine, to try to get fingerprints
19 off the baggies.

20 Q. Sure. And just a handful of times you've been
21 able to --

22 A. Two that I can remember.

23 Q. Okay. Now, we talked about physical
24 evidence -- Ms. Benevento did. Detective Sawyer, I'm
25 showing you State's No. 17. This is a photo of the

M. SAWYER -- REDIRECT BY MR. ROSS

1 cash; right?

2 A. Yes, sir.

3 Q. Is this a physical object?

4 A. Yes.

5 Q. I can reach out and I can touch that cash;
6 right?

7 A. Yes.

8 Q. And that's essentially the definition of a
9 physical -- physical evidence; right?

10 A. Yes, sir.

11 Q. You can reach out and touch it?

12 A. Yes, sir.

13 Q. Where did you find this physical evidence?

14 A. Stuffed down in Kelvin Jones' pants.

15 Q. And what are the primary denominations of
16 these bills?

17 A. Primarily \$20 bills.

18 Q. And how is that relevant to a drug
19 investigation?

20 A. I think I testified yesterday that it starts
21 at the top and goes down. And by the time it gets to
22 street level dealers, they purchase drugs in \$20
23 quantities. So, in return, when the money goes back to
24 the top, they don't usually go to the bank and trade in
25 \$20 for hundreds, it just goes right back to the top.

1 Q. Did you find these \$20 bills on any other
2 person in that house?

3 A. No.

4 Q. These were on Kelvin Jones; right?

5 A. Yes.

6 Q. In his pants; right?

7 A. Stuffed in his pants, not in the pockets.

8 Q. So, would this be physical evidence linking
9 him to that cocaine?

10 A. Yes.

11 MR. ROSS: No further questions, Your Honor.

12 THE COURT: Okay.

13 **RECROSS EXAMINATION BY MS. BENEVENTO:**

14 Q. Captain Sawyer, you don't have any evidence
15 suggesting any connection between that cash and the
16 white powder; do you?

17 A. I don't have any physical evidence.

18 Q. You find white powder, you find cash, but
19 there's no indication that that cash had anything to do
20 with the white powder that was found in the backpack
21 under the couch, is there, besides pure speculation?

22 A. Well, like I said, there's no physical
23 evidence. But in 25 years, and 12 years in narcotics,
24 large sums of cash and large sums of drugs, normally go
25 together.

1 Q. Okay. But the cash and the drugs were not
2 found together; isn't that right?

3 A. They were not.

4 Q. Okay. And, again, there's no indication --
5 there's no connection between this cash and this
6 powder?

7 A. There's no physical evidence that ties them
8 together.

9 Q. And going back to the bag -- because Mr. Ross
10 brought up the bag again -- just to be clear, at the
11 time that you saw Kelvin and the bag together, you had
12 no idea what was inside of that bag; isn't that true?

13 A. Inside of that bag?

14 Q. Correct.

15 A. When I seen him outside?

16 Q. Correct.

17 A. True. I -- I did not know what was inside
18 that bag when I seen him.

19 Q. And you testified a few moments ago, that
20 there were several minutes where both the bag and
21 Kelvin and the other occupants of the home, were out of
22 your sight?

23 A. That is correct.

24 Q. And you testified that it was possible that
25 any number of those -- any one of those people could

C. COLINDRES -- DIRECT BY MR. ROSS

1 have touched that bag, could have touched that white
2 powder, and we just don't know; do we?

3 A. That's correct.

4 MS. BENEVENTO: No further questions, Your Honor.

5 THE COURT: All right, sir. You may step down.
6 Would you call your next witness, please.

7 MR. ROSS: The State calls Detective Carlos
8 Colindres.

9 THE CLERK: State your full name for the record.

10 THE WITNESS: Carlos Colindres.

11 CARLOS COLINDRES, after having
12 been duly sworn, testified as follows:

13 **DIRECT EXAMINATION BY MR. ROSS:**

14 Q. Detective, how are you this morning?

15 A. Pretty good. How are you?

16 Q. Doing great. You are a member of the SWAT
17 team that executed the search warrant; is that correct?

18 A. Yes, Special Response Team.

19 Q. And before we get to what you did on April 21,
20 2011, can tell the jury about your background in law
21 enforcement, please?

22 A. Yes. I started with Aiken Department of
23 Public Safety in 2004. I became a member of the
24 Special Response Team in 2007. I'm now a detective.

25 Q. Okay. And you've since been promoted to

C. COLINDRES -- DIRECT BY MR. ROSS

1 detective since this arrest?

2 A. Yes.

3 Q. Okay. And tell me what is the SOP that y'all
4 use, as far as the SWAT team goes when you're executing
5 a search warrant specifically for narcotics -- what are
6 y'all trained to do?

7 A. Well, we're -- we're there as a security team.

8 Q. Okay. And what does that typically involve?
9 Tell me about the steps of executing a search warrant
10 101? What would be the basics?

11 A. Well, what we do is -- it's not something
12 where we just gather up and then just go to wherever
13 they want us to go. We'll meet. We have a meeting.
14 We brief. We talk about possible threats that we might
15 have at whatever location we are going to. If there --
16 if we have any indication that they might have weapons.

17 We even ask to see if there's anything -- any
18 indicators that there might be children. And then we
19 gather all that information, we process it, and that --
20 that kind of shows us -- it guides us on how we are
21 going to carry out this search warrant, whether we are
22 going to do a no-knock, because we have a high
23 possibility that there's going to be a weapon in there
24 with the information that we've, you know, obtained
25 previous. And then especially with children, whether

C. COLINDRES -- DIRECT BY MR. ROSS

1 we're going to use distraction devices or anything like
2 that.

3 Q. Okay. You mentioned a no-knock warrant vs. a
4 knock warrant; what would be the baseline? Would it be
5 no-knock or knock?

6 A. When it's that high possibility, you know,
7 when we're getting briefed, and they said, yes, we have
8 information indicating there are weapons in this house.

9 Q. Okay. So that's the exception rather than the
10 rule?

11 A. That would be the exception.

12 Q. Okay. Are y'all involved in actually
13 searching the house and looking for drugs or -- or
14 what?

15 A. No, we are just there to secure the scene, try
16 to put -- make the scene safe for everybody, for us,
17 for the people in the house, and for the investigators
18 that are going to process the house.

19 Q. Now, if you see any incriminating items, do
20 y'all pick it up and give it to the officers or -- or
21 how does that work?

22 A. No, we just -- if we see something, we make a
23 mental note of it. And as the investigators come by,
24 we'll tell them, hey, they was -- when I came in, I saw
25 this on a shelf or something. But we don't actually

C. COLINDRES -- DIRECT BY MR. ROSS

1 grab it.

2 Q. Okay. Tell me about your participation on
3 April 21, 2011?

4 A. Yes. I -- I remember we -- like we always do,
5 we met up and briefed on the search warrant. We
6 decided that we were going to do a knock and announce.
7 There's a possibility there's weapons in there, but we
8 don't have any real indicators that's saying yes,
9 there's definitely weapons in that house.

10 But we all know where, you know, a lot of times
11 where there's drugs -- possible drugs, there might be
12 guns. So we decided on this case, that we were going
13 to do a knock and announce.

14 And the procedure for that is, you knock on the
15 door. We state who we are and our reason for being
16 there. So it would be knock on the door, "Police,
17 search warrant". We'll wait probably about five to ten
18 seconds we'll knock again, "Police, search warrant".
19 And what we're waiting at that point is for someone to
20 either indicate, "coming to the door, "I'm going to
21 open the door, don't -- don't break it down"; or -- or
22 somebody just opening the door.

23 Q. Okay.

24 A. We are also keeping our ears open, and
25 listening to hear if we hear anything going on in the

C. COLINDRES -- DIRECT BY MR. ROSS

1 house, people running around or anything like that.

2 For this particular situation on that night,
3 we -- we were a little short staff on the Special
4 Response Team. We had a lot of guys that were off on
5 vacation or sick, or had other things that were going
6 on, so we didn't have the full team with us. And we
7 realized that this house was going to be a rather large
8 house.

9 I remember the plan was to -- as we enter, after
10 the -- whether we breach or whether we're let in, my
11 job as the -- I think I was about the fourth person in
12 the stack -- and what a stack is, is just a line, a
13 close line of Special Response Team members.

14 I was about the fourth one in the stack. And
15 they said, well, my job was -- as we come in, the left
16 side of the house, we're going to hold it. So my job
17 is basically just to watch that left side of the house,
18 just to -- as we enter, take a position and just watch,
19 just to see what I see over there. Give commands if I
20 see anybody, to get on the ground or whatever, but just
21 to watch that area while the right side of the house
22 was going to be cleared by Special Response Team
23 members.

24 Q. So you were watching the left hand side and
25 the folks in the front of you were going to the right;

C. COLINDRES -- DIRECT BY MR. ROSS

1 is that correct?

2 A. Yes. Yes.

3 Q. I got you. And you were providing cover for
4 them?

5 A. Yes, that's the -- providing cover.

6 Q. And how many individuals were on or responded
7 with that Special Response Team that night?

8 A. I believe eight or nine.

9 Q. Okay. And you said y'all were a little bit
10 short staffed, what is a typical -- how many folks are
11 typically on that team?

12 A. We have 15.

13 Q. Okay. So you went in -- how long did it take
14 after y'all knocked and announced for y'all to go in?
15 Tell me about that.

16 A. I remember we did the knock, "Police, search
17 warrant", about five to ten seconds, knocked again,
18 "Police, search warrant". And I remember we heard
19 movement in the house. You could hear people moving
20 around. We didn't hear any indication of somebody
21 saying, "hey, I'm coming to the door". We just heard a
22 lot of movement.

23 After the second knock and announcement, we
24 waited about five to ten seconds, and we headed -- our
25 breach went ahead and breached the door with the ram.

1 Q. So from the time of the first knock to the
2 time y'all entered that house, approximately how
3 long -- how much time elapsed?

4 A. About 15 seconds I would say.

5 Q. And you said you went to the left?

6 A. Yes.

7 Q. And tell me what happened when you went to the
8 left?

9 A. From what I remember, we come through the
10 front door. It's kind of like a half hallway. You had
11 a wall, and then it immediately opened into like a
12 living room area. And I took a position on that wall
13 while the SRT members -- the ones in front of me went
14 over to the right, and the ones behind me went over to
15 the right.

16 Q. Okay.

17 A. And I stayed and watched that living room area
18 and there was nobody in that living room area.

19 Q. Okay. What happened next?

20 A. I'm hearing, you know, normal commands,
21 "police, get on the ground. Police, search warrant,
22 get on the ground". We're doing what we -- get
23 everybody in that position where it's safe for them,
24 but it's also safe for us. We get them on the ground,
25 on their stomach, with their hands out. So I'm

C. COLINDRES -- DIRECT BY MR. ROSS

1 hearing, you know, everybody giving commands, everybody
2 getting on the ground.

3 And then to let me know that it's okay to enter
4 the area that I'm watching, one of the Special Response
5 Team members squeezes my shoulder and that's our
6 indicator that you've got somebody behind you, it's
7 okay to start entering into that -- into --

8 Q. So the guy behind you in the stack gives you
9 the signal that somebody's got your back and you can
10 proceed further?

11 A. Yes. We proceed into the living room. That's
12 clear if we don't see anybody hiding or anything, or
13 anybody in that area that we need to deal with. And I
14 remember there was a room, as soon as you enter that
15 living room area, there's a room that was right here on
16 the right side. And we entered that room, the lights
17 were off, but there was a computer. And there was a
18 young man, a very young age, juvenile that was sitting
19 on the computer.

20 I came in first into the room, and I peeled to
21 the left to -- to clear my corner, because one of --
22 one of the dangerous areas is those corners. So I go
23 in, I see him, but I look over to my corner. The
24 corner is clear.

25 I entered the room. The guy behind me, he's

C. COLINDRES -- DIRECT BY MR. ROSS

1 dealing with the young man that's sitting, who's facing
2 us now, and he's in a -- kind of a state of shock, you
3 know. He doesn't -- he's not processing quite quick
4 enough of what's going on.

5 The officer's giving him commands get on the
6 ground, get on the ground, but he's -- I mean,
7 obviously, he's scared. But I remember we have a
8 threat, which was a closed closet. And I don't know if
9 somebody is -- it's an unknown, somebody could be
10 hiding there. We don't know. But the safest thing we
11 need to do is get everybody on that ground. Because if
12 someone is in there and something bad goes down, it's
13 usually not going to happen low, it's going to happen
14 up high where we're standing.

15 So I had to grab the young man's wrist and pull
16 him down on his stomach. And I said, "lay down, put
17 your arms up", which he complied at that point. And
18 then we cleared the closet and there was nobody in
19 there.

20 Q. Okay. How long did it take for y'all to
21 secure that house?

22 A. Probably about 30 seconds.

23 Q. Okay. What happened after the house was
24 secure?

25 A. After we -- the procedure of wherever you are,

C. COLINDRES -- DIRECT BY MR. ROSS

1 is where you stay. You stand still until basically one
2 of the detectives or investigators who's processing the
3 scene tells you, okay, you're okay to go ahead and
4 leave the -- leave that area, so they can go ahead and
5 process.

6 Our -- our SOP, after that, what we mainly do is
7 we go outside the residence, and we provide security,
8 you know, outside the residence while they're inside
9 processing the scene.

10 Q. Okay. After the house was secure, did you --
11 again, did you participate in the search of the house?

12 A. No.

13 Q. Okay. And you said that typically y'all go
14 outside and provide perimeter security, did you do that
15 in this case?

16 A. Yes.

17 Q. And tell me about that please.

18 A. Well, on this night, I mean, it was actually
19 pretty -- rather quick. Because as I get outside, a
20 crowd is already forming. So we're already having to
21 keep the crowd away. And you've got people that were
22 saying they were family members or close friends that
23 were approaching -- and not necessarily causing any
24 problems -- they just want to know what's going on. We
25 told them we were conducting a search warrant. If you

C. COLINDRES -- DIRECT BY MR. ROSS

1 -- the way that house is, it's right off of a street.
2 So what we told the crowd is stay on the other side of
3 the street. You can be there, but just stay on the
4 other side of the street while we're here processing
5 the scene.

6 Q. Okay. And how long did you physically assist
7 in providing that perimeter security?

8 A. Oh, it was a pretty long time. I think it was
9 about an hour and a half.

10 Q. Okay. Was a crowd there the whole time?

11 A. Yes. The crowd -- it just kept getting bigger
12 and bigger and bigger.

13 Q. Tell me about the demeanor of the folks in
14 that crowd?

15 A. You had people that were there just -- I guess
16 kind of wanted to see -- it's something a little bit
17 exciting, and it's in their neighborhood. They just
18 kind of want to check it out. But you had some that
19 were kind of enticing the crowd, yelling at us, yelling
20 obscenities and what not, and trying to get the crowd
21 into it. And we had to tell those people, stop what
22 you are doing right there. You can be arrested for
23 disorderly conduct because they were using profanity in
24 public out loud, in a public area.

25 Q. Okay. Did you maintain or did you stay at the

C. COLINDRES -- DIRECT BY MR. ROSS

1 scene for the completion of the search?

2 A. Just until -- I don't know exactly if the
3 investigator stayed longer, but it was just until they
4 said, all right, you guys are okay to leave now.

5 Q. Okay. You were told all clear and that's when
6 you left?

7 A. Uh-huh.

8 Q. Detective, if you would please, step down and
9 I'd like to show you State's No. 3. You need to
10 position yourself so everybody on this jury can see.
11 Let me get you a laser pointer.

12 Now, with State's No. 3, could you please
13 explain to the jury your approach to the house and then
14 subsequent entry and clearance of the house?

15 A. Yes. I think we approached from this side,
16 came up -- because where we were stationed, it would --
17 it's out -- up over here. So we come down, this would
18 be the main road. We are here. We parked. We
19 approached. This is the front door, knock, knock.
20 "Police, search warrant". We wait a few seconds.
21 Knock knock, "Police, search warrant". We are hearing
22 movement around the house. People are scattering
23 around.

24 We hit the door. The door opens in. There's a
25 little half wall right here, my position was here.

C. COLINDRES -- DIRECT BY MR. ROSS

1 Q. Okay. And you said you were the third or
2 fourth person in?

3 A. Yes. So the guys in front of me, they are
4 going into the house into this bathroom and clearing
5 this area.

6 Q. Okay.

7 A. I hold; I get the squeeze. We come in.
8 There's this room right here. We enter that room. The
9 young man was sitting right over here. He was facing
10 us. We clear this corner. There was a closet right
11 here. The other officers were dealing with him, trying
12 to get him on the ground. He's in that state of shock.
13 He's not. I come over and grab his wrist, we put him
14 on the ground. And then we clear -- the closet was
15 clear.

16 Q. And, again, while you're going over here,
17 other members are coming into the kitchen; is that
18 correct?

19 A. Kitchen and into this bathroom.

20 Q. Okay. What was going on in this bathroom?

21 A. I heard -- I mean, I really didn't see because
22 my eyes were focused here. But I'm hearing -- I can
23 tell somebody is in here, because I hear commands; "get
24 on the ground, get on the ground, get on the ground".

25 Q. Commands from other law enforcement officers

C. COLINDRES -- DIRECT BY MR. ROSS

1 there on the scene?

2 A. Yes.

3 Q. Okay.

4 A. After we're all clear, we are just waiting
5 here. We pat the young man -- we don't search, but
6 we'll pat down just in case we feel something that's
7 obviously a weapon. Once we felt that he was okay, we
8 just secure him with handcuffs and just keep him in
9 place until the investigators come in.

10 Q. Okay. And the young man that was in this
11 room, approximately how old was he?

12 A. I would say 12 maybe; 10, 12.

13 Q. So there's no doubt in your mind he was a
14 juvenile?

15 A. Yes.

16 Q. What was he doing in this room?

17 A. Well, there was a computer on. I don't know
18 exactly, but there was a computer on. I'm assuming he
19 was on the computer, because he was sitting in the
20 chair that was in front of it.

21 Q. Okay. So he was seated right in front of the
22 computer?

23 A. Uh-huh.

24 Q. And the computer was on?

25 A. Uh-huh.

1 Q. Okay.

2 A. And as we came in, I believe the computer is
3 right here facing this way, he was turned towards us so
4 the computer was off this way. He's doing that.

5 Q. Okay. That's all the questions I have for
6 you, Detective. If you would, please, answer anything
7 the defense has for you.

8 A. Yes.

9 THE COURT: Cross examination.

10 **CROSS EXAMINATION BY MR. SELLERS:**

11 Q. I really don't have many questions for you,
12 sir, but just a few. I was going to borrow that from
13 you real quick, just to be clear -- how are you doing
14 this morning?

15 A. I'm doing pretty.

16 Q. Yeah, sorry we had you up here yesterday
17 and -- we wore everybody out yesterday. But just to be
18 clear, when you came into the home, you had this living
19 room where this couch is as provided by State evidence
20 three here, and there was a gentlemen in this room here
21 when you entered?

22 A. Yes. The young juvenile.

23 Q. And also heard there was someone in this
24 bathroom here?

25 A. Yes.

M. SAWYER -- CROSS BY MR. SELLERS

1 Q. Correct -- both of those rooms have access to
2 this living room where there's a couch?

3 A. I don't -- and I don't remember where that --
4 because it's kind of these half walls and then there's
5 the living room.

6 Q. Yes.

7 A. But I remember that bath -- as you come in
8 that front door, it was basically straight ahead.

9 Q. Okay.

10 A. But I turned my attention away from that
11 because of my threat was on the left side of the house.

12 Q. And isn't it true that when you came in, just
13 as you testified, that you could see if anybody was
14 entering this left room and nobody was?

15 A. Yeah. There was nobody into that -- that area
16 there.

17 Q. There was absolutely nobody in here in this
18 room where the couch is?

19 A. No, not that I saw. I -- I was just looking
20 that way, I didn't see anybody in that living room
21 area. And after I got that squeeze, we go into that --

22 Q. At any time, did you see my client, Kelvin
23 Jones?

24 A. No. There was a lot of people -- the only
25 time I -- I saw anybody, the only individual I saw that

C. BURGESS -- DIRECT BY MR. ROSS

1 actually got his -- saw his face was that juvenile.

2 Q. And so your -- your answer is, no, you didn't
3 see Kelvin Jones, and I'm going to say -- take a gander
4 that at no time you saw Kelvin Johns with this bookbag?

5 A. No, I did not see him.

6 Q. And at no time did you see Kelvin Jones with a
7 white powdery substance at all?

8 A. No.

9 MR. SELLERS: Thank you, Your Honor. I have no
10 further questions.

11 THE COURT: Any redirect?

12 MR. ROSS: No, Your Honor.

13 THE COURT: May this witness be excused?

14 MR. SELLERS: Sure, Your Honor.

15 THE COURT: Thank you, sir. Call your next
16 witness, please, sir.

17 MR. ROSS: The State calls Sergeant Craig Burgess
18 to the stand.

19 THE CLERK: State your full name for the record..

20 THE WITNESS: Craig Steven Burgess.

21 CRAIG S. BURGESS, after
22 having been duly sworn, testified as follows:

23 **DIRECT EXAMINATION BY MR. ROSS:**

24 Q. Good morning, Sgt. Burgess; how are you?

25 A. Fine. How are you today?

C. BURGESS -- DIRECT BY MR. ROSS

1 Q.. I'm doing great, thanks. You're a member of
2 the SWAT team that executed the search warrant in this
3 case; is that correct?

4 A. I do.

5 Q. Before we get to your actions on April 21,
6 2011, can you tell the jury about your background in
7 law enforcement please?

8 A. Yes, sir. I've been with Aiken Public Safety
9 for over 21 years. I began in 1993. I'm currently a
10 patrol sergeant, which means I work the road, wearing
11 this uniform. I supervise up to nine officers on a
12 given shift day. We work 12 hour days. And the
13 Special Response Team duties just an extra duty that I
14 volunteer for.

15 Q. Okay. And how long have you been on the SWAT
16 team?

17 A. Since '96, 1996.

18 Q. Okay.

19 A. So not quite 20 years.

20 Q. Tell me about the SOP for clearing a -- or
21 executing a narcotic search warrant -- as a member of
22 the SWAT team, what are y'all trained to do?

23 A. We are trained to -- after we actually get
24 into wherever it is, house -- or whatever structure we
25 are trying to go into, is to make everything safe for

C. BURGESS -- DIRECT BY MR. ROSS

1 everybody, which is through getting in there quickly,
2 securing anybody that may be there, may involve putting
3 people on the ground to make sure --.

4 MR. SELLERS: Your Honor, objection. May we
5 approach?

6 THE COURT: Yes, sir.

7 (WHEREUPON, a bench conference was held.)

8 BY MR. ROSS:

9 Q. Sgt. Burgess, you were assisting or you were a
10 member of the SWAT team that night; correct?

11 A. Correct, yes.

12 Q. And can you tell the jury about exactly what
13 you did in executing this search warrant? Tell me the
14 facts leading up to getting to the house?

15 A. Okay. We are notified usually an hour or two
16 prior to having a search warrant, because we are
17 part-time -- we're not full time -- to give us time to
18 respond. We are given a time and a place to respond
19 to. We don't know where we're going or what we're
20 doing, so we arrive. We are briefed and we await word
21 from the investigating officer as far as when to
22 actually travel to the location.

23 Q. Okay. And y'all traveled to the location?

24 A. Yes.

25 Q. What happened next?

C. BURGESS -- DIRECT BY MR. ROSS

1 A. We approached the front door. We have certain
2 duties that are assigned to us. I was probably second
3 or third in what we call a line of officers. There was
4 an officer assigned to knocking and announcing.
5 There's officers assigned to -- should we have to force
6 entry into the residence. And my role at that point
7 was simply to maintain security, cover for those
8 officers that have other responsibilities.

9 Q. Okay. And then an officer knocked and
10 announced?

11 A. Yes.

12 Q. And then what happened?

13 A. There was a lot of commotion inside. You
14 could hear a lot of just movement banging, bumping kind
15 of things inside. The word was given to breach, which
16 is to force the door open; that took place. The door
17 was breached.

18 Q. Okay. How was it breached?

19 A. We have a -- it's a heavy ram. It's
20 essentially just a -- it's a two-handed device that you
21 just hit into a door with.

22 Q. Okay. But nobody came to the door prior to
23 breaching; right?

24 A. Right, correct.

25 Q. Okay. What happened next?

C. BURGESS -- DIRECT BY MR. ROSS

1 A. I was probably, maybe the third or fourth
2 person in through there, and when I entered in -- the
3 plan was to have -- have some officers cover to the
4 left. We knew, in general, what the layout was, that
5 there was a larger open area to the right. And
6 somebody else's responsibility was to cover to my left
7 so that -- that took that out of my responsibility.
8 And I entered into, what's essentially, a big living
9 room sort of kitchen area.

10 Q. Okay. So you were one of the first
11 individuals in?

12 A. Yes.

13 Q. And you were tasked with going to the right?

14 A. Correct.

15 Q. What happened when -- once you entered into
16 the house and started moving towards the right, tell
17 the jury about that please.

18 A. When I moved to the right, there's a kitchen
19 at the -- what would be -- sort of the back wall of the
20 house. We came in from the front. There's a back wall
21 and the kitchen is in the back right area. And as I
22 moved to that area -- I'm sorry -- as I moved to that
23 area, there were several individuals in the kitchen.
24 There was a male, a female, and I think a younger
25 child, but there was definitely a male and a female and

C. BURGESS -- DIRECT BY MR. ROSS

1 somebody else there.

2 Q. Okay. And what did y'all do at that point --
3 or what did you do at that point?

4 A. I went to the male, which was the first person
5 I encountered. What we do is, we order people to the
6 ground so that, you know, we can see their hands. You
7 know, we know that they are not moving around on us.
8 So he was ordered to the ground.

9 This man, it was sort of -- because we do things
10 quickly and fast for our safety and for theirs,
11 sometimes people get a little stunned or whatever, so I
12 ordered him several times to get to the ground. And
13 then I put a hand on him, okay, and moved him down to
14 the ground on the floor in the kitchen.

15 Q. And what happened next?

16 A. I held security in that area. There were
17 other officers there that dealt with the female and the
18 other person. Somebody else comes up and handcuffs
19 them. And then I turn my attention to the other areas
20 of the house that are not yet cleared.

21 Q. So the black male that you encountered was
22 secured in the position that you first encountered him;
23 right?

24 A. Yes, on the kitchen floor, yes.

25 Q. On the kitchen floor. Okay. And what

C. BURGESS -- DIRECT BY MR. ROSS

1 happened next to that individual that was secured?

2 A. He was handcuffed and he left in the --
3 somebody else was watching him. He was no longer my
4 responsibility at that point.

5 Q. What was your responsibility moving forward at
6 that point?

7 A. Moving forward was, again, to -- you know, we
8 have a very large house, and to make sure that the rest
9 of the house is secure. There's no more individuals or
10 things that could harm us. So at that point, I turned
11 my attention to -- there was a stairwell off the side
12 of that -- that large area, the kitchen living room
13 area that went upstairs.

14 Q. Okay.

15 A. And I moved over to that.

16 Q. But to be clear, after that individual was
17 secured in the kitchen, you didn't participate in any
18 subsequent search of that individual; right?

19 A. No, I did not.

20 Q. That wasn't your job?

21 A. No, sir. I was actually holding a rifle. I
22 couldn't search anybody anyways, so...

23 Q. Okay. You said you moved upstairs?

24 A. Yes, sir.

25 Q. And was that area secured as well?

C. BURGESS -- DIRECT BY MR. ROSS

1 A. It was secured, yes, sir.

2 Q. And what happened next?

3 A. After that, our job is to maintain basically
4 sight and security. We do a double check. We double
5 check every area, every closet. We make sure that
6 everything has been double checked, there's nobody
7 hiding anywhere because we have encountered that in the
8 past.

9 And once we do that secondary sweep, the SWAT
10 team or SRT team, as we call it, is essentially
11 security. Our job is to maintain the sight security,
12 whether it's watching prisoners until investigators
13 take over their control, or moving outside. In this
14 case, I moved outside to maintain, you know, the
15 residential security from the outside.

16 Q. Okay. And what happened as you were
17 maintaining that perimeter of security of the
18 residence?

19 A. In very short order, there was probably 30 to
20 40 people that gathered across the street. And came
21 from the area -- the surrounding areas. Some people
22 even drove up. And they were on their -- out there and
23 being a little loud and boisterous to our presence.
24 This was night time, darkish evening.

25 Q. Okay. Approximately how many officers were on

C. BURGESS -- DIRECT BY MR. ROSS

1 that SWAT team that night?

2 A. The maximum number is 13. We had a couple
3 that were sick, so I think we responded with 10, maybe
4 11 officers.

5 Q. Okay. And y'all all maintained the perimeter;
6 right?

7 A. Correct.

8 Q. No one was allowed inside that house?

9 A. Correct.

10 Q. If you could, please, step down. I'm going to
11 show you State's No. 3. If you could stand here,
12 please.

13 A. Absolutely.

14 Q. Here's your pointer. With reference to
15 State's No. 3, could you explain to the jury your
16 approach to that house, subsequent entry, and later
17 securing of the house?

18 A. We approached from -- there's a -- I want to
19 say there's a fence that we went through, an open area
20 to the front porch where there's a doorway.

21 Q. Okay.

22 A. We entered through the front door. And my
23 attention as -- again, the left inside was somebody
24 else's responsibility; mine was the right.

25 Q. Was that Detective Colindres?

C. BURGESS -- DIRECT BY MR. ROSS

1 A. Correct, yeah.

2 Q. Okay.

3 A. I entered into the kitchen area here, where I
4 encountered the defendant here in this area. There was
5 a female and -- and another person in the kitchen, but
6 my responsibility was him because he was the first
7 person I encountered.

8 Q. Okay. And the first person you encountered
9 was the defendant, Mr. Jones?

10 A. Correct.

11 Q. And he was -- encountered here?

12 A. Yes, right. The cabinets and all in the
13 corner, he was in the corner area of the kitchen, the
14 left hand corner.

15 Q. And you secured him there?

16 A. Yes. He was put on the ground there and
17 handcuffed right there.

18 Q. Okay. And somebody following behind you,
19 maintained security over him while you went up these
20 steps; right?

21 A. Correct, yeah. After that, I went to the
22 stairwell, had to wait for another officer or two to
23 join me, we went up the stairs to -- it's a bedroom
24 area that we checked.

25 Q. Okay. And after that, what happened?

1 A. After that we, again, we made sure everything
2 has been double checked by everybody, again, because --
3 it's a quick action. We don't want to miss anything or
4 anybody. And then we just all entered out. And the
5 street is down here, the main road. And we just
6 maintained security. Our vehicles were parked here and
7 across the street, which would be out -- off the map
8 where the crowd had gathered.

9 Q. So you maintained security here while the
10 detectives were searching through this house?

11 A. Yeah.

12 Q. Sergeant, that's all the questions I have for
13 you. If you would, please answer anything defense
14 counsel has.

15 A. Absolutely.

16 THE COURT: Cross examination.

17 **CROSS EXAMINATION BY MR. SELLERS:**

18 Q. Thank you, and thank you for your service.
19 That -- I mean, you all's job is a very dangerous job
20 so thank you for your service. I just wanted to ask you
21 a brief question about -- I'm here in State's evidence
22 3. When you said you entered the kitchen, you said
23 that there was another individual there and a juvenile;
24 correct?

25 A. There was a female and I believe a juvenile,

1 yes.

2 Q. Isn't it true that my client, who you said you
3 encountered, Kelvin Jones, was placed in the kitchen?
4 He was not running from anyone, he was just standing in
5 the kitchen when you came in?

6 A. He was in the kitchen when I saw him.

7 Q. Isn't it true that Kelvin Jones, when you saw
8 him, did he have this blue book bag on or anything, or
9 any white substance whatsoever?

10 A. I didn't notice anything on his person, no.

11 Q. At any point throughout that evening, did you
12 see this blue book bag with Kelvin Jones when you
13 entered the home?

14 A. I did not, no, sir.

15 Q. Did you see Kelvin Jones, at any point in that
16 evening, with a white powdery substance?

17 A. No, sir, I did not.

18 MR. SELLERS: One second, Your Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. SELLERS:

22 Q. Isn't it true throughout your testimony, that
23 the only thing you know about Kelvin Jones, as we sit
24 here today, is that he was in the kitchen?

25 A. Yes, sir.

1 MR. SELLERS: Thank you, Your Honor. No further
2 questions.

3 THE COURT: Redirect?

4 **REDIRECT EXAMINATION BY MR. ROSS:**

5 Q. You didn't participate in the surveillance
6 outside that home with Detective Sawyer, did you?

7 A. No, sir.

8 Q. Okay. And you got on the scene after he
9 essentially called y'all, that it was time to execute
10 the search warrant; right?

11 A. Yes. We were given word by him and we -- we
12 drive up and we go do our thing, yes, sir.

13 Q. Okay. Thank you, Sergeant.

14 THE COURT: May this officer be excused?

15 MR. ROSS: The State has no objection, Your Honor.

16 MR. SELLERS: No objection.

17 THE COURT: Thank you, sir.

18 THE WITNESS: Thank you.

19 THE COURT: Next witness, please.

20 MS. BURCHSTEAD: Sgt. Dave Flanders.

21 THE CLERK: Please state your full name for the
22 record.

23 THE WITNESS: My name is David Flanders.

24 DAVID FLANDERS, after having been
25 duly sworn, testified as follows:

D. FLANDERS -- DIRECT BY MS. BURCHSTEAD

DIRECT EXAMINATION BY MS. BURCHSTEAD:

Q. Good morning, Sergeant.

A. Hello. How are you?

Q. Doing well. How about yourself?

A. Good.

Q. Thanks for being here this morning. I'm just going to ask you a few questions I think. If you would, just give the jury an idea of your background and training in law enforcement.

A. Sure. My name is Sgt. Dave Flanders. I'm a patrol sergeant with Aiken Department of Public Safety. I went through the academy in 1995 and I have been in law enforcement a little over 19 years.

Q. Okay. So, you are currently with the Aiken Department of Public Safety?

A. Correct.

Q. And rank of sergeant?

A. Correct.

Q. So you were employed there back in April of 2011?

A. Correct.

Q. Were you a sergeant then?

A. Yes..

Q. What were your duties as sergeant in 2011?

A. I was a patrol sergeant. I was one of three

1 people that's responsible for a shift for supervisory
2 duties. I'm also assigned to the Special Response
3 Team.

4 Q. All right. And that's what you may refer to
5 as SRT?

6 A. Yeah.

7 Q. Some folks might call it SWAT?

8 A. Correct.

9 Q. So on April 21, 2011, did you participate in
10 the execution of a search warrant at [REDACTED] Morgan Street?

11 A. I did.

12 Q. All right. Did you have an assigned role in
13 that execution?

14 A. I did. I was -- I was assigned to the
15 breacher duties, which means if the door was locked, my
16 job was to open the door.

17 Q. Okay.

18 A. So using some type of mechanical device.

19 Q. All right. If you would, just give the jury
20 an idea of what led up to the actual -- your specific
21 role, what led up to the execution of the search
22 warrant? What do you remember?

23 A. My specific role is, again, is the breacher.
24 I'm one of the first two guys right up to the door. It
25 was a -- we were given a briefing. It was a narcotics

D. FLANDERS -- DIRECT BY MS. BURCHSTEAD

1 investigation. They had gotten a search warrant for
2 this residence. We had done some entail on the address
3 just to make sure what kind of doors they had for my
4 perspective.

5 Q. Right.

6 A. To make sure what kind of door it was. What
7 kind of mechanical means did I need to breach the door.
8 And that was pretty much my assignment leading up to
9 that day.

10 Q. Okay. Did you participate in any surveillance
11 of the residence?

12 A. I did not.

13 Q. So your role is just part of the SRT, going to
14 breach the door?

15 A. Correct.

16 Q. All right. So did you actually breach the
17 door in this case?

18 A. I did. We executed the search warrant. We
19 approached the residence stealth. We were very quiet.
20 We got up to the door. I'm with a partner --

21 Q. Okay.

22 A. -- and they are -- knocked and announced, you
23 know, "Aiken Department of Public Safety, Police,
24 search warrant", we did that a couple of times. We
25 were given the command to go ahead and breach the door.

1 That's my -- that's my job is to go ahead and open up
2 the door. I have a ram and I popped the door, and the
3 door opened up.

4 On that day, I was also assigned -- once the
5 door was opened, I stepped back and let the team go,
6 then I followed in the back.

7 Q. And when you are referring to the team, at
8 this point, we are still talking SRT folks?

9 A. Yes, just SRT --

10 Q. Not the narcotics agents?

11 A. Correct, just the SRT team.

12 Q. All right. Do you remember what time of day
13 it was?

14 A. It was at nighttime. I'm not sure what time
15 it was.

16 Q. And prior to breaching the door, do you
17 remember anything about the residence? Did you hear
18 anything or not hear anything?

19 A. Just that -- that there was an ongoing
20 narcotics investigation on the residence. We were
21 given that in the briefing.

22 Q. Okay. In terms of any noise coming from the
23 house and you're standing there ready to breach, did
24 you hear anything?

25 A. Yeah, so the -- so the team, like I said, we

D. FLANDERS -- DIRECT BY MS. BURCHSTEAD

1 kind of -- we kind of approached the door quietly.
2 It's for our safety and for everybody else's safety.
3 And we approached the door. My partner was knocking on
4 the door, announced "Police, search warrant". Did
5 that, I think, three times. Knocked, announced, "Aiken
6 Public Safety, search warrant", and I'm standing at the
7 ready.

8 Q. Okay.

9 A. His queue is if it's time for me to open up
10 the door, he just gets out of the way.

11 Q. Okay.

12 A. And then this time, there was a flurry of
13 activity on the other side of the door. We could hear
14 people -- it sounded kind of like people running around
15 behind the door, but there was no -- the door wasn't
16 being unlocked, you know. Sometimes you would wait
17 just a minute just to see if somebody would unlock the
18 the door.

19 Q. Sure.

20 A. They didn't do that. There was a flurry of
21 activity. For our safety, they just kind of backed out
22 of the way, and that was my queue to hit the door.

23 Q. Okay. So once you hit the door, what do you
24 recall?

25 A. I backed up. The team entered. I flowed into

1 the back of the line. I put my tool down. And I
2 flowed back in the line. My responsibility was to go
3 back to the left. It was kind of an odd structure. It
4 had multiple layers. It had like a downstairs layer
5 and a middle layer and then an upper layer.

6 My responsibility was to go to the left and hold
7 that while the rest of the team did the majority of the
8 house. It was a very small part, and I was just to be
9 a part of the group that was to hold the left side.

10 Q. Okay. I'm going to stand this thing up again
11 one more time. If I could just ask you to step down.
12 And I'm going to refer you to State's 3, which I
13 believe has been shown to the jury a good bit here.
14 And if you don't mind, just stand maybe on this side so
15 the jury can see everything. And just -- let me find
16 the laser pointer.

17 A. I've got a pen.

18 Q. Here we go. If you would, just guide the jury
19 what you recall in the residence and what you did.

20 A. Sure. The approach was right up here by the
21 front door. This is where I made the breach, where I
22 hit the door and unlocked the door using a ram. I
23 stood back right about here and the team entered. They
24 were good to go to the right part of the house, which
25 was a lot bigger than the left side.

D. FLANDERS -- DIRECT BY MS. BURCHSTEAD

1 When I came in -- by the time I came in, my team
2 that was on -- assigned to the left side, was already
3 in action. They were already going to their rooms. So
4 I could see an officer in the bathroom. I could
5 already see two officers going into this room right
6 here. I'm by myself. We always have a rule that you
7 kind of have to go with somebody else to go into a
8 room, so I held my position until somebody came up
9 behind me and said you have a second person to go,
10 then I went into this room right here. This -- this
11 part of this room. So I went straight from the door,
12 around the couch, right into this room right here.

13 Q. Okay. Very good. And you can go ahead and
14 sit back down. All right. So you mentioned the living
15 room with the couch?

16 A. Yeah.

17 Q. Once you -- I think you said you had gone to
18 that -- that back room, did you go back to the living
19 room?

20 A. I did. There was -- when I went to that one
21 room, the farthest room on the left, I went into that
22 room, there was nothing in there. I think there was
23 one chair. I think that was the only thing that was in
24 that room. No furniture, no boxes, no nothing. So I
25 didn't really have a whole lot to do, so I just came --

1 kind of came back out to be a part of the rest of the
2 team.

3 Q. All right.

4 A. Everybody -- at this point, we started hearing
5 people saying they were secure. The activity was dying
6 down and so I just kind of held that position. So I
7 came outside my door. And when I came outside the
8 door, my group on the downstairs was -- it seemed they
9 were okay. I mean, they was -- they weren't asking for
10 any kind of help or assistance or anything. And I was
11 just kind of standing there, just kind of monitoring
12 the room. When I looked down at the couch, and I could
13 see the butt of a pistol.

14 Q. Okay.

15 A. And it was right by my foot. I mean, I was
16 standing right next it. And I kind of saw it -- it was
17 kind of sticking out from the bottom of the couch.

18 Q. Was that of significance to you?

19 A. Yeah. Any kind of weapon is definitely -- you
20 know, as far as a safety factor, I mean, it's kind
21 of -- I kind of saw it and I needed to stay with it.

22 Q. Okay.

23 A. And when I looked, and I could see the -- it
24 kind of was like the handle of a pistol. And then just
25 right next to it, a little bit down, also sticking out

D. FLANDERS -- DIRECT BY MS. BURCHSTEAD

1 from the bottom of the couch was a -- looked like a
2 pickle jar, and it had some green leafy kind of, you
3 know -- looked like something was inside the pickle
4 jar.

5 Q. Okay. Now in your -- in your role with the
6 SRT Unit, do you seize or actually physically touch
7 anything that's found in the home?

8 A. No. If you see something, I just kind of
9 noted it, and I just stayed with it.

10 Q. All right. And is that what you did in this
11 case?

12 A. And that's what I did until I was relieved.

13 Q. Okay.

14 MS. BURCHSTEAD: If I may just approach, Your
15 Honor, I'm going to show the witness State's No. 7.

16 A. Yeah.

17 BY MS. BURCHSTEAD:

18 Q. Okay. Do you recognize that?

19 A. Yeah. That's the couch and that's the door
20 that -- of the farthest room on the left that I went
21 inside.

22 Q. Okay. Just going to stop up here. We have
23 this handy tool. Okay. So is this the couch you are
24 referencing?

25 A. That's correct.

D. FLANDERS -- DIRECT BY MS. BURCHSTEAD

1 Q. And I'm going to place State's 8 on here. If
2 you can't see it well enough, just let me know. Is
3 that a closer shot of the couch?

4 A. It is.

5 Q. Is that the weapon you saw that night?

6 A. Yes, ma'am.

7 Q. Okay. And I'm showing State's 9; do you
8 recognize this?

9 A. Yes, ma'am.

10 Q. And what do you see there?

11 A. It was the pickle jar that looked like it had
12 something inside of it.

13 Q. Okay. And do you recognize anything next to
14 the pickle jar?

15 A. It -- like a little bag, a little knapsack.

16 Q. Do you recall anything about that bag?

17 A. No.

18 Q. Okay. Once you noted these items, did you let
19 anybody else know that was searching the house?

20 A. I did. When everything was secured and calmed
21 down, I just noted that I had something. They said,
22 "okay, well, just stay with it". And I think I let --
23 the investigating officer was Captain Sawyer and
24 Detective Medlin.

25 Q. Okay.

D. FLANDERS -- DIRECT BY MS. BURCHSTEAD

1 A. And Medlin was closest to me. And I said,
2 "we'll, I've got something here". And he said, "okay,
3 well, I'll get to you in just a minute". You know,
4 they are busy. And so I just kind of stood with the
5 items until he was ready for me.

6 Q. Okay. So did Medlin come and take a look at
7 those items?

8 A. He did. I came and I showed them to him. And
9 he said, "okay, just stay here and let me get a camera
10 and let's take some pictures".

11 Q. Okay. Did y'all ever lift up the couch?

12 A. He did. He actually asked me to -- he was
13 taking pictures. He actually asked me to lift the
14 couch up.

15 Q. Okay. So you lifted the couch?

16 A. I did.

17 Q. And saw the items?

18 A. I just picked it up.

19 Q. Okay. All right. What else did you do in the
20 house, if anything?

21 A. That -- as far as that was concerned, once I
22 was relieved by Detective Medlin, at that point there
23 was a lot of activity outside. There was -- they said
24 we need more security on the outside.

25 MR. SELLERS: Objection, Your Honor, I mean --

1 repetitive, Your Honor.

2 THE COURT: I'll sustain that objection.

3 BY MS. BURCHSTEAD:

4 Q. In terms of inside the residence, did you do
5 anything else?

6 A. No.

7 Q. All right. So you exited the residence and
8 performed security; is that right?

9 A. I did.

10 Q. Okay. I have nothing further, Your Honor.

11 THE COURT: Cross examination.

12 **CROSS EXAMINATION BY MS. BENEVENTO:**

13 Q. How are you, Sgt. Flanders?

14 A. Good. How are you?

15 Q. Good. Just a few quick questions. You did
16 not have any interaction with Kelvin Jones during your
17 time inside the Morgan Street house; is that correct?

18 A. I did not.

19 Q. Okay. And beyond finding a pistol, a pickle
20 jar, and what you identified as a little piece of a bag
21 under the couch, you didn't have any other interaction
22 with anything having to do with Mr. Jones?

23 A. No.

24 Q. Okay. And your sole job that evening was to
25 secure your area of the house, which you did?

1 A. Correct.

2 Q. You never had any conversations with anyone
3 inside the house, you just watched the stuff?

4 A. That's exactly right.

5 Q. And handed it over to Medlin?

6 A. That's correct.

7 Q. Okay. So at no time did you see Kelvin Jones
8 with any items?

9 A. I did not.

10 Q. In fact, you didn't probably see Kelvin Jones
11 at all, did you?

12 A. I did not.

13 Q. Okay.

14 MS. BENEVENTO: No further questions, Your Honor.

15 THE COURT: Redirect?

16 MS. BURCHSTEAD: No, Your Honor. May the witness
17 be excused?

18 THE COURT: Any objection?

19 MS. BENEVENTO: No objection.

20 MR. SELLERS: No objection.

21 MS. BURCHSTEAD: And may we approach, Your Honor?

22 THE COURT: Mr. Foreman, ladies and gentlemen,
23 let's take a morning break. If you need anything, make
24 sure you let our bailiffs know. We'll be glad to
25 provide it for you.

1 (WHEREUPON, the jury leaves the courtroom at
2 approximately 10:48 a.m.)

3 THE COURT: All right. Do you need him to have an
4 escort like he did yesterday?

5 MR. SELLERS: No, just yesterday because the whole
6 jury pool was still in here.

7 THE COURT: I got you.

8 MR. SELLERS: He can use this one. Thank you.
9 What time, Your Honor?

10 THE COURT: Let's do about 11:00. That will give
11 us about 12 minutes.

12 (WHEREUPON, a brief recess was taken.)

13 THE COURT: Be seated. Is the State ready?

14 MS. BURCHSTEAD: Yes, sir. I was just going to
15 bring to your Court's attention, this witness will be
16 getting into more of the exhibits in the case, to
17 include the white powder substance. And there was a
18 weapon found under the couch. I just wanted the
19 court's guidance on how we should handle the weapon.

20 THE COURT: Well, as far as weapons are concerned,
21 I assume that it has been disabled as far as --

22 MS. BURCHSTEAD: That's what we are verifying now,
23 Judge.

24 THE COURT: Well, let's verify that.

25 DEPUTY: It does -- it has a cable lock on it,

1 Your Honor.

2 THE COURT: It does have a lock?

3 DEPUTY: It has a cable lock and it's clear, sir.

4 THE COURT: Okay. Instruct your witness -- I'm
5 going to tell the jury, right before you introduce it,
6 that it's been disabled and no one will point it at
7 them, so to make sure they don't point it at anybody
8 even though it's been disabled. Okay.

9 MS. BURCHSTEAD: No, sir. My intention is to hand
10 Detective Medlin the box and have him pull it out by
11 the butt of the gun, point down. That's it.

12 MR. SELLERS: We don't mind the weapon at all,
13 Your Honor. We do have questions about the intentions
14 of the use of the cocaine. Because as -- any way, the
15 cocaine, it hasn't been established as such. And they
16 haven't -- I mean, we still have a chain witness this
17 afternoon. So I mean, I don't --

18 MS. BURCHSTEAD: Judge, he's the beginning of the
19 chain. That's what we are going to do is lay the
20 foundation for the chain. We're going to call it white
21 powder substance until the chemist comes in and says
22 it's cocaine.

23 THE COURT: Okay. I have no problem with that.

24 MS. BURCHSTEAD: But the BEST kit --

25 MR. SELLERS: Fair enough. Thank you, Your Honor.

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 THE COURT: Yes, sir. Are you ready to go from
2 the defense side, Mr. Sellers?

3 MR. SELLERS: Yes, sir.

4 THE COURT: Are you ready -- would you bring the
5 jury in, please, ma'am.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 11:08 a.m.)

8 THE COURT: Would you call your next witness,
9 please, ma'am.

10 MS. BURCHSTEAD: Yes, Your Honor. The State calls
11 Detective John Chris Medlin.

12 THE CLERK: State your full name for the record.

13 THE WITNESS: John Christopher Medlin.

14 JOHN C. MEDLIN, after having
15 been duly sworn, testified as follows:

16 **DIRECT EXAMINATION BY MS. BURCHSTEAD:**

17 Q. Good morning, Detective.

18 A. Good morning.

19 Q. If you would, tell the jury where you are
20 employed?

21 A. I'm employed with the Aiken Department of
22 Public Safety.

23 Q. How long have you been there?

24 A. For a little over 19 years.

25 Q. All right. So you were there back in 2011?

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 A. Yes, ma'am.

2 Q. And what was your role with the Department of
3 Safety back in 2011?

4 A. At -- on the date in question, I was -- my job
5 was narcotics investigator.

6 Q. Okay. And give the jury a little more of an
7 idea of your background and training in law
8 enforcement, to include any special training that you
9 may recall?

10 A. With Aiken Department of Public Safety, we are
11 a public safety department. We are police officers,
12 and fire fighters, and medical first responders also.
13 So I'm a police officer. I'm a firefighter. I'm a
14 paramedic. I'm a firearms instructor. I was a
15 narcotics investigator at this time, and along with
16 wearing many other hats, many other duties along the
17 way.

18 Q. Okay. Very good. All right. Now, back in
19 April, 2011, did you obtain a search warrant for [REDACTED]
20 Morgan Street Northwest?

21 A. Yes, ma'am.

22 Q. And is that in Aiken County?

23 A. Yes, ma'am.

24 Q. All right. And without going into too much
25 detail, why -- why did you get a search warrant?

1 A. My partner, Captain Sawyer, and I, we had
2 received information about short term activity at the
3 -- at this residence, at [REDACTED] Morgan Street, short term
4 activity and things that led us to believe there was
5 likely drug -- drug related activity, drug sales going
6 on there.

7 Q. Okay. Did you have any information or did --
8 did you personally have any information about Kelvin
9 Jones at that residence?

10 A. I didn't receive information about Kelvin
11 Jones at the residence until after talking with Captain
12 Sawyer.

13 Q. Okay. Were you under the impression that Mr.
14 Jones was associated with that residence?

15 A.[?] Yes.

16 Q. Okay. So you actually obtained the search
17 warrant?

18 A. Yes, ma'am.

19 Q. All right. And did you participate -- or was
20 the search warrant executed?

21 A. Yes, ma'am.

22 Q. Did you participate in the execution of the
23 search warrant?

24 A. I did.

25 Q. All right. What -- what does that mean to

1 execute the search warrant?

2 A. To execute the search warrant, is to actually
3 go to the location in question that's described in the
4 search warrant; to go there and look for the items
5 outlined in the search warrant. And search it and see
6 if we can find those items that we have probable cause
7 to believe that were there.

8 Q. And what were y'all looking for in this case?

9 A. We were looking for any narcotics or any
10 evidence of narcotics manufacturing, sale, possession,
11 packaging, things of that nature.

12 Q. Okay. What would some samples of those items
13 be?

14 A. Baggies, torn baggies, torn and twisted
15 baggies, where people would package narcotics in
16 smaller amounts for individual sale rather than a
17 wholesale amount. Also things such as blunt wrappers,
18 where you buy empty cigar tubes and pack them with
19 marijuana so you can smoke it covertly, things of that
20 nature that we would -- that show that, hey, there's
21 drug activity going on here.

22 Q. All right. So would it be fair to say you're
23 looking for just items associated with the trade or
24 sale or use of drugs?

25 A. Yes, ma'am.

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 Q. All right. Would that include weapons?

2 A. Absolutely.

3 Q. Okay. Is it fair to say weapons are typically
4 involved with the sale of drugs?

5 A. Almost every time.

6 Q. Okay. So in this particular instance, what
7 did y'all do to begin preparation for execution of the
8 search warrant?

9 A. To prepare for the search warrant, we started
10 performing surveillance on the house, to see if we
11 identified who lived there, who frequented the house,
12 any potential risks such as information about people
13 there having weapons, people with violent past.
14 Indications that there were children there or any
15 special hazards, any other considerations -- the
16 special response team, or the investigators would need
17 to know so we could look for specific things, or
18 respond in a particular way due to the threat or
19 potential hazards there at the house.

20 Q. Okay. So you were considered a narcotics
21 detective in this instance, correct?

22 A. Yes, ma'am. And I was -- at the time, I was
23 also a member of the Special Response Team so --

24 Q. Okay --

25 A. -- when we executed, I performed as a member

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 of the team -- of the entry team during the execution
2 of the search warrant until it was secure.

3 Q. Okay. And let's just talk a little more about
4 that night on -- or was it night on April 21, 2011?

5 A. Yes, ma'am.

6 Q. Okay. So you participated as both detective
7 and on the SRT Team?

8 A. Yes, ma'am.

9 Q. All right. What was your role with SRT that
10 night?

11 A. That night, I performed as an entry team
12 member. That means I was one of the guys in line that
13 had to go in and secure the residence, secure people in
14 there, and that was my first step -- my first duty in
15 the execution of the search warrant.

16 Q. All right. And in your role as a narcotics
17 detective, what was your duty for that night?

18 A. For that night, since I obtained the search
19 warrant, I took the role as the -- the on-scene
20 evidence custodian. I was going to collect all the
21 evidence and log it and list it on the search warrant
22 return, and all those things so we could, you know,
23 because we have to outline specifically the things we
24 take from a residence or from a location we perform a
25 search warrant on.

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 Q. Did you participate in any of the surveillance
2 that night?

3 A. No, ma'am.

4 Q. Where were you prior to the execution of the
5 search warrant, immediately prior?

6 A. I was at our headquarters with the rest of the
7 Special Response Team, staging, waiting for Captain
8 Sawyer to give us the go ahead to come up there and
9 execute a search warrant.

10 Q. And did you get that call from Captain Sawyer?

11 A. Yes, I did.

12 Q. All right. What do you recall at that point,
13 when Captain Sawyer called, what happened?

14 A. Captain Sawyer callid me and said, "y'all come
15 on now". And, you know, this is a few minutes after
16 calling us and saying, "hey, get ready". And once he
17 told us to come on, we got in -- in the truck. We
18 drove directly to the scene, took a couple of minutes..
19 We -- we got out of the truck, we lined up at the door.
20 The officers knocked and announced.

21 Upon knocking and announcing, it's loud. When
22 they are knocking, it's not just a (indicating) hello,
23 come in. It's (indicating) "Police, search warrant;
24 Police, search warrant" over the course of a couple of
25 seconds.

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 When they did that, and so there's no doubt that
2 the people inside know it's the police there and it's
3 not somebody there to rip them off, rob them or
4 whatever, home invasion. And upon the officers
5 knocking and announcing, we could hear -- I was -- I
6 was four or five, six people back in the stack in the
7 line of officers, lined up at the door, I could hear
8 people running back and forth, back and forth in the
9 house, from the left to the right, and back and forth
10 in the house. And, you know -- okay, they know we are
11 here. They're not coming to the door.

12 Q. All right. Let me back you up for just a
13 second. From the time you got the call from Sawyer --
14 let me just clarify -- were you the one personally to
15 get the call from Captain Sawyer?

16 A. Yes, ma'am.

17 Q. All right. So from the time -- you hear from
18 Captain Sawyer, to the time SRT is knocking and
19 announcing, how long are we talking?

20 A. We're looking at five to seven minutes. You
21 know, we just have to drive five or six blocks down the
22 road, load up, drive five or six blocks, and get out
23 and do it. And we are very practiced at this. We --
24 we do this -- at the time, we were doing this all the
25 time, so it ran pretty smoothly. So it was about five

1 or seven minutes or so.

2 Q. All right. And knocking and announce more
3 than once or how many times?

4 A. Oh, at least twice. I don't recall the exact
5 number of times, but it's at least twice so there's no
6 doubt that the people inside know it's the police for
7 our safety and for theirs, so that they don't think
8 that they're getting robbed or something like that.

9 Q. All right. So, in this case, was the door
10 answered?

11 A. No.

12 Q. Okay. So the door was breached by law
13 enforcement?

14 A. Yes, ma'am.

15 Q. All right. What do you recall happening after
16 that?

17 A. Upon Sgt. Flanders breaching the door, and
18 officers in front of me going in, going to their
19 various directions, we go in and we identify -- the --
20 each team member, when they go in, they have to
21 identify which -- which is the next threat, the next
22 area of responsibility that's not covered. Well, I
23 went straight ahead. And straight in front of the door
24 was a bathroom. It was a short little entry hallway
25 about eight feet or so deep, and doors to the right and

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 left. And directly ahead was a bathroom. And I could
2 see a black male in there flushing, hitting the toilet
3 and trying to flush something.

4 Q. Okay. What do you recall after that? What
5 did you do next?

6 A. I went -- and because he -- nobody was dealing
7 with him, and he was eventually destroying evidence. I
8 went to that person, ordered him to the ground, and
9 handcuffed him, and then -- and just stayed with him
10 until I could hear the all-clear from the rest of the
11 house.

12 Q. Okay. And after you got the all-clear, then
13 what?

14 A. After that, I put on some gloves and recovered
15 a bag of white powder and some cash from -- from inside
16 the toilet.

17 Q. Okay. So is it -- at that point, have you
18 kind of switched hats from SRT to your detective role?

19 A. Yes, ma'am.

20 Q. Okay. So at this point, are you now
21 processing the scene so-to-speak?

22 A. Yes, ma'am.

23 Q. Okay. So the first thing you did was retrieve
24 the items from the bathroom?

25 A. Yes, ma'am.

1 Q. All right. Can you just walk the jury through
2 what you recall doing in the house?

3 A. In -- in -- in the bathroom, you know, like I
4 said, I put on some gloves. I got the bag of white --
5 small bag of white powder. It was about the size of a
6 ping pong ball or so roughly. I got that bag of white
7 powder and a couple of \$20 bills out of there.

8 I searched the person in the bathroom there. I
9 searched Ron -- I'm drawing a blank on his last name --
10 on his person. I found his I.D. Some more cash, some
11 scales were either on him or he was trying to flush
12 them. I don't know why, but anyway, but they were
13 there. And -- but we got all these things and I
14 secured them and photographed them, and started moving
15 through the house and seeing what everybody had, to get
16 an overview to see where I needed to go and what I
17 needed to do.

18 And one of the first things was, by that time,
19 Sgt. Flanders was standing next to the red couch and
20 said, "Hey, I've got a gun here and this jar with --
21 with something in it".

22 Q. Okay. Did you take pictures that night?

23 A. Yes, I did.

24 Q. Okay. And what's the purpose of taking
25 pictures?

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 A. So we can document the location of any
2 evidence, the manner it was found in, the location, so
3 we -- you know, we can note its proximity or whatever.
4 And, again, the condition it was found so that we can
5 say we found this much of this or -- and -- or it was
6 in this bag or whatever.

7 Q. Okay. If I --

8 MS. BURCHSTEAD: I beg the court's indulgence.

9 BY MS. BURCHSTEAD:

10 Q. Okay. I'm going to use this machine here. If
11 you can't see something, just let me know.

12 A. Yes, ma'am.

13 Q. But if you can take a look at that screen up
14 there, and we are referencing State's 4. What is that
15 a picture of?

16 A. That's a picture of the house at [REDACTED] Morgan
17 Street.

18 Q. Okay. And that's where the search warrant was
19 executed?

20 A. Yes, ma'am.

21 Q. And State's 5, do you recognize that?

22 A. Yes. That's the same house, just a picture
23 taken -- apparently from the corner diagonally across
24 the intersection.

25 Q. All right. Now, we are looking at State's 7;

1 is this the couch you have been referencing?

2 A. Yes, ma'am.

3 Q. Okay. And State's 8, is this the same couch?

4 A. Yes, it is.

5 Q. And what is that sticking out under the couch?

6 A. That's the butt of a semi-automatic handgun.

7 Q. Do you recall seeing that on scene?

8 A. Yes, I do.

9 Q. And State's 9?

10 A. That's a pickle jar that contained a quantity
11 of green leafy plant material and a large amount of
12 cash.

13 Q. Okay. And --

14 A. And also a blue bag there next to it.

15 Q. Okay. Okay. So we've talked about this
16 couch, when do you recall seeing the couch?

17 A. After securing the subject in the bathroom,
18 and Sgt. Flanders -- and checking on everything -- Sgt.
19 Flanders said, "hey, I've got a gun here". So I went
20 up to the -- I went immediately to that living room to
21 the left, when you come in the door, it's immediately
22 to the left. And I saw the gun.

23 And I asked, because things were apparently
24 stuffed up under there, and -- and the couch is very
25 low. It's about three or four inches off the ground.

1 It's not a real high couch. So I asked Sgt. Flanders
2 to pick it up.

3 And he grabbed one end of the couch and lifted
4 it up in the air. That's the easy way to search under
5 a couch or bed, just to lift one end of it up and look,
6 instead of trying to poke around and look. And you --
7 you might miss something.

8 Q. Okay. What did you see under the couch?

9 A. Under the couch, I saw the rest of the
10 handgun, the Smith & Wesson handgun. I saw a pickle
11 jar that contained green leafy plant material, and a --
12 a wad of cash. And also that -- that blue string bag.

13 Q. Okay. Let me show you a couple more pictures.
14 Do you recall anything being in the string bag?

15 A. Yes, ma'am. It -- when I took it, it
16 obviously had something that weighed a couple of pounds
17 in it. And I opened it up, and found three ziplock
18 bags with a white powder material in them, and also a
19 set of scales.

20 Q. Okay. I'm going to show you State's 10. Does
21 that accurately reflect what you found on the scene?

22 A. Yes, ma'am.

23 Q. State's 11, is that the contents of what was
24 in the bag?

25 A. Yes, ma'am.

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 MS. BURCHSTEAD: And permission to approach, Your
2 Honor?

3 THE COURT: Yes, ma'am.

4 BY MS. BURCHSTEAD:

5 Q. I'm showing you State's 20; do you recognize
6 this?

7 A. Yes, ma'am. That's the bag I found under the
8 couch.

9 Q. All right. So when you find all this stuff
10 under the couch, what do you do with it?

11 A. I noted what was there. I took pictures of it
12 and you see, opened it up to search it, see what's in
13 there. And I found the bags of white powder material,
14 the scales, and I start itemizing those things.

15 Q. Okay. Were there other items that were seized
16 in the home?

17 A. Yes, ma'am.

18 Q. Okay. Once you find the materials, are you
19 familiar with the term BEST kit?

20 A. Yes, ma'am.

21 Q. Do y'all use BEST kits?

22 A. Yes, we do.

23 Q. What do you put in a BEST kit?

24 A. We use a BEST kit -- and I don't recall what
25 the acronym stands for, but it's -- the BEST kit is

1 used for packaging narcotics or any material we want
2 tested by either Aiken County Sheriff's Office drug
3 lab, or by SLED's drug lab. And in-house, it has the
4 chain of custody and all the paper that is needed for
5 that -- for testing, for lab and such.

6 Q. Okay. So did you -- the white powder that was
7 found, did you put that in the BEST kit?

8 A. Yes, ma'am. As best we could, because it was
9 too much to fit into the bag. So we had to -- had to
10 make a bag out of just some material that we had --
11 it's tubular material, plastic, that we can make a
12 custom size bag for anything from just something for a
13 pencil, all the way to a rifle, you know, anything in
14 between. So we had to make a bag to size for all that
15 white powder material that was found in there. Because
16 it wouldn't fit in the bag that comes in the kit.

17 Q. Now, is there a way to track the bag as it
18 goes through the system for testing?

19 A. Yes, ma'am. Each -- each bag -- each BEST kit
20 has its own tracking number on the bag that comes in
21 the kit. And like your UPS tracking number, so you can
22 track that package throughout the system so there's no
23 question as to this is the item in reference.

24 Q. Okay.

25 MS. BURCHSTEAD: Beg the court's indulgence.

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 Permission to approach, Judge?

2 THE COURT: Yes, ma'am.

3 BY MS. BURCHSTEAD:

4 Q. Showing you State's Exhibit 22; do you
5 recognize this?

6 A. Yes, ma'am. This is the -- the white powder
7 material and the packaging that I found in it; and
8 packaging I put it in, and the BEST kit bag that comes
9 in the bag that has the tracking on it.

10 Q. And what is that number?

11 A. And that number is A, alfa, 007784.

12 Q. All right. And when you placed the powder in
13 a bag, did you alter it in any way?

14 A. No, ma'am.

15 Q. All right. Thank you. What did you do with
16 the bag -- well, let me back up. You put this powder
17 and the other contents in this bag on scene; is that
18 correct?

19 A. Not -- not on scene. We initially -- in one
20 of the pictures you can see, I've got a blue -- like a
21 a Rubbermaid bucket, a box there with a lid. And I
22 take that on search warrants and -- because that's what
23 I put all my in evidence in, so I can have it all
24 collected, so I don't leave anything on scene. And
25 I've got all my packaging materials as best I can there

1 with me, so I'm getting organized on the scene.

2 So I collect everything in there; keep it in my
3 possession until after the search warrant is completed.
4 I'll go to our headquarters and that's where we keep
5 the BEST kits at, and we do all the chain of custody --
6 we start the chain of custody form, the -- and all the
7 paperwork associated with -- with placing -- placing
8 all of our evidence into evidence.

9 Q. Okay. Before we get to that, I'm just going
10 to show you a couple more pictures.

11 A. Yes, ma'am.

12 Q. And see if you can tell us what these are. Do
13 you recognize State's 12?

14 A. Yes, ma'am.

15 Q. Okay. And is this other -- are these items
16 seized from the home that night?

17 A. Yes, ma'am. That's the overall picture of the
18 contraband I found in the house...

19 COURT REPORTER: I'm sorry.

20 A. It's the overall picture of the contraband I
21 found in the house. Sorry.

22 Q. And State's 13, is that similar?

23 A. Yes, ma'am.

24 Q. And State's 14?

25 A. Yes, ma'am.

1 Q. And what do we have here in State's 15?

2 A. That's a picture -- that's a picture of the
3 kitchen. And the bag there that you were pointing at,
4 is the bag that had -- that was found to have over
5 \$5,000 in cash that came from Mr. Jones, from in the
6 front of his pants.

7 Q. And State's 16, is that a close-up of that
8 same bag?

9 A. Yes, ma'am.

10 Q. And what is State's 17?

11 A. That's the same bag opened up to show the
12 cash.

13 Q. And I understand you are a firearms
14 instructor?

15 A. Yes, ma'am.

16 Q. And part of your job, are you very comfortable
17 with weapons?

18 A. Absolutely.

19 Q. Okay. I believe you mentioned there was a
20 weapon found under the couch; is that correct?

21 A. Yes, ma'am.

22 Q. Do you recall what that was?

23 A. It was a Smith & Wesson, I think, SW 40 VE is
24 the model, 40 caliber pistol.

25 MS. BURCHSTEAD: If I may beg the Court's

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 indulgence and have this marked as a State's exhibit.

2 THE COURT: Okay. While you're doing that, ladies
3 and gentlemen, for your edification, any weapons that
4 may be introduced or shown during this trial have been
5 disabled. They're not loaded. And they will not be
6 pointed at anyone during the case, so you can relax.
7 Okay. Go ahead.

8 (State's Exhibit No. 23 was marked for
9 identification.)

10 MS. BURCHSTEAD: Thank you, judge. And I'm not
11 going to touch it.

12 BY MS. BURCHSTEAD:

13 Q. I'm showing you State's 23, if you could tell
14 the jury if you recognize that and what it is.

15 A. Yes, ma'am. This is a Smith & Wesson model SW
16 40 VE. It's a 40 caliber semi-automatic handgun that I
17 found that was fully load and partially stuffed under
18 the couch there.

19 Q. All right. So was it next to this blue bag
20 here, State's 20?

21 A. Yes, ma'am.

22 Q. Okay. I'll let you put that back in the box
23 and bring it back over here. Okay. So, do I
24 understand, you put everything in a container, and you
25 take it back to headquarters; is that right?

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 A. Yes, ma'am.

2 Q. All right. Do you -- the items that you
3 seized on scene, are they considered evidence?

4 A. Yes, ma'am.

5 Q. And do you alter or tamper them in any way?

6 A. Absolutely not.

7 Q. All the items in the container were in your
8 custody, care, and control?

9 A. Yes, ma'am.

10 Q. And that includes State's 22?

11 A. Yes, ma'am.

12 Q. Okay. State's 20?

13 A. Yes, ma'am.

14 Q. All right. So when you get back to
15 headquarters, what do you do with the evidence that you
16 took possession of?

17 A. I sit down, I lay it out on the table, and
18 start -- I get out our evidence -- our property control
19 sheet, and start logging those items. Because they all
20 have to be itemized on the evidence sheet so that they
21 can be logged into evidence properly. And -- and so we
22 can identify this particular item as best as possible.

23 So once all -- and also things that are going to
24 the Aiken County drug lab, such as a white powder
25 material, they're -- it's packaged in a BEST kit. The

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 green leafy plant material is in -- placed in a secure
2 bag because we test it. We have people -- we have
3 officers at our department that are certified by SLED
4 to test that green leafy plant material. I'm one of
5 them. And we package things safely such as the
6 pistol -- the two pistols found. They were packaged
7 securely and safely to make sure they couldn't harm
8 anybody. And all those things are itemized, kept --
9 kept in my control during that whole time, itemized,
10 packaged properly according to our procedures. And
11 then they are placed into a secure evidence locker,
12 almost like a -- we have almost like a bus locker,
13 that's set into a wall, that we put things in there and
14 close them and it's locked. And it can only be opened
15 by an evidence technician inside the evidence section
16 of the department.

17 Q. And who is that evidence tech with the
18 Department of Public Safety?

19 A. Our evidence custodian is Missy Odenthal.

20 Q. All right. So essentially you're turning
21 these items over to Missy's custody --

22 A. Yes, ma'am.

23 Q. -- is that correct -- okay. And you mentioned
24 some paperwork. I'm going to just pause for one minute
25 and ask if we could have one more form marked.

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 (State's Exhibit 24 marked for identification.)

2 MS. BURCHSTEAD: I beg the court's indulgence.

3 BY MS. BURCHSTEAD:

4 Q. Okay. Detective, are you familiar with
5 something called a form B?

6 A. Yes, ma'am.

7 Q. All right. Was that filled out in this case?

8 A. Yes, ma'am.

9 Q. What's a form B?

10 A. A form B is the initial custody form where
11 we -- it starts the chain of custody on this item that
12 is going to the Aiken County drug lab or SLED drug lab.
13 And it shows where the item -- what the item is, where
14 it was taken from, and where I placed it. And that --
15 that form, with my signature, is notarized before
16 placing it into evidence.

17 Q. So is it part of what would be called chain of
18 custody paperwork?

19 A. Yes, ma'am.

20 Q. It helps track the items?

21 A. Yes, ma'am. That's the beginning of the
22 tracking.

23 Q. I'm going to place on the screen -- we got
24 State's No. 24; can you see that?

25 A. Yes, ma'am.

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 Q. And what is it?

2 A. That is the form B, the form that I completed
3 that night -- or at least a copy of it. The -- at the
4 top left, it has the control number, which is that A
5 007784, which is the control number from the BEST kit
6 that I placed the white powder material in there.
7 It -- I put our case number right below that, my name,
8 the agency I work for, who I seized the item from. The
9 location or where it was near. What item is placed --
10 what item or items are placed in the BEST kit. The
11 date that I placed it into evidence and where I put it;
12 and -- or who I transferred it to, which in this case
13 was into the evidence lockers of Aiken Public Safety.
14 And my name and I signed it. And it's notarized by
15 Captain Sawyer.

16 MS. BURCHSTEAD: Okay. Your Honor, at this time,
17 we move State's 24 into evidence.

18 THE COURT: Any objection?

19 MR. SELLERS: No, Your Honor.

20 THE COURT: Admitted without objection.

21 (State's Exhibit No. 24 admitted into evidence.)

22 BY MS. BURCHSTEAD:

23 Q. I think you talked about a property log of
24 some sort; right?

25 A. Yes, ma'am.

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 Q. Okay. I'm going to put up here -- let me see
2 if I can get it right this time -- State's 21. Let's
3 see if I can do it here. Do you recognize this?

4 A. Yes, ma'am.

5 Q. Okay. And what is it exactly?

6 A. That's the Aiken Public Safety property report
7 and that's our form that we use for tracking evidence
8 to log the evidence in, and -- and it's kept or at
9 least a copy of it or originals, is kept in evidence.
10 And it's for itemizing the -- itemizing the things that
11 are placed in evidence and then where they go; who
12 has -- who has control of them at a various -- at
13 specific times.

14 Q. All right. So this standard form that you use
15 to track items that you remove from -- from a search;
16 right?

17 A. Yes, ma'am.

18 Q. So you used that in this case?

19 A. Yes, ma'am.

20 Q. Okay. And did you fill out -- what portions
21 of this form would you have filled out?

22 A. I filled out everything down to about half way
23 down, I filled out the top half of it.

24 Q. Right.

25 A. Down to my signature. And I stopped there,

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 where my signature and printed name are below it. And
2 then below that is the -- that's the signature log for
3 the chain of custody.

4 Q. All right.

5 A. After I placed it into evidence.

6 Q. So you fill out the top portion to keep track
7 of what you seized and logged into evidence?

8 A. Yes, ma'am.

9 Q. Correct -- okay. In this particular case, was
10 there more than one page?

11 A. Yes, ma'am.

12 Q. Okay.

13 MS. BURCHSTEAD: And I'm just going to ask to
14 approach the witness so he can read a little bit
15 better, Judge.

16 THE COURT: Yes, ma'am.

17 BY MS. BURCHSTEAD:

18 Q. I'm showing you State's 21, would this help
19 you remember what was seized on scene?

20 A. Sure.

21 Q. And would it be a complete reporting of what
22 was seized on scene?

23 A. Yes, ma'am.

24 Q. And everything on there was kept in your
25 custody and control until you logged it in with Missy

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 --

2 A. Yes, ma'am.

3 Q. -- is that correct -- okay. If you could just
4 let the jury know what you seized from the residence
5 this night?

6 A. Okay. Item one, six bags of white powder.
7 And, yes, there were three larger bags in the -- in the
8 blue sling bag. But in one of the bags, or two of the
9 bags, were multiple smaller bags inside there. So I
10 itemized them as six. Six bags of white powder; four
11 ziplock bags that were unused; one bag of green plant
12 material; one set of electronic scales with white
13 powder residue on them that were found near a juvenile
14 that was on the scene.

15 Q. Okay.

16 A. A set -- another set of black scales. Half
17 pint jar with green plant residue in it.

18 MR. SELLERS: Your Honor, we have an objection and
19 a matter of law.

20 THE COURT: Just one second. Mr. Foreman, would
21 you take your jury to the jury room, please.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 11:38 a.m.)

24 MR. SELLERS: Your Honor, the witness keeps going
25 back to this green leafy substance in this pickle jar

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 that was found. And, you know, we made the argument
2 that Kelvin Jones isn't on trial for marijuana, was
3 never in possession of marijuana. There's no evidence
4 that this was in his possession. And it just
5 prejudices my client by keep mentioning this green
6 leafy substance, which was present at the home. We --
7 under basic Rule 403, we think the prejudice outweighs
8 the relevancy.

9 THE COURT: I'm going to overrule your objection.
10 at this point. It's been referred to, brought up a
11 number of times, so I think at this point it's
12 harmless. Any other objections?

13 MR. SELLERS: That's it, Your Honor.

14 THE COURT: All right. Would you bring the jury
15 back in, please.

16 (WHEREUPON, the jury enters the courtroom at
17 approximately 11:40 a.m.)

18 MS. BURCHSTEAD: Thank you, Judge.

19 BY MS. BURCHSTEAD:

20 Q. All right. Just to pick -- pick up where we
21 were, without necessarily reading everything -- because
22 I think, you know, we've got a report the jury will be
23 able to see later -- is it fair to say there were
24 numerous items of drugs, paraphernalia, guns, that kind
25 of stuff?

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 A. Yes, ma'am.

2 Q. Okay. And let's go back to some specific
3 items. The cash in the residence, the \$5,042 that came
4 out of the CVS bag; did you seize that?

5 A. Yes, ma'am.

6 Q. What did you do with that?

7 A. I -- on scene, Captain Sawyer and I counted
8 the money, to find out and make sure how much money we
9 had. And then once we got back to headquarters,
10 Captain Sawyer and I counted the money again to make
11 sure we had the right count and nothing was lost or
12 added to or anything. And then it was placed in a
13 secure -- in a secure bag and placed into evidence with
14 everything else.

15 Q. Okay. And State's 22, the BEST kit, when you
16 packaged up the white powder, did you heat seal the
17 bag?

18 A. Yes, ma'am.

19 Q. All right. Can you just describe to the jury
20 exactly how you packaged everything?

21 A. Again, the -- we have a roll of packaging
22 material -- it's -- it's a flat tube, kind of like your
23 food saver bags you buy on a roll, where you can make a
24 custom side bag for whatever food you're packaging.
25 And -- and we'll take a piece, cut it to length, the

J. MEDLIN -- DIRECT BY MS. BURCHSTEAD

1 appropriate length. And have an impulse sealer, you
2 put it down -- and it's like a very narrow iron, and it
3 will heat seal on one end. And then we put the items
4 in to make -- to make the bag or to hold something.
5 It's not just a tube anymore. And secure that in, put
6 the items in there with any appropriate paper work, and
7 then heat seal the other so that it's all sealed. It's
8 all packaged. Nobody can put anything in, nobody can
9 take anything out. It's secure.

10 Q. All right. Very good.

11 MS. BURCHSTEAD: And just permission to approach
12 one more time, Judge.

13 THE COURT: Yes, ma'am.

14 BY MS. BURCHSTEAD:

15 Q. Referencing State's 23, again, the gun we
16 talked about earlier, do you know that to be the same
17 gun you found on scene?

18 A. Yes, ma'am.

19 Q. How do you know that?

20 A. Because it matches -- the serial -- the model
21 and the serial number, they match with my paper work.
22 And this -- this is the item. This is it particularly.

23 MS. BURCHSTEAD: Your Honor, we move State's 23
24 into evidence -- make sure it's 23.

25 THE COURT: Any objection?

1 MR. SELLERS: No, sir, Your Honor.

2 THE COURT: Admitted without objection.

3 (State's Exhibit No. 23 admitted into evidence.)

4 BY MS. BURCHSTEAD:

5 Q. And just to sum it up here, all the items that
6 you retrieved were logged into evidence with the
7 evidence custodian; is that correct?

8 A. I placed them into the evidence locker, yes,
9 ma'am. And that -- that's the normal -- that's our
10 procedure.

11 Q. Okay.

12 MS. BURCHSTEAD: I beg the court's indulgence. No
13 further questions.

14 THE COURT: Cross examination.

15 **CROSS EXAMINATION BY MS. BENEVENTO**

16 Q. Good morning --

17 A. Good morning.

18 Q. -- Detective Medlin, how are you?

19 A. Good.

20 Q. You testified a moment ago that your
21 involvement in this case began when you were waiting
22 with the SWAT team for -- for Captain Sawyer's call;
23 isn't that correct?

24 A. Yes, ma'am.

25 Q. And you were waiting at headquarters?

J. MEDLIN -- CROSS BY MS. BENEVENTO

1 A. Correct.

2 Q. So you were not present during surveillance --

3 A. Correct.

4 Q. -- is that correct -- okay. And when you
5 received that call, you proceeded to the house with the
6 SWAT team?

7 A. Yes, ma'am.

8 Q. And you went into the house with the SWAT team
9 as well, kind of in a dual capacity, both as a SRT
10 member and as a narcotics officer?

11 A. Yes, ma'am.

12 Q. Okay. And when you entered the home, you
13 mentioned that you saw Mr. Jones?

14 A. Eventually I saw Mr. Jones as I moved through
15 the house. I initially dealt with another subject,
16 when I first went in.

17 Q. And Mr. Jones was not the first person that
18 you encountered upon entering the house; isn't that
19 right?

20 A. Correct.

21 Q. Okay. And when you encountered Mr. Jones, you
22 mentioned that he was carrying a sum of cash on his
23 person; isn't that correct?

24 A. Yes, ma'am.

25 Q. Okay. But there's, again, no indication, no

1 evidence or no anything to suggest that --

2 MS. BURCHSTEAD: Objection, fact for a jury,
3 question of law.

4 THE COURT: Overruled. Good ahead.

5 BY MS. BENEVENTO:

6 Q. You have no information about that cash, do
7 you? Where it came from, what its purpose was?

8 A. I have no direct evidence of where that cash
9 came from besides from Mr. Jones.

10 Q. Okay. And when you first entered the home,
11 you mentioned another individual. That individual
12 would have been Mr. Ricky Lloyd; is that correct?

13 A. Yes, ma'am.

14 Q. And he was in the bathroom?

15 A. Yes, ma'am.

16 Q. And he was in the bathroom with a white powder
17 substance?

18 A. Yes, ma'am, a small quantity.

19 Q. And he had that white powder substance, and he
20 was attempting to flush that white powder substance
21 down the toilet, wasn't he?

22 A. Yes, ma'am.

23 Q. Along with several other items, including cash
24 and I think you mentioned scales?

25 A. Yes, ma'am.

J. MEDLIN -- CROSS BY MS. BENEVENTO

1 Q. Okay. Mr. Jones was not in that bathroom
2 flushing anything, was he?

3 A. No, ma'am.

4 Q. And he wasn't in the kitchen trying to dispose
5 of anything, was he?

6 A. He was in the kitchen, but not trying to
7 dispose of anything that I'm aware of, no, ma'am.

8 Q. Okay. At one point after you deal with Mr.
9 Lloyd, you discover this handgun that we keep making
10 reference to under a couch?

11 A. Yes, ma'am.

12 Q. And you ask Sgt. Flanders to lift up the couch
13 and you discover other items as well?

14 A. Yes, ma'am.

15 Q. There is no connection whatsoever between that
16 handgun, those other items found under the couch, and
17 Mr. Jones; isn't that correct?

18 A. The handgun, not to my knowledge. The -- the
19 bag was the one that I was told that was -- that he was
20 seen carrying in the house.

21 Q. Okay. But you did not see him carry the bag in
22 the house?

23 A. No, ma'am.

24 Q. And at no point, while you were in the house,
25 did you see Mr. Jones with the bag?

1 A. That's correct.

2 Q. And at no point, when you were in the house,
3 did you see Mr. Jones with the contents of the bag?

4 A. That's correct.

5 Q. That being this -- what you identified as
6 white powder substance taken from the bag, at no point
7 did you see Mr. Jones with this white powder substance?

8 A. Correct.

9 Q. And the pickle jar with the green leafy
10 substance, any connection between that and Mr. Jones?

11 A. No -- no direct evidence, no, ma'am.

12 Q. And Mr. Jones was not charged with that item?

13 A. No, ma'am.

14 Q. And he wasn't charged with the gun?

15 A. No, ma'am.

16 Q. And isn't it true that neither the gun, nor
17 the pickle jar full of green leafy substance, have
18 anything to do with Mr. Jones?

19 A. There's no direct evidence, no, ma'am.

20 Q. But you have no information to suggest that he
21 had any connection to those items?

22 A. No direct evidence, no, ma'am.

23 Q. Okay. All right.

24 MS. BENEVENTO: Beg the court's indulgence one
25 moment, Your Honor.

J. MEDLIN -- CROSS BY MS. BENEVENTO

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 BY MS. BENEVENTO:

4 Q. And, Detective Medlin, just to be clear so
5 that it's clear in my mind on time, it was your
6 understanding that Captain Sawyer was at the residence
7 with other people performing surveillance, you were
8 waiting for a call?

9 A. Yes, ma'am.

10 Q. Okay. And the only time that you saw Kelvin
11 Jones was once you were inside the house already?

12 A. Yes, ma'am.

13 Q. You have no direct knowledge of anything that
14 went on during that surveillance other than the phone
15 call that you had with Captain Sawyer?

16 A. Yes, ma'am.

17 Q. Okay. And once you were inside, did you --
18 when you were collecting the evidence, I think there
19 was a lot of testimony about the process of collecting
20 the evidence, and how we preserve it, did you ever
21 submit the gun or the pickle jar that you were
22 referring to for analysis of any kind?

23 A. Yes, ma'am, I did.

24 Q. Okay. And what type of analysis would that
25 have been?

1 A. The green plant material would be submitted
2 for analysis to confirm whether or not it's marijuana.
3 And the gun and the pickle jar were submitted for
4 fingerprint.

5 Q. Okay. And were any fingerprints found on any
6 of those items?

7 A. No fingerprints were found on it.

8 Q. Mr. Jones' fingerprints were not found on
9 either the gun or the pickle jar; isn't that correct?

10 A. That's correct. No fingerprints.

11 MS. BENEVENTO: I have no further questions for
12 this witness, Your Honor.

13 THE COURT: Redirect?

14 MS. BURCHSTEAD: Briefly, Your Honor.

15 **REDIRECT EXAMINATION BY MS. BURCHSTEAD:**

16 Q. Just to pick up where Ms. Benevento was
17 asking, the fingerprints on a gun, is it -- is it
18 typical to find fingerprints on a gun necessarily?

19 A. It's very rare.

20 Q. Okay.

21 A. Unless it's a -- like a chrome type gun,
22 very -- very smooth finish.

23 Q. All right. Now, going back to when the SRT
24 coming to the house, we've got knock and announce. How
25 much time was it between knock, and announce, and

1 breach?

2 A. Just a matter of a couple of seconds. During
3 -- under stress, your -- your perception of time is
4 really skewed when your adrenaline gets going. What
5 seems like might be five minutes, is really about five
6 seconds sometimes and it -- but --

7 Q. But we are talking --

8 A. Our typical -- typical time is five, ten, 15
9 seconds.

10 Q. All right. And in this case, that's about
11 accurate?

12 A. Yes, ma'am.

13 Q. Is that what you recall?

14 A. I believe so.

15 Q. All right. So when you head in the home,
16 we've got someone in the bathroom flushing cocaine;
17 right?

18 A. Yes, ma'am.

19 Q. Or a white powder substance?

20 A. A white powder.

21 Q. A small quantity, is that what you said?

22 A. Yes, ma'am. It's a bag about the size of a
23 ping pong ball roughly.

24 Q. So in reference to State's 22, this white
25 powder, in your training and experience with folks

1 flushing powder down a toilet, do you think all of this
2 could have been flushed down a toilet in that amount of
3 time?

4 A. No, it would take a couple of flushes if it
5 would even go.

6 Q. But somebody could certainly throw it under a
7 couch; right?

8 A. Easily.

9 Q. Okay. And in your training and experience in
10 the field of narcotics work, is there an association
11 between drugs and guns?

12 A. Yes, ma'am.

13 Q. And was this gun, that we've talked about, in
14 real close proximity to the white powder?

15 A. Directly next to it.

16 MS. BURCHSTEAD: Nothing further, Your Honor.
17 Thank you.

18 **RECROSS EXAMINATION BY MS. BENEVENTO:**

19 Q. Mr. Jones was not charged with the gun; isn't
20 that correct?

21 A. That's correct.

22 Q. And Mr. Jones was not charged with the
23 contents of the pickle jar; isn't that correct?

24 A. That's correct.

25 Q. And at no point in time did you see Mr. Jones

1 running towards the couch, or running anywhere in the
2 house for that matter; isn't that correct?

3 A. That's correct. Well, we didn't see
4 anybody -- we could hear people running back and forth
5 from one side to the other of the house, but didn't see
6 anybody, no, ma'am.

7 Q. Right. And the sounds that you heard at that
8 time, what you're describing now, that could have been
9 any of the occupants in the house; isn't that correct?

10 A. Yes, ma'am.

11 Q. And there were many occupants in the house
12 other than Mr. Jones; isn't that correct?

13 A. A total of about five or six, seven people,
14 yes, ma'am.

15 Q. But you're not sure who that was that you
16 heard running?

17 A. No, ma'am.

18 Q. And you have no indication of any kind that
19 Mr. Jones ever touched that white powder substance; do
20 you?

21 A. We've got no direct evidence of that, no,
22 ma'am.

23 MS. BENEVENTO: No further questions, Your Honor.

24 MS. BURCHSTEAD: Nothing further, Your Honor. If
25 I may suggest, this is a good breaking point.

1 THE COURT: Okay. Is it all right if this officer
2 steps down?

3 MS. BENEVENTO: Yes.

4 THE COURT: Thank you, sir.

5 THE WITNESS: Yes, sir.

6 THE COURT: Then let me see you guys.

7 (WHEREUPON, a bench conference was had.)

8 THE COURT: All right. Mr. Foreman, we are going
9 to take a lunch break now. I'm going to let you go to
10 lunch until 1:25. If you'd be back in your jury room
11 about that time, we'll resume trial about 1:30. Let me
12 remind you not to speak amongst yourselves, with anyone
13 about the facts of this case, or about this case until
14 you begin your deliberations at the end of the case.
15 Okay, sir.

16 I hope you all have a good lunch. If you'll
17 leave your pads, Madam Bailiff, you want them here in
18 the courtroom?

19 THE BAILIFF: Yes.

20 THE COURT: Just leave your pads there in the
21 courtroom.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 11:53 a.m.)

24 THE COURT: All right, sir. Anything further from
25 the State before we break for lunch?

1 MS. BURCHSTEAD: Not before lunch, Judge.

2 THE COURT: From the defense?

3 MR. SELLERS: No, sir.

4 THE COURT: All right. Recessed until 1:30.

5 MS. BURCHSTEAD: Thank you.

6 MR. SELLERS: Thank you.

7 (WHEREUPON, a lunch break was taken.)

8 THE COURT: Be seated. All right. Mr. Sellers, I
9 ran into the State at lunchtime. But other than saying
10 hello, I didn't have any conversations with them just
11 to let you know.

12 MR. SELLERS: Did you eat well at least, Your
13 Honor?

14 (Off-record discussion.)

15 THE COURT: All right. You ready?

16 MS. BURCHSTEAD: The State is ready.

17 THE COURT: You guys ready?

18 MR. SELLERS: Yes, sir, Your Honor.

19 THE COURT: Would you bring the jury in please,
20 ma'am.

21 (WHEREUPON, the jury enters the courtroom at
22 approximately 1:35 p.m.)

23 THE COURT: Does everybody on the jury have what
24 they need? Got your pads, good. All right.

25 The State, would you call your next witness?

M. ODENTHAL -- DIRECT BY MR. ROSS

1 please.

2 MR. ROSS: The State calls Melissa Odenthal to the
3 stand.

4 THE CLERK: State your full name.

5 THE WITNESS: Melissa Odenthal.

6 MELISSA ODENTHAL, after having
7 been duly sworn, testified as follows:

8 MS. BURCHSTEAD: Judge, could we approach for just
9 one second?

10 THE COURT: Yes, ma'am.

11 (WHEREUPON, a bench conference was had.)

12 THE COURT: Ms. Odenthal, if you need to leave
13 urgently, you're free to go. Ms. Odenthal is a little
14 under the weather, so.

15 THE WITNESS: Thank you.

16 MS. BURCHSTEAD: Thank you, Judge.

17 THE COURT: Go ahead.

18 **DIRECT EXAMINATION BY MR. ROSS:**

19 Q. Good afternoon, Ms. Odenthal, how are you?

20 A. Okay.

21 Q. You're a little bit under the weather this
22 afternoon?

23 A. A little bit. A little bit.

24 Q. We'll try and run through this pretty quick.

25 A. Okay. Thank you.

M. ODENTHAL -- DIRECT BY MR. ROSS

1 Q. You are the evidence custodian over at the
2 Aiken Department of Public Safety; is that correct?

3 A. Yes, I am.

4 Q. Can you tell jury about the chain of custody
5 procedures y'all have in place --

6 A. Sure.

7 Q. --at the evidence --

8 A. Sure. Basically what happens is if when an
9 officer has any evidence to drop, they fill out a
10 property sheet, and they'll have an incident report.
11 And they will drop those items into a locker that no
12 one else can get to except for myself, on the other
13 side when I come in the next day. I'll pull all that
14 evidence out and I'll check everything in until it's
15 needed for court or needed for testing, that type of
16 thing.

17 Q. Now, you -- I saw you indicate you were
18 referring to some documents?

19 A. Yes, sir.

20 Q. What documents do you have here in your
21 possession?

22 A. This is a copy of one of our property sheets.
23 And as you can see, the -- the officers will list
24 everything that is dropped. And then they'll sign it.
25 And then I'm the next one to check it in.

1 Q. Okay. And the second form, that appears in
2 yellow, can you tell the jury what this form is?

3 A. This is basically -- this would be the top
4 copy and this is the second sheet that would kind of be
5 underneath it like that. But a lot of times what
6 happens is, we'll have -- say, in this particular case,
7 we would have marijuana to test. And when that happens
8 it gets tested in house. So the original sheet would
9 go with the marijuana and be put into an area for
10 testing for officers who do the testing, to come and
11 pull it out when needed.

12 Q. The original sheet is the white sheet?

13 A. That's correct.

14 Q. And this is like a triplicate type form?

15 A. Yes, sir.

16 Q. Where if you write on it, it'll go through a
17 couple of pages?

18 A. Yes, sir.

19 Q. Let's mark these two pieces of paper as the
20 next exhibit. I believe, Madam Court Reporter, it's 25
21 -- and I've got a 26 as well.

22 (State's Exhibits Nos. 25 and 26 marked for
23 identification.)

24 BY MS. BURCHSTEAD:

25 Q. I'm showing you State's No. 5 (sic), are these

M. ODENTHAL -- DIRECT BY MR. ROSS

1 the two pieces of paper you were just talking about?

2 A. Yes, sir.

3 Q. And the one on top is the white sheet?

4 A. That's correct.

5 Q. The one on the bottom is --

6 A. Like the duplicate.

7 Q. The duplicate.

8 A. Yes, sir.

9 Q. Now, in reference to item or State's Exhibit
10 25, is it your regular business practice to create this
11 record?

12 A. It's -- what? I'm sorry.

13 Q. Is it your regular business practice, as the
14 evidence custodian at the Aiken Department of Public
15 Safety, to store and house evidence for trial --

16 A. Yes. Yes.

17 Q. And testing?

18 A. Yes, it is.

19 Q. And is it your regular business practice for
20 these forms to be filled out on each piece of evidence?

21 A. That's correct.

22 Q. And these forms are filled out by the officers
23 that seize the evidence and by yourself; right?

24 A. Uh-huh. And then anybody that would need it,
25 you know, throughout for testing or anything like that.

M. ODENTHAL -- DIRECT BY MR. ROSS

1 Q. Okay. And as evidence custodian, you have
2 access to these forms; right?

3 A. That's correct.

4 Q. You are the evidence custodian for these forms
5 as well?

6 A. That's correct.

7 MR. ROSS: Your Honor, at this time, I would move
8 State's No. 25 pending any objection by the defense.

9 MR. SELLERS: Your Honor, we would just renew our
10 objection earlier to the mention of this substance, the
11 green leafy substance that you ruled on earlier, Your
12 Honor.

13 THE COURT: It's noted. I will charge the jury,
14 however, that the reference to marijuana or a green
15 leafy type substance has no bearing on the charges in
16 this case. The charges were as explained to you at the
17 beginning of this trial. Okay, sir.

18 BY MR. ROSS:

19 Q. Now, Ms. Odenthal, going back to your chain of
20 custody procedures, when you receive items such as
21 drugs, what are they usually packaged in?

22 A. They could -- typically, it's packaged in a
23 smaller, you know, tamper proof bag. If there's drugs
24 that are going to be going out to Aiken County for
25 testing, it's put in what's called a BEST kit.

M. ODENTHAL -- DIRECT BY MR. ROSS

1 Q. Okay. And what's a BEST kit?

2 A. A BEST kit would be anything -- anything
3 harder than marijuana would go in that BEST kit.

4 Q. Okay. And does each BEST kit have a unique
5 number for that BEST kit?

6 A. Yes, sir.

7 Q. And does the manufacture stamp that unique
8 number on it?

9 A. Yes, it does.

10 Q. And no two BEST kits have the same number;
11 isn't that correct?

12 A. No, sir.

13 Q. Okay. And when you receive that BEST kit out
14 of storage, do you document your receipt on --

15 A. Yes.

16 Q. -- something like Exhibit 25?

17 A. Right. It would show where I took it out and
18 then I took it over to Aiken County.

19 Q. Okay. Referring to State's No. 25, and it
20 would probably be on your monitor there, Ms. Odenthal.
21 This top part here that we're looking at -- if it will
22 come back in focus -- right here. This top part where
23 it says "date", who fills that part out?

24 A. The officer would fill that part out.

25 Q. Okay. And this case number, is that the same

1 thing as the BEST kit number?

2 A. Well, that case number would be put on the
3 BEST kit when I checked it in.

4 Q. Okay. And moving down here, item one, what is
5 item one?

6 A. Item one says "six bags of white powder" with
7 a BEST kit number of A 007784.

8 Q. Okay. And further down on this sheet of
9 paper, does that indicate when you actually received
10 it?

11 A. Yes.

12 Q. And when was that?

13 A. Can you move it over just a little bit. It
14 says 4/28 of '11.

15 Q. Okay. So according to this report, it was
16 turned in on April 21st --

17 A. Right.

18 Q. -- 2011, and you indicated that you took it
19 out of a storage locker on April 28, 2011; is that
20 correct?

21 A. That is correct.

22 Q. So what accounts for the discrepancy in the
23 two dates?

24 A. A lot of times if there's, you know, a lot of
25 evidence regarding a case, sometimes I'll try to get

M. ODENTHAL -- DIRECT BY MR. ROSS

1 with the officer; or if there's a question about a
2 case, I won't even pull it until I can talk with that
3 officer. I'm assuming that this -- you know, this
4 could have been one of those times. You know, it's
5 been several years ago, so that's the only thing I can
6 think of as far as --

7 Q. Well, that's why -- what's why you write stuff
8 down so --

9 A. Right.

10 Q. -- so several years later when the case comes
11 to court --

12 A. Right.

13 Q. -- you know when it's actually handled; is
14 that correct?

15 A. Right.

16 Q. Okay. And does this form indicate when it was
17 turned over to the sheriff's department for testing?

18 A. Can you scroll -- move it up a little bit.

19 Q. Actually on page two here.

20 A. Yes. It shows it going on 5/2/11, and it
21 returned on 6/28 of '11.

22 Q. And that's right here where it shows --

23 A. That's correct. That's correct.

24 Q. And right over here is where it says the item
25 number, right?

M. ODENTHAL -- DIRECT BY MR. ROSS

1 A. Yes.

2 Q. And that's item one, it looks like it was
3 scratched through, right?

4 A. Right.

5 Q. But that's the BEST kit, right?

6 A. That's correct.

7 Q. So from the point Detective Medlin turned in
8 the BEST kit, A 007784, on April 21, 2011, to the point
9 you relinquished custody to the sheriff's department on
10 5/2/2011, was that BEST kit within the care, custody,
11 and control of the Aiken Department of Public Safety's
12 Evidence Room?

13 A. Yes, it was.

14 Q. And that was within your care, custody, and
15 control, correct?

16 A. Yes, it was.

17 Q. And was it in the same condition when it was
18 turned over to the sheriff's department as when it was
19 initially turned in by Detective Medlin?

20 A. Yes, it was.

21 Q. Now, does this form indicate when the BEST kit
22 was returned back after testing?

23 A. Can you scroll over a little bit? Yes, it was
24 returned on 6/28 of '11.

25 Q. Okay. And was that item -- has that item been

M. ODENTHAL -- DIRECT BY MR. ROSS

1 in the care, custody, and control of the evidence since
2 then?

3 A. Yes, sir.

4 Q. And when the item was turned in, did you check
5 the seal?

6 A. Yes.

7 Q. And that was when it was turned in by
8 Detective Medlin, right?

9 A. Yes.

10 Q. Did you check the seal after it came back from
11 evidence processing?

12 A. Yes, sir.

13 Q. Was the item subsequently checked out for
14 Court purposes?

15 A. Yes.

16 Q. And who has care, custody, and control of the
17 item when it's checked out for court?

18 A. The officer that checked it out.

19 Q. Okay. And that's indicated on this piece of
20 paper specifically?

21 A. Yes.

22 Q. Right here?

23 A. Uh-huh.

24 Q. Who is Lt. Clay Adams?

25 A. He works with Aiken County Sheriff's Office.

M. ODENTHAL -- DIRECT BY MR. ROSS

1 Q. Okay. And it looks like it was checked out by
2 M. E. Sawyer?

3 A. Captain Sawyer, yes, sir.

4 Q. Okay. And when was it checked out?

5 A. I can't see the dates -- 6/11/13.

6 Q. Okay. And when was it turned back in?

7 A. It looks like 7/11 of '13.

8 Q. Okay. And is it your understanding Lt. Adams
9 actually does the fingerprint analysis?

10 A. Yes, sir.

11 MR. ROSS: Judge, that's all the questions I have
12 for her. Ms. Odenthal, if you would, please, answer
13 anything that the defense has.

14 THE COURT: Cross examination.

15 MR. SELLERS: Your Honor, we don't have any
16 questions for the witness. We just wish she feels
17 better.

18 THE WITNESS: Thank you.

19 THE COURT: May this witness be excused?

20 MR. SELLERS: Please.

21 THE COURT: Next witness please.

22 MS. BURCHSTEAD: The State calls Amber Collins.

23 THE CLERK: State your full name for the record.

24 THE WITNESS: Amber Way Collins.

25 AMBER WAY COLLINS, after

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 having been duly sworn, testified as follows:

2 **DIRECT EXAMINATION BY MS. BURCHSTEAD:**

3 Q. Good afternoon, Ms. --

4 MS. BURCHSTEAD: I'm sorry. Beg the court's
5 indulgence. I'm getting a couple of things marked
6 here.

7 BY MS. BURCHSTEAD:

8 Q. It's Ms. Collins now; yes?

9 A. Yes, ma'am.

10 Q. Formerly Way?

11 A. That's correct.

12 Q. Recently married?

13 A. Yes.

14 Q. Congratulations.

15 A. Thank you.

16 Q. With whom are you employed?

17 A. Aiken County Sheriff's Office.

18 Q. And what do you do there?

19 A. I am their forensic drug analyst.

20 Q. And as a forensic drug analyst, what types of
21 things do you do?

22 A. I get unknown substances that the officers
23 collect. And from there, I determine what the
24 substance is, generate reports; maintain evidence. Do
25 stuff for different agencies throughout the county.

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 Q. And what is your background and training to
2 allow you to do this role?

3 A. I have a bachelors degree in chemistry. And I
4 was also trained by the South Carolina Law Enforcement
5 Division, better known as SLED in Columbia.

6 Q. Okay. And approximately how times have you
7 analyzed controlled substances?

8 A. Let's see. I've been doing it for nine years.
9 I've analyzed over -- over 5,000 cases.

10 Q. All right. And do you do any continuing
11 education?

12 A. I go to conferences. And I also do peer
13 review every Friday with two other chemists from other
14 counties.

15 Q. All right. Have you previously testified in
16 General Sessions Court?

17 A. I have.

18 Q. Approximately how times?

19 A. Let's see, I've been certified 14, so
20 probably -- I'd go around 14, 15 times.

21 Q. And you've previously been certified as an
22 expert?

23 A. Correct.

24 Q. In what?

25 A. In forensic drug analysis.

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 MS. BURCHSTEAD: And, Your Honor, at this time,
2 the State does offer Ms. Collins as an expert in
3 forensic drug analysis or chemical testing.

4 THE COURT: Any voir dire?

5 MR. SELLERS: No, sir, Your Honor.

6 THE COURT: Do you stipulate to her expertise?

7 MR. SELLERS: Yes, sir, Your Honor.

8 THE COURT: Very good. All right. Ladies and
9 gentlemen of the jury, normally witnesses aren't
10 allowed to give their opinion. They are limited to
11 testifying to what they see, they smell, they hear,
12 they feel. However, if a person, because of their
13 education or experience has become an expert in a
14 particular area, and that area would be beneficial to
15 you, the jury, they are allowed to give an opinion in
16 their area of expertise.

17 In this case, this witness has been stipulated
18 to be an expert in the field of forensic drug analysis.
19 She'll be allowed to give her opinion in that area.
20 Expert opinion is like any other testimony you will
21 hear in this case, you may accept it. You may reject
22 it, or give it as much weight as you think it is
23 entitled. Go ahead, please, ma'am.

24 MS. BURCHSTEAD: Thank you, Your Honor.

25

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 BY MS. BURCHSTEAD:

2 Q. All right. Ms. Collins, remind me, how long
3 have you been with the county?

4 A. I just celebrated my ninth year.

5 Q. Okay. In your role for testing substances, is
6 there a -- a protocol for how items should come to you
7 for testing?

8 A. Yes. From outside agencies, they bring the
9 evidence directly to me.

10 Q. Okay. And when you receive it, do you -- is
11 it packaged in any certain way?

12 A. Yes. Everyone is required to put their
13 evidence into a BEST evidence package, which is
14 basically a tamper evidence pouch, along with
15 paperwork. And it's given to me. And then I generate
16 a case number -- not a case number, a log number for
17 that case.

18 Q. Okay. So you generate your own number in
19 addition to the BEST kit number; is that correct?

20 A. Correct.

21 Q. And internal lab number?

22 A. Yes.

23 Q. Okay. Are you familiar with what's called a
24 Form A?

25 A. I am.

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 Q. What is a Form A?

2 A. A Form A lists my credentials, and it also
3 lists when an agency turns something over to me to be
4 tested.

5 Q. Okay. And were you provided something for
6 testing in this case?

7 A. I was.

8 Q. Okay.

9 MS. BURCHSTEAD: Your Honor, I'm going to place
10 State's 27 -- let me just show counsel first. I'm
11 going to place 26 -- 27 here, and you can take a look
12 at it and tell the jury what it is. Do you see it --
13 here we go -- all right. And does that look like the
14 Form A?

15 A. It does.

16 Q. In this case?

17 A. Yes, ma'am.

18 Q. Okay. So at this -- this form, if I
19 understand it correctly, just has your credentials?

20 A. Right. It has my credentials. Then it also
21 has the date that Aiken Department of Public Safety
22 turned the evidence over to me. And then it also has
23 the type of testing I did in this case.

24 Q. Okay. So what is the date that you received
25 the evidence in this case?

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 A. May 2, 2011.

2 Q. Okay. So, you would have received that from
3 the Department of Public Safety?

4 A. Correct.

5 Q. Okay. And you took it into your personal
6 custody?

7 A. That's right.

8 Q. Okay. And what identification do we have on
9 here that you know what you received?

10 A. I have which agency it came from, which is the
11 Aiken Department of Public Safety. And I also have my
12 lab number.

13 Q. Okay. And that's the lab number you were
14 talking about a little while ago?

15 A. Correct.

16 MS. BURCHSTEAD: Okay. Your Honor, I would offer
17 State's 27 into evidence.

18 THE COURT: Any objection?

19 MR. SELLERS: No objection, Your Honor.

20 (State's Exhibit Number 27 admitted into
21 evidence.)

22 MS. BURCHSTEAD: I beg the court's indulgence.

23 BY MS. BURCHSTEAD:

24 Q. Okay. So, Ms. Collins, in this case, you
25 actually prepared -- or you conducted analysis in this

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 case; is that correct?

2 A. Correct, yes, ma'am.

3 Q. Okay. Do you typically prepare a report when
4 you conduct analysis?

5 A. I do.

6 Q. Did you prepare a report in this case?

7 A. Yes, ma'am.

8 Q. Okay. And the chain of custody, the protocol
9 you talked about a few minutes ago, was that followed
10 in this case?

11 A. It was.

12 Q. When evidence is received, if it's been
13 tampered in any way, what do you do?

14 A. I won't accept it.

15 Q. Okay. If it had been tampered, you would --
16 would you make a notation or send it back -- what would
17 you do?

18 A. I would send it back. I wouldn't test it.

19 Q. Okay. Very good. All right. So I understand
20 you actually did prepare a report in this case?

21 A. Correct.

22 Q. I'm going to show you State's 28, and just ask
23 if you can identify that for me.

24 A. Yes, ma'am. It's my report.

25 Q. Okay. I'm going to stick it up here for the

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 jury to see it.

2 MS. BURCHSTEAD: Your Honor, at this time, the
3 State is offering Exhibit 28 into evidence and would
4 allow Ms. Way -- Ms. Collins to go through her report.

5 THE COURT: Any objections?

6 MR. SELLERS: No, sir, Your Honor.

7 THE COURT: Admitted without objection.

8 (State's Exhibit No. 28 admitted into evidence.)

9 BY MS. BURCHSTEAD:

10 Q. Okay. Ms. Collins, can you see the report
11 well?

12 A. It's a little fuzzy. Yes, ma'am. I think I
13 can make it out.

14 Q. Okay. I'm happy to bring it back to you if we
15 need to. Okay. Can you show us where the lab number
16 is on here?

17 A. Okay. The lab number is up to the right
18 corner. It's lab number L 11-0196. Up a little bit --
19 or there, and up a little bit higher.

20 Q. All right. Up here?

21 A. Under the date, yes, ma'am.

22 Q. Okay. And when we see control number, can you
23 read that out for us?

24 A. Yes, ma'am. It's A 007784.

25 Q. And what is the control number?

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 A. That's the number linked to the BEST kit.

2 It's actually printed on the BEST evidence kit.

3 Q. Okay. I'm going pause right there. And just
4 ask if I can approach, and show you Exhibit 22. Do you
5 recognize this?

6 A. Yes, ma'am.

7 Q. And what is this?

8 A. This is the finished product of everything,
9 along with the BEST evidence pouch.

10 Q. Okay. And is there a number on there?

11 A. Correct, yes, ma'am.

12 Q. And does that number match what's on your
13 report?

14 A. Yes, ma'am.

15 Q. And would you just read that again?

16 A. A 007784.

17 Q. Okay. So the items that are in that kit, is
18 that what you actually tested?

19 A. Yes, ma'am.

20 Q. The white powder substance?

21 A. Yes, ma'am.

22 Q. All right. And does it appear today in court
23 to be in the same condition in which you -- well, let
24 me back up. After you tested it, did you reseal it?
25 What did you do with the white powder?

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 A. I resealed it, yes, ma'am.

2 Q. Okay. And does that appear to be in the same
3 condition as it was once you finished your testing?

4 A. Yes, it does. There's another heat sealed
5 area here, but this -- are my initials right here from
6 where I did it.

7 Q. All right. So is there any question that
8 that's what you tested?

9 A. No, ma'am.

10 Q. All right. Thank you. And let's take a look
11 back at your report, can you please explain to the jury
12 your findings in this case? What -- what tests did you
13 run and what is your -- did you reach a conclusion
14 about what this white powder substance is?

15 A. Okay. I always do a preliminary test which is
16 the chemical test you'll see checked here at the
17 bottom. It's basically a color test, just to see what
18 -- liquid will change to different colors depending on
19 what kind of drug you're interacting with.

20 Let's see. From there, I generated my report.
21 I've got two items listed here. Do you want me to read
22 out everything or --

23 Q. Yes, ma'am. Just explain to the jury what --
24 what exactly did you test? I see item one and item
25 two. If you want to just take it in order. That would

1 be great.

2 A. Okay. All right. Item one was three plastic
3 bags containing compressed powdered substance. This I
4 tested with a color test and I ran it on
5 instrumentation which is our FTIR, which stands for
6 Fourier Transform Infrared Spectrometer. I also did
7 the same thing to item two, which is three plastic
8 bags, which each contained plastic bags, which each
9 contained powder substance.

10 Q. Okay. So in item two, you had a total of six
11 bags?

12 A. Six bags. Yes, ma'am.

13 Q. Three of which actually had the powder that
14 you tested?

15 A. Correct.

16 Q. Okay. So in -- in conducting your testing,
17 did you reach a conclusion as to what item one
18 contained?

19 A. Yes, ma'am.

20 Q. And what is your conclusion as to that?

21 A. Cocaine found, combined weight.

22 Q. What does combined weight mean?

23 A. It means -- it's the weight of all three of
24 the bags in that item.

25 Q. And item two, did you reach a conclusion as to

A. COLLINS -- DIRECT BY MS. BURCHSTEAD

1 what the white powder substance is?

2 A. I did. Cocaine was also found, combined
3 weight.

4 Q. And combined weight, again, being the total?

5 A. Yes, ma'am.

6 Q. Okay. And just so I'm clear, why do we have
7 item one and two? Why is it not all tested together?

8 A. According to our methods and protocol, that if
9 something is packaged differently, it's tested
10 separate. If all the bags -- if all the bags were just
11 six bags of compressed, they would have been tested
12 together. But because the other three were packaged
13 within another bag, I tested them separately than the
14 first one.

15 Q. All right. So item one, did you reach a total
16 weight of what appeared to be cocaine?

17 A. I did.

18 Q. And what is that?

19 A. It's a little fuzzy to read, I can see --

20 Q. Let me focus it in here.

21 A. Oh, that was a little -- I was about to say,
22 my screen just went dark.

23 Q. Your screen went dark?

24 A. A little bit, yeah. Oh, now it's gone.

25 MS. BURCHSTEAD: I beg the Court's indulgence. I

1 need technical help here.

2 A. Oh, there we go. That's much better. Thank
3 you. There you go.

4 Q. There we go.

5 A. Okay. That's better.

6 Q. All right. So item one, what is your -- what
7 is the weight for cocaine?

8 A. 749.33 grams.

9 Q. And item two, did you reach a weight as well?

10 A. Yes, ma'am. 501.88 grams.

11 Q. Beg the Court's indulgence. Just a point of
12 clarification, when you got your weight on the cocaine,
13 is that purely the powder or does it include the
14 packaging?

15 A. Purely the powder, no packaging.

16 MS. BURCHSTEAD: Nothing further at this time,
17 Judge.

18 THE COURT: Cross examination?

19 MR. SELLERS: Your Honor, we have no questions for
20 this witness.

21 THE COURT: May she be excused?

22 MR. SELLERS: She may, Your Honor.

23 MS. BURCHSTEAD: We would love that, yes.

24 THE COURT: Thank you, ma'am.

25 THE WITNESS: Thank you.

C. ADAMS -- DIRECT BY MR. ROSS

1 THE COURT: You may be excused.

2 MS. BURCHSTEAD: Thank you, Ms. Collins.

3 THE COURT: Call your next witness please.

4 MR. ROSS: The State calls Lt. Clay Adams to the
5 stand.

6 THE CLERK: State your full name for the record.

7 THE WITNESS: Martin Clay Adams.

8 MARTIN CLAY ADAMS, after
9 having been duly sworn, testified as follows:

10 **DIRECT EXAMINATION BY MR. ROSS:**

11 Q. Lt. Adams, how are you doing this afternoon?

12 A. Doing good.

13 Q. You tested some items for fingerprint analysis
14 in this case; is that correct?

15 A. I did, yes, sir.

16 Q. Before we get to the test that you ran, can
17 you tell the jury about your background and training,
18 specifically as it pertains to fingerprint development
19 and analysis?

20 A. I have -- after college, I went to the South
21 Carolina Criminal Justice Academy, and became a
22 certified law enforcement officer. Past that training,
23 I've had advanced training in latent fingerprint
24 development, latent fingerprint identification, crime
25 scene investigations, and I am a certified latent print

C. ADAMS -- DIRECT BY MR. ROSS

1 examiner.

2 Q. You say "latent print", what does that mean?

3 A. Fingerprints, anything of latent, meaning
4 unknown or hidden.

5 Q. So what are the steps that you do to develop a
6 print, then analyze it? Tell the jury a little bit
7 about that, please.

8 A. The first thing we do is we examine the
9 surface of the item that we're trying to see if there
10 are any fingerprints on. The first step we do is a
11 visual examination to -- just to see if we can actually
12 see a fingerprint.

13 An example that I use is glass. Like a glass
14 coffee table, you can typically see fingerprints or
15 smudges or partial prints just by looking at it. So
16 when we have an item that we are looking to see if
17 there are any fingerprints on, we'll do a visual
18 examination of it first.

19 Once we determine that the item that we are
20 looking at is sufficient to hold a fingerprint, then we
21 determine on what process that we're going to use that
22 will best develop that fingerprint.

23 Q. Okay. Now, have you been qualified as an
24 expert in fingerprint development and analysis in State
25 Circuit Court before?

C. ADAMS -- DIRECT BY MR. ROSS

1 A. I have, yes, sir.

2 Q. How many times?

3 A. Eighteen.

4 Q. And the techniques that you use in your
5 analysis, are they generally considered reliable?

6 A. Yes, sir.

7 Q. Are they the same techniques or are these same
8 techniques taught to law enforcement officers
9 throughout the state and throughout the country?

10 A. Yes, sir.

11 Q. Okay. You're applying the principles that
12 other officers use in California, New York? It's not
13 just an Aiken County doctrine you're applying, right?

14 A. That's correct.

15 MR. ROSS: Your Honor, at this time, we would
16 offer Lt. Adams as an expert in fingerprint analysis
17 and development.

18 THE COURT: Any voir dire?

19 MR. SELLERS: No, sir.

20 THE COURT: Do you stipulate?

21 MR. SELLERS: Yes, sir.

22 THE COURT: All right. Ladies and gentlemen, if
23 you will recall, I told you a minute ago about experts.
24 In this case, this gentleman will be considered an
25 expert in the field of fingerprint development and

C. ADAMS -- DIRECT BY MR. ROSS

1 analysis. He'll be allowed to give his opinion in that
2 area. His testimony is like any other testimony you
3 will hear in this case, you may accept it; you may
4 reject it, or give it as much weight as you believe it
5 deserves. Okay, sir.

6 BY MR. ROSS:

7 Q. Lt. Adam, were you asked to examine several
8 items to develop fingerprints in this case?

9 A. Yes, sir.

10 Q. And what items were you asked to analyze?

11 A. I believe six plastic sandwich style baggies
12 and two scales.

13 Q. Okay. And I'm handing you what's been marked
14 as State's No. 22, is this the BEST kit that you were
15 asked to examine baggies from?

16 A. It is, yes, sir.

17 Q. And how do you make that determination?

18 A. The seal markings have my initials and the
19 date.

20 Q. Okay. What about the BEST kit number?

21 A. Yes.

22 Q. Is that the same BEST kit number?

23 A. It is.

24 Q. Who did you receive that BEST kit from?

25 A. Captain Marty Sawyer.

C. ADAMS -- DIRECT BY MR. ROSS

1 Q. And Captain Sawyer told you -- or he gave you
2 instruction on what needed to be tested?

3 A. Yes, sir.

4 Q. And did you cut open the bag?

5 A. I did, yes, sir.

6 Q. And was Captain Sawyer in your presence when
7 you did that?

8 A. Yes, sir.

9 Q. And did you subsequently take those baggies
10 out and do your fingerprint analysis?

11 A. I did, yes, sir.

12 Q. And what were the results of that analysis?

13 A. No identifiable fingerprints were developed.

14 Q. Okay. And what did you do with the BEST kit
15 afterwards?

16 A. I reinserted the -- the plastic baggies back
17 into the BEST kit and resealed it.

18 Q. Okay. How did you reseal it?

19 A. A heat seal.

20 Q. Okay. And you mentioned your initials a
21 second ago, can you tell me where you put your
22 initials?

23 A. I put my initials on the inside of the bag.
24 And then take the heat sealer and seal it across my
25 initials and date.

C. ADAMS -- DIRECT BY MR. ROSS

1 Q. Okay. And because it's been heat sealed, is
2 the bag and this contents in the same condition now as
3 when you resealed everything?

4 A. It is, yes, sir.

5 Q. Did you add anything into this bag that wasn't
6 already in the bag when you opened it up?

7 A. No, sir.

8 MR. ROSS: Your Honor, at this point, we would
9 offer State's No. 22 into evidence.

10 THE COURT: Any objection?

11 MR. SELLERS: No objection, Your Honor.

12 THE COURT: Admitted without objection.

13 (State's Exhibit No. 22 admitted into evidence.)

14 BY MR. ROSS:

15 Q. Now, in looking at State's No. 22, can you
16 identify which particular baggies you tested in this
17 sack?

18 A. These right here that are darker than
19 everything else.

20 Q. And how do you know that?

21 A. Because that's fingerprint powder that I used.

22 Q. Okay. So you weren't able to identify or
23 develop prints, latent prints off any of the baggies or
24 the scales?

25 A. I was not able to develop any identifiable

1 fingerprints on either the bags or the scales.

2 Q. Does that mean that nobody -- no human being
3 ever touched these bags or touched those scales?

4 A. No. It just means that the ridge detail that
5 was present on the bags were not of sufficient quality
6 to make an identification.

7 Q. Okay. Is that common when you're dealing with
8 plastic bags?

9 A. Yes, sir, very common.

10 Q. How -- how common is it for you to develop
11 usable latent prints off of a plastic bag in drug
12 cases?

13 A. Plastic baggies, in this case, depending on
14 the mill or the thickness of the bag, dictates our
15 percentage of being able to develop identifiable
16 fingerprints. In this case, with a very thin mill
17 plastic style baggy, we have a very low percentage rate
18 of developing identifiable fingerprints.

19 Q. You say "low percentage rate", can you give me
20 a ballpark figure?

21 A. No greater than a five percent success rate.

22 Q. Okay. So how many times in your career have
23 you been able to develop usable latent prints off of a
24 plastic bag in a drug case?

25 A. Maybe only a handful of times.

C. ADAMS -- CROSS BY MR. SELLERS

1 Q. And how many times have you looked for such
2 prints off of a bag in a drug case?

3 A. A lot of times.

4 Q. Okay. And you said it's less than -- five
5 percent is the max you would think?

6 A. That would be about my best guesstimate.

7 MR. ROSS: Okay. Just one second, Your Honor.

8 (Pause.)

9 MR. ROSS: Nothing further, Your Honor.

10 **CROSS EXAMINATION BY MR. SELLERS:**

11 Q. Thank you, sir. Thank you for joining us
12 after lunch. The State failed to ask you about the
13 scale. Isn't it true that you tested a scale as well?

14 A. Yes, sir, two of them.

15 Q. Isn't it true that the scale is of -- a hard
16 surface and a little bit easier to detect fingerprints
17 than a plastic baggy?

18 A. It really depends on the scale's composite
19 make-up.

20 Q. And what about this scale that you tested and
21 its composite make-up, isn't it true that this scale
22 was a hard surface -- we saw a picture of it -- isn't
23 it true that it was a hard surface and a different
24 make-up than these plastic baggies?

25 A. It is a harder surface, yes. However, the

1 surface area of it is kind of a texture. It is not a
2 smooth surface. It's --

3 Q. But weren't there some smooth surfaces on this
4 scale? In fact, where you would place, quote unquote,
5 drugs or this white powdery substance; wasn't that a
6 smooth area?

7 A. Yes, sir.

8 Q. And so you could get prints off that area, if
9 in fact, there were some there?

10 A. That is a surface that is conducive to holding
11 fingerprints better than the plastic baggies.

12 Q. And did you find any fingerprints on there?
13 Did you find any fingerprints from Kelvin Jones on that
14 scale?

15 A. No, sir, I did not.

16 Q. So you tested both these baggies, all of these
17 baggies -- and we'll give you that, that these baggies
18 sometimes are very difficult to have fingerprints on
19 them. But you also tested this scale that the State
20 did not ask you about, and Kelvin Jones' fingerprints
21 were not on that scale; is that correct?

22 A. That is correct.

23 MS. BENEVENTO: Thank you. No further questions,
24 Your Honor.

25 THE COURT: Redirect?

REDIRECT EXAMINATION BY MR. ROSS:

1
2 Q. Is it out of the ordinary for you not to be
3 able to get prints off a scale?

4 A. It is not out of the ordinary, especially when
5 there is a residue, a foreign residue on the item
6 itself. In this case, a white powdery substance was --
7 would be on it.

8 A fingerprint is water, about 98 percent water.
9 So when a fingerprint is deposited on an item, it sits
10 on top of the surface. When there is foreign objects
11 between the fingerprint and the surface, such as metal
12 or plastics or anything -- any make-up like that,
13 there's nothing for the fingerprint to adhere to
14 because it's actually adhering to the dust or particles
15 that -- that are not associated to that metal.

16 Q. Now, I ask you the same question with regard
17 to the baggies, does that mean that you couldn't --
18 because you could not develop a usable print off that
19 scale, does that mean no one ever touched that scale?

20 A. No, sir.

21 Q. Does it mean no one ever touched these bags?

22 A. No, sir.

23 MR. ROSS: That's all the questions I have, Your
24 Honor.

25 MR. SELLERS: Your Honor, just -- beg my

1 indulgence for -- our indulgence for -- your indulgence
2 for one second -- we'll figure out whose indulgence it
3 is.

4 **RECROSS EXAMINATION BY MR. SELLERS**

5 Q. This is State's Exhibit 11. I just want this
6 scale that we're all talking about, for you to actually
7 see it. Is that the scale that you tested?

8 A. Yes, sir. That looks like it.

9 Q. Okay. Thank you. And just to harp on the
10 State's questioning a little bit, in -- we want to go
11 back and make sure that we are aware that Kelvin Jones'
12 fingerprints were not found on that, correct?

13 A. That is correct.

14 Q. And the State asked you a question, they said,
15 isn't it true that because, you know, you didn't find
16 any fingerprints, doesn't mean it couldn't have been
17 touched or somebody could have touched it, correct?

18 A. That's correct.

19 Q. Isn't it true that possibly more than one
20 person could have touched it then?

21 A. Yes, sir.

22 Q. Or multiple people could have touched it?

23 A. Yes, sir.

24 Q. But we know for a fact -- or -- or we -- we do
25 know one fact for certain, that Kelvin Jones'

1 fingerprints weren't on it?

2 A. That is correct.

3 Q. And we also know for a fact that multiple
4 people could have handled it?

5 A. That is correct.

6 MR. SELLERS: Thank you. No further questions,
7 Your Honor.

8 THE COURT: May this witness be excused?

9 MR. ROSS: The State has no objection, Your Honor.

10 MR. SELLERS: No objection.

11 THE COURT: All right. Thank you, sir.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Call your next witness please.

14 MS. BURCHSTEAD: The State calls Solicitor Strom
15 Thurmond, Jr.

16 MR. SELLERS: Your Honor, if we may approach for a
17 second?

18 THE COURT: Mr. Foreman, would you take your jury
19 to the jury room right quick please, sir. Are you
20 finding everything you need back there?

21 MR. FOREMAN: Yes, Your Honor.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 2:15 p.m.)

24 MR. SELLERS: Your Honor, did you want to put that
25 back on the record, what we -- in chambers, I was

1 following your lead. I'm sorry.

2 MS. BURCHSTEAD: Oh, no. That's okay. I was just
3 going to start rolling. And if we had a problem, we
4 could pause, but it probably is better to do it now. I
5 just wanted to reiterate our conversation in chambers,
6 Judge, and maybe lay some perimeters of his testimony.

7 The State would ask that we not get into any
8 sort of line of questioning in terms of the conflict to
9 the AG's office, that the Solicitor's Office -- the
10 Aiken Solicitor's Office was previously going to try
11 the case, the length of the delay. We would like to
12 avoid questioning down that path, Judge.

13 THE COURT: And I believe you indicated that you
14 really have no intention of going there?

15 MR. SELLERS: We don't -- we don't intend on going
16 down that road, Your Honor, but we do feel as if there
17 maybe some facts that the witness may have based on his
18 role in the investigation previously. So we will
19 ask -- but there -- there -- we -- we will not dabble
20 in the length of time and what happened here or there
21 or anything else. But we do feel as if there may be
22 some information that we can gain from the witness at
23 that point.

24 THE COURT: Okay. And just because I don't know
25 what's coming --

1 MS. BURCHSTEAD: Yes, sir.

2 THE COURT: If there's a problem, let me know.

3 MS. BURCHSTEAD: Yes, sir.

4 MR. SELLERS: Your Honor, we would also ask that
5 Solicitor Thurmond, my good friend, be called Mr.
6 Thurmond from the stand. We feel like Solicitor may
7 put him on some pedestal or will give him some improper
8 bias -- improper bias in front of the jury.

9 MS. BURCHSTEAD: It's his title, Judge.

10 MR. SELLERS: I mean, he did -- he did earn it and
11 got elected for it.

12 THE COURT: Well, we've been calling everybody
13 else, Officer so-and-so, Captain so-and-so. If she
14 wants to call him Solicitor --

15 MR. SELLERS: Well then I will as well.

16 THE COURT: I'll let you call him Mister.

17 MS. BURCHSTEAD: I -- I always do, Judge, so...

18 MR. SELLERS: I will call him the honorable then.

19 THE COURT: All right.

20 MR. SELLERS: Thank you.

21 THE COURT: Anything --

22 MS. BURCHSTEAD: Not from the State, Judge. Thank
23 you.

24 MR. SELLERS: Not from the defense.

25 THE COURT: Thank you, guys. Would you bring the

S. THURMOND -- DIRECT BY MS. BURCHSTEAD

1 jury in?

2 (WHEREUPON, the jury enters the courtroom at
3 approximately 2:20 p.m.)

4 MS. BURCHSTEAD: Thank you, Your Honor. The State
5 calls Solicitor Strom Thurmond, Jr.

6 THE CLERK: Please state your name for the record.

7 THE WITNESS: James Strom Thurmond.

8 JAMES STROM THURMOND, after
9 having been duly sworn, testified as follows:

10 **DIRECT EXAMINATION BY MS. BURCHSTEAD:**

11 Q. Good afternoon, Solicitor.

12 A. Good afternoon.

13 Q. Thank you for being here today.

14 A. You're welcome.

15 Q. Are you elected Solicitor for Aiken County?

16 A. I am, also known as the second judicial
17 circuit.

18 Q. Okay. Thank you. And in your role as
19 Solicitor, what is your -- what is your job? What do
20 you do?

21 A. Our office is responsible for the prosecutions
22 of most crimes that occur within that three county
23 region.

24 Q. And how long have you been Solicitor?

25 A. About six years.

S. THURMOND -- DIRECT BY MS. BURCHSTEAD

1 Q. Okay. I want to take you back to April of
2 2011; were you present with law enforcement conducting
3 surveillance at [REDACTED] Morgan Street?

4 A. I was earlier that day. I believe it was a
5 Thursday. Myself and Deputy Solicitor Beth Anne Young
6 were invited to go on what is commonly referred to as a
7 ride-along with law enforcement.

8 Q. All right. And [REDACTED] Morgan Street, that's in
9 Aiken County?

10 A. That is.

11 Q. So you're along for a ride-along. What's --
12 what's the purpose of that?

13 A. Well, there are several purposes. It kind of
14 gets prosecutors out of the office. And, you know,
15 they have a stack of files and it kind of lets them see
16 what it's like in the real world out there. It allows
17 them to get to know local law enforcement and to -- to
18 see the important and sometimes dangerous jobs that
19 they have. And it allows an attorney to be present if
20 there was a need for any kind of real time legal advice
21 that the law enforcement agency requested.

22 Q. Okay. So, on April 21, 2011, you are
23 participating in a ride-along, and who is present in
24 the vehicle?

25 A. Captain Marty Sawyer. I believe he was

S. THURMOND -- DIRECT BY MS. BURCHSTEAD

1 Detective Marty Sawyer at the time, myself and Deputy
2 Solicitor Beth Anne Young.

3 Q. All right. And I believe you said it was a
4 Thursday. Do you recall what time of day it was?

5 A. We got there about 7:30. And the purpose of
6 being there was to observe the service or the execution
7 of a search warrant by the Aiken Department of Public
8 Safety SWAT team.

9 Q. Okay. So did you conduct surveillance at that
10 point then?

11 A. Kind of unwittingly, yes. When we -- when we
12 got there, there was nobody home and Public Safety did
13 not want to raid an empty house, if you will. So we
14 waited with Detective Sawyer until occupants were to
15 arrive at that residence.

16 Q. And do you remember what the lighting was
17 like?

18 A. It was extremely well lit. There was a porch
19 light at [REDACTED] Morgan street. There was an operating
20 street light on the opposite side of Morgan Street, as
21 well as a street light on Hampton Street, which would
22 face the -- the opposite side of that address.

23 Q. Okay.

24 MS. BURCHSTEAD: I beg the court's indulgence.
25

S. THURMOND -- DIRECT BY MS. BURCHSTEAD

1 BY MS. BURCHSTEAD:

2 Q. I want to show you just a couple of pictures
3 here to see if it reflects what you recall. State's 4
4 here. Does this look familiar to you, Solicitor?

5 A. That is the incident location of [REDACTED] Morgan
6 Street.

7 Q. All right. And let me place State's 5 on
8 here, ask if you recognize that?

9 A. That's the same location.

10 Q. Okay.

11 A. From the approximate advantage point of where
12 Detective Sawyer's vehicle was located.

13 Q. Okay. So this is approximately where the
14 vehicle you were in was located?

15 A. Yes.

16 Q. All right. And let me show you State's 6. I
17 direct your attention in this general vicinity, does
18 that look familiar to you?

19 A. Yes. That's the street light on Hampton
20 Avenue.

21 Q. Okay. So there's a street light on Hampton
22 Avenue, and was there any lighting on the house itself?
23 You may have already answered that.

24 A. The front porch light was on.

25 Q. Okay. So you get there. And I believe your

S. THURMOND -- DIRECT BY MS. BURCHSTEAD

1 testimony -- you're waiting for somebody to come home;
2 is that correct?

3 A. We waited for approximately 30 minutes. And
4 an individual identified as a Ricky Lloyd walked out
5 Morgan Street, across Hampton Street, entered a little
6 gate at [REDACTED] Morgan Street. Walked up to the front
7 door; knocked on the door. Nobody answered. He turned
8 around and walked almost up to the vehicle that we were
9 sitting in, but we were kind of catty-corner to that
10 address. Walked within about 10 or 12 feet of it, and
11 then walked back up Morgan Street from the direction
12 that he originated from.

13 About an hour and a half passed, maybe an hour
14 and 45 minutes, with no activity. And then everybody
15 else kind of arrived at once. An individual identified
16 as that defendant, Mr. Kelvin Jones, kind of came on
17 the same path of travel as Ricky Lloyd previously did.

18 He came down Morgan Street. He crossed over
19 Hampton Street, walked to the front little gate there
20 at [REDACTED] Morgan Street, walked up the walk. He went to
21 the front door, kind of lingered, turned around,
22 entered that residence.

23 About a minute and a half, two minutes later,
24 Ricky Lloyd, the first individual that we had observed
25 within 30 minutes of arriving there, followed that same

S. THURMOND -- DIRECT BY MS. BURCHSTEAD

1 course of travel, Morgan Street, crossed Hampton
2 Street. Entered the front gate, walked up the walk,
3 then entered the front door of [REDACTED] Morgan Street.

4 And about two minutes after that, a car pulled
5 up with several occupants in it, say Ms. Tiffany
6 Butler, her son, another young man about her son's age,
7 another woman and a child then entered. So ultimately
8 seven people total entered the residence.

9 Q. Okay. Let me take you back to when -- I
10 believe you stated -- you saw the defendant enter the
11 residence?

12 A. I did.

13 Q. Prior to him entering the residence, could you
14 describe his -- give us a physical description of the
15 defendant?

16 A. Sure. He was -- he was immediately identified
17 by Detective Sawyer, and Detective Sawyer had a pair of
18 binoculars. And as Mr. Jones walked down Morgan Street
19 and entered that front gate, Detective Sawyer either
20 passed or I took the binoculars from him, and looked
21 for myself; and observed Mr. Jones with a -- well,
22 using the binoculars --

23 Q. I'm just putting State's 4 back up here.

24 A. Okay. Traveled through that gate, up to the
25 front door, turned around and lingered under that porch

S. THURMOND -- DIRECT BY MS. BURCHSTEAD

1 light, and then entered the residence. He was dressed
2 in a black shirt, black pants, had a goatee similar to
3 what he does today. He was not wearing the glasses
4 then as he is today. And he had on a -- a backpack.
5 It was an unusual backpack. It was dark colored and it
6 had kind of tight rope straps rather than a traditional
7 backpack strap. And the backpack was sitting kind of
8 low on his rear end as though there was something in
9 it.

10 Q. All right. If I may just approach, Your
11 Honor. I'm going to show you State's 20 and ask if
12 this looks like what you saw on the defendant?

13 A. It appears to be the backpack that I observed,
14 although it was darker. And I believe it would have
15 been worn this way, with the dark color to the back.

16 Q. Okay. Very good. Okay. So you were talking
17 about everybody sort of arriving at once, did you
18 observe the law enforcement, the SRT Unit, execute the
19 search warrant?

20 A. Correct. Within a matter of minutes, maybe
21 just a couple of minutes after the car full of
22 individuals arrived, the SWAT team from the City of
23 Aiken pulled up. It was an armored vehicle, followed
24 by several marked units, and they made rapid entry into
25 the house.

S. THURMOND -- DIRECT BY MR. SELLERS

1 We, again, were parked catty-corner from [REDACTED]
2 Morgan Street. Detective Sawyer relocated to the front
3 of that residence where we parked. He went inside.
4 There was a first -- there was an initial all-clear.
5 Then about a five minute gap to a second all-clear.
6 And at that time, Deputy Solicitor Beth Ann Young and
7 myself exited and entered that residence, and were
8 given a walk through, if you will, and observed the --
9 the officers collecting evidence.

10 We -- they're were several individuals, all
11 detained in the kitchen area. Mr. Jones was detained
12 in the kitchen area. Mr. Lloyd was detained in the
13 bathroom. And we were there for a matter of minutes,
14 and then requested a marked unit drive Deputy Solicitor
15 Young and myself back to Aiken Public Safety
16 headquarters, where we departed for the evening.

17 Q. Okay.

18 MS. BURCHSTEAD: Beg the court's indulgence.

19 (Pause.)

20 MS. BURCHSTEAD: Nothing further, thank you.

21 THE COURT: Cross examination.

22 **CROSS EXAMINATION BY MR. SELLERS:**

23 Q. Thank you, Solicitor Thurmond. Good
24 afternoon.

25 A. Hey, how you doing?

1 Q. Doing quite well. We're going to go through
2 this again. We went through it a little bit earlier.
3 But you testified that you had saw Kelvin Jones walking
4 to the Morgan Street residence with a blue backpack;
5 isn't that correct?

6 A. It was a dark colored backpack.

7 Q. Is this the backpack that you saw?

8 A. If that is the only backpack from the
9 residence recovered, that had those rope straps, I
10 would say yes.

11 Q. And you said this backpack hung low? Didn't
12 you say that?

13 A. Yes, sir.

14 Q. And so isn't it true -- if I can get this
15 on -- that this backpack can hang low with absolutely
16 nothing in it, as it is doing now, on my shoulders?
17 I'm a little taller. But there we go. Isn't it true
18 this backpack can hang low with absolutely nothing in
19 it as you see right here below?

20 A. Yes, sir. But the backpack I saw, the straps
21 were -- were tight. And it was kind of sitting lower
22 than it is on you. Maybe it's because you are larger
23 than Mr. Jones. But it appeared to have something in
24 it --

25 Q. Something in it --

S. THURMOND -- DIRECT BY MR. SELLERS

1 A. -- weighing it down.

2 Q. I'm going to take my Rule book here. Isn't it
3 true that it possibly could have been a book that was
4 in this backpack weighing it down, or anything else; or
5 gym shoes, or a shirt, or tie, or anything of that
6 nature?

7 A. It -- it could have been anything weighing it
8 down, that's correct.

9 Q. So isn't it true that you were about 50 yards
10 away from the residence?

11 A. About 50 yards from the front door, yes, sir.

12 Q. And you were using binoculars?

13 A. Yes, sir.

14 Q. And it was dark outside, correct?

15 A. It was dark, but the area was very well lit
16 with the two streets lights and the porch lights, and
17 the binoculars.

18 Q. And this was summertime, Spring?

19 A. It was April.

20 Q. April. Spring?

21 A. Yes, sir.

22 Q. And there wasn't a breeze that night, was it?

23 A. Not to my recollection.

24 Q. Is it fair to say that just using binoculars,
25 you couldn't see inside this dark bag?

1 A. I --

2 Q. You could not see the contents of this dark
3 bag?

4 A. That's correct. That you could not see inside
5 the bag with a pair of binoculars.

6 Q. That is correct. Thank you. Is it also fair
7 to say that you have no idea what was in that dark bag?

8 A. That's correct.

9 Q. Is it also fair to say that you cannot say
10 that this cocaine was in that dark bag?

11 A. That would probably be a question for the
12 detective who discovered the dark bag.

13 Q. But for you, who witnessed this, who did
14 surveillance, isn't it true that you cannot say that
15 you saw this in the dark bag?

16 A. I can testify to that. I did not search the
17 bag.

18 Q. Isn't it true that you, as you were sitting
19 doing surveillance, that you didn't take any video of
20 this evening or any video of the execution of the
21 search warrant?

22 A. That's correct. And just to clarify that, my
23 purpose in being there was not to conduct surveillance.
24 My -- my role was observational, rather than
25 operational, if that makes any sense.

S. THURMOND -- DIRECT BY MR. SELLERS

1 Q. That makes sense. But the question still
2 remains, isn't it true that you didn't take any
3 photographs or video?

4 A. I did not take any photographs or videos, and
5 would not have.

6 Q. Let's go to the timeline just -- just briefly.
7 Didn't you say that it was about five or seven minutes
8 in between the time in which you saw Kelvin Jones walk
9 into that home and SWAT arrive?

10 A. Mr. Jones entered the residence. About a
11 minute and a half to two minute gap; Mr. Lloyd entered
12 the residence. A minute and a half to two minute gap,
13 Ms. Tiffany Butler, and the individuals with her,
14 entered the residence. And then just a couple minutes
15 after that, the SWAT team made entry. So from the time
16 Mr. Jones entered the residence, I would say eight
17 minutes maybe at the most before the -- the SWAT team
18 entered.

19 Q. That's an -- that's an important eight
20 minutes. Because during that eight minutes, isn't it
21 true that you did not have any eyes on Mr. Jones or
22 this book bag?

23 A. I was not in the house, correct.

24 Q. And during that eight minutes, weren't other
25 people coming into the home at that time?

S. THURMOND -- DIRECT BY MR. SELLERS

1 A. Not after the -- Tiffany Butler; her son,
2 Justin Butler; his acquaintance, Jamarus Coleman;
3 another young woman and a child entered. Nobody
4 entered after that -- the rest of that family did.

5 Q. So, if I'm not mistaken that's seven people
6 during this eight minutes where you did not have your
7 eyes on either Mr. Jones or this backpack, where they
8 were in the home, correct?

9 A. That's absolutely correct. Because they were
10 in the home and I was not.

11 Q. Correct. And isn't it true that all those
12 people possibly could have access to that backpack?

13 A. I don't -- I don't know who had access to it
14 once inside.

15 Q. Isn't it true that the only person who was
16 found to be in possession of any white powder inside
17 the home when you entered, was Ricky Lloyd?

18 MS. BURCHSTEAD: Objection. Calls for
19 speculation.

20 THE COURT: Rephrase your question, please, sir.

21 BY MR. SELLERS:

22 Q. You testified that one of the individuals in
23 there, in the bathroom, was Ricky Lloyd; correct?

24 A. That's correct.

25 Q. And wasn't Ricky Lloyd flushing or -- or

S. THURMOND -- DIRECT BY MR. SELLERS

1 flushing a white powdered substance down the toilet?

2 A. He was flushing the drugs attributable to him
3 down the toilet, along with his driver's license I
4 believe.

5 Q. Correct. And isn't it true that the only
6 person in that home, who you saw or know of who had
7 actual possession of a white powdered substance at that
8 time, was Ricky Lloyd?

9 A. I didn't see him in possession of any white
10 powder substance.

11 Q. Did you see Mr. --

12 A. He was -- he was -- he was detained at the
13 bathroom, at the toilet in the bathroom. Someone had
14 attempted to flush cocaine and his driver's license
15 down the toilet.

16 Q. When you entered the home, you said my client,
17 Mr. Jones, was detained in the kitchen; is that
18 correct?

19 A. Yes, sir.

20 Q. And did he have this blue backpack on him when
21 he was detained in the kitchen?

22 A. No, sir. He was separated from that backpack
23 by a distance of approximately 20 feet.

24 Q. Twenty feet?

25 A. Yes, sir, approximately.

S. THURMOND -- DIRECT BY MR. SELLERS

1 Q. During that seven or eight minutes, is it
2 possible that someone over than Kelvin Jones had
3 contact with that backpack during that timeframe?

4 A. Again, I don't know who had contact with the
5 backpack once Mr. Jones entered the house with the
6 backpack.

7 Q. But I just want to be clear. And I'm going to
8 hold this up so we can be clear with the jury. At no
9 particular time -- this is evidence marked 22 -- at no
10 particular time, Solicitor Thurmond, did you see this
11 -- this white powdery substance with Kelvin Jones?

12 A. At --

13 Q. It's a -- at no particular time, did you see
14 this white substance, marked Exhibit 22, with Kelvin
15 Jones?

16 A. That's correct, yes.

17 Q. Mr. Thurmond, weren't you and your office
18 originally assigned to the prosecution of this case?

19 A. Yes, sir.

20 MS. BURCHSTEAD: Objection, Your Honor.

21 (WHEREUPON, a bench conference was had.)

22 BY MR. SELLERS:

23 Q. At any point, have you been made aware of any
24 of Kelvin Jones' DNA present on the cocaine that was
25 found in the home?

S. THURMOND -- DIRECT BY MR. SELLERS

1 A. No, sir.

2 Q. At any point, have you seen any of Kelvin
3 Jones' fingerprints located on the cocaine or the bag,
4 or the gun, or the scale or anything in the home?

5 A. I don't believe his or anybody else's, no,
6 sir.

7 Q. At any point, were you made aware any hair or
8 fibers belonging to Kelvin Jones on the cocaine?

9 A. No, sir.

10 Q. And isn't it true that when you entered the
11 home, Kelvin Jones was in the kitchen?

12 A. Yes, sir.

13 Q. And isn't it true that the cocaine was found
14 under a sofa in another room?

15 A. To put context "in another room", there's
16 really not a barrier separating the living room from
17 the kitchen. And when we entered the house, after the
18 house had been made safe by the SWAT team, he was
19 seated approximately 20 feet from the couch where that
20 bag was found full of cocaine.

21 Q. Isn't it true that you are not aware of any
22 statements made by anyone in the home, written
23 statements given during the course of this
24 investigation, from anyone during the home implicating
25 Kelvin Jones?

1 A. I believe that's correct.

2 MR. SELLERS: One second, Your Honor.

3 THE COURT: Yes, sir.

4 (Pause.)

5 BY MR. SELLERS:

6 Q. And -- and a somewhat of a brief summary,
7 isn't it true that the only thing that you've actually
8 seen -- you haven't seen -- isn't it true you haven't
9 seen any fingerprints, you haven't seen any fibers or
10 hair, you haven't seen any DNA, you haven't seen
11 anything other than Kelvin Jones in possession of a
12 blue backpack; isn't that true, Solicitor Thurmond?

13 A. I saw your client, Mr. Jones, enter that
14 residence with that backpack, yes.

15 Q. But isn't it true that you have never seen my
16 client --

17 MS. BURCHSTEAD: Objection, asked and answered
18 many times.

19 THE COURT: Overruled. Go ahead.

20 BY MR. SELLERS:

21 Q. Isn't it true that you haven't seen my client
22 in possession of State's Exhibit 22?

23 A. That's correct.

24 MR. SELLERS: Thank you. No further questions
25 right now, Your Honor.

M. SAWYER -- DIRECT BY MR. ROSS

1 MS. BURCHSTEAD: Nothing further. We ask that he
2 be excused.

3 THE COURT: Any objection to this witness being
4 excused?

5 MS. BENEVENTO: No, Your Honor.

6 THE COURT: Thank you, sir. Call your next
7 witness, please.

8 MR. ROSS: Your Honor, the State would recall
9 Detective Sawyer to the stand.

10 **DIRECT EXAMINATION BY MR. ROSS:**

11 Q. Detective Sawyer, how are you this afternoon?

12 A. I'm good.

13 Q. I want to ask you some questions specifically
14 related to your qualifications and training in the
15 field of narcotics. Can you tell the jury about your
16 background in that field?

17 A. As I've said earlier, I was assigned to the
18 narcotics division 12 years. During that 12 year time
19 period, I worked local narcotics in the city, and also
20 worked with Aiken County Sheriff's Office daily,
21 basically. And for six of them 12 years, I was
22 assigned to a federal task force with ATF. It's a
23 regional anti-gang enforcement task force which we --
24 we were involved in long term operations. These city
25 and county cases were normally short term, probably two

M. SAWYER -- DIRECT BY MR. ROSS

1 or three months, but some of these ATF cases go three
2 or four years.

3 Q. So these are longer, bigger scale conspiracies
4 that you investigated with the federal government?

5 A. That's correct.

6 Q. Okay. And can you tell me about specific
7 classes and specific training you have received from
8 certified law enforcement agencies?

9 A. Well, I've been to narcotics investigation;
10 been to several advanced narcotics investigation
11 classes. Undercover narcotic operations, several of
12 them. Several classes of working undercover. Several
13 surveillance classes on running surveillance, the best
14 way to do it. New tricks, stuff like that.

15 Drug ID classes, meth lab classes. Again,
16 several ATF sponsored classes since I was on the task
17 force. Money seizure seminars. Narcotics commander's
18 class, managing and controlling and working informants.
19 That's just to name a few. I mean, several.

20 Q. Now, all these that you've discussed, what
21 agencies teach these classes? Who -- who certifies
22 these classes?

23 A. Well, most of every one I have been through,
24 it's certified by the South Carolina Criminal Justice
25 Academy. And I get my earned credit hours through the

M. SAWYER -- DIRECT BY MR. ROSS

1 academy. It could be the public -- Public Agency
2 Training Counsel or IPTM. SLED puts on some of them.
3 And there's a couple of them thrown by private industry
4 and then some put on by the federal government.

5 Q. Okay. Now, the students that attend these
6 classes, are they limited to just the City of Aiken, or
7 are they from all over the country?

8 A. No. Most of the time, they are from all over
9 the southeast. But I have been to some classes where
10 they were from all over the country.

11 Q. So these classes involve law enforcement
12 officers inside of South Carolina and outside of South
13 Carolina?

14 A. That's correct.

15 Q. How many narcotic cases have you personally
16 participated in during this career?

17 A. There's no way I can get you an exact answer.
18 It's over -- I mean, it's over a thousand. I would
19 say a couple of thousand that I've been involved in.

20 Q. And what type of -- specifically what type of
21 drugs?

22 A. Marijuana, cocaine, crack cocaine. Now it's
23 getting into meth real big and prescription pills.

24 Q. Approximately how many cocaine and crack
25 cocaine cases have you handled in your career?

M. SAWYER -- DIRECT BY MR. ROSS

1 A. Again, I'd say a thousand that I've been
2 involved in. Because, I mean, crack was the drug of
3 choice for a long time.

4 Q. And to get back to the classes that you --
5 that you took, the doctrines that are taught there, are
6 they essentially based on the shared experience of law
7 enforcement throughout the country?

8 A. Yes, they are.

9 Q. Have you been qualified as an expert in
10 narcotics investigations in State Circuit Court before?

11 A. Yes, I was.

12 Q. How many times?

13 A. At least two, maybe three. I can't remember
14 on the third one if we went through it or not. At
15 least two.

16 Q. And in those cases, you gave expert opinions?

17 A. I did.

18 Q. And those expert opinions were based on the
19 techniques that you've learned in all of these classes?

20 A. Yes. And on the job experience.

21 Q. And in the field training as well?

22 A. Yes.

23 MR. ROSS: Your Honor, at this time, we would
24 offer Captain Sawyer as an expert in narcotics
25 investigations.

M. SAWYER -- DIRECT BY MR. ROSS

1 THE COURT: Just one second. Mr. Foreman, would
2 you take your jury to the jury room real quick please.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 2:44 p.m.)

5 THE COURT: First, from my perspective, I'm not --
6 I'll hear from you, too. Before I will even consider
7 it, you have to narrow down the scope of your expertise
8 request. Narcotics investigation is so wide open, I
9 would not consider it. Okay.

10 MR. ROSS: What about crack cocaine and cocaine
11 conspiracies, Judge?

12 THE COURT: No, sir. I'm going to give you a
13 minute to think about it. But you have to narrow down
14 your field. And I know I'm catching you off guard --

15 MR. ROSS: Yes, Your Honor.

16 THE COURT: -- so I'm going to let you think about
17 it. Mr. Sellers, as far as his expertise goes, from
18 his experience and training in some area, do you have
19 any voir dire or do you have a problem with it?

20 MR. SELLERS: This is our -- this is our first
21 time hearing about -- or even knowing that he would
22 venture into the realm of being an expert. I mean, we
23 have a ton of questions. I mean, in 20 years -- I have
24 a great deal of respect for Captain Sawyer -- in 20
25 years, being qualified as an expert twice, you know,

M. SAWYER -- DIRECT BY MR. ROSS

1 that doesn't seem to be a -- like a whole lot of
2 experience there. But we -- we can sit here and review
3 it --

4 THE COURT: I'm not so much concerned about the
5 number of times. I am very concerned about the stated
6 area of expertise, and the area that you go into. We
7 are going to listen to him in -- in camera first. I
8 keep harping back to when I heard -- not terribly long
9 ago -- not here, obviously, but they wanted to have
10 somebody qualified as -- a drug recognition expert.
11 And, you know, there's certain things I'm just not
12 going to do. Okay. So I want you to think about what
13 you want to do.

14 MR. ROSS: And, yes, sir, your Honor, while we're
15 thinking about this, there is a relevant case that --
16 in the intervening time period, you may have a chance
17 to look at. It's State --

18 THE COURT: Sure. Read me the case.

19 MR. ROSS: State vs. Robinson, 722 SE 2nd 820.

20 THE COURT: 722 SE 2nd?

21 MR. ROSS: Eight twenty. It's from the Court of
22 Appeals, 2012. And I think in that case, they did use
23 generalized language like "narcotics investigation".
24 I'm just thinking outside the box --

25 THE COURT: I'm just telling you, I'm not going to

M. SAWYER -- DIRECT BY MR. ROSS

1 do it in this case.

2 MR. ROSS: Yes, Your Honor.

3 THE COURT: I don't care if there's another case
4 out there that says that. I'll read it. If I'm wrong,
5 I'll correct myself.

6 MR. ROSS: Yes, Your Honor.

7 THE COURT: But my general impression is, it's not
8 going to happen. Okay, sir. All right. Let's take a
9 five minute break.

10 (WHEREUPON, a brief recess was taken.)

11 THE COURT: By the way, counsel, I read those
12 cases. I checked the Supreme Court site, in which you
13 said was incorrect. In that case, it's the State vs.
14 Robinson --

15 MR. ROSS: Yes, Your Honor.

16 THE COURT: The expert in that case testified that
17 he had been previously -- I think on seven or eight
18 occasions -- qualified in the area of how cocaine is
19 packaged, sold, and going price, and the typically
20 intoxicating dose. In that particular case, he was
21 qualified in how -- how cocaine is sold and packaged.

22 MR. ROSS: Okay.

23 THE COURT: Okay, sir.

24 MR. ROSS: Yes, Your Honor.

25 THE COURT: And that's all I'm asking you to do.

M. SAWYER -- DIRECT BY MR. ROSS.

1 I'm not trying to beat up on you, I just want you to
2 narrow down the range so we can have a more manageable
3 area of expertise. I'm going to hear your objections.

4 MR. ROSS: And, Your Honor, that's essentially
5 what -- the answer we came to, was we would like to
6 qualify him as an expert in the methods of cocaine
7 valuation, number one. And --

8 THE COURT: Hang on. Let me write this down.
9 Valuation?

10 MR. ROSS: Valuation, like setting a street value.

11 THE COURT: Okay.

12 MR. ROSS: Essentially the evidence -- the
13 testimony we want to elicit from him is the street
14 value of this cocaine. And we want to qualify him as
15 an expert in illegal cocaine sales. We could proffer
16 additional voir dire on his experience in the
17 undercover capacity and through confidential
18 informants.

19 Essentially what we would get at, is the
20 feasibility for one person to be in charge of all this
21 cocaine, Judge, as opposed to having other individuals
22 involved. You've got to have folks to -- you have a
23 chain where you have one person at the top and dealers
24 beneath it.

25 THE COURT: I'll hear you on that. All right.

M. SAWYER -- DIRECT BY MR. ROSS

1 Mr. Sellers, you raised an objection first, as to
2 notice?

3 MR. SELLERS: Yes, sir, Your Honor. We don't have
4 a CV. We don't have anything from him. We haven't had
5 proper time to prepare voir dire. We need to know, you
6 know, his experience in seminars. Has he been
7 published anywhere. We would go back to his first
8 investigation -- I mean, those type things. We -- we
9 were not thrown any notice that this would even become
10 an issue or that -- I mean, I know he's a great police
11 officer, but we had no idea that, you know, he would be
12 considered an expert in this, or cocaine valuation
13 as -- as Mr. Ross so eloquently put it. I mean, also a
14 conspiracy is not in question here. Mr. Jones isn't --
15 isn't charged with any --

16 THE COURT: Well, that's what I wanted to hear a
17 little bit on. I don't think he's going toward
18 conspiracy; are you?

19 MR. ROSS: Your Honor, that's in the indictment.
20 That's part of the charging document, is that he was --

21 THE COURT: The charges are trafficking in
22 proximity.

23 MR. ROSS: Yes, Your Honor. Conspiracy through
24 trafficking; that he aided, abetted or conspired with
25 others --

M. SAWYER -- DIRECT BY MR. ROSS

1 THE COURT: There's not a charge present before
2 the jury of conspiracy, is there?

3 MR. ROSS: Yeah. It's --

4 THE COURT: I mean, trafficking, 400 grams or
5 more.

6 MR. ROSS: Yes. And that statute includes the act
7 of conspiracy as well.

8 THE COURT: It does? The statute says that --

9 MR. ROSS: It's possession and conspiracy to
10 distribute over 10 grams.

11 MS. BURCHSTEAD: Yes, sir. The language of the
12 statute is in the indictment, and that -- that is why
13 we included it in there, yes, sir.

14 THE COURT: Let me hear how -- what do you -- how
15 do -- how do you respond to the fact that he hadn't had
16 opportunity -- first, I'm not terribly concerned about
17 the CV or anything like that. But the notice part of
18 it --

19 MR. ROSS: I'm not aware of any requirement that
20 the State has to put someone on notice unless there is
21 a written report. I know typically defense attorneys
22 offer expert witnesses all the time. And the reason
23 they are allowed to do that is there's no written
24 report generated.

25 Our -- the State's intent was not to try and

M. SAWYER -- DIRECT BY MR. ROSS

1 hide the ball regardless. We wanted -- typically, my
2 experience has been, I've been able to elicit this
3 testimony -- expert type testimony without having him
4 qualified per se as an expert.

5 THE COURT: Well, some of it has come out already.
6 I mean, the \$20 and the packaging and all that. I'll
7 tell you what, I'm going to let you voir dire him. If
8 you feel like you need additional time, I don't really
9 think you do; request it. I'll consider it. I want to
10 hear from you in just a minute after you voir dire him.

11 This -- this issue about conspiracy, I want to
12 hear a little bit about that. All right. Do you want
13 to go ahead and do that now?

14 MR. SELLERS: I mean, Your Honor, if -- I mean,
15 can we have a brief moment to --

16 THE COURT: Sure.

17 MR. SELLERS: I mean this is -- I mean, I know
18 they're not trying to spring it on us, but for all
19 practical purposes, it was sprung. So if we may have
20 ten minutes, Your Honor, just to -- and we may -- we
21 may just say that it's not worth the -- but, you know,
22 we want to --

23 THE COURT: Absolutely. And if you need
24 additional time, let me know. Okay.

25 MR. SELLERS: All right. Thank you, Your Honor.

1 MS. BURCHSTEAD: Thank you, Judge.

2 THE COURT: You are under oath still. You've been
3 under oath about 99 percent of this trial. All right.
4 Go ahead and step down.

5 (WHEREUPON, a brief recess was taken.)

6 THE COURT: Have you had enough time to speak --

7 MR. SELLERS: Yes, sir. We don't -- we don't want
8 to belabor the point any longer. We have a -- a few
9 questions, and then we want to make a clean objection,
10 and just some differences out between State v.
11 Robinson, if you don't mind.

12 THE COURT: I'll be glad to.

13 MS. BENEVENTO: Your Honor, would you rather hear
14 the objection on the record first or get into voir
15 dire?

16 THE COURT: Do your voir dire, then do your
17 objection. I think that will be cleaner. By the way,
18 I did double check the statute. It does say
19 conspiracy.

20 MR. SELLERS: Yeah, we found it.

21 **CROSS EXAMINATION BY MR. SELLERS:**

22 Q. Thank you, Captain Sawyer. How many years did
23 you say you had in narcotics in particular?

24 A. Twelve.

25 Q. And can you please tell me what your degree is

Voir dire by Mr. Sellers

1 in, or what -- tell me -- tell me when you finished
2 high school?

3 A. 1986.

4 Q. And did you proceed to go to college? And if
5 so, what is your degree in?

6 A. I went for a couple of semesters and did not
7 finish.

8 Q. You went to a couple of semesters where?

9 A. Aiken Technical College.

10 Q. And you didn't finish high school?

11 A. No.

12 Q. You didn't finish technical college -- I'm
13 sorry.

14 A. No. I did graduate high school.

15 Q. Have you ever been published in any drug,
16 narcotics publications? Anything through any state law
17 enforcement agencies or federal law enforcement
18 agencies?

19 A. No.

20 Q. Have you ever taught a class or lectured on
21 the subject, in particular of drug valuation?

22 A. Drug val -- no, sir.

23 Q. Have you ever been qualified in federal court
24 as an expert?

25 A. No.

1 Q. Have you ever testified in federal court as an
2 expert?

3 A. I --

4 Q. -- or have you ever testified in federal court
5 at all?

6 A. Yes.

7 Q. But not as an expert?

8 A. No.

9 MR. SELLERS: Your Honor, we would -- we would --
10 I mean restate our objection. It's -- it's pretty
11 clear that there are a number of differences between
12 this case and Robinson. I mean, it's absolutely clear.
13 And we -- we have a great appreciation for Captain
14 Sawyer throughout this process. But in State v.
15 Robinson, it was clear that the expert that was being
16 qualified -- he wrote an article in a national -- in a
17 national publication for the DEA. He taught classes on
18 this subject. He was a guest instructor for the United
19 States Attorney's Office.

20 THE COURT: Well, doesn't the Robinson case
21 actually point out that the deficiencies in your
22 education doesn't go to your qualifications, but it
23 goes to the weight --

24 MR. SELLERS: I mean that -- that --

25 THE COURT: Not to eligibility.

Voir dire by Mr. Sellers

1 MR. SELLERS: That may be true, Your Honor. But
2 we're not harping on his education as much as we are
3 the experience factor, Your Honor. I mean, that --
4 we -- we -- we would venture to say that publications,
5 teaching classes, actually writing different books on
6 the subject, and that -- the experience in federal
7 court and all of these things on that subject in
8 particular, they don't go to education, they go to
9 experience in the matter. And with all due respect to
10 Captain Sawyer, he just does not have that experience
11 that would qualify him as an expert, or that we would
12 say equally qualifies him as an expert.

13 THE COURT: I got you. In the area, again,
14 counsel, I had written down valuation, any other area
15 are you seeking to have him --

16 MR. ROSS: Methods of cocaine valuation and
17 illegal --

18 THE COURT: Methods or --

19 MR. ROSS: Cocaine -- or just cocaine valuation.

20 THE COURT: Okay.

21 MR. ROSS: Expert in valuing, appraising cocaine.

22 THE COURT: Appraising cocaine.

23 MR. ROSS: That -- it sounds weird to say
24 appraisal --

25 MR. SELLERS: The appraisal thereof.

1 MR. ROSS: Valuing cocaine. And also illegal
2 cocaine distribution. And I think in his --

3 THE COURT: I'm not letting you go so broad as
4 illegal cocaine distribution. You just need to narrow
5 it down to packaging, selling --

6 MR. ROSS: Packaging, selling, street level,
7 illegal cocaine sales, Judge.

8 MR. SELLERS: And, Your Honor, we would -- we
9 would actually object to any testimony about the
10 packaging or selling or anything of the sort. Because
11 this is Mr. Sawyer's second time up there. I mean,
12 he's already delved into that. He's already testified
13 as to the packaging, as to selling. I mean, he went
14 through this whole crack head experiment, all the way
15 up to street level vs. everything else. I mean, I
16 think that will be -- I think to offer that testimony
17 this morning, and then to come back and say, now, he's
18 an expert and offer it again, that -- that lends
19 nothing but confusion to myself and the jury.

20 THE COURT: Well, it certainly would be
21 cumulative. I -- I -- let me say this, I'm going to
22 overrule your objection as to the expertise. I'm going
23 to make you limit it to a more narrow area of
24 valuation. How cocaine is packaged and sold, that's
25 consistent with the Robinson case. I think it goes to

Voir dire by Mr. Sellers

1 the weight, not its admissibility. I think he has
2 sufficient experience and training, both on the job and
3 in the classroom to qualify as an expert.

4 And, so, you certainly can have some wide
5 latitude to cross examine him. And I may give you some
6 time over night to think about it if you me want to.

7 MR. SELLERS: Okay.

8 THE COURT: I am a little bit concerned, however,
9 it's unusual from my experience as a lawyer, and my
10 limited experience as a Judge, to have you call a lay
11 witness; take him off the stand, and then effectively
12 have him dismissed; and then bring him back as an
13 expert. And then, if you think you're going to go let
14 him walk back through that same pasture again that you
15 went through this morning, it is not going to happen.
16 Okay, sir?

17 MR. ROSS: Yes, Your Honor.

18 THE COURT: It's cumulative and it's repetitive.
19 And I have a concern with that. And I have a concern
20 with the procedure. I really do. And I know you think
21 I'm just beating you up, I just have a concern about
22 it.

23 MR. ROSS: No, it was the State's intent to elicit
24 all of this yesterday. And I think we kind of got --

25 THE COURT: Did I force you not to when --

1 MR. ROSS: No, we were just -- it was running
2 late --

3 THE COURT: You're shaking your head over there.
4 How did I do that?

5 MS. BURCHSTEAD: I wouldn't say you forced us to
6 do anything, Judge, we just under the impression -- as
7 I recall -- Mr. Ross was eliciting testimony. He held
8 up the picture of the cocaine, and I think referred to
9 it as cocaine, which we understand at that point maybe
10 we should have been calling it powder. But at that
11 point, he was trying to elicit a street value. And
12 there was an objection, and I don't recall the exact
13 exchange between --

14 THE COURT: Well, that's just the order you put
15 your case in, nothing that -- what I did.

16 MS. BURCHSTEAD: No, sir. I just -- I recall
17 there being a discussion about the fact that we would
18 recall him once we've established that it's cocaine for
19 that purpose. That was -- that was our understanding.
20 Maybe it was incorrect, but that was our understanding.

21 MR. ROSS: And we were simply trying to qualify
22 him as an expert just to make the case cleaner. I
23 think they objected because he hadn't been qualified --

24 MR. SELLERS: Your Honor, we were very clear in
25 our objection. The reason that we objected it was

Voir dire by Mr. Sellers

1 chain of custody, and we stated that in the objection.

2 I mean, we -- there was nothing --

3 THE COURT: I recall it chain of custody. You
4 know, listen, I don't mind you correcting me if I'm
5 wrong, and I might bark a little bit, but I ultimately
6 come around to it, but --

7 MR. ROSS: Judge --

8 THE COURT: I tell you what I'm going to do.

9 MR. ROSS: Judge, we can proceed without having to
10 quote/unquote qualify him as an expert --

11 THE COURT: No. I'm going to let you qualify him
12 as -- for an expert. You will be very limited to the
13 areas that I told you about. I don't want you going
14 back and rehashing the same testimony that you did
15 before.

16 MR. ROSS: Yes, Your Honor.

17 THE COURT: If you feel you want to break over
18 night, I'll let you break, then call somebody else.
19 And you can come back and cross examine him tomorrow,
20 and give you some time to prepare.

21 MR. SELLERS: Thank you, Your Honor.

22 THE COURT: Okay, sir.

23 MR. ROSS: And just to be clear, Your Honor, an
24 expert in --

25 THE COURT: Valuation; how cocaine is packaged and

1 sold.

2 MR. ROSS: Yes, Your Honor.

3 THE COURT: And valuation would be basically the
4 same as going price, wouldn't it?

5 MR. ROSS: Yes, sir.

6 THE COURT: Those are the same areas --

7 MR. SELLERS: And appraisal, Your Honor.

8 THE COURT: And appraisal. All right. You ready
9 to go or you need a minute?

10 MR. ROSS: I'm ready, Your Honor.

11 THE COURT: You ready to go?

12 MS. BENEVENTO: Yes, Your Honor.

13 THE COURT: Would you bring the jury in.

14 (WHEREUPON, the jury enters the courtroom at
15 approximately 3:25 p.m.)

16 THE COURT: Thank you, ma'am.

17 MR. ROSS: Your Honor, at this time, we would
18 offer Captain Sawyer as an expert in cocaine valuation
19 and how cocaine is packaged and sold.

20 THE COURT: Okay. Subject to prior rulings.

21 Ladies and gentlemen, again, usually witnesses
22 are limited in their testimony to what they see, they
23 saw, they heard, their smell or senses. In other
24 words, if you are qualified in certain areas, you can
25 give a field -- you can give your opinion in that

Voir dire by Mr. Sellers

1 field, if it's helpful to you, the jury.

2 In this case, this gentleman, I have -- I have
3 found him to be an expert in the field of how cocaine
4 is packaged; how it is sold and valuation.

5 MR. ROSS: Thank you, Your Honor.

6 BY MR. ROSS:

7 Q. Captain Sawyer, I'm handing you State's No.
8 22; is this the cocaine that was seized in this case?

9 A. Yes, it is.

10 Q. Can you tell the jury how much that cocaine is
11 worth?

12 A. Well, it depends on supply and demand, how
13 easy you can get it, how hard it is to get it. It
14 could range anywhere from \$24,000, \$25,000 to \$35,000,
15 \$36,000 wholesale, if you're buying the whole kilo.

16 Q. What about retail?

17 A. Well, it depends on -- if keep it as cocaine,
18 if turned into crack later on down the road --

19 MR. SELLERS: Your Honor -- objection, Your Honor.

20 THE COURT: I'll sustain that.

21 BY MR. ROSS:

22 Q. What would be the -- just give me a figure,
23 what would be the retail value of that amount of
24 cocaine if it's sold on the streets?

25 A. If it's sold as cocaine, I mean, it could be

1 sold anywhere from a \$1,000 to \$1,500 an ounce. So
2 that times -- I think this is 42 ounces, whatever that
3 math is. It's probably \$55,000, \$60,000 as cocaine.

4 Q. Is it typical, from in your experience, for
5 one person to be charged with selling that amount of
6 cocaine on the streets? Do you typically find one
7 person in charge of distributing that at the retail
8 level on the streets?

9 A. Not at the retail level on the streets, no.

10 Q. Can you explain that to the jury, please?

11 A. Well, I mean this amount of drugs, is
12 obviously not something you can hide, walk around with
13 very well. But one person or a group of people but --
14 are at the top. Let's say one person -- you have
15 people under you that you give it to, and it may go two
16 or three steps down before it actually makes it to
17 street value.

18 Somebody that's selling this weight of cocaine,
19 they are going to sell somebody whose buying maybe a
20 couple ounces, most of the time it's four and a half
21 ounces, or nine ounces. And then they would sell to
22 somebody, who might buy an ounce or two. They might
23 sell to somebody who buys a half ounce, who's on the
24 street selling. So it works its way down from a kilo
25 to, you know, four and a half, nine, maybe an ounce or

Voir dire by Mr. Sellers

1 two, down to the street level.

2 Q. So you would typically find multiple people
3 involved in the sale of that much cocaine?

4 A. Yes.

5 Q. And when multiple people agree to commit a
6 crime, is that called conspiracy?

7 A. Yes.

8 Q. And is that what he's been charged with under
9 this statute?

10 A. Yes, that's included in the statute.

11 MS. BENEVENTO: Judge, that's all the questions I
12 have for this witness.

13 THE COURT: Just one second. May I see counsel up
14 here?

15 (WHEREUPON, a bench conference was held.)

16 THE COURT: All right. Ladies and gentlemen, I
17 know sometimes you feel like you're just rushing in and
18 out of the courtroom, you feel like cattle. But there
19 is a method to the madness, and some of this we do will
20 lengthen and make this a more efficient process. I'm
21 going to take about a 15 minute break, relax. If you
22 need anything, let the bailiff know. And then we'll
23 bring you back out here. Okay.

24 (WHEREUPON, the jury leaves the courtroom at
25 approximately 3:31 p.m.)

1 THE COURT: All right, sir. I don't even need to
2 remind you any more.

3 THE WITNESS: Yes, sir.

4 THE COURT: Would you just send me word back when
5 you're ready to go?

6 MR. SELLERS: We will. Yes, sir, Your Honor.

7 MS. BENEVENTO: Thank you, Judge.

8 (WHEREUPON, a brief recess was taken.)

9 THE COURT: Has the defense had sufficient amount
10 of time?

11 MS. BENEVENTO: We have, Your Honor.

12 THE COURT: Are you ready to proceed?

13 MS. BENEVENTO: Yes, Your Honor.

14 THE COURT: Very good. Would you bring the jury
15 in, please.

16 (WHEREUPON, the jury enters the courtroom at
17 approximately 3:50 p.m.)

18 THE COURT: Ready.

19 **CROSS EXAMINATION BY MS. BENEVENTO:**

20 Q. Captain Sawyer, you've never been published in
21 any publications, books, written any articles on the
22 subject of cocaine valuation; have you?

23 A. No, I have not.

24 Q. And you've never taught any classes on that
25 subject either?

1 A. No, I have not.

2 Q. Okay. And just a few minutes ago you
3 testified that this amount of cocaine, that you have in
4 front of you, could vary in value anywhere between
5 \$24,000 to \$60,000 just depending on whether it was
6 sold wholesale or retail; isn't that right?

7 A. That's true.

8 Q. Okay. But you didn't find anywhere close to
9 that amount of cash in the Morgan Street house on April
10 21st of '11, did you?

11 A. No, I didn't.

12 Q. Okay. And you have no evidence of any deals
13 or buys or transactions related to either that cocaine
14 or any of the people in that house; isn't that correct?

15 A. Ask me again.

16 Q. You don't have any evidence of any deals that
17 were set up or buys or transactions related to that
18 cocaine or any of the people in the house; isn't that
19 right?

20 A. That's -- that's correct.

21 Q. Okay. And you testified that in your
22 experience, multiple people are typically involved with
23 a quantity of cocaine like the one that's sitting in
24 front of you, but Kelvin Jones was the only one that
25 you charged in connection with that cocaine; isn't that

1 right?

2 A. With this cocaine, yeah --

3 Q. The one that's sitting in front of you, yes,
4 sir.

5 A. Yes.

6 Q. Okay. So you had no evidence or information,
7 beyond just pure speculation, about who in that house,
8 including Kelvin Jones, may or may not have been in
9 contact with that cane -- with that cocaine at any
10 point; isn't that right?

11 A. No direct evidence. Physical evidence, yes.

12 Q. Okay. And there's no evidence of any kind of
13 conspiracy in this case; isn't that correct?

14 A. Well, just my speculation or my knowledge
15 through my experience, that one person is not going to
16 sell all this dope.

17 Q. But other than your speculation and your
18 knowledge, from your experience, no evidence?

19 A. That's correct.

20 Q. Okay. And Kelvin Jones actually wasn't
21 connected to that cocaine? In fact, you testified
22 earlier that you never saw him with that cocaine; isn't
23 that right?

24 A. That is correct.

25 Q. You saw him with a backpack, that backpack --

M. SAWYER -- CROSS BY MR. BENEVENTO

1 A. The backpack that the cocaine came out of five
2 minutes after I seen him.

3 Q. And that's the same backpack that for five to
4 seven minutes was out of your sight along with Kelvin
5 Jones?

6 A. That's correct.

7 Q. Okay. So there's no evidence at all to
8 suggest that Kelvin ever had dominion or control over
9 those drugs that are sitting in front of you?

10 A. There's no physical evidence.

11 Q. Beyond your speculation?

12 A. Yes.

13 Q. Okay. And you didn't arrest anybody for
14 buying or selling from the Morgan Street house that
15 day? There were no deals, again, related to that
16 cocaine; isn't that right?

17 A. No purchases? Drug deals?

18 Q. No deals, correct?

19 A. Yes -- no, that's correct.

20 Q. Okay. And you don't actually know where that
21 cocaine came from; do you?

22 A. No, I don't know where it came from.

23 Q. Okay. And you don't know how long it was in
24 the Morgan Street house; do you?

25 A. I don't know for sure how long it was in the

1 Morgan Street house.

2 Q. Okay. And, in fact, you don't know how it got
3 in the house; do you?

4 A. No.

5 Q. Okay. And you don't know if Kelvin ever
6 touched it?

7 A. No.

8 Q. So you cannot connect Kelvin to that cocaine
9 in any way; isn't that correct?

10 A. Once again, I can connect that bag to Kelvin
11 five minutes later. We find this dope in that bag.

12 Q. Okay. So beyond connecting Kelvin to the bag,
13 you cannot connect Kelvin to that cocaine in any way;
14 isn't that correct?

15 A. I never seen him with that on his person than
16 I seen visually, no.

17 MS. BENEVENTO: Okay. Beg the court's indulgence
18 for one moment, Your Honor.

19 (Pause.)

20 MS. BURCHSTEAD: No questions, Your Honor.

21 THE COURT: Any redirect?

22 MR. ROSS: Yes, Your Honor.

23 **REDIRECT EXAMINATION BY MR. ROSS:**

24 Q. You were asked about evidence of any other
25 deals in that house. You found this large bag in that

1 sling bag; right?

2 A. Yes, sir.

3 Q. And this is well over a kilo of cocaine;
4 right?

5 A. Yes, sir.

6 Q. Ricky Lloyd was found with a smaller amount of
7 cocaine in his hand; wasn't he?

8 A. Well, trying to flush it down the commode.

9 Q. Wouldn't that be evidence of a deal in the
10 house?

11 A. Yes, sir. That's -- that's a strong
12 possibility.

13 Q. You were also asked about connecting Kelvin
14 Jones to the cocaine. You found the cocaine in this
15 bag; right?

16 A. Yes.

17 Q. You saw him wearing this bag into the house;
18 right?

19 A. Yes.

20 Q. And then you saw him with this money on his
21 person; right?

22 A. Yes.

23 Q. This money connects him to that bag; right?

24 A. I think so, yes.

25 Q. You also testified to sales on the streets;

1 right?

2 A. Yes.

3 Q. Sales are typically done in \$20 increments;
4 right?

5 A. Yes.

6 Q. What are the denominations of the bills in
7 this bag?

8 A. Mostly 20s.

9 Q. Would that connect Kelvin Jones to this bag?

10 A. Yes.

11 MR. ROSS: That's all the questions, Your Honor.

12 **RECROSS EXAMINATION BY MS. BENEVENTO:**

13 Q. Captain Sawyer, you mentioned Ricky Lloyd a
14 moment ago, that he had a small quantity of cocaine
15 with him that he was trying to flush down the toilet?

16 A. Yes, that's correct.

17 Q. But you have no evidence that that little bit
18 of cocaine had any connection to that cocaine; do you?

19 A. Once again, I can speculate. But, no, I don't
20 have any direct evidence of that.

21 Q. Okay. And you don't know where Ricky Lloyd
22 got that cocaine, how long he had it, or where it came
23 from?

24 A. No.

25 Q. Okay. And as far as the backpack and the

1 cocaine later being found together, just to be clear,
2 and I hate to beat this to death -- because I feel like
3 we've been over it -- but there were five to seven
4 minutes at one point, where both the backpack and Mr.
5 Jones were out of your sight; isn't that correct?

6 A. That's correct.

7 Q. And during those five to seven minutes, that
8 backpack, Mr. Jones, were inside the house with
9 multiple other people; isn't that correct?

10 A. Not for five to seven minutes.

11 Q. Okay. At some point during the five to seven
12 minutes, there were multiple people in the house?

13 A. Correct. Ricky Lloyd was in there for
14 probably four or five minutes. The other members that
15 came, was in there for less than two minutes.

16 Q. Okay.

17 A. So, yeah, there were people in the house, but
18 not for the whole five to seven minutes. I wanted that
19 to be straight, too.

20 Q. Sure, I understand. And that was my fault for
21 asking a muddy question. But to be clear on my end,
22 isn't it true that all of those people who were inside
23 the house, had access to that bag?

24 A. Yes.

25 Q. Okay. And Mr. Ross mentioned, and you

1 confirmed, that the money connects Kelvin to that bag?

2 A. Well, in my experience of working narcotics
3 for 12 years, if somebody is walking around with \$5,000
4 stuffed in their crotch, and they've got -- they're
5 seen just a few minutes ago with a bag that has a kilo
6 of cocaine in there, they are selling drugs. That's my
7 experience --

8 Q. Is that --

9 A. -- working narcotics for 12 years.

10 Q. Sorry. I did not mean to cut you off. But
11 besides speculation, you have no information that that
12 \$5,000 in cash had anything to do with the cocaine,
13 beyond speculation?

14 A. I don't have any physical evidence to tie it
15 together, no.

16 Q. And there -- no information, basically, beyond
17 speculation, no connection?

18 A. Yes, that's correct.

19 MS. BENEVENTO: Your Honor, I have no further
20 questions.

21 THE COURT: Thank you, sir. You may step down.
22 Would you call your next witness, please.

23 MS. BURCHSTEAD: Your Honor, the states rests its
24 case.

25 THE COURT: Okay. Mr. Foreman, ladies and

1 gentlemen of the jury, the State says they rest. What
2 that means is they have presented all the evidence they
3 intend to in their case in chief.

4 I have some administrative matters I need to
5 take care of. It'll probably be about 15 minutes, and
6 then we'll bring you back out here. Okay, sir, if you
7 would go back to the jury room.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 4:00 p.m.)

10 THE COURT: All right. Motions from the
11 defendants?

12 MR. SELLERS: Yes, Your Honor. At this point in
13 time, we would like to restate all of our previous
14 motions and objections. We want to make sure we get on
15 the record and restate our beginning motion that we
16 adopted the order from, especially the motion to
17 suppress the drug evidence, Your Honor.

18 And we would like to move for a directed
19 verdict, Your Honor, as we believe the State hasn't met
20 its burden of proof in regards to actual or
21 constructive possession of the cocaine in question,
22 Your Honor.

23 THE COURT: Okay, sir. How about with regard to
24 the proximity case?

25 MR. SELLERS: Your Honor, we believe that if they

1 don't have proof that he actually -- had actual or
2 constructive possession of the cocaine at all, there's
3 no way --

4 THE COURT: It doesn't matter for either one.

5 MR. SELLERS: It doesn't matter for either one,
6 Your Honor.

7 THE COURT: I got you. Your response to that?

8 MS. BURCHSTEAD: Briefly, Your Honor. I'm -- I'm
9 sure you're well aware of the standard, which we are of
10 course concerned at this point with the existence of
11 evidence, not weight. We do believe we have presented
12 evidence as to each and every element including the
13 proximity charge with Captain Sawyer talking about
14 reading the odometer, three-tenths of a mile from the
15 Pinecrest School. And we've had more than one witness
16 identify the defendant. We've established it's
17 cocaine; it weighed over 400 grams; and it is a
18 constructive possession case. That's a matter for the
19 jury, Judge.

20 THE COURT: Right. I agree. I'm going to deny
21 your motions.

22 MR. SELLERS: Thank you, Your Honor.

23 THE COURT: Do you have anything else you feel
24 like you need to put on the record at this juncture?

25 MR. SELLERS: I -- I -- I think we've been pretty

1 thorough. And I want to, you know, thank the other
2 side about being thorough, as well as making sure
3 everything was clean on the record, Your Honor.

4 THE COURT: Very good. Mr. Jones, would you raise
5 your right hand?

6 KELVIN JONES, after having
7 been duly sworn, testified as follows:

8 THE COURT: Okay, sir. You may drop your hand.
9 Now, again, I know I've explained to you your fifth
10 amendment rights in the beginning of this trial, but
11 I'm going to do it again.

12 If you don't understand anything that I say to
13 you, please let me know. I'll certainly try to explain
14 it sufficiently so that you do. I'll give you ample
15 time to speak with your attorney, so they can explain
16 it to you as well. Okay.

17 I believe you did tell me at the beginning of
18 this trial, that your attorneys did explain to you your
19 rights under the fifth amendment to the United States
20 Constitution; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you felt like you understood those
23 rights?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, let me tell you this, at this

1 point we've reached that stage in the trial that you
2 have a right to claim the protections given to you by
3 the fifth amendment, or you have a right to present
4 evidence in your own defense, including the right to
5 testify. But the fifth amendment, in pertinent parts,
6 exists -- it says that no person shall be compelled in
7 any criminal case, to be a witness against himself; do
8 you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: As we spoke earlier, that means that
11 you can't be required to testify, the State can't call
12 you and make you testify. I can't call you and make
13 you testify, your attorneys can't call you and make you
14 testify; do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, whether or not you exercise your
17 rights to the fifth amendment is purely a personal
18 right, but you must exercise that right knowingly and
19 intelligently, and in a voluntary matter; do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, if you decide that you do want to
23 testify, you'll be subject to the same rules as any
24 other witnesses, you'll be subject to direct
25 examination by your attorneys, you'll be subject to

1 cross examination from the State. If you have any
2 criminal history -- I don't know whether or not you do
3 that involves conviction or imprisonment for more than
4 one year, or/dishonesty or false statement, and I
5 determine that the probative value of that crime
6 outweighs the prejudice to you, the State will be
7 allowed to cross examine -- cross examine you about
8 your criminal record.

9 Obviously, the reason they are going to do that
10 is to impeach you, impeach your credibility; do you
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, on the other hand, if you decide
14 that you do not want to testify, I will instruct the
15 jury, in my final instruction, that they shall not --
16 shall not, being mandatory, consider your failure to
17 testify whatsoever. Because the burden remains on the
18 State to prove each and every element of the charges
19 against you beyond a reasonable doubt. And you don't
20 have to disprove or prove your innocence whatsoever; do
21 you understand this?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions of me?

24 THE DEFENDANT: No, sir.

25 THE COURT: Now, I will give you a reasonable

1 opportunity to speak with any family members, your
2 attorneys, or anyone else within reason to determine
3 whether or not you wish to claim the protections under
4 the fifth amendment, or whether or not you want to
5 testify. But again, ultimately, the decision has to be
6 made by you and you alone. Okay, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you had a sufficient opportunity
9 to speak with your attorneys at this juncture, or would
10 you like additional time?

11 THE DEFENDANT: No, sir. No, sir.

12 THE COURT: So you feel like you are ready to make
13 your determination as to whether or not you want to
14 testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you want to testify?

17 THE DEFENDANT: No, sir.

18 THE COURT: You do not?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you making that decision freely
21 and voluntarily?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Anything you'd like to place on
24 the record with regard to the fifth amendment rights?

25 MR. SELLERS: No, sir. We've spoken -- well, yes,

1 sir. We have spoken multiple times with the client --
2 our client, both in our office and here again. We
3 recently had another conversation with him and family
4 members, and we respect his decision to assert his
5 fifth amendment rights.

6 THE COURT: Very good. Okay. Do you intend to
7 put up any -- you may be seated. Thank you, sir. Do
8 you intend to put up any witnesses at all?

9 MR. SELLERS: No, sir. And at this point, the
10 defense would be willing to rest as well.

11 THE COURT: Okay. So I'm going to tell the jury
12 to come back in the morning at 9:30.

13 MS. BURCHSTEAD: It sounds good, Your Honor.

14 THE COURT: I'm trying to remember, did you submit
15 any exhibits?

16 MR. SELLERS: We did not.

17 MS. BENEVENTO: We did not, Your Honor.

18 THE COURT: So you get last argument?

19 MR. SELLERS: We do, Your Honor.

20 THE COURT: Okay. You don't disagree with that?

21 MS. BURCHSTEAD: I do not. I would just ask, just
22 for clarification purposes, is -- it's our intention to
23 do one closing, to waive closing on the law first. And
24 I don't believe we have to charge on the law. We would
25 just ask that they go and then --

1 THE COURT: You go and --

2 MS. BURCHSTEAD: Never mind. I'm being
3 ridiculous -- we're good. It's a good thing I'm not
4 doing my closing argument this afternoon. Disregard
5 all that. Everything sounds good, Judge.

6 THE COURT: I hear you.

7 (Discussion off-record.)

8 THE COURT: All right. Would you bring the jury
9 in, please?

10 MR. SELLERS: Your Honor, what do you want to do
11 about jury instructions?

12 MS. BENEVENTO: Instructions, Your Honor. Do you
13 want to handle that tomorrow or should we submit --

14 THE COURT: No. No. We're going to do that. I'm
15 going to go ahead and send them home.

16 MR. SELLERS: Okay.

17 THE COURT: And then we'll go over that in just a
18 minute.

19 MR. SELLERS: Okay.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 4:08 p.m.)

22 THE COURT: Okay. Ladies and gentlemen, we have
23 concluded the second phase of this case, which is the
24 presentation of the evidence.

25 Tomorrow we will go to the closing arguments by

1 the attorneys and then I'll charge you on the law.
2 Then after a brief conference, you'll be given word to
3 begin your deliberations.

4 But I'm going to excuse you for this afternoon.
5 I'll remind you -- excuse me -- not to speak amongst
6 yourselves or with anyone else about this case. Do not
7 read, hear or look at anything about this case. We'll
8 see you in the morning about 9:30, please.

9 (WHEREUPON, the jury leaves the courtroom at
10 approximately 4:09 p.m.)

11 THE COURT: Do you have any requests to charge
12 from the State?

13 MS. BURCHSTEAD: Beg the court's indulgence where
14 I get my cheat sheet, but I -- it would just be the
15 standard charges related to the trafficking case. I
16 assume we would want, you know, obviously we want
17 trafficking, reasonable doubt, constructive possession,
18 Judge. I assume they're going to want a mere presence
19 charge --

20 THE COURT: Hang on. Hang on. I can't hear you.

21 MS. BURCHSTEAD: Oh, you can't hear me? I'm
22 sorry.

23 THE COURT: That's all right. Just do this --

24 MS. BURCHSTEAD: I was -- I was trying not to
25 waste time.

1 THE COURT: I've got a charge that I'm going to
2 give to you. It's out of the standard charge book.
3 But do you have any written requests to charge?

4 MS. BURCHSTEAD: No, sir. Whatever your standard
5 charges are, I'm sure are fine. I just wanted to make
6 sure we covered all the ones needed, Judge.

7 THE COURT: All right. Mr. Sellers, does the
8 defense --

9 MS. BENEVENTO: Your Honor, we do. We have seven.
10 And I believe a lot of these -- a lot of these are
11 standard, Your Honor.

12 THE COURT: Okay.

13 MS. BENEVENTO: You can weed through them. I have
14 a copy for Ms. Burchstead.

15 THE COURT: Now, it's my feeling that -- that I
16 would not charge PWID, because I haven't seen really
17 any evidence of it. It's either 400 or more or not; do
18 you disagree with that?

19 MR. SELLERS: Your Honor, we -- we actually would
20 agree with your assertion.

21 THE COURT: Okay.

22 MS. BURCHSTEAD: Your Honor, the State actually
23 disagrees for two reasons. One, we believe, just based
24 on the fact that it's a -- we don't know what the jury
25 is considering back there. We believe a lesser

1 included --

2 THE COURT: Tell me what evidence is in the
3 record, other than you showing that there's trafficking
4 at 400 grams or more?

5 MS. BURCHSTEAD: I just believe it's a lesser
6 included, Judge, because --

7 THE COURT: Doesn't the charge specifically say
8 that the only difference is the weight?

9 MS. BURCHSTEAD: Yeah. That's -- that's it.
10 That's why we would assert that it is a lesser
11 included, because it's based on the weight. But we
12 also do have distribution materials such as scales,
13 baggies, the \$20 bills, all that can be considered
14 distribution.

15 THE COURT: That's not cocaine.

16 MS. BURCHSTEAD: I'm sorry, Judge?

17 THE COURT: That's not cocaine.

18 MS. BURCHSTEAD: It goes to the sale of cocaine,
19 Judge. We would argue it goes to the distribution of
20 cocaine per Captain Sawyer's testimony.

21 THE COURT: I don't. I'll think about it --

22 MS. BURCHSTEAD: Yes, sir.

23 THE COURT: But my tendency is I do not think it's
24 an appropriate charge in this case.

25 MS. BURCHSTEAD: Sure.

1 THE COURT: And you -- and you convinced me
2 already when I had my mind changed, so I'm subject to
3 it. I really just don't think it's appropriate.

4 MS. BURCHSTEAD: Yes, sir. I -- I would just ask
5 ask for clarity on how we're going to instruct on the
6 PWID proximity charge then. The proximity charge --
7 the actual title of the statute is PWID --

8 THE COURT: Well, I looked at that definition of
9 proximity, and the distribution is what you're saying.
10 But distribution also is in the trafficking statute,
11 isn't it? Don't they have that term?

12 MS. BURCHSTEAD: Yes. Yes, sir. And that -- I
13 guess that's essentially my argument, is it's all kind
14 of related when you look at the two statutes together,
15 you're looking at one called PWID, but under the guise
16 of trafficking. Because proximity is used for PWID or
17 trafficking cases, judge. I just don't want to have
18 the jury confused. But, frankly, we do think we met
19 trafficking 400. And, obviously, it's up to the Court.

20 THE COURT: Well, I mean, there's certainly
21 evidence in the record that the jury can find. That's
22 for sure. That -- the concern I have -- and just food
23 for thought, and educate me -- and I'll be glad to be
24 educated. But looking at the charge, it appeared to me
25 that they say the distinction is the weight. So the

1 only evidence is, it's more than a kilo. So,
2 therefore, PWID is a lesser included just doesn't seem
3 to be appropriate.

4 MS. BURCHSTEAD: Yes, sir. Even under that
5 thought pattern, I would just suggest that goes to the
6 weight of the chemist's testimony. I mean, you don't
7 know what juries are thinking about. I -- it's the
8 State's position, even if you're just looking at the
9 weight, the weight is a lesser included of the
10 trafficking. The jury could somehow come back with a
11 different way. I'm not saying I would, I'm just saying
12 they could based on what we put in front of them.

13 THE COURT: -- the evidence in the record in a
14 different weight -- I'm sorry. Okay. Do you have
15 those...

16 (Pause.)

17 MS. BURCHSTEAD: I guess we would need to do a
18 Blockburger analysis, Judge. But just --

19 THE COURT: Well, tell me --

20 MS. BURCHSTEAD: I just want to have clarity in
21 terms of how --

22 THE COURT: Give me the Blockburger analysis, and
23 tell me what it is.

24 MS. BURCHSTEAD: I'm trying to recall if there's a
25 separate element in the PWID or not, and I think it is

1 all related to the weight, Judge. So you actually have
2 more elements in the trafficking --

3 THE COURT: Well, in order for it to be a lesser
4 included --

5 MS. BURCHSTEAD: Yes, sir.

6 THE COURT: -- you would have to have each and
7 every element, wouldn't you?

8 MS. BURCHSTEAD: Correct, yes, sir. I'm just
9 thinking out loud. I didn't -- I didn't have my act
10 together to argue this just yet, Judge. So I apologize
11 if I'm rambling, but --

12 THE COURT: That's okay.

13 MS. BURCHSTEAD: Mr. Ross may be more versed on
14 this than me.

15 THE COURT: I can charge you in the morning.

16 MS. BURCHSTEAD: Yes, sir.

17 THE COURT: I'm giving you overnight to look at
18 it.

19 MS. BURCHSTEAD: This is why Mr. Ross is with me.
20 He's -- he's tried drug cases more recently than I
21 have. He may have some -- some more education for us,
22 Judge. But I -- my main concern is confusion as to the
23 PWID proximity, and how we read that out to the -- to
24 the jury. Thank you, Judge.

25 THE COURT: All right. Well, I'm not trying to

1 create an issue when there's not one, I just --

2 MS. BURCHSTEAD: Right.

3 THE COURT: -- don't think -- okay.

4 MS. BURCHSTEAD: I -- I just want to make sure any
5 of the -- I guess in terms of the charge, we just want
6 to charge trafficking. We want to charge PWID
7 proximity. The question for me is on the jury form,
8 what goes back as a lesser included.

9 THE COURT: Well, let me just tell you this: I
10 absolutely, categorically -- I can't even speak this
11 afternoon -- I categorically would not put PWID as a
12 lesser included without charging it. There's no way.

13 MS. BURCHSTEAD: Right. Yes, sir.

14 THE COURT: Okay. And either you're going to
15 charge it, and put it, or don't charge it, and not put
16 it. Okay.

17 MS. BURCHSTEAD: Yes, sir.

18 THE COURT: Look at the trafficking charge. I'm
19 not going to send a copy to the jury room. I don't do
20 that. That just happens to be on there.

21 MS. BENEVENTO: Your Honor, just for --

22 THE COURT: Oh, I'm sorry.

23 MS. BENEVENTO: -- for clarification if we may.

24 Are you charging on all of these that you included in
25 in this packet, because I believe that PWID is included

1 --

2 THE COURT: No. No. I -- I --

3 MS. BENEVENTO: I included it in there in case we
4 needed to go over and let you look at it.

5 THE COURT: Okay. But my intent was to skip over
6 it and just charge the proximity and the trafficking.

7 MS. BENEVENTO: Okay. I just wanted to clarify.
8 Thank you, Your Honor.

9 THE COURT: Listen, I need all the help I can get.

10 (Discussion between attorneys concerning
11 charge.)

12 THE COURT: Have you had sufficient time to look
13 at the proposed charge?

14 MS. BURCHSTEAD: Yes, sir. I mean, I haven't read
15 every single word of it. But these are standard
16 charges and --

17 THE COURT: They are.

18 MS. BURCHSTEAD: And defense counsel and I have
19 talked, and I think we are all on the same page,
20 standard charge are --

21 THE COURT: Well, you know, one thing that she did
22 say that rings true with me a little bit is, you know,
23 if you have the charge itself of PWID, it's the same
24 elements except the weight, so it's in the record.

25 MS. BURCHSTEAD: And, Judge, let me just clarify,

1 I was going all haywire with PWID being a lesser of
2 trafficking. But we also have the second indictment of
3 PWID prox, and I think PWID is a lesser of PWID prox.
4 Because the proximity of the half mile of the school is
5 the added element to PWID. So, I think --

6 THE COURT: It is.

7 MS. BURCHSTEAD: Yes, sir. I -- after I had time
8 to talk and sort it out, it almost makes more logical
9 sense just to say we need a PWID charge under the
10 proximity --

11 THE COURT: You disagree --

12 MS. BURCHSTEAD: -- indictment.

13 THE COURT: Do you disagree that it's a lesser
14 included of proximity?

15 MS. BENEVENTO: We absolutely don't disagree, Your
16 Honor. We don't.

17 THE COURT: So you want me to -- so, in other
18 words, I think I might -- I probably -- I probably need
19 to charge it. And then the question is, do I do it as
20 a lesser included of one or both.

21 MS. BURCHSTEAD: Exactly, Judge. And the State
22 submits it's under both.

23 THE COURT: Do you have a verdict form to reflect
24 --

25 MS. BURCHSTEAD: -- based on my previous

1 statements to the court.

2 THE COURT: Do you disagree with that?

3 MR. SELLERS: I mean, I think that the major
4 difference in the elements -- I mean, I -- I understand
5 logically more so the PWID prox argument than I do the
6 trafficking PWID argument. Because, I mean, we didn't
7 even cross the chemist when it comes to the weight of
8 the 400 -- 400 grams. There's absolutely no evidence
9 in the record that states that that ain't 400 grams, so
10 I mean --

11 THE COURT: I -- I -- that part of it, I hear you.
12 That was my initial impression.

13 MR. SELLERS: I mean, I don't have any -- I mean,
14 I don't have any --

15 THE COURT: But you go -- I mean, you go to the
16 charge itself, and it says it's everything -- the same
17 elements of trafficking except for the weight.

18 MR. SELLERS: But I think that's huge. I mean, it
19 -- that is a difference. That's a -- I mean, that's a
20 substance of difference --

21 THE COURT: All right. Let's do this. I want
22 y'all to think about it, research it, let me know. We
23 can deal with it in the morning. I want -- I don't
24 want you to make the call on this now. If it's a
25 lesser included of the proximity, then clearly I need

1 to charge it on that. I don't -- I'll go look that up
2 before I leave here today. Hang on. Let me go -- just
3 one second.

4 MS. BURCHSTEAD: Yes, sir.

5 (Pause.)

6 THE COURT: I think it's State vs. Gosnel, 341 SC
7 627. And this is obviously just a head note. I don't
8 have the case in front of me. It says "where the
9 amount of the drug involved in the conspiracy is not
10 disputed, charging a lesser amount offense as a lesser
11 included offense, would be error because it would allow
12 the jury to convict the defendant of an offense which
13 he has not been charged".

14 MR. SELLERS: That's our argument, Your Honor, on
15 the jury charge and on the jury form. When you have
16 trafficking, and that's it. Because as you see, Your
17 Honor, we didn't -- there's no evidence on the record
18 to dispute -- none whatsoever -- that that bag is 400
19 or more.

20 THE COURT: Okay.

21 MR. SELLERS: In fact, we didn't cross at all. We
22 gave up that right.

23 THE COURT: Anyway, did you get that case?

24 MS. BURCHSTEAD: I wrote it down, yes, sir. We'll
25 take a look at it.

1 THE COURT: Just look out there and --

2 MS. BURCHSTEAD: Yes, sir.

3 THE COURT: -- and throw it at me. Anyway --

4 MS. BURCHSTEAD: Just to add what we were
5 reviewing with regard to your proposed charges, Judge,
6 we would just ask that there be a constructive
7 possession and circumstantial evidence.

8 THE COURT: That's -- that's in there.

9 MS. BURCHSTEAD: Yeah. I figured it was in there.
10 I don't think we have any other issues, Judge.

11 MR. SELLERS: We -- we -- I mean, we have a few,
12 Your Honor, as you look over them this evening that are
13 not included in your --

14 THE COURT: They are -- okay. Which numbers are
15 those? The first one is about reasonable doubt.

16 MR. SELLERS: Uh-huh.

17 THE COURT: Presumption of innocence is in there.

18 MR. SELLERS: Are we looking at the same thing,
19 Your Honor?

20 THE COURT: Number one has the State has the
21 burden of proving the defendant guilty beyond a
22 reasonable doubt -- is that not the same --

23 MS. BENEVENTO: The first page that we have, Your
24 Honor, says trafficking.

25 THE COURT: Oh, I thought you said you -- I was

1 looking at yours.

2 MR. SELLERS: Oh, okay. Yeah. All right. What
3 are we talking about here?

4 MS. BENEVENTO: I think we all need to go home.

5 THE COURT: Hold on -- as -- mine has the standard
6 charge out of the charge book. I'm not saying whether
7 or not we're going to do a lesser included, but the
8 trafficking PWID is a lesser included for the proximity
9 charge. Any objections as written or given to you?

10 MR. SELLERS: We would -- we would object to the
11 PWID as a lesser included charge.

12 THE COURT: Right. I understand. I'm not saying
13 that --

14 MR. SELLERS: Okay.

15 MS. BENEVENTO: But as to the writing --

16 THE COURT: As written. As to the charge itself?

17 MS. BENEVENTO: No, Your Honor.

18 MR. SELLERS: No.

19 THE COURT: So you -- the correct proposition and
20 charge on the law, correct?

21 MR. SELLERS: Correct.

22 MS. BENEVENTO: Correct.

23 THE COURT: You agree?

24 MS. BURCHSTEAD: Yes, sir.

25 THE COURT: Okay. Now, as to your request to

1 charge, number one, the reasonable doubt charge is in
2 my standard charge, and I'll go over that with you.

3 MR. SELLERS: Okay.

4 MS. BENEVENTO: Your Honor, do you mind if I ask
5 which -- which one you charge? Do you charge hesitate
6 to act or firmly convinced?

7 THE COURT: I'll show you exactly. In fact, what
8 I'll do --

9 MS. BENEVENTO: I thought that I heard Your Honor,
10 at the beginning of the trial, mention hesitate to
11 act --

12 MR. SELLERS: Hesitate to act.

13 MS. BENEVENTO: I just wanted to verify.

14 THE COURT: Reasonable -- I know I have the new
15 circumstantial evidence charge. But -- "what is a
16 reasonable doubt. A reasonable doubt is a kind of
17 doubt that would cause a reasonable, sincere, honest
18 and conscientious person to hesitate to act in an
19 important matter in their own affairs".

20 MR. SELLERS: Yes, sir, Your Honor.

21 THE COURT: That's what you want?

22 MS. BENEVENTO: Yes, Your Honor.

23 MR. SELLERS: Yes, sir.

24 THE COURT: Okay. I have my basic structure of my
25 charge. Have you ever tried one with Gary Hill out of

1 Greenville?

2 MR. SELLERS: Didn't he just get there --

3 THE COURT: He was before me.

4 MR. SELLERS: Yeah.

5 THE COURT: And I shamelessly plagiarized his --
6 the body of his charge. I have it here. You are more
7 than welcome to just look at my general charge. It's
8 in three parts. And I have the law that defines and
9 controls the jury's duties as jurors. That would
10 include --

11 MR. SELLERS: Presumption of innocence.

12 THE COURT: Sir?

13 MR. SELLERS: Presumption of innocence?

14 THE COURT: I've got presumption of innocence --
15 just to walk through it. You know, basically, I tell
16 them they have to make the determination from what they
17 heard here, and they have nobody to reward or -- or to
18 punish.

19 I tell them what is, in fact, evidence and what
20 is not evidence and -- consistent with what I told them
21 earlier. I define the types of evidence, direct and
22 circumstantial, based on the State vs. Logan case.

23 I go over credibility of the witnesses, expert
24 testimony. The fact that the indictment is not
25 evidence. That multiple charge have to be separately

1 considered, multiple indictments.

2 I go over the presumption of innocence,
3 reasonable doubt, intent, failure of the defendant to
4 testify. And I -- do you believe identification is
5 part of this case?

6 MS. BENEVENTO: Your Honor, we submitted it. I
7 believe it's number seven out of our requests to
8 charge.

9 THE COURT: I have that in my standard charge.
10 What's -- what's your position on identification?

11 MS. BURCHSTEAD: I think we all agree that it's an
12 issue in this case.

13 THE COURT: Go ahead and charge it?

14 MS. BURCHSTEAD: Yes, sir.

15 MR. SELLERS: Yes, sir.

16 THE COURT: Do y'all want to look at my charge on
17 identification?

18 MR. SELLERS: I mean, I -- it's pretty standard,
19 isn't it?

20 THE COURT: Yeah..

21 MS. BENEVENTO: Your Honor, if it's of any help,
22 our submitted charges came straight from Judge
23 Anderson's book.

24 THE COURT: From whose?

25 MS. BENEVENTO: As to what to charge.

1 MR. SELLERS: Judge Anderson's.

2 MS. BENEVENTO: Judge Ralph King Anderson's book.

3 THE COURT: I tell you, those things go on for
4 days and days. I know they're highly, highly
5 intelligent. They're just long.

6 MR. SELLERS: And highly plagiarized, too, in many
7 cases.

8 THE COURT: You said it. All right.

9 MS. BENEVENTO: I guess, the only other two that
10 weren't mentioned, Your Honor, that we would like in
11 our stack of submitted --

12 THE COURT: Which numbers are those, on yours?

13 MR. SELLERS: Five and six.

14 MS. BENEVENTO: Numbers five and six, Your Honor.

15 THE COURT: Five and six.

16 MS. BURCHSTEAD: And, Judge, just one final
17 thought. Obviously we've got the charge of trafficking
18 with the language of the statute to include conspired,
19 like we were discussing earlier. We would just ask if
20 we could have further explanation for the jury as to
21 what "conspire" means.

22 THE COURT: I don't think so, but tell me what you
23 want. If you give -- give me a proposed charge and
24 I'll be glad to look at it.

25 MS. BURCHSTEAD: Okay.

1 THE COURT: My concern, when I start getting there
2 and start is -- I get real close to commenting on the
3 facts of the case, and that gives me some pause.

4 MS. BURCHSTEAD: Sure. We'll see if we can come
5 up with a proposal. As long as we got the language of
6 the statute, I think we're covered. I just don't want
7 the jury to come back and -- I mean, maybe if they come
8 back, then we can address it. I just don't want there
9 to be confusion as to -- he's -- he's not charged with
10 conspire, but conspire is an element, what does that
11 mean.

12 THE COURT: Well, I saw a case --

13 MS. BURCHSTEAD: I think we can come up with
14 something --

15 THE COURT: -- conspire is a part of the statute
16 of trafficking.

17 MS. BURCHSTEAD: Okay. Yes, sir.

18 THE COURT: Let me look at number five. Just one
19 second.

20 (Pause.)

21 THE COURT: All right, Ms. Burchstead.

22 MS. BURCHSTEAD: Yes, sir.

23 THE COURT: I have to look at your name each time.

24 MS. BURCHSTEAD: That's all right.

25 THE COURT: As to defense request charge number

1 five, have you looked at that?

2 MS. BURCHSTEAD: I looked at it quickly. Let me
3 peek back at it, Judge. Right. We -- we talked about
4 mere association being different from mere presence.
5 It's the State's position that mere presence would
6 cover it, but I'm going to defer to Your Honor in this
7 instance.

8 THE COURT: I tend to agree that the mere
9 association language is not necessarily -- that I need
10 that charge. I have no problems charging number five,
11 almost in its entirety.

12 I underlined, under the first sentence, or the
13 mere association by the defendant, with people who have
14 committed a crime. My thought would be to excise that,
15 and have the mere presence of the defendant where a
16 crime has occurred is insufficient proof, go to
17 there -- just delete the association. Okay, mere
18 association.

19 Also, the last paragraph on page two, I would --
20 do not find beyond a reasonable doubt that the
21 defendant has dominion and control with right to access
22 dominion and control over the controlled substance. I
23 mean, it's -- it's not an incorrect statement, it's
24 just an incomplete statement. I would prefer that
25 language to read, if you find that -- from the

1 evidence, or the lack of evidence, that the defendant
2 is merely present on the property where the controlled
3 substance is found, and ordinarily associated -- then
4 your verdict should be not guilty.

5 MS. BENEVENTO: That's fine, Your Honor.

6 MR. SELLERS: That's -- yeah.

7 MS. BENEVENTO: I don't have any objections to
8 that.

9 MR. SELLERS: That's fine, Your Honor.

10 THE COURT: Okay.

11 MS. BENEVENTO: Your Honor, our only response to
12 your comment with regard to the mere association, Your
13 Honor we would just ask that that be included simply
14 because at issue in this case, was the presence of
15 multiple other individuals in the house, who were also
16 arrested for drug crimes, Your Honor. And so we
17 believe that because of Mr. Jones' association by being
18 in that house, that he should be entitled to that
19 charge separately as well.

20 THE COURT: Have you seen cases that say presence
21 and/or association?

22 MS. BENEVENTO: Your Honor, admittedly, I pulled a
23 mere presence case, but I do not have a case law with
24 me today that deals with the charging of both mere
25 presence and mere association. I can certainly look

1 that up tonight and get to it, Your Honor, if you would
2 like me to do that.

3 THE COURT: I -- it's -- my thoughts are, when you
4 brought it up, phrased it way -- you didn't bring it
5 up, but I still like mere presence. Keeps it cleaner.

6 MS. BENEVENTO: Sure.

7 THE COURT: If you show me something, I'll change
8 my mind. The second, number six, it's just -- it's
9 duplicative of the first mere presence, and I'm going
10 to deny -- I'm going to decline that. Okay.

11 MS. BENEVENTO: Thank you, Your Honor.

12 THE COURT: Yes, ma'am. So of your five requested
13 charges, I'd only charge number five in somewhat of a
14 redacted manner.

15 MS. BENEVENTO: There are seven total, Your Honor.

16 THE COURT: Seven? There are? I have
17 identification, do you want to look at my
18 identification charge?

19 MS. BENEVENTO: Sure, Your Honor. That will be --

20 THE COURT: Ma'am?

21 MS. BENEVENTO: Yes, sir.

22 THE COURT: Come on.

23 (WHEREUPON, a bench conference was had.)

24 THE COURT: Y'all take -- this is my entire
25 charge. I have the rules that confine and control.

1 Then I do the substantive law, which is what we just
2 got through working on. Then I do some deliberations.
3 Y'all take a minute, ignore my notes, and just -- after
4 you have a chance to look at it, would y'all just let
5 me know?

6 MR. SELLERS: Yes, sir.

7 THE COURT: All right. Thank you, buddy.

8 (WHEREUPON, a brief recess was taken.)

9 THE COURT: Any questions, comments, additions,
10 deletions of the proposed charge -- sometimes on that
11 last part on the -- the deliberations, I don't go
12 through every line and sentence of it, but for the most
13 part, that's what they get.

14 MS. BURCHSTEAD: Yes, sir. No, we -- we have no
15 objections to those proposed. We'll just look for a
16 definition of conspiracy to hand up and take another
17 look at PWID as a lesser included, Judge.

18 THE COURT: Okay.

19 MS. BENEVENTO: Nothing from us, Your Honor.
20 That's fine.

21 THE COURT: Ms. Benevento?

22 MS. BENEVENTO: No, Your Honor.

23 THE COURT: No -- okay. And you are also going to
24 let me know about Gosnel. I was starting to read that.

25 MS. BURCHSTEAD: Yes, sir. That -- that relates

1 to the PWID -- correct, yes, sir. We'll take a look at
2 that.

3 THE COURT: And you have something -- well, you're
4 right. Because I was just looking at proximity. And
5 they say possession with intent to distribute is part
6 of the elements.

7 MS. BURCHSTEAD: I'm just worried about confusion
8 and what not, but we'll -- we'll digest it tonight and
9 discuss it more in the morning, Judge, if that suits
10 you.

11 THE COURT: I did not see anything saying that
12 PWID -- I mean, that PWID is a lesser included of --

13 MS. BURCHSTEAD: Right.

14 THE COURT: -- proximity, but it certainly is an
15 element. Sir?

16 MR. SELLERS: Yeah. And you know our concern is
17 trafficking and --

18 THE COURT: Right. Right.

19 MR. SELLERS: We have some priorities.

20 MS. BURCHSTEAD: Yes, sir, understood.

21 THE COURT: All right, guys. Anything further
22 from the State before we break?

23 MS. BURCHSTEAD: No, sir.

24 THE COURT: From the defense?

25 MS. BENEVENTO: No, Your Honor.

1 THE COURT: All right. Thank you. I will see you
2 all tomorrow at 9:30.

3 MS. BURCHSTEAD: Yes, sir.

4 THE COURT: And then we'll crank it up and go.
5 Now, I generally will give the parties -- the
6 attorneys, if they desire, a chance to let me charge on
7 the law first, and argue after. Some people like it
8 better that way, some of the people with gray hair
9 don't, because they're used to doing it the old
10 fashioned way. So if everybody agrees, I'll charge
11 first. If everybody doesn't, then we'll do it the way
12 we've always done it.

13 MS. BURCHSTEAD: We will discuss that, Your Honor.
14 That's certainly a tempting option.

15 THE COURT: Okay. Thank you, guys.

16 MS. BURCHSTEAD: Thank you, Judge.

17 MS. BENEVENTO: Thank you, Your Honor.

18 THE COURT: Have a good one.

19 (WHEREUPON, the trial of the case was recessed
20 for the day.)
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* * * P R O C E E D I N G S * * *

FEBRUARY 19, 2015

THE COURT: All right. Let's put some matters on the record. I met with the attorneys in my chambers with regard to the charge. I did some research last night, and was of -- am of the opinion that trafficking is a stand alone charge in this case, based on the facts of the case, based on the amount of the alleged drug being undisputed. And, therefore, although legally PWID is clearly a lesser included charge, factually, under this case, it would be inappropriate to charge it, so I'm not going to. I'm respectfully going to decline.

As to the proximity charge, I am going to include in my charge, the inference on the possession of one gram or more, being an evidentiary fact. But the verdict form, for the jury, will be two stand alone charges, and that is trafficking and possession with intent within proximity of a school or park.

I know the State objects to that, but that's my ruling right or wrong. Would the State like to supplement anything that we said in chambers other than what I put on the record?

MS. BURCHSTEAD: No, sir. I believe that covers

1 it.

2 THE COURT: And the defense?

3 MR. SELLERS: Perfect, Your Honor.

4 THE COURT: Okay. With that being said, then,
5 everyone has agreed that I will put the jury to sleep
6 first before they close, and then we'll go from there;
7 right?

8 MR. SELLERS: Yes, sir.

9 THE COURT: And you have some demonstrative
10 evidence you want to use, and that -- that's without
11 objection from the State; correct?

12 MS. BURCHSTEAD: Correct, Your Honor.

13 THE COURT: Okay. Would you bring the jury in,
14 please, ma'am.

15 (WHEREUPON, the jury enters the courtroom at
16 approximately 9:54 p.m.)

17 THE COURT: Well, good morning. I hope everyone
18 is warm enough here. It's actually fairly bitter out
19 there today. But before we get started, let me ask if
20 anyone has read, heard or seen anything about this
21 case, or has spoken with anyone about this case,
22 including one another on the jury? If so, would you
23 raise your right hand?

24 (No response.)

25 THE COURT: Very good. Let the record reflect

1 that no one responded, and I thank you for that.

2 Ladies and gentlemen, we are entering into the
3 third phase of this case, which normally would be the
4 closing argument phase. By stipulation with the
5 attorneys, we are going to reverse that a little bit.
6 I am going charge you on the law first, then the
7 attorneys will give you their closing arguments. And
8 then after a meeting, we will give you word to go ahead
9 and begin your deliberations.

10 Let me apologize in advance. Some of my charge
11 will be read to you. I try to keep the reading to a
12 minimum. However, because some of these points --
13 these points of law are very important, I don't feel
14 comfortable not reading to you each and every element
15 so we make sure that it's -- that you hear it.

16 If at any time you don't hear me, or don't
17 understand what I'm telling you, raise your hand and
18 I'll stop. I'll repeat it. I do not send my charge
19 back to the jury, but I'll give it to you as often and
20 as many times as you want me to. Okay.

21 Now, with that being said, ladies and gentlemen,
22 the law requires that I instruct you on the law that
23 you must apply in this case. These instructions will
24 be in three parts.

25 The first part will be the general rules that

1 define and control your roles as jurors. The second
2 part will be the rules that you must apply. In other
3 words, what the State must make out in order to prove
4 its case against this defendant. The third will be
5 some considerations for your deliberations.

6 Then, Mr. Foreman, I'll go over the verdict form
7 you. It's basic and simple, but I'll still do that.
8 Okay, sir.

9 Now, as I told you at the beginning of the
10 trial, ladies and gentlemen, you are the finders of the
11 facts. You must apply the facts to the evidence that
12 you heard in this case in this courtroom. And to those
13 facts as you find them to be, you must apply the law as
14 I give it to you now. And you must follow the law as I
15 give it to you. You should not and shall not be
16 concerned with what you'd like it to be, but what it
17 is.

18 You also must not, shall not be influenced by
19 any personal likes or dislikes, opinions, prejudice, or
20 undue sympathy that you may have for one side or the
21 other. That means that you have no one to -- no
22 friends to reward, no enemies to punish. That simply
23 means that you will decide this case based solely on
24 the evidence that was presented to you during the case,
25 during this trial in this courtroom. If you remember,

1 you took an oath at the beginning of this case, where
2 you said you'd do just that.

3 Now, following my instructions, you must follow
4 each and every part of my instructions as I give it to
5 you. You can't pick out certain aspects of it that you
6 like, and apply those and disregard others. All my
7 instructions are equally important.

8 And, again, if I had said or done anything
9 during this case which seems to indicate to you how you
10 are to find the facts, ie, which verdict you are to
11 reach, I'm going to ask you and also instruct you
12 disregard that. I can assure you, I have no feeling
13 one way or the other as to the verdict you are to
14 reach. That's for you and you alone to decide.

15 And our State Constitution does not allow any
16 Court or judge to make a comment or have an opinion as
17 to the facts of any case. So what you will do, is you
18 will evaluate and weigh the evidence that you heard
19 during this trial, to come to a conclusion as to the
20 charges in this matter.

21 Now, there's no way for me to give you a set of
22 scales for you to literally weigh the evidence. It's a
23 mental process. And you will use your good sense and
24 sound judgment in determining what the facts are.

25 Now, in this case, you will determine what the

1 facts are from the following: This is what evidence
2 is, it is the sworn testimony of witnesses that you
3 heard in this case, whether it being direct evidence,
4 direct testimony, or cross examination.

5 Also, any exhibits that have been admitted into
6 evidence is evidence. That is the only true evidence
7 that you have before you in this case. So that leads
8 me to what is not evidence.

9 Arguments by these attorneys, statements by
10 these attorneys is not evidence. They have not been
11 sworn. They have not been put on the stand and been
12 subjected to cross examination. What they say is
13 helpful, but it is not evidence.

14 If, during your deliberations, your memory of
15 what the facts are differs from what either the State
16 or the defense, or both of them tell you, then your
17 memory will control.

18 Also, I remind you about your notes. Simply
19 because something appears in a juror's notes, doesn't
20 mean it trumps somebody's memory or somebody who may
21 not have made that note on their pad.

22 Mr. Foreman, that's why they call them
23 deliberations. If there's a difference, y'all have to
24 hash that out and come to a resolution. Okay, sir.

25 MR. FOREMAN: Yes, sir.

1 THE COURT: Also, questions and objections by
2 attorneys, it's not evidence. In every trial, an
3 attorney is sworn to object when he or she sees
4 something they feel is inappropriate. The fact that
5 there is an objection, and the fact that I let you stay
6 in here when I ruled on that objection, may not and
7 shall not be considered by you during your
8 deliberations.

9 Mr. Foreman, that is not an appropriate topic
10 for -- for deliberations, and will be your job to make
11 sure that that topic is not brought up during the
12 deliberations. In other words, the fact that someone
13 objected and I ruled on it one way or the other. Okay,
14 sir.

15 Also, ladies and gentlemen, anything that you
16 may have heard while court was not in session, is not
17 evidence. The bottom line is, you have to make your
18 decision, what the facts are, based on the testimony
19 and the evidence you heard here in this courtroom, and
20 from no other place. And you apply the law as I give
21 it to you now.

22 Now, in South Carolina, we have two types of
23 evidence. We have direct evidence and we have
24 circumstantial evidence. Let me read you a little bit
25 about that.

1 So, there are two types of evidence which are
2 generally presented during a trial, direct evidence and
3 circumstantial evidence. Direct evidence directly
4 proves the existence of a fact and does not require
5 deduction. Circumstantial evidence is proof of a chain
6 of facts and circumstances, indicating the existence of
7 a fact.

8 Crimes may be proven by circumstantial evidence.
9 The law makes no distinction between the weight or
10 value to be given to either direct or circumstantial
11 evidence. However, to the extent the State relies on
12 circumstantial evidence, all of the circumstances must
13 be consistent with each other. And when taken
14 together, point conclusively to the guilt of the
15 accused beyond a reasonable doubt.

16 If these circumstances merely portray the
17 defendant's behavior as suspicious, the proof has
18 failed. The State has the burden of proving the
19 defendant guilty beyond a reasonable doubt. This
20 burden rests with the State regardless of whether the
21 State relies on direct evidence, circumstantial
22 evidence, or some combination of the two.

23 Now, with that being said, this is an example of
24 direct evidence. If I were standing on a street
25 corner, and the issue in a case was whether somebody

1 ran a red light. And if I were to say this person did
2 or did not run a red light, that would be direct
3 evidence, because it immediately establishes that fact.

4 An example of circumstantial evidence, if each
5 of you were to go to bed at night, and there were a
6 fresh sheet of snow in your front yard. And if you
7 were to wake up in the morning, and find tracks going
8 through that snow, you can reasonably infer that
9 someone or something walked through your yard during
10 the night, although you did not see that yourself.
11 That is an example of circumstantial evidence.

12 Now, ladies and gentlemen, in deciding what the
13 facts are in this case, you must consider all of the
14 evidence in doing this, and you have to decide which
15 testimony you wish to believe, and which testimony you
16 wish not to believe. You have a right to disbelieve
17 all or part of any witness' testimony. You have a
18 right to believe all of any witness' testimony.

19 In making this decision, what we call the
20 credibility of the witnesses, you may -- but you're not
21 required to take into account -- the following factors:
22 Number one, you can ask yourself, was the witness able
23 to see, or hear, or know about the things which the
24 witness testified about. How well was the witness able
25 to recall and describe the things that was the subject

1 of their testimony.

2 What was the witness' manner while they're
3 testifying. In other words, what was their demeanor
4 while they're on the stand.

5 You can ask yourself was -- is there some reason
6 a witness would want to give testimony that would help
7 or hurt one side or the other. Did that witness have
8 interest in the outcome of the case or any bias or
9 prejudice concerning any party or any matter involved
10 in the case.

11 You can ask yourself how reasonable the witness'
12 testimony was in light of all the evidence in the case,
13 and whether that witness' testimony had been
14 contradicted by what he or she said at one time or
15 another by other witnesses or by any other evidence in
16 this case.

17 Now, Mr.. Foreman, ladies and gentlemen, those
18 are just some of the factors you may consider in
19 whether or not -- in making this determination of
20 credibility of the witnesses. Certainly you don't
21 check your common sense at the door when you are sworn
22 in, and you shouldn't do so now. You should use those
23 things in your day-to-day lives that you find
24 indicative of truthfulness, and indicative of lack of
25 truthfulness when you make this determination of

1 credibility of the witness.

2 One thing that you may not do, however, is add
3 up the number of witnesses who testified on behalf of
4 the State or defense in this matter, in making this
5 determination, because it doesn't matter to you where
6 the truth come from. All your sole interest is, is to
7 try to find the truth from the evidence that's
8 presented to you during the course of this trial.

9 Also, ladies and gentlemen, you've heard
10 testimony by persons who have been described as
11 experts. As I've told you, people who -- because of
12 their education or experience, who have become an
13 expert in their field, have a right to state their
14 opinion on matters in that field, if it helps you reach
15 findings of fact in this case.

16 Now, expert opinion should be judged just like
17 any other testimony in this case. You may accept it,
18 you may reject it, or give it as much weight as you
19 think it deserves, considering the witness' education,
20 their experience, and their reasons given for the
21 opinions in this case.

22 Now, ladies and gentlemen, I'll remind you that
23 the fact that this defendant has been charged and
24 indicted -- and these indictments right here in my
25 hands will not be with you in the jury room. It's not

1 an inference of guilt, and it does not raise a
2 presumption of guilt. Those are simply the charging
3 mechanism by which the State brings a defendant before
4 a court for a trial and a determination by a jury, such
5 as yourselves, of guilt or innocence.

6 Also, Mr. Foreman, each indictment is free
7 standing. What that means is, is you have to make your
8 decision as to each charge independent of your decision
9 on the other charge. Okay, sir. And I'll tell you
10 more about that in just a minute.

11 Now, in this case the defendant has pled not
12 guilty. Therefore that puts the burden on the State of
13 South Carolina to prove him guilty by proof beyond a
14 reasonable doubt. I'll tell you, and charge you, that
15 a person charged with committing a criminal offense in
16 South Carolina, is never required to prove himself
17 innocent.

18 And I charge you that it is an important rule of
19 law, that a defendant in a criminal trial, no matter
20 how serious the crimes are for which he has been
21 charged, will always be presumed to be innocent of the
22 crime for which the indictment has been issued, unless
23 guilt has been proven by evidence satisfying you of
24 that guilt beyond a reasonable doubt.

25 Now, this presumption of innocence does not end

1 when you begin your deliberations, but it accompanies
2 the defendant throughout the trial, until you reach a
3 verdict of guilt based on evidence satisfying you of
4 guilt beyond a reasonable doubt.

5 It has been said that the presumption of
6 innocence is like a robe of righteousness that's been
7 placed upon the shoulders of the defendant, where it
8 remains until it has been stripped by evidence
9 satisfying you of guilt beyond a reasonable doubt.

10 Now, the presumption of innocence is not a mere
11 legal theory, and it's not just a legal phrase, it is a
12 substantial right which every defendant is entitled
13 unless you, the jury, are satisfied from the evidence
14 of guilt beyond a reasonable doubt.

15 Now, that leads me to what is a reasonable
16 doubt. This is the definition: A reasonable doubt is
17 the kind of doubt that would cause a reasonable,
18 sincere, honest and conscientious person to hesitate to
19 act in an important matter in their own affairs. Proof
20 beyond a reasonable doubt is proof that leaves you
21 firmly convinced of the defendant's guilt.

22 Now, there are very few things in this world
23 that we know with absolutely certainty. And in
24 criminal cases, the law does not require proof that
25 overcomes every possible doubt.

1 If, based on your consideration of the evidence,
2 you are firmly convinced that the defendant is guilty
3 of the crime or crimes for which he has been charged,
4 then you must find him guilty.

5 If, on the other hand, you think there is a real
6 possibility that the defendant is not guilty, you must
7 give the defendant the benefit of the doubt and find
8 him not guilty.

9 A reasonable doubt may arise from the evidence
10 or from the lack of the evidence. And I'll instruct
11 you further that a defendant is entitled to every
12 reasonable doubt that may arise in the case.

13 What that simply means is that, if upon any
14 issue of fact essential to a conviction, and a verdict
15 of guilty of the offense from which he has been
16 charged, if you have any reasonable doubt as to how
17 that issue is to be resolved, it is your duty to
18 resolve that doubt in favor of the defendant.

19 Now, ladies and gentlemen, in order to establish
20 criminal liability, criminal intent is required. For
21 example, the mental state required to be proven by the
22 State for a particular crime may be purpose, intent,
23 knowledge, recklessness or criminal negligence.
24 Criminal intent must be proven by the State beyond a
25 reasonable doubt.

1 Criminal intent is always a matter that must be
2 determined by the jury from the circumstances
3 surrounding the situation. There is no way to prove
4 intent to a -- to a mathematical certainty. There's no
5 way that medical science can dissect a person's brain
6 to determine what they had in mind. So the law says
7 that criminal intent may be inferred from the
8 circumstances shown to have existed.

9 And this is how you make the determination of
10 whether or not the element requiring intent was
11 present. It is not necessary to establish intent by
12 direct and positive evidence, but intent may be
13 established by inference in the same way as any other
14 fact, by taking into consideration the acts of the
15 parties, and all the facts and circumstances of the
16 case.

17 Criminal intent is a mental state. It is a
18 conscious wrong doing. It is up to you, ladies and
19 gentlemen, to determine what the defendant intended to
20 do based on the circumstances shown to have existed.
21 Criminal intent can arise from action or a failure to
22 act. It may arise from negligence, recklessness or
23 indifference to duty or the consequences that is
24 considered by the law to be the equivalent of criminal
25 intent.

1 Ladies and gentlemen, an issue in this case is
2 the identification of the defendant as the person who
3 committed the crime charged. The State has the burden
4 of proving identity beyond a reasonable doubt.

5 You must be satisfied beyond a reasonable doubt
6 of the accuracy of the identification of the defendant
7 before you may convict a defendant.

8 Identification testimony is an expression of
9 belief or impression by a witness. You must determine
10 the accuracy of the identification of the defendant.

11 You must consider the believability of each
12 identification witness in the same way as any other
13 witness. You may consider whether the witness had
14 adequate opportunity to observe the offender at the
15 time of the offense, and this will be affected by
16 things like how long or short of a time was available;
17 how far or close the witness was; the lighting
18 conditions; and whether the witness had the chance to
19 see or know the person in the past.

20 It is not essential that the witness himself be
21 free from doubt as to the correctness of his statement.
22 Once again, I instruct you the burden of proof is on
23 the State, and it extends to every element of the crime
24 for which the defendant has been charged. And this
25 specifically includes the burden of proving beyond a

1 reasonable doubt, the identity of the defendant as the
2 person who committed the crime. If, after examining
3 the testimony, you have a reasonable doubt as to the
4 accuracy of the identification, you must find the
5 defendant not guilty.

6 Now, ladies and gentlemen, I finally instruct
7 you, and I will emphasize, that the fact that the
8 defendant did not testify is not and shall not be a
9 factor to be considered by you in your deliberations.
10 The State always has the burden of proving his guilt,
11 and that is proof beyond a reasonable doubt.

12 Mr. Foreman, if any juror attempts to bring up
13 the fact that the defendant did not testify, it will be
14 your duty to stop that because that is not a factor
15 that you may consider, and you shall not consider his
16 failure to testify in any aspect. Okay, sir.

17 Now, ladies and gentlemen, those are the general
18 rules that define and control your duties as jurors.
19 I'm going to give you the law of the charges in this
20 case, and that is two.

21 First, it's the law of trafficking in cocaine.
22 The second with the law of distribution of a controlled
23 substance within proximity of a school or park. The
24 first will be trafficking.

25 The defendant is charged with trafficking in

1 cocaine. The State must prove beyond a reasonable
2 doubt that the defendant knowingly sold, manufactured,
3 cultivated, delivered, purchased, brought into this
4 State, provided financial assistance or otherwise
5 abetted, aided -- excuse me -- otherwise aided,
6 abetted, attempted or conspired to sell, manufacture,
7 cultivate, deliver, purchase or bring into this State
8 what's knowingly in actual or constructive possession,
9 normally attempted to become in actual or constructive
10 possession of cocaine.

11 Now, that is very convoluted. So I'm going to
12 read it to you one more time so you understand it. The
13 defendant is charged with trafficking in cocaine. The
14 State must prove beyond a reasonable doubt that the
15 defendant knowingly sold, manufactured, cultivated,
16 delivered, purchased, brought into this state, provided
17 financial assistance or otherwise aided, abetted,
18 attempted or conspired to sell, manufacture, cultivate,
19 deliver, purchase, or bring into this state what's
20 normally in actual or constructive possession, normally
21 attempted to become in actual or constructive
22 possession of cocaine.

23 Now, the State must also prove beyond a
24 reasonable doubt that the amount of cocaine, or any
25 mixture containing cocaine, was 400 grams or more. To

1 prove possession, the State must prove beyond a
2 reasonable doubt that the defendant had both the power
3 and the intent to control the disposition or use of the
4 cocaine.

5 Possession may be either actual or constructive.
6 Actual possession means that the cocaine was in the
7 actual physical custody of the defendant. Constructive
8 possession means that the defendant had the dominion
9 and control, or the right to exercise dominion or
10 control over either the cocaine itself, or the property
11 on which the cocaine was found.

12 However, mere presence at the scene where the
13 drugs were found, is not enough to prove possession.
14 The mere presence of a defendant where a crime has
15 occurred is insufficient proof that the defendant has
16 committed a crime.

17 Evidence that an individual is present at the
18 time a crime is committed, is in and of itself
19 sufficient -- insufficient proof that a defendant
20 committed a crime. Thus, the mere presence of a
21 defendant on the property where controlled substances
22 are kept, is insufficient proof that the defendant
23 possessed a controlled substance.

24 Evidence that an individual is present at the
25 time of the sale of a controlled substance, is not in

1 and of itself sufficient proof that the individual had
2 actual or constructive possession of a controlled
3 substance. Possession requires more than mere
4 presence. Mere presence where the controlled substance
5 is found is not sufficient to convict without more.

6 Evidence that an individual is present at the
7 time a controlled substance is found or located is not
8 in and of itself sufficient proof that an individual
9 had actual or constructive possession of the controlled
10 substance.

11 Proof of constructive possession by the
12 defendant requires that the State prove beyond a
13 reasonable doubt that the defendant had dominion and
14 control over the controlled substance. Stated in other
15 terms, the State must prove beyond a reasonable doubt
16 that the defendant had both the power and intent to
17 control the disposition or use of a controlled
18 substance. If you find from the evidence or the lack
19 of the evidence, that the defendant was merely present
20 on the property where the controlled substance was
21 found, then your verdict should be not guilty.

22 Ladies and gentlemen, the defendant's knowledge
23 and possession may be inferred when a substance is
24 found on the property under the defendant's control.
25 However, this inference is simply an evidentiary fact

1 to be taken into consideration by you along with the
2 other evidence in this case, and to be given the weight
3 you decide it should have.

4 I'll also charge you that two or more persons
5 may have joint possession of a drug. Now, the
6 definition of deliver is this, it means -- deliver
7 means to actually, constructively or attempt to
8 transfer a drug. Distribute means to deliver other
9 than by administering or dispensing a drug.
10 Manufacture means to produce, prepare, convert,
11 process, plant, cultivate, grow or harvest a drug
12 naturally or chemically. Manufacturing includes any
13 packaging or repackaging of a drug or labeling or
14 relabeling of a drug's container.

15 All right. Ladies and gentlemen, that is the
16 law of trafficking in cocaine. The next is
17 distribution of a controlled substance.

18 The defendant is charged with distribution of
19 cocaine within proximity of a school or park. The
20 State must prove beyond a reasonable doubt that the
21 defendant distributed, sold, purchased, manufactured,
22 or unlawfully possessed with intent to distribute
23 cocaine while in, on, or within one half mile of the
24 grounds of a public or private elementary, middle or
25 secondary school; a public playground or park; a public

1 vocational or trade school, or technical education
2 center, or a public or private college or university.

3 The person must have knowledge that he or she is
4 in, on, or within one half mile of the grounds of a
5 public or private elementary, middle or secondary
6 school; a public playground or park; a public
7 vocational or trade school or technical education
8 center; or a public or private college or university.

9 Also, ladies and gentlemen, possession of more
10 than one gram of cocaine creates an inference that the
11 defendant possessed the cocaine with intent to
12 distribute it. This inference does not relieve the
13 State from proving beyond a reasonable doubt that the
14 defendant had the intent to distribute it. It is
15 simply an evidentiary fact to be taken into
16 consideration by you, along with the other evidence in
17 this case, and to be given the weight you decide it
18 should have.

19 All right. Those are the two statutes that
20 you'll be dealing with in this case. That leaves me to
21 my final part of my charge, which considers -- concerns
22 your deliberations.

23 In just a few minutes, after the attorneys give
24 you their closing statements, you'll be sent back with
25 word to begin your deliberations.

1 Now, you don't serve as jurors in this case to
2 be partisans or advocates for one side or the other.
3 In fact, both sides picked you because they felt and
4 you indicated to them, that you could be fair and
5 impartial, and make your decision based on the
6 testimony and evidence in accordance with the law in
7 this case.

8 When you begin your deliberations, you should
9 reflect on your experiences in life, your good common
10 sense, and your good sense of logic and reason when you
11 come to your resolution of this case. Deliberations,
12 when I looked it up, it's defined as this: It is a
13 careful consideration, weigh it up with a view to a
14 decision.

15 Now, ladies and gentlemen, regardless of what
16 you may feel about the judicial system, I would submit
17 to you that our jury system allows 12 men and women,
18 just like yourselves, who come from different walks of
19 life, who have different backgrounds, who have
20 different life experiences and different perspectives,
21 to listen to the testimony, to talk about it, to talk
22 about the law in this case, and to ultimately reach a
23 verdict.

24 And we call them deliberations for a reason.
25 You should carefully and considerately go through all

1 the evidence and all the testimony and hopefully reach
2 a verdict in a very calm and courteous manner.

3 Again, you are not partisans or advocates for
4 one side of the case, but you're judges of the fact.
5 And your sole interest is to try to find the truth from
6 the testimony that you've heard here in this courtroom
7 and in accordance with the law as I give it to you now.

8 In your deliberations, I'll ask you and also
9 charge you, that you are to listen to everyone's points
10 and their points of view, talk to, and talk through all
11 the evidence thoroughly and courtesy with one another.
12 And if you are doing something deliberately, you should
13 not be in a big hurry.

14 I'll tell you, that this is the State's and this
15 defendant's only day in court. They don't get to come
16 back for a second bite at the apple. So take your time
17 and go through everything with each other, and come to
18 a resolution if you can.

19 In order for your verdict to stand, it will have
20 to be unanimous. In other words, all 12 must agree on
21 that verdict.

22 With that being said, ladies and gentlemen, each
23 of you must decide this case for yourself, but you
24 should only do so after you have impartially considered
25 all the evidence, you have discussed it fully with your

1 fellow jurors. You've listened to their points and
2 their points of view. Don't be afraid to change your
3 opinion on what the facts are in this case, if the
4 discussion persuades you that's the right thing to do.
5 But, on the other hand, do not come to a decision
6 simply to appease your fellow jurors.

7 Now, Mr. Foreman, if at any time during your
8 deliberations, you have any questions, I'm going to ask
9 that you write them down on a piece of paper. You sign
10 your name to it. We'll receive that here in the
11 courtroom and we will react accordingly. Okay, sir.

12 Now, the verdict form in this case, I have to
13 put it in some order. So the order in which it appears
14 is of no sequence, but these are your -- these are your
15 options.

16 Number one, as to the charge of trafficking in
17 cocaine of 400 or more grams, we, the jury, unanimously
18 find the defendant -- and your option is guilty or not
19 guilty. You circle the one that the jury unanimously
20 agrees upon. Okay, sir.

21 Once you have come to that resolution, you will
22 independently and separately consider the other charge,
23 which is -- as to the charge of possession with intent
24 to distribute cocaine within proximity of a school or
25 park. We, the jury, unanimously find the defendant

1 guilty or not guilty. Again, you will circle the one
2 that the jury has unanimously agreed upon.

3 Once you do that, you will sign your name to the
4 jury form. You'll knock on the door, and we'll receive
5 your verdict here in the courtroom. Okay, sir.

6 Now, to make sure that I have not misstated
7 something in the law, or I have omitted to tell you
8 something that's important, I'm going to have a brief
9 conference with these attorneys. And then we'll have
10 closing arguments.

11 But if you'll go back to your jury room now,
12 we'll be bring you back in just a moment please.

13 (WHEREUPON, the jury leaves the courtroom at
14 approximately 10:25 p.m.)

15 THE COURT: Any additions or exceptions from the
16 State?

17 MS. BURCHSTEAD: Your Honor, we do have one matter
18 that we believe there may be some confusion for the
19 jury.

20 THE COURT: Okay.

21 MS. BURCHSTEAD: And I'm hoping we can clear it
22 up. We've looked at the jury form -- we all agree
23 possession with intent to distribute is -- is what the
24 State is moving forward on. And I understand you
25 explained possession with intent to distribute in the

1 charge. However, I think the word "distribution" was
2 used to explain the -- what he's charged with. And I'm
3 -- the State is concerned that we're going to have some
4 confusion that the State needed to prove an actual
5 distribution. We don't -- I don't know how to clarify
6 it, but we would ask for some clarity that distribution
7 and possession with intent to distribute are -- is the
8 same charge.

9 THE COURT: Well, wasn't that the purpose of
10 having the inference charge in there to clarify that?

11 MS. BURCHSTEAD: The -- the inference, yes, sir.
12 And that's why I say I do know we have language in
13 there explaining possession with intent to distribute.
14 I'm just concerned when we call it "distribution",
15 there just may be confusion. I'm just looking for
16 clarity. That's all, Judge.

17 THE COURT: And I -- I know in this charge is, --
18 you know, especially the trafficking is so -- it's so
19 convoluted --

20 MS. BURCHSTEAD: Yes, sir.

21 THE COURT: -- it's not easy. What's your thought
22 on that, Mr. Sellers?

23 MR. SELLERS: Your Honor, if the jury has any
24 confusion, I mean, I think they'll write a note and we
25 can address it at that point. But we have no problem

1 with your -- with your charge as it stands.

2 THE COURT: So that's what I was going to ask you
3 next, any additions or exceptions?

4 MR. SELLERS: No. No, sir, Your Honor.

5 THE COURT: I don't think I'm going to clarify it.
6 But if you have a suggestion, I'll be glad to consider
7 it.

8 MS. BURCHSTEAD: Let me confer with co-counsel.

9 THE COURT: Both of you speak -- I don't have a
10 problem.

11 MS. BURCHSTEAD: Mr. Ross has a thought.

12 (Pause.)

13 MS. BURCHSTEAD: I think we're clear that he has
14 two separate charges, trafficking and possession with
15 intent to distribute. So as long as we are clear
16 there's two separate indictments, I think that's clear.

17 With regard to possession with intent to
18 distribute, we would just ask for some -- some sort of
19 charge that says the term "distribution" and
20 "possession with intent to distribute" are -- stem from
21 the same statute. The State's not required to prove
22 distribution in order to sustain a conviction under
23 that charging statute.

24 THE COURT: I hear you. I -- I think that the
25 inference in the charge should address that. I will

1 offer at some -- at -- either after or before you do
2 your closing; that if any time they want clarity on the
3 one charge, I'll be glad to give it to them.

4 MS. BURCHSTEAD: Yes, sir. Thank you.

5 THE COURT: Thank you. Anything else, Mr.
6 Sellers?

7 MR. SELLERS: Thank you. That's it. Thank you,
8 Your Honor.

9 THE COURT: Do you want to take a minute before
10 you do your closing, or are y'all ready to go?

11 MR. SELLERS: They need a minute. I mean, the
12 second from the right -- I want to make sure they get
13 some coffee at least -- so five minutes, Your Honor.

14 MS. BURCHSTEAD: Yes, we noticed that, too. I
15 assumed it was because the law may not be super
16 rivetting to them, but we definitely have a sleeper.

17 (Discussion off record.)

18 (WHEREUPON, a brief recess was taken.)

19 THE COURT: I believe we confirmed yesterday the
20 defense gets last argument; correct?

21 MS. BURCHSTEAD: Yes, sir.

22 THE COURT: Okay. Just making sure we're on the
23 same page. You ready to go?

24 MS. BURCHSTEAD: Other than my runny nose and
25 freezing hands, yes, sir.

1 THE COURT: You need a minute?

2 MS. BURCHSTEAD: No. No. No. I'm fine. It
3 ain't going to get any better, so let's do it.

4 THE COURT: Mr. Sellers, are you ready?

5 MR. SELLERS: Yeah, we're ready to rock, Your
6 Honor.

7 THE COURT: Very good. Bring the jury in, please.

8 (WHEREUPON, THE jury entered the courtroom at
9 approximately 10:38 a.m.)

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen of the jury, we will now move to the closing
12 arguments phase of this trial. And again, Mr. Foreman,
13 if the jury at any time wants any clarification on the
14 law, as I gave to it you, just ask. Okay, sir.

15 MR. FOREMAN: Yes, sir.

16 THE COURT: Are you ready to proceed?

17 MS. BURCHSTEAD: Yes, Your Honor.

18 THE COURT: The defense ready?

19 MR. SELLERS: We are, Your Honor. Thank you.

20 MS. BURCHSTEAD: Thank you, Judge.

21 THE COURT: Yes, ma'am.

22 MS. BURCHSTEAD: Morning. Where there's cash, and
23 a bag, and a kilo of cocaine, you are selling drugs.
24 As my colleague told you at the beginning of this case,
25 it's simple. And it is simple. That man, the

1 defendant, carried this bag into that house, and the
2 bag had a kilo of cocaine in it.

3 It's a drug house three tenths of a mile from a
4 school, and he's a drug dealer. Follow the money. He
5 had that cash stuffed down in his pants. Money rises
6 to the top.

7 He had control of this bag, and this is his bag,
8 and he has control of that house. He used a key to go
9 in. Everybody shows up after he gets there, because
10 this is his cocaine.

11 April 21, 2011, Kelvin Jones committed
12 trafficking cocaine, 400 grams or more; and possession
13 with intent to distribute cocaine within half mile of
14 a -- what's called proximity of a school or park. In
15 this case, a school.

16 Let's talk -- take a look back at exactly what
17 the State has presented to you. Aiken Department of
18 Public Safety, Detective Medlin gets a search warrant
19 based on some tips for [REDACTED] Morgan Street. All right.

20 They decide the time to execute this search.
21 warrant is on Thursday, April 21, 2011. We have
22 Detective Sawyer, a couple members of the Solicitor's
23 Office, one being the Solicitor, go do surveillance.
24 Of course, the Solicitor is there for a ride-along. He
25 explained that to you. The purpose is to take a look

1 at the house, see what's going on before we actually
2 execute search warrant. They prefer to have somebody
3 home. They sit and they wait for Kelvin Jones to come
4 with this bag.

5 Let's take a look back at the surveillance.
6 We've got this house here. Remember, it's at night.
7 We've got lights. It's 7:30, we start the
8 surveillance. It's well lit. We've got the poles..
9 All right. The lighting. And remember, we have
10 testimony lighting on the front porch. There's no
11 question from Detective Sawyer or the Solicitor, the
12 defendant walked into that house, went in the front
13 door using a key.

14 He goes into the house with this bag. Then
15 while they are there, before he shows up -- remember,
16 we've got Ricky Lloyd. Ricky Lloyd comes to the house.
17 He doesn't go in. He leaves and he comes back after
18 Kelvin Jones goes in that house.

19 We've got SWAT, SRT Response Team, waiting on
20 stand-by at headquarters. Medlin is sitting on go.
21 They're ready to roll, waiting on Detective Sawyer to
22 give them a call.

23 Sawyer recognizes KJ and, again, we've heard
24 from the Solicitor and Detective Sawyer, Kelvin Jones
25 goes in that house, to make that phone call, let's roll

1 guys. Let's go. Let's hit the house. It's time to
2 get in there and see what we find and execute our
3 search warrant.

4 Within that timeframe -- we've got about five to
5 seven minutes, but we have other folks arrive. Ricky
6 Lloyd comes back. He waits for Kelvin Jones to come
7 back. Then he goes in that house.

8 He's there about four minutes, the testimony
9 was, and then the others arrived. The other members of
10 the house. The other folks that are there when the
11 execution occurs, they come. They are there about two
12 minutes.

13 So we've got a few minutes from the time Kelvin
14 Jones enters the home, the SWAT team arrives. And it's
15 well lit. No question who goes in that house with that
16 bag.

17 We've got "Police, search warrant" -- knock and
18 announce, right? A couple times at least. Nobody
19 answers the door for the police. Instead, we've got
20 commotion, running. So we've got to breach that door,
21 go in there, and see what we can find.

22 Let's talk about what we found in that house,
23 just minutes after Kelvin Jones gets in there. We know
24 we've got the bag and the cocaine in it. Let's take a
25 look back at everything that was seized during the

1 execution of that search warrant.

2 We've got the couch; right? Under that couch,
3 we had the gun sticking out. We've got the green,
4 leafy substance. The bag -- the bag in question. And
5 low and behold, what's in that bag? Powder cocaine.

6 Let's take a better look at it. That's what it
7 looked like on scene. That's what came out of that bag
8 minutes after Kelvin Jones walks into that house. And
9 this is the evidence, these are the items seized in
10 that house. That's a drug house, folks. And there's
11 the cash. Remember the cash; follow that money.

12 Kelvin Jones had \$5,042 stuffed in his pants
13 when the police entered that bag. He's in the kitchen.
14 Remember Detective Sawyer told you, money rises up.
15 You get that kilo of cocaine, you distribute it, a
16 network. It works down. Kelvin Jones was in control
17 of that cocaine. He was in control of that money. He
18 has control. All right. That's what we are talking
19 about here.

20 So let's talk about the burden of proof for a
21 minute. Firmly convinced. The judge has already
22 instructed you on what reasonable doubt is. We just
23 remind you, remember what the Judge said, you don't
24 check your common sense when you come in the door to
25 serve as a juror. You bring in your every day life

1 experiences and your common sense.

2 And I submit to you, following your common
3 sense, there's no other verdict that can be reached in
4 this case but guilty. I want to walk you through the
5 actual elements of the crime that he's charged with.
6 And we had a little recap of the facts there, but let's
7 actually take a look at the elements in this case. We
8 have to establish identity.

9 We definitely have to establish identity, and I
10 think we have absolutely done that. The State submits
11 to you there's no question Kelvin Jones went in that
12 house. In fact, two people who have said that was
13 Kelvin Jones. They know him. And remember, Kelvin
14 Jones recognized Sawyer, "Sawyer Sawyer, I got talk to
15 you". No question Kelvin Jones is in that house,
16 located in the kitchen close to this couch or
17 proximity, kitchen, couch, dope, cocaine found under
18 the couch. No question it's Kelvin Jones.

19 And, folks, there's no question it's cocaine.
20 Remember, we had Ms. Collins come and testify, and
21 you'll have this report. You'll have her report back
22 there to take a look at it. We've got to prove to you
23 it was 400 grams or more of cocaine. It well over 400
24 grams of cocaine. It was over a kilo of cocaine, a
25 thousand grams of cocaine. So identity is not in

1 question. Whether it's drugs, cocaine, not in
2 question. The house is in Aiken County three tenths of
3 a mile from a school, the elementary school. That's
4 not in question.

5 So let's talk about possession. For
6 trafficking, my colleague told you at the beginning,
7 you can have possession or you can have aide, assist,
8 abet, conspire -- the judge read off the whole litany
9 of what it is. I'm just going to focus on a few of
10 those words because we're going to suggest to you it's
11 aide, abet, assist and conspire. Right. Possession or
12 conspire. We believe we've proven both to you.

13 The Judge explained possession to you, actual or
14 constructive. Actual possession is a pen in my hand.
15 Constructive possession, my bag under the table.
16 That's my bag. I don't have it on me, but that's my
17 bag; right. So in this case, we have the bag that Mr.
18 Jones wears into the house. The bag is found in the
19 house that has cocaine in it, within minutes of him
20 entering the house.

21 Now, remember, you have the inference, when the
22 items found on the property under the defendant's
23 control, you can infer possession. That's what we've
24 got. That's what we've got, in addition to the fact
25 that we've got the conspiracy.

1 When multiple people are agreeing to distribute,
2 that's a conspiracy. This is a drug house. You had
3 the testimony from Detective Sawyer. You've got a kilo
4 of cocaine. You've got cash in \$20 bill increments.
5 Who's got that cash? Kelvin Jones. Follow the money.
6 He's the leader. He's in control.

7 He had a key to get in the house. He had a kilo
8 of cocaine. He was in control. He's the leader. He's
9 the drug dealer. He's the one with cash in his pants,
10 \$20 increments. That kilo works down like an
11 organization, wholesalers, retailers, you send that
12 cocaine out, and that's what he was going to do.

13 No, we don't have fingerprints. You heard, it's
14 not usual we get fingerprints under these
15 circumstances. We've got a trail. We've got a trail
16 all right. We've got a trail of Kelvin Jones trying to
17 distribute this cocaine in this state.

18 Use your common sense, folks. If you heard
19 these facts, sitting at a restaurant with your friends,
20 you'd be firmly convinced and you should be in here as
21 well. Possession with intent to distribute is a
22 separate charge from trafficking. It requires the
23 intent to distribute.

24 This, folks, is not for personal use. We've got
25 \$5,000, 20's. Do you remember how we talked about

1 \$20 -- you're buying in increments. This is not
2 personal use. That is for distribution.

3 Take a look at those pictures you're going to
4 have back there. You've got guns and other
5 paraphernalia. You've got lots of stuff seized in in
6 that house. That's a drug house. This was for
7 distribution. There's cash, a bag of kilo of cocaine,
8 you're selling drugs.

9 Now, the judge talked to you a little bit about
10 mere presence. I expect my colleagues for the
11 defendant are going to talk to you about mere presence.
12 This is not a mere presence case.

13 We've got the cash. We've got no doubt -- there
14 is no doubt, that defendant walked with this bag and it
15 had cocaine. He didn't just happen to be in this
16 house. He had a key. And everybody shows up after he
17 arrives. He's got control of that house and he's got
18 control of that kilo of cocaine.

19 He didn't just happen to be there. A kilo of
20 cocaine didn't just happen to arrive in his bag that he
21 carried in there. If somebody is trying to ditch it,
22 why are they going to put it in Kelvin Jones' bag.
23 Throw it in the backyard. That makes no sense. This
24 is not mere presence.

25 And it's not speculation either. We had some

1 cross examination where the officers were just frankly
2 honest on the stand, speculation. We've got a legal
3 term. The officers are telling you what they saw. No,
4 we didn't have x-ray binoculars. No, we didn't see
5 inside the bag. So what? Use your common sense. That
6 man carried that bag in and it had a kilo of cocaine in
7 it. Firmly convinced.

8 I submit to you, Kelvin Jones committed
9 trafficking cocaine, 400 grams or more; possession with
10 intent to distribute within a half mile of a school.
11 That's his cocaine and it's time to hold him
12 responsible. There's no doubt he had that bag and it
13 had cocaine.

14 Thank you so much for your time and attention,
15 and for your service this week.

16 THE COURT: Mr. Sellers.

17 MR. SELLERS: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. SELLERS: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 MR. SELLERS: I'm going to slide these out of the
22 way so I don't sustain a sprained ankle in closing.
23 That would be a first.

24 Good morning. This has been a long three days.
25 When I think I began this week by saying thank you, and

1 I want to echo those sentiments again.

2 In my opening statement, I gave you three core
3 principles, which we hoped would guide you throughout
4 this case. The first was the presumption of innocence.
5 And today, sitting right there, is Kelvin Jones. And
6 as Kelvin sits, he is an innocent man. That is an
7 innocent man sitting at that table.

8 The second was the burden of proof. We went
9 through the fact that Kelvin didn't have to prove
10 anything. In fact, that was the State's job. It was
11 Mrs. Burchstead and Mr. Ross' job to prove each and
12 every element of the offenses by which Kelvin has been
13 charged.

14 And the third was reasonable doubt. The burden
15 is upon the State to prove guilty beyond a reasonable
16 doubt. We talked about what reasonable doubt means.
17 It's the highest legal standard in the land. It's the
18 highest legal standard we have. It's the kind of doubt
19 that would make a reasonable person hesitate to act.

20 Ladies and gentlemen, I submit to you that the
21 State has simply failed to meet that burden. This case
22 is full of reasonable doubt. This case is the very
23 definition of reasonable doubt.

24 I want to go over here to my chart. If you
25 think that Kelvin is possibly guilty, or you think that

1 he's probably guilty, or you think that he's likely
2 guilty, that, ladies and gentlemen, is still not
3 guilty. That is not guilt beyond a reasonable doubt.

4 At the start of this trial, my good friend, Mike
5 Ross, and the State came before you and said that they
6 would prove their case in two ways. They even said
7 that they didn't have to prove it in two, but they
8 would.

9 Mr. Ross promised that he would prove to you
10 that Kelvin actually possessed the cocaine when
11 carrying it into house and putting it on the couch.
12 Then Mr. Ross promised you that he would prove to you
13 that Kelvin constructively possessed the cocaine by
14 aiding and abetting in a cocaine transaction. The
15 State has failed to fulfill either of these promises.

16 First, there was absolutely no testimony from
17 any of the State's witnesses that Kelvin Jones was in
18 possession of cocaine. In fact, every single one of
19 the State's witnesses admitted they never saw Kelvin
20 Jones in the possession of cocaine.

21 Let's start with Captain Sawyer. He testified
22 and I quote, he couldn't see what was in the bag. He
23 further admitted that he never saw Kelvin with cocaine.
24 He admitted even that there were five to seven minutes
25 that he could not see Kelvin or the backpack. He

1 admitted that others in the house -- and this is
2 important -- he admitted that others in the house could
3 have touched the backpack or placed items in it.
4 Ladies and gentlemen, that's reasonable doubt.

5 Detective Medlin testified that he never saw
6 Kelvin Jones with cocaine. Ladies and gentlemen, that
7 is reasonable doubt. Sergeant Colindres with SWAT
8 testified that he never saw Kelvin or had any
9 interaction with him. He testified that he never saw
10 Kelvin with cocaine.

11 Sgt. Burgess came up and testified that he saw
12 Kelvin in the kitchen, but testified that he never saw
13 Kelvin with cocaine.

14 Sgt. Flanders testified, with SWAT, that he
15 never saw Kelvin with cocaine. And it's of note that
16 the testimony from these three SWAT officers offered no
17 relevant evidence to the issue of whether or not Kelvin
18 Jones possessed cocaine or conspired with others to
19 posses cocaine.

20 And then we heard from Solicitor Strom Thurmond.
21 And he even testified that he could not see what was in
22 the blue backpack. He, too, admitted under oath that
23 he never saw Kelvin Jones with cocaine. He admitted
24 that there were five to seven minutes where he couldn't
25 see Kelvin Jones or the backpack.

1 He admitted that others in the house could have
2 touched the backpack or placed something in it. Ladies
3 and gentlemen, that is reasonable doubt.

4 My colleagues here sitting at this table, they
5 made a big deal about the backpack, and they brought
6 forward several witnesses that testified that they saw
7 Kelvin with the backpack. And even if you feel as if
8 the State has proven that Kelvin Jones was wearing the
9 backpack, there is absolutely zero evidence or
10 testimony that you heard from that stand, that cocaine
11 was in the backpack at the time Kelvin was seen wearing
12 it. There is, therefore, no evidence that Kelvin Jones
13 possessed cocaine.

14 The State has broken its promise to you. There
15 is absolutely no one that testified before this court,
16 and there are no facts present proving that Kelvin
17 Jones had cocaine. You know what they want you to do?
18 They want you to make a leap of faith. And you simply
19 cannot do that. Your oath won't allow it. They want
20 you to take their word for it, and convict this man to
21 find him guilty of a serious crime with no evidence.

22 That, ladies and gentlemen, is reasonable doubt.
23 The State has not given you any evidence, that during
24 the period of time between being seen by investigators
25 and then cocaine later being found under the couch,

1 that Kelvin ever was in possession of cocaine.

2 They haven't presented you any evidence to this
3 because, in fact, there is none. In fact, all we know
4 is that from the investigators' own testimony, that
5 there was at least five to seven minutes where the blue
6 backpack was inside the house and out of anyone's
7 sight.

8 During those minutes, none of the State's
9 witnesses, not one, was present inside the home. And
10 none of those witnesses testified about what went on
11 behind that closed door on Morgan Street. They didn't
12 testify about that because they simply cannot, because
13 they were not there. Because they did not have eyes on
14 either the blue backpack or Kelvin Jones for a period
15 of several minutes after Mr. Jones entered the home.

16 During these several minutes, what we do know to
17 be a fact, is according to the investigators' own
18 testimony, at least four other adults and two
19 juveniles, who could have potentially answered those
20 questions for you, were in that home. You heard
21 testimony from absolutely none of these people.

22 You should ask the State as they sit here before
23 you today, where is Tiffany Butler. You should ask the
24 State where is Ricky Lloyd. You should ask the the
25 State where is Jamarus Coleman. You should ask the

1 State where is Justin Butler. Ladies and gentlemen,
2 herein lies reasonable doubt.

3 Then we have the State's own forensic
4 investigator that testified that none of Kelvin Jones'
5 fingerprints were found on the baggies that the cocaine
6 was found in. But they -- you know, they told you that
7 was okay, that was the defense lawyer trick.

8 I say okay. I say, however, none of the
9 fingerprints were found on the scale or its flat
10 surface. I say, let's go one step further. I say no
11 -- none of Kelvin Jones' fingerprints were found on the
12 gun.

13 And I remember his testimony from the stand. He
14 said, you know, you can find fingerprints on a glass
15 surface. Then I said, ding ding. None of Kelvin
16 Jones' fingerprints were found on that glass pickle jar
17 either. Kelvin Jones had no fingerprints on absolutely
18 any evidence in that home.

19 In fact, there is absolutely no evidence linking
20 Kelvin Jones to anything in that home. So what do we
21 know?

22 We know that the State is simply and
23 fundamentally broken its first promise to you, in that
24 they have failed to prove to you beyond a reasonable
25 doubt that Kelvin ever possessed the cocaine. They

1 cannot prove that there was cocaine in the backpack
2 going inside the house. They cannot prove what happened
3 to that backpack inside the house. They cannot prove
4 who placed the cocaine in the backpack once inside the
5 house, or they can't prove to you who put the backpack
6 under the couch. Ladies and gentlemen, that is
7 reasonable doubt.

8 The State, I would submit, has also broken its
9 second promise to you. Mr. Ross said at the beginning
10 of this case that he would prove to you trafficking in
11 two ways. And we've already established that they have
12 failed to prove it by actual possession. Because they
13 did not present one witness or one piece of evidence
14 providing beyond a reasonable doubt, that Kelvin ever
15 possessed the cocaine.

16 But then, they said, they would prove
17 trafficking by proving that Kelvin aided and abetted,
18 or conspired with someone in the sale and distribution
19 of cocaine. And, ladies and gentlemen, there has been
20 absolutely no testimony during this trial about who
21 Kelvin Jones would have been aiding or abetting, or how
22 he would have done so. Not one individual who was
23 present in that house. Listen to me closely, not one
24 individual who was present in that house on April 21,
25 2011 testified that Kelvin did anything with the

1 cocaine, anything with the money, or any other
2 substance found in the house that day.

3 Again, we didn't hear from Ricky Lloyd. We
4 didn't hear from Tiffany Butler. We did not hear from
5 Jamarus Coleman. We did not hear from Justin Butler.
6 You also heard testimony from that stand right there,
7 that there were absolutely no arrests for buying or
8 selling. There was no evidence of any controlled buys
9 from that house or anyone inside.

10 There was no confidential informant. There was
11 no marked money. Captain Sawyer even admitted to you
12 that his theory about conspiracy was what; pure
13 speculation. You cannot convict someone on pure
14 speculation.

15 There is absolutely no evidence to support this
16 assertion. The evidence that the State presented to
17 you all simply did not fulfill Mr. Ross' promise to you
18 at the beginning of this trial.

19 Now, it's the elephant in the room. The State
20 mentioned on several occasions that Kelvin Jones had
21 \$5,000 cash on his person. There has been absolutely
22 no testimony or evidence to prove that this money was
23 in any way tied to a drug transaction. Was this money
24 marked; no. Was it used in the sale of narcotics; no.
25 Was it drug money; no. No witnesses came forward to

1 testify that he or she had just purchased cocaine from
2 Kelvin drugs -- from Kelvin Jones, or sold drugs to
3 Kelvin Jones.

4 There was no witness, no testimony, or no
5 statement that Kelvin Jones had sold any cocaine or
6 that he was looking to purchase drugs from anyone with
7 that money.

8 So I ask you, when you go back in the back, ask
9 yourself this question, so who did Kelvin Jones aid and
10 abet? With whom did he conspire? The answer is no
11 one. Because just like the backpack, the State has
12 broken its second promise to you. There is simply no
13 evidence. And, again, they expect the 14 of you all to
14 make that leap of faith again. They want you to make
15 that leap of faith. And, ladies and gentlemen, that is
16 reasonable doubt.

17 Ladies and gentlemen of the jury, I will tell
18 you that Kelvin Jones is not guilty of trafficking.
19 Kelvin Jones is not guilty of PWID proximity. Kelvin
20 Jones was merely present at [REDACTED] Morgan Street on April
21 21, 2011. And the judge just instructed you that mere
22 presence of a defendant on property where controlled
23 substances are kept, with people who control -- who
24 posses controlled substances is insufficient proof that
25 the defendant possessed the controlled substance.

1 He just told you that evidence that an
2 individual is present at the time of a sale of a
3 controlled substance is not in and of itself sufficient
4 proof that the individual had actual or constructive
5 possession of a controlled substance. Ladies and
6 gentlemen, Kelvin Jones is not guilty.

7 Now, some of you will have reservations about
8 what you've heard during this trial. And many of you
9 all may not like the fact that Kelvin Jones was in that
10 house on Morgan Street. And that may get you to
11 perhaps he is guilty. You may not like that
12 investigators testified that they saw Kelvin wearing a
13 blue backpack, and that may get you to, I think, he is
14 possibly guilty.

15 You may not even like the fact that Kelvin Jones
16 had cash in his pants, and that may give -- get you to
17 guilt is likely. And you may not like the fact that
18 Kelvin was associated with Ricky Lloyd, Tiffany Butler,
19 Jamarus Coleman and Justin Butler, and that may get you
20 to guilt is highly likely.

21 But these questions in your mind, these
22 hesitations are what is known as reasonable doubt.
23 Reasonable doubt is the kind of doubt that would cause
24 a reasonable person to hesitate to act.

25 We found out, throughout the course of this

1 trial, that there is a whole lot of missing
2 information, and a whole lot of unknowns in this case.
3 It's too much missing information. It's too many
4 unknowns to convict someone of a serious crime. It's
5 too much missing information and too many unknowns to
6 prove Kelvin Jones guilty of trafficking cocaine, or
7 possession with intent to distribute cocaine within the
8 proximity of a school beyond a reasonable doubt.

9 As you can see from this blaring lack of
10 evidence, the State simply cut corners. And now they
11 expect you to take leaps of faith and fill in the
12 blanks where they have failed to prove the elements of
13 these offenses beyond a reasonable doubt.

14 The State has never put my client, Kelvin, they
15 have never put him with this blue backpack and this
16 cocaine. They failed to do so. And, therefore, there
17 is no actual possession. That's reasonable doubt.

18 There is no evidence that Kelvin Jones aided or
19 abetted anyone to conspire with anyone to sell or
20 purchase cocaine. That is reasonable doubt.

21 And, ladies and gentlemen, when you go back to
22 your jury room, I want you to take out your phone or
23 your watch, or even grab the -- grab the clock off the
24 wall. And then I want you to set it for five minutes,
25 as I'm doing here today. I want you to set it for five

1 minutes. It's those five to seven minutes, after
2 Kelvin entered the home, and before the cocaine was
3 found, and the State failed to prove that Kelvin had
4 dominion and control over that phone -- excuse me --
5 over that cocaine. That's reasonable doubt. Just let
6 that five minutes run.

7 (Whereupon, there was an approximate five minute
8 pause.)

9 MR. SELLERS: For five to seven minutes after
10 Kelvin entered the home and before the cocaine was
11 found, the State failed to prove that Kelvin had
12 dominion and control over the backpack. Therefore,
13 there is no constructive possession. Reasonable doubt
14 lives in that five minutes.

15 Without actual or constructive possession, and
16 without any evidence that Kelvin Jones aided, abetted
17 or conspired with anyone to sell or purchase cocaine,
18 there can be no trafficking. Without actual or
19 constructive possession, there can be no possession
20 with intent to distribute cocaine within proximity of a
21 park or school.

22 And you've heard many times throughout the
23 pendency of this trial, that the State had to prove its
24 case beyond a reasonable doubt. And the Judge has just
25 told you that the State must prove each and every

1 element of the offenses with which Kelvin Jones has
2 been charged beyond a reasonable doubt.

3 The Judge has instructed you what those elements
4 are. He has explained the elements of trafficking
5 cocaine. He has explained the elements of possession
6 with intent to distribute within the proximity of a
7 school or park. That means that if the State fails to
8 prove even one element beyond a reasonable doubt, they
9 have failed to prove their case and you must find
10 Kelvin Jones not guilty.

11 Ladies and gentlemen of this jury, during this
12 awesome service on this day, the State has failed to
13 meet their burden and Kelvin Jones is not guilty.
14 Thank you.

15 THE COURT: All right. Mr. Foreman, ladies and
16 gentlemen of the jury, I'm going to send you back to
17 your jury room in just one moment. I'll send back the
18 verdict form, along with the exhibits and with
19 instructions to begin your deliberations. Until that
20 time, do not begin your deliberations.

21 Let me point out to you that if you need any
22 clarification on the law, I'll do so as often as you
23 need.

24 As far as the testimony and evidence, all the
25 testimony and the evidence that is going to be in the

1 record is now in the record. You must make a decision
2 based upon that record. There will be -- not a chance
3 to supplement further testimony or evidence at this
4 juncture. Okay, sir. ,

5 With that being said, I'm going to ask the
6 alternates to get their personal belongings and come
7 back to the courtroom. I'm going to ask the 12 main
8 jurors to stay in the jury room until we send the
9 exhibits back, or I ask you to come back here for
10 further clarification. Okay, sir. If you'd go back
11 with the bailiff now please.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 11:18 a.m.)

14 THE COURT: Any additions or exceptions from the
15 State to my closing instructions?

16 MS. BURCHSTEAD: No, Your Honor.

17 THE COURT: From the defense?

18 MR. SELLERS: No, Your Honor.

19 THE COURT: All right. Let me say something, this
20 is mainly for the defendant and to the officers. I
21 know the officers probably know better. I go all over
22 South Carolina. I watch various attorneys try cases.
23 It's been my pleasure to be with all these attorneys
24 this week. You've done a fine job. You represented
25 your respective claims and positions very, very well.

1 I'm proud of your preparation. I'm proud of your
2 professionalism. You make lawyers -- you make -- you
3 take the tarnish off of the reputation that many
4 lawyers have. Thank you for that.

5 With that being said, if you'd check your
6 exhibits, I'll send everything back. And once they
7 have that, the -- we'll get the alternates to come back
8 in here. I'm going to give you the verdict form, Ms.
9 Bailiff. And we'll -- confirm with you, telling them
10 to begin their deliberations. Okay.

11 Would you bring the alternates back in?

12 (Whereupon, the alternates entered the courtroom
13 and were released.)

14 (Whereupon, the court was in recess.)

15 THE COURT: All right, guys. Come over here. I
16 just want to thank you. You had the hardest job of
17 everybody. You had to sit here and listen.

18 (Discussion off record with alternates.)

19 (WHEREUPON, the alternates were dismissed.)

20 (WHEREUPON, jury starts deliberations at
21 approximately 11:25 a.m.)

22 THE COURT: Thank you, guys, for coming back so
23 quickly. We have a request from the jury. And "can we
24 get a -- can we get the printed definition of
25 reasonable doubt?" I'm not going to give them a

1 printed definition, but I will recharge them on that.

2 Any objection from the State?

3 MS. BURCHSTEAD: No objection.

4 THE COURT: From the defense?

5 MR. SELLERS: No objection.

6 THE COURT: I didn't think so. Okay. Would you
7 bring the jury in, please, ma'am.

8 (Jury note marked as Court's Exhibit 2.)

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 12:27 a.m.)

11 THE COURT: All right. Mr. Foreman, the jury has
12 requested that I provide them a printed definition of
13 reasonable doubt; is that correct?

14 MR. FOREMAN: Yes, sir.

15 THE COURT: What I will do is, if I send any of my
16 charge back, I have to send the whole thing back. So
17 what I prefer is just read you the reasonable doubt
18 charge. I'll do it slowly and softly if you want me
19 to, before I send back the charge. Okay.

20 Also, did y'all get any heat back there?

21 JUROR: Not so you notice.

22 THE COURT: Do you have anything warmer than that
23 a short sleeve shirt.

24 JUROR: Oh yeah, I'm fine.

25 THE COURT: Okay. After I give you this charge, I

1 want you to check with your jury to make sure it's
2 satisfactory. I'll do it as many times as you need it.
3 Okay, sir.

4 Also, I'm checking with the clerk. They say
5 that lunch would probably be about 30 minutes if we
6 order, at a minimum. So if you feel like you're making
7 progress, let me know. If you feel like you need to go
8 ahead and order lunch, send us word for that too.
9 Okay, sir.

10 All right. This is the definition of reasonable
11 doubt. And I'll do it very slowly. A reasonable doubt
12 is the kind of doubt that would cause a reasonable,
13 sincere, honest, and conscientious person to hesitate
14 to act in an important matter in their own affairs.
15 Proof beyond a reasonable doubt is proof that leaves
16 you firmly convinced of the defendant's guilt..

17 There are very few things in this world that we
18 know with absolutely certainty. And in criminal cases,
19 the law does not require proof that overcomes every
20 possible doubt.

21 If, based on your consideration of the evidence,
22 you are firmly convinced that the defendant is guilty
23 of the crime charged, you must find the defendant
24 guilty.

25 If, on the other hand, you think there is a real

1 possibility that the defendant is not guilty, you must
2 give the defendant the benefit of the doubt and find
3 him not guilty. A reasonable doubt may arise from the
4 evidence or a lack of the evidence -- let me go back
5 and do that again.

6 A reasonable doubt may arise from the evidence
7 or from a lack of the evidence. I further instruct you
8 that a defendant is entitled to every reasonable doubt
9 that may arise in the case. And what that simply means
10 is this. If, upon any issue of fact essential to a
11 conviction and a verdict of guilty of an offense, if
12 you have any reasonable doubt as to how that issue
13 should be resolved, it is your duty to resolve that
14 doubt in favor of the defendant.

15 Does that respond to your request? I'm going to
16 ask you -- instead of me breathing down your neck, go
17 back, talk to your jury. If you want it more, I'll
18 give it to you as many times as you would like. Okay,
19 sir.

20 MR. FOREMAN: Yes, sir.

21 THE COURT: I don't like to send back the written
22 charge. Because, unfortunately, the juries start
23 looking at that and start challenge the law. So I
24 prefer not to do it that way.

25 Also, let us know whether or not you would like

1 to go ahead and order lunch at this juncture. Okay,
2 sir.

3 MR. FOREMAN: Yes, sir.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 12:30 p.m.)

6 THE COURT: Any additions or exceptions from the
7 State?

8 MS. BURCHSTEAD: No, Your Honor.

9 THE COURT: From the defense?

10 MR. SELLERS: None, Your Honor.

11 THE COURT: All right. Guys, just be at ease.
12 Thank you so much.

13 Mr. Bailiff, if we start giving charges, have
14 somebody by that door so they won't come in and out
15 please.

16 THE BAILIFF: Yes, sir.

17 THE COURT: We'll be in recess again. Thank you.

18 MR. SELLERS: Well, do you want me -- I mean, do
19 you want us to wait until they decide what they're
20 going to do about food or not --

21 THE COURT: Well, he's going to send us word back.
22 Yeah, you might as well stick around.

23 MS. BURCHSTEAD: We are hanging out. We're back
24 from lunch. We're here.

25 THE COURT: Where do y'all go...

1 (Discussion off-record.)

2 (The jury continued with their deliberations
3 after returning to jury room.)

4 (Whereupon, the court was in recess.)

5 THE COURT: All right, guys. I have another
6 request from the jury. They want me to recharge them
7 on reasonable doubt.

8 The next one I'm not really sure what they mean
9 by this. Maybe y'all can guide me. It says, "what
10 determination is guilty or not guilty? Redefine guilty
11 or not guilty".

12 MR. SELLERS: Whoa, is this on the record?

13 THE COURT: Yeah.

14 MS. BURCHSTEAD: It sounds to me like they want a
15 further explain of reasonable doubt, more than what
16 you've charged. I don't know a remedy for that.

17 THE COURT: I'm going to redo it -- we're just
18 going to redo it. Then they want me to redo
19 trafficking. Okay.

20 MS. BURCHSTEAD: That's understandable.

21 THE COURT: So that's not a problem. "But what
22 determination is guilty or not guilty. Redefine guilty
23 or not guilty", I'm just not --

24 MR. SELLERS: I don't think you ever defined it,
25 did you? You can't --

1 THE COURT: How can you define guilty or not
2 guilty? You did it or you didn't do it. I mean, --

3 MS. BURCHSTEAD: Right. The State's position is
4 reasonable doubt ought to cover it, unless they want
5 further explanation about circumstantial evidence, mere
6 presence, like additional charges to accompany
7 reasonable doubt.

8 THE COURT: I don't know.

9 MR. SELLERS: You may always --

10 THE COURT: I'll get clarification from them on it
11 and then --

12 MR. SELLERS: Sure. Maybe, Your Honor, I think
13 they might be wanting to hear what is mere presence.

14 THE COURT: You are wanting them to hear mere
15 presence.

16 MS. BURCHSTEAD: Circumstantial evidence,
17 constructive possession, Judge.

18 (WHEREUPON, the jury enters the courtroom at
19 approximately 3:26 p.m.)

20 THE COURT: All right. Ladies and gentlemen of
21 the jury, I've got your requests. Certain parts of it
22 are very understandable. We've gone over what
23 reasonable doubt is. We've given you the definition of
24 trafficking. I understand those. I'm not real sure
25 what you are asking for, Mr. Foreman, when you say

1 "what determination is guilty or not guilty, redefine
2 guilty or not guilty". Could you give me a little
3 clarification on that, please, sir?

4 MR. FOREMAN: Well, I believe that --

5 THE COURT: Oh, before you answer, never tell me
6 where the jury stands numerically. Don't tell me
7 anything about that. It's none of our business. Okay,
8 sir?

9 MR. FOREMAN: All right. I think there is a
10 question about the exact wording in that definition
11 where if -- several words may or may not --

12 THE COURT: Which definition are you referring to?

13 MR. FOREMAN: Guilty or not guilty.

14 THE COURT: See, that's -- that's what I was
15 curious about. Because in my charge, I never gave you
16 a definition of guilty or not guilty.

17 MR. FOREMAN: All right.

18 THE COURT: Okay. But go ahead, I interrupted
19 you. I'm sorry.

20 MR. FOREMAN: Well, the -- the other questions
21 there -- can I go on that instead --

22 THE COURT: Absolutely. Please, sir.

23 MR. FOREMAN: The the other question about -- this
24 question about trafficking.

25 THE COURT: Right.

1 MR. FOREMAN: For a redefinition.

2 THE COURT: Right.

3 MR. FOREMAN: And I think that there are some
4 words there that -- that are clear.

5 THE COURT: Okay.

6 MR. FOREMAN: And some that are not exactly clear.

7 THE COURT: Okay.

8 MR. FOREMAN: That need to be redefined.

9 THE COURT: All right. Let me do this: Let me
10 read -- let me give you the reasonable doubt charge.
11 Let me charge you on the definition of trafficking.

12 I'm going to get you, after that, to go back in
13 with your jury. Let me confer with everyone, but I'm
14 going to ask you to -- if you still have questions on
15 this definition of guilty or not guilty, to clarify
16 that a little bit for me. Because, quite frankly, I'm
17 not sure what you are looking for. And I'll give you
18 what you are looking. Okay.

19 MR. FOREMAN: I think it's going to go back to
20 reasonable doubt then.

21 THE COURT: Okay.

22 MR. FOREMAN: Okay.

23 THE COURT: All right. So then maybe this --
24 maybe the definition or the charge will answer your
25 question -- is that what you are saying, you think?

1 MR. FOREMAN: Yes.

2 THE COURT: Potentially. Okay. Everybody ready,
3 all right. This is the definition of reasonable doubt.

4 A reasonable doubt is the kind of doubt that
5 would cause a reasonable, sincere, honest, and
6 conscientious person to hesitate to act in an important
7 matter in their own affairs. Proof beyond a reasonable
8 doubt is proof that leaves you firmly convinced of the
9 defendant's guilt. There are very few things in this
10 world that we know with absolutely certainty. And in
11 criminal cases, the law does not require proof that
12 overcomes every possible doubt.

13 If, based on your consideration of the evidence,
14 you are firmly convinced that the defendant is guilty
15 of the crime charged, you must find the defendant
16 guilty.

17 If, on the other hand, you think there is a real
18 possibility that the defendant is not guilty, you must
19 give the defendant the benefit of the doubt and find
20 him not guilty. A reasonable doubt may arise from the
21 evidence or from a lack of evidence.

22 I further instruct you that a defendant is
23 entitled to every reasonable doubt that may arise in
24 the case. What that means is simply this: If upon any
25 issue of fact essential to a conviction and a verdict

1 of guilt of the offense charged, if you have any
2 reasonable doubt as to how that issue should be
3 resolved, it is your duty to resolve that doubt in
4 favor of the defendant.

5 That is the charge on reasonable doubt. Okay,
6 sir. This is the charge on trafficking. And I'll also
7 do it slowly because it is somewhat verbose.

8 The defendant is charged with trafficking in
9 cocaine. The State must prove beyond a reasonable
10 doubt that the defendant knowingly sold, manufactured,
11 cultured, delivered, purchased, brought into this
12 state, provided financial assistance or otherwise
13 aided, abetted, attempted or conspired to sell,
14 manufacture, cultivate, deliver, purchase or bring into
15 this state what's knowingly -- what's knowingly in
16 actual or constructive possession, normally attempted
17 to become in actual or constructive possession of
18 cocaine.

19 The State must also prove beyond a reasonable
20 doubt that the amount of the cocaine or any mixture
21 containing cocaine was 400 grams or more.

22 To prove possession, the State must prove beyond
23 a reasonable doubt that the defendant had both the
24 power and the intent to control the disposition or use
25 of the cocaine. Possession may either be actual or

1 constructive.

2 Actual possession means that the cocaine was in
3 the actual, physical custody of the defendant.

4 Constructive possession means that the defendant had
5 dominion and control, or the right to exercise dominion
6 or control over either the cocaine itself or the
7 property on which the cocaine was found.

8 Mere presence at the scene where the drugs were
9 found is not enough to prove possession. The mere
10 presence of a defendant, where a crime has occurred, is
11 insufficient proof that that defendant has committed a
12 crime.

13 Evidence that an individual is present at the
14 time a crime is committed is not in and of itself
15 sufficient proof that the individual committed a crime.

16 Thus, the mere presence of a defendant on
17 property where controlled substances are kept, is
18 insufficient proof that the defendant possessed a
19 controlled substance.

20 Evidence that an individual is present at the
21 time of a sale of a controlled substance, is not in and
22 of itself sufficient proof that the individual had
23 actual or constructive possession of a controlled
24 substance. Possession requires more than mere
25 presence.

1 Mere presence where the controlled substance is
2 found is not sufficient to convict without more.
3 Evidence that an individual is present at the time a
4 controlled substance is found or located, is not in and
5 of itself sufficient proof that an individual had
6 actual or constructive possession of the controlled
7 substance.

8 Proof of constructive possession by the
9 defendant requires that the State show beyond a
10 reasonable doubt that the defendant had dominion and
11 control over the controlled substance.

12 Stated in other terms, the State must prove
13 beyond a reasonable doubt that the defendant had both
14 the power and intent to control the disposition or use
15 of the controlled substance.

16 If you find from the evidence or lack of
17 evidence that the defendant was merely present on the
18 property where the controlled substance was found, then
19 your verdict should be not guilty.

20 The defendant's knowledge and possession may be
21 inferred when a substance is found on the property
22 under the defendant's control. However, this inference
23 is simply an evidentiary fact to be taken into
24 consideration by you, along with the other evidence in
25 the case, and to be given the weight you decide it

1 should have.

2 Two or more persons may have joint possession of
3 a drug. Now, the definition of deliver is this: It
4 means to actually, constructively or attempt to
5 transfer the drug. Distribute means to deliver other
6 than by administering or dispensing a drug.
7 Manufacture means to produce, prepare, convert,
8 process, plant, cultivate, grow or harvest a drug
9 naturally or chemically. Manufacturing includes any
10 packaging or repackaging of the drug or labeling or
11 relabeling of the drug's container.

12 Do you need that -- do you need me to redo any
13 of that? I'm glad to.

14 MR. FOREMAN: I think -- I think I got what was
15 needed.

16 THE COURT: You think so. Okay. If you would, go
17 back with your jury to the jury room. Does that answer
18 what you were asking about the definition of guilty or
19 not guilty -- or --

20 MR. FOREMAN: I believe it does.

21 THE COURT: Okay. All right. Let me confer with
22 these attorneys to make sure that they don't want me to
23 add or subtract something I just told you. You can
24 check to make sure that that responded to the jury's
25 question. But do not resume your deliberations until

1 we send you word. Okay, sir. Okay. So we'll get you
2 right back.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 3:37.)

5 (Jury Note marked as Court's Exhibit 3.)

6 THE COURT: Any --

7 THE BAILIFF: The smokers say since they can't
8 deliberate, can Marvin take them out?

9 THE COURT: Yes, ma'am. He's back there in the
10 kitchen.

11 (Pause.)

12 THE COURT: Any additions or exceptions from the
13 State?

14 MS. BURCHSTEAD: No, Your Honor.

15 THE COURT: From the defense?

16 MR. SELLERS: No, sir, Your Honor. We thought
17 that was it.

18 THE COURT: Okay. After they get through smoking,
19 would you tell them to resume that their deliberations
20 after they all --

21 THE BAILIFF: Yeah. She said that you said no
22 deliberating, so she wanted to know if she could smoke.

23 THE COURT: That's right. That's exactly right.
24 Okay. Guys, at ease. I appreciate it.

25 (Whereupon, the court was in recess. The jury

1 continued deliberations.)

2 THE COURT: Please be seated. This is the
3 question. It says "trafficking definition has several
4 conditions. Can one or more definitions constitute
5 guilt even if all terms do not apply? If one is -- if
6 one is true, can that constitute guilt, or does it have
7 to be all"?

8 I think what he's asking me is, if you mix any
9 of these different areas of definition, can that be
10 trafficking? What is your thought on that?

11 MS. BURCHSTEAD: I agree, Judge. I don't know if
12 we need to recharge the whole statute again, or just
13 answer the question. But the State's suggestion would
14 be to -- it's our legal interpretation -- obviously we
15 defer to Your Honor -- that any of them meets -- meets
16 the law and we would answer the question.

17 THE COURT: Oh, I think clearly it's "or" --

18 MS. BURCHSTEAD: Yes, sir.

19 THE COURT: You disagree with that?

20 MR. SELLERS: I -- I -- can you reread the
21 question, Your Honor? I'm not sure I made --

22 THE COURT: Yeah, I'll be glad to let you look at
23 it. It's a little bit disjointed.

24 MS. BENEVENTO: I think they just want to be
25 clear -- they're not referring to elements --

1 MR. SELLERS: Yeah, how -- how are we sure they're
2 not referring to the elements of the trafficking
3 charge?

4 THE COURT: I think that's what they are asking
5 me, is do we have to have it --

6 MR. SELLERS: Because it says -- well, Your Honor,
7 it does say several conditions. And conditions in my
8 opinion means elements. And if that's the case, then
9 yes, the State has the burden and they have to meet
10 every single element of the charge, every single
11 condition of the charge.

12 THE COURT: Well, let me get clarification from
13 them. You know, if -- I would suspect what they're
14 saying is that very disjointed sounding definition --
15 when you have manufactured, cultivated, delivered, etc.
16 etc. etc, or conspired or manufactured or this or
17 that -- it's probably what he's asking. But I will get
18 clarification from him and then we'll respond
19 accordingly. Okay?

20 MR. SELLERS: Yes, sir, Your Honor.

21 MS. BURCHSTEAD: Thank you, Judge.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 4:46 p.m.)

24 THE COURT: All right. Mr. Foreman, the jury's
25 question is "the trafficking definition has several

1 conditions, can one or more definition constitute
2 guilt, even if all the terms do not apply? If one is
3 true, can that constitute guilt, or does it have to be
4 all?"

5 For my edification, when the statute goes into
6 manufacture, cultivate, deliver, etc. etc., are those
7 the items you are talking to, or are you talking about
8 each and every element of the charge of the
9 trafficking -- or am I not being clear?

10 MR. FOREMAN: No, you're -- you're clear. There
11 are -- there are some aspects of the definition that
12 are questionable, that may or may not apply. If they
13 didn't apply, did that mean that -- did that mean that
14 the charge was -- that -- that -- that there was no
15 trafficking involved -- because the charge is
16 trafficking.

17 THE COURT: Tell me that one more time.

18 MR. FOREMAN: Okay. On the list that you've
19 named, several things, if -- if one or two aspects of
20 that didn't apply to this case --

21 THE COURT: Okay. Let me stop you right there.
22 When you say "aspects", what are you saying -- when I
23 go through the -- it says -- I'm just going to
24 paraphrase here. I'm not trying to pick anything out
25 and give it more emphasis than others, just for

1 edification. When it says the State must prove beyond
2 a reasonable doubt the defendant knowingly sold,
3 manufactured, cultivated, purchased, brought to the
4 State, provided financial assistance, or otherwise
5 abetted or attempted -- are those the different areas
6 you're talking about?

7 MR. FOREMAN: Yes, and then one of those.

8 THE COURT: Okay. Those are -- okay. Before I
9 answer, I want to speak with counsel and make sure
10 everybody agrees with my -- my explanation. Go back to
11 the jury room for two seconds and I'll bring you right
12 back with an answer. Okay, sir.

13 (WHEREUPON, the jury leaves the courtroom at
14 approximately 4:48 p.m.)

15 THE COURT: Okay. My response would be that those
16 are all in the alternatives, so any one of those type
17 of activities could constitute trafficking if they
18 unanimously find that. I know that's not the answer
19 you want me to give them, but that's what I think he's
20 looking for.

21 MR. SELLERS: Well, Your Honor, I mean, I think --
22 I think in all fairness, I think Your Honor would have
23 to restate the entire definition of trafficking. I
24 think that it's clear that the word "or" is there. And
25 anyone of sound mind and body understands that the word

1 "or" is present --

2 THE COURT: Not anyone, but -- necessarily. But

3 --

4 MR. SELLERS: But, I mean, a reasonable person who
5 is on this jury, I would believe.

6 THE COURT: Right.

7 MR. SELLERS: And I think that in all fairness,
8 and out of an abundance of caution, Your Honor, would
9 simply have to restate the entire trafficking charge.

10 THE COURT: The entire charge -- are you talking
11 about just the first part as to what activities could
12 constitute trafficking? I'm glad to do that. I don't
13 know that they are looking for the whole charge.

14 MR. SELLERS: I mean, we would argue that the
15 elements would have to be met as well.

16 THE COURT: Well, I know that's what your argument
17 is, but his -- but the foreman's response to me
18 indicated, when I asked him specifically, are you
19 talking about the different activities here, he said
20 yeah. So -- and I asked him your question of the
21 elements. And I know that's not what you want to hear
22 but --

23 MR. SELLERS: Because, Your Honor, I still believe
24 that the State would have to prove beyond a reasonable
25 doubt that even when it comes to delivery, when it

1 comes to manufacturing, or when it comes to aided and
2 abetting, that you just can't state those in isolation.
3 They also have to meet the elements thereby to prove
4 those. You can't just say, Your Honor, that --

5 THE COURT: I -- let me tell you, I don't think
6 that's what they're looking for, nor do I really want
7 to recharge the charge again. I'll ask them if they
8 want me to redo it. But the answer to what he's
9 looking for, the answer to his question as to the
10 listed activities, if they unanimously find that any of
11 those activities -- not all of them -- can constitute
12 trafficking. And I don't know how to say it without
13 commenting on the facts. Go ahead, you don't have to
14 whisper to him. You can go ahead and put it up on the
15 record --

16 MS. BENEVENTO: Your Honor, I'm sorry.

17 THE COURT: That's okay.

18 MS. BENEVENTO: I was just asking, are you
19 referring to just reminding the jury that the language
20 in the statute is disjunctive vs. conjunctive --

21 THE COURT: Ma'am?

22 MR. SELLERS: Are you --

23 THE COURT: It's disjunctive, isn't it?

24 MS. BENEVENTO: It is. That's why I'm asking is
25 that the reminder that you are going to be providing to

1 the jury?

2 THE COURT: Yeah --

3 MS. BENEVENTO: I think our concern is with giving
4 them the answer to that question, and not also
5 reminding them that the State has a burden to prove
6 each element, it may prove to be a little confusing to
7 them.

8 THE COURT: Well, what if I do this? What if I --
9 the statute is written disjunctive, meaning that or any
10 of the activities enumerated could constitute
11 trafficking. However, don't -- this is to remind you,
12 the State has to prove each and element of the charge
13 beyond a reasonable doubt before they can be guilty.
14 And if you'd like, I can give you the charge again.
15 Let them respond.

16 MR. SELLERS: Thank you, Your Honor. That's
17 perfect.

18 THE COURT: Any objection to that?

19 MS. BURCHSTEAD: No objection.

20 THE COURT: Well, I think that's a safer way of
21 doing it anyway. Okay.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 4:54).

24 THE COURT: Okay. Mr. Foreman, in response to the
25 jury's question, the trafficking statute is written in

1 the disjunctive, meaning it's "or". Okay.

2 The enumerated activities that I defined for
3 you, you don't have to find each and every one of them
4 occurred. Any of -- any of the listed activities, if
5 it's unanimously found, could constitute trafficking.

6 But I remind you, and the jury, that the State
7 has to prove each and every element of the trafficking
8 charge as well. So don't forget that.

9 If the jury would like, I will be glad to
10 recharge you on trafficking, or do you feel like the
11 jury is sufficiently appraised of the trafficking
12 charge in this case?

13 MR. FOREMAN: Can you define the elements, again,
14 then that the defense --

15 THE COURT: Well, let me tell you this: One --
16 one of the problems -- I don't mind doing that at all.
17 One of the problems is, if I just focus in one aspect
18 of it, it has a tendency for you not to look at the
19 other aspects. And the State is still required to
20 prove those beyond a reasonable doubt, too. So I'm
21 glad to do it very slowly, but I would prefer if I do,
22 to go ahead and do the whole thing so there's no
23 question about what the State has to prove; is that a
24 problem?

25 MR. FOREMAN: No.

1 THE COURT: Are you sure?

2 MR. FOREMAN: Yes.

3 THE COURT: Okay. And I note, it's a little
4 confusing so I'll go slow. All right.

5 The State -- the defendant is charged with
6 trafficking in cocaine. The State must prove beyond a
7 reasonable doubt that the defendant knowingly sold,
8 manufactured, cultivated, delivered, purchased, brought
9 into this State, provided financial assistance, or
10 otherwise abated -- aided, abetted, attempted or
11 conspired to sell, manufacture, cultivate, deliver,
12 purchase, or bring into this State, was knowingly in
13 actual or constructive possession, knowingly attempted
14 to become in actual or constructive possession of
15 cocaine.

16 The State must also prove beyond a reasonable
17 doubt that the amount of the cocaine or any mixture
18 containing cocaine was 400 grams or more.

19 To prove possession, the State must prove beyond
20 a reasonable doubt that the defendant had both power
21 and the intent to control the disposition or use of the
22 cocaine.

23 Possession may be either actual or constructive.
24 Actual possession means that the cocaine was in the
25 actual, physical custody of the defendant.

1 Constructive possession means that the defendant had
2 dominion and control, or the right to exercise dominion
3 or control over either the cocaine itself or the
4 property on which the cocaine was found. Mere presence
5 at the scene where the drugs were found is not enough
6 to prove possession.

7 The mere presence of a defendant where a crime
8 has occurred is insufficient proof that the defendant
9 has committed a crime. The evidence that an individual
10 is present at the time of a crime is committed, is not
11 in and of itself sufficient proof that the individual
12 committed the crime.

13 Thus the mere presence of a defendant on
14 property where controlled substances are kept is
15 insufficient proof that the defendant possessed a
16 controlled substance.

17 Evidence that an individual is present at the
18 time of a sale of a controlled substance, is not in and
19 of itself sufficient proof that the individual had
20 actual or constructive possession of a controlled
21 substance.

22 Possession requires more than mere presence.
23 Mere presence where the control substance is found is
24 not sufficient to convict without more.

25 Evidence that an individual is present at the

1 time a controlled substance is found or located is not
2 in and of itself sufficient proof that an individual
3 had actual or constructive possession of a controlled
4 substance. Proof of constructive possession by the
5 defendant requires that the State show beyond a
6 reasonable doubt that the defendant had dominion and
7 control over the controlled substance.

8 Stated in other terms, the State must prove
9 beyond a reasonable doubt that the defendant had both
10 the power and intent to control the disposition or use
11 of the controlled substance.

12 If you find from the evidence or lack of
13 evidence, that the defendant was merely present on the
14 property where the controlled substance was found, then
15 your verdict should be not guilty.

16 The defendant's knowledge and possession may be
17 inferred when a substance is found on the property
18 under the defendant's control. However, this inference
19 is simply an evidentiary fact to be taken into
20 consideration by you, along with other evidence in the
21 case, and to be given the weight you decide it should
22 have. Two or more persons may have joint possession of
23 a drug.

24 The definition of deliver means to actually
25 constructively or attempt to transfer the drug.

1 Distribute means to deliver other than by administering
2 or dispensing a drug. And manufacture means to
3 produce, prepare, convert, process, plant cultivate,
4 grow, or harvest a drug naturally or chemically.

5 Manufacturing includes any packaging or
6 repackaging of the drug or labeling, or relabeling of
7 the drug's container.

8 So, in short, Mr. Foreman at the beginning of
9 charge, when you have the enumerated activities, those
10 are disjunctive. They are in the alternative, this or
11 that or that or that. Okay, sir. Does that fully
12 answer the jury's question?

13 MR. FOREMAN: Yes, sir.

14 THE COURT: Okay, sir. If you would, hold off
15 before you resume, so I can double check with counsel
16 to make sure I didn't misstate or omit to tell you
17 something. Then we'll let you resume your
18 deliberations. Okay, sir.

19 (WHEREUPON, the jury leaves the courtroom at
20 approximately 5:00 p.m.)

21 THE COURT: Okay, sir.

22 MR. SELLERS: Your Honor, we don't have a problem
23 with -- especially with the restatement thereof, but we
24 would appreciate when you mentioned to the jury, as you
25 did, that it's disjunctive, as you stated this or that,

1 or that or that, it's also necessary that the State
2 prove beyond a reasonable doubt that each and every
3 burden is met. I think those statements have to be
4 said together because that is the charge.

5 THE COURT: I know. I think I clearly articulated
6 that with them --

7 MR. SELLERS: Okay.

8 THE COURT: But I think you're -- you're protected
9 on the record. I -- I -- when I was telling them that,
10 they have to prove beyond a reasonable doubt, going
11 back through it again, I think that's sufficient.

12 MR. SELLERS: Thank you, Your Honor.

13 THE COURT: Anything from the State?

14 MS. BURCHSTEAD: No, Your Honor.

15 THE COURT: All right, guys, we'll be in recess.

16 MR. SELLERS: Your Honor, we just wanted to
17 question -- is there going to become a point, I guess,
18 when you ask the jury are they planning on getting
19 sleeping bags or --

20 THE COURT: You know what, I'm going to let them
21 go for a while.

22 MS. BURCHSTEAD: Yes, sir.

23 THE COURT: Until they start indicating some
24 problem to me. I don't think y'all want to keep coming
25 back here, you know -- if we were all local, then I

1 might go to a certain time and send them home. But at
2 this point, it makes sense for all of us to let them go
3 as long as they seem like they are making progress. It
4 seems to me a little bit like they are making some
5 progress. But whatever y'all want to do is what -- I'm
6 here.

7 MR. SELLERS: No, we -- let them go.

8 MS. BURCHSTEAD: Agree.

9 THE COURT: Okay.

10 MR. SELLERS: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (Jury Note marked as Court's exhibit 4.)

13 (Whereupon, the court was in recess.)

14 THE COURT: I think we have a verdict. Okay.

15 (Pause.) Would you bring the jury in.

16 While she's doing that, officer, what is your
17 name again. I know I had it written down.

18 OFFICER MEDLIN: Medlin, sir.

19 THE COURT: Okay. Mr. Medlin -- Officer Medlin is
20 going to take the exhibits and file back to Aiken
21 County; is that correct?

22 OFFICER MEDLIN: Yes, sir. That's correct.

23 THE COURT: And that's with the consent of
24 everybody; is that correct?

25 MR. SELLERS: We have no objection, Your Honor.

1 THE COURT: The clerk is fine with that as well.

2 THE CLERK: Yes, sir.

3 (WHEREUPON, the jury enters the courtroom at
4 approximately 5:17 p.m.)

5 THE COURT: All right. Mr. Foreman, my
6 understanding is that the jury has reached a verdict;
7 is that correct?

8 MR. FOREMAN: Yes, sir.

9 THE COURT: Is it unanimous?

10 MR. FOREMAN: Yes, sir.

11 THE COURT: Would you pass it to the bailiff
12 please, sir?

13 THE CLERK: In the matter of the State of South
14 Carolina vs. Kelvin Jones, indictment numbers
15 2014-GS-18 -- 02-01182, 2012-GS-02-00133. As to the
16 charge of trafficking in cocaine, 400 grams or more;
17 we, the jury, unanimously find the defendant guilty.

18 As to the charge of possession with intent to
19 distribute cocaine within proximity of a school or a
20 park; we, the jury, unanimously find the defendant
21 guilty.

22 Signed by the presiding juror, February 19,
23 2015.

24 THE COURT: All right. Mr. Foreman, ladies and
25 gentlemen of the jury, if that was your verdict in the

1 jury room and if that is your verdict now, would you
2 raise your right hand?

3 THE COURT: Okay. Let the record reflect that all
4 12 responded.

5 All right. Ladies and gentlemen, the court is
6 never concerned your verdict. But the court is always
7 concerned with the process and to make sure that it's
8 followed.

9 You paid attention. You were diligent. You
10 worked hard for your community. You did your service
11 to the community, during jury service, so we thank you
12 for that service. Not to say we thank you for your
13 verdict, but we thank you for your service.

14 Before you leave, I need the foreman to sign a
15 couple pieces of paper for me, get some paper work
16 done. I'd like to meet with you shortly, just to ask
17 you a couple of questions -- not about your verdict,
18 but about your experience as jurors. I will not hold
19 you long. Then let you go.

20 You don't have to come back for three years.
21 And if anybody will need a statement from their -- for
22 their employer, Madam Clerk, we can handle that today,
23 can't we -- or do we need to wait and have it mailed to
24 them? A statement for their employer.

25 THE CLERK: It was my understanding that y'all

1 didn't need any. But if you do, I can.

2 THE COURT: Okay. We can take care of that.

3 THE CLERK: I will.

4 THE COURT: We'll do that while you're here. All
5 right. If you'd go back to your jury room, I'll be
6 there in just one second.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 5:20 p.m.)

9 THE COURT: All right. Would you prepare me the
10 sentencing sheets. Mr. Jones, you will have 10 days to
11 appeal any sentence that you get. That would include
12 your plea from Monday. Okay, sir. We held that appeal
13 date to today. I'll be right back.

14 (Pause.)

15 THE COURT: Do you have those sentencing sheets
16 ready?

17 MS. BURCHSTEAD: I do, Your Honor. I'll hand them
18 to the -- Madam Clerk here.

19 THE COURT: And on -- for the record, I think we
20 should do this -- the officer will take all the
21 exhibits and all the file back over to Oconee (sic)
22 county -- Officer Medlin, is that correct?

23 OFFICER MEDLIN: Yes, sir. Myself and Captain
24 Sawyer will be taking --

25 THE COURT: Both of you will be --

1 OFFICER MEDLIN: -- it back to Aiken County.

2 THE COURT: Both of you will be. And I think the
3 defense has agreed to that. I think we should put that
4 on the record. Okay.

5 MS. BURCHSTEAD: Yes, sir. I would just also pass
6 up for Your Honor's consideration -- and I'm happy to
7 show defense counsel first -- we have his certified
8 prior convictions, Judge, just so Your Honor has them.

9 THE COURT: Well, isn't -- let me ask you this:
10 Isn't the trafficking mandatory 25 and 200?

11 MS. BURCHSTEAD: Yes, sir. It's 25 to 30 and
12 we'll just leave it to your discretion.

13 THE COURT: Okay. Come on around.

14 MS. BURCHSTEAD: Just so you have it, Judge. And
15 I believe I wrote it on the sentencing sheet. And the
16 proximity charge is zero to 10.

17 Your Honor has clearly heard the facts of the
18 case, so at this point we would just --

19 THE COURT: Go ahead and tell me his prior record
20 please.

21 MS. BURCHSTEAD: That's what I was just pulling
22 out, Judge. I passed up the certified convictions for
23 you. I know he has --

24 THE COURT: Distribution.

25 MS. BURCHSTEAD: Yes, sir. He, in all candor to

1 the court, this is a case we could have potentially
2 sought life without parole. He did have two prior
3 strikes, Judge.

4 THE COURT: He did?

5 MS. BURCHSTEAD: Yes, sir. Obviously, we did not
6 do that in light of numerous factors. I need to take
7 another look at my sentencing -- or my rap sheet here,
8 but we did pass the certified convictions up. As I
9 recall there may have been -- may have been a
10 conviction in another state.

11 We have a 2000 disorderly conduct; 2000 simple
12 possession of marijuana. 2002, looks like a CDV. Then
13 in 2004, we had a PWID or distribution of cocaine,
14 crack cocaine, Judge. Bear with me, Your Honor, I
15 apologize. I have this written out somewhere and I
16 just managed to lose my notes.

17 Actually Mr. Ross is going to be kind enough to
18 help me. It was -- it was two separate counts in 2004.
19 Then in 2008, we had a possession with intent to
20 distribute proximity charge, Judge.

21 So in 2004, it was a PWID crack cocaine as well
22 as proximity. So there was two prior proximity charges
23 which is how we would have reached the third strike,
24 Judge.

25 So from 2004, two charges related to crack and

1 2008, the additional PWID proximity. And I believe
2 those are the certified convictions we passed up.

3 THE COURT: Mr. Sellers, would you bring your
4 client around please, sir -- and Ms. Benevento.

5 MR. SELLERS: Yes, sir.

6 THE COURT: All right. Tell me a little bit about
7 him.

8 MR. SELLERS: Thank you, Your Honor. Kelvin Jones
9 is 32 years old. He's -- he recently -- just recently
10 had his fourth child. And the child, Your Honor, is
11 still in NICU in -- in Georgia right now as we speak.
12 He's been traveling when he leaves court to go back
13 home and spend time with that child.

14 He's been involved in a trucking business
15 recently. He's been doing everything he possibly can
16 to do -- to do everything and provide for his family.

17 He undoubtedly had some run-ins with the law
18 earlier. And we felt as if once we got past this --
19 after we got past this day, that there was no doubt
20 that Kelvin was, you know, engaged in his family.

21 Throughout the pendency of the trial, Your
22 Honor, his mother was here. His uncle was here, and
23 the mother of his -- of his youngest child was here.
24 And Kelvin is strong -- extraordinary strength
25 throughout this process, understanding that he does

1 have a -- a baby was born three or four months
2 premature in NICU, and carrying that burden and still
3 owning up to his responsibility.

4 And we just ask you, Your Honor, for as much
5 leniency as possible in this matter.

6 THE COURT: All right. Mr. Jones, do you have
7 anything you'd like to state?

8 THE DEFENDANT: Yes, sir, Your Honor. I feel like
9 my trial wasn't fair. It wasn't right for me, for my
10 family to be -- be put in this situation for a certain
11 amount of time that this -- this case has been going
12 on. It has been going on for like four and a half
13 years, five years.

14 I haven't been in any trouble. I have been
15 flying straight. I mean, it's just -- it's just like
16 the old me, but I was -- the old Kelvin is -- you're
17 looking at a new Kelvin right now. And my fourth child
18 really woke me up to life, to let me realize what I'm
19 here for, to raise my kids. And to be there for my
20 kids and to -- to make a better life for my kids.

21 That old young, stupid guy that I was, back in
22 the days that y'all, my peers, before me right now,
23 that judging me on stuff that happened years, years
24 back when I was a teenager, I feel like I was -- I -- I
25 was misrepresented a little bit. I wanted it -- it's

1 been like lies been told in the case. It's just --
2 it's -- I'm so shocked right now, Your Honor, I don't
3 --

4 THE COURT: I know. Let me --

5 MR. SELLERS: Your Honor, just to piggy back on
6 what Kelvin was talking about earlier. We -- Kelvin
7 has been out on bond now due to the, you know, the --
8 as you know the roller coaster ride that this case has
9 been on for four years, and has not been in trouble one
10 time. He's reported.

11 And this is the third time this case has been
12 scheduled for trial, and not due to his own fault.
13 This case had to be rescheduled and he's shown up every
14 single day. And we, you know, Your Honor, he's been
15 out on bail on 95, two blocks away from 95, here in St.
16 George each day this week and has shown up on time, and
17 after every break, Your Honor. And so we -- we want to
18 submit that to you as well.

19 THE COURT: Mr. Jones, I know your attorneys --
20 you know, I don't know what you mean by misrepresented,
21 but I watch this trial --

22 THE DEFENDANT: Yeah, I mean --

23 THE COURT: Your lawyers did a fine job from what
24 I can see.

25 THE DEFENDANT: Yes, sir. I'm not saying my

1 lawyers -- meaning like the things --

2 THE COURT: The facts or something?

3 THE DEFENDANT: The facts, they couldn't really
4 say to really show my innocence.

5 THE COURT: I got you.

6 THE DEFENDANT: You see what I'm saying?

7 THE COURT: Yes, sir. And let me remind you, you
8 have 10 days to appeal my sentence. And I'm sure your
9 fine lawyers have also told you, my hands are somewhat
10 tied on this case. Okay, sir. I mean the range is 25
11 to 30, with a \$200,000 fine. Is it still -- the fine
12 as being mandatory?

13 MS. BURCHSTEAD: Beg the court's indulgence. I
14 believe that's correct, Judge.

15 THE COURT: I think it is, too.

16 MS. BURCHSTEAD: Yes, sir.

17 THE COURT: Anyway, I'm going to sentence you to
18 25 and \$200,000, ten on the proximity, one on the
19 possession, all concurrent.

20 Do you have any time that you spent in jail or
21 on home incarceration? If you do, I'm giving you
22 credit for that. I know it's tough, but I wish you the
23 best of luck. Okay, sir.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right.

1 MS. BURCHSTEAD: Thank you, Judge.

2 THE COURT: Thank you, guys.

3 MR. SELLERS: Your Honor?

4 THE COURT: Sir.

5 MR. SELLERS: We have one motion we wanted to
6 make.

7 THE COURT: Okay.

8 MR. SELLERS: And I believe it's appropriate at
9 this point that we make a motion for a new trial. And,
10 you know, I think that this has been a long week for us
11 all. And --

12 THE COURT: Do you want me to give you 10 days to
13 file written motions or would you rather make them now,
14 or both?

15 MR. SELLERS: Let me get a few days.

16 THE COURT: I'd rather you get your heads together
17 because it has been a few days.

18 MR. SELLERS: If you don't mind, we will do that,
19 Your Honor.

20 THE COURT: I don't mind. Do you have a problem
21 with that?

22 MS. BURCHSTEAD: No objection, Judge.

23 THE COURT: Ten days will be sufficient time for
24 you?

25 MR. SELLERS: Yes, Your Honor.

1 THE COURT: Very good. Thank you, guys.

2 MS. BURCHSTEAD: Thank you,, Your Honor.

3 MR. SELLERS: Thank you, Your Honor.. Drive
4 safely.

5 (Whereupon, the trial was concluded.)

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CERTIFICATE OF REPORTER

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I, SHARON D. JONES, CERTIFIED COURT REPORTER, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS
HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
GENERAL SESSIONS FOR DORCHESTER COUNTY, SOUTH CAROLINA,
ON 17TH, 18TH AND 19TH OF FEBRUARY, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

6.23.15

SDJ

SHARON D. JONES,
CERTIFIED COURT REPORTER

State of South Carolina) In General Sessions Court
County of Aiken) Second Judicial Circuit

State of South Carolina) Transcript of Record

Vs.) 2014-GS-02-01182

Kelvin Jones,) *Addendum*

Defendant.)

February 19, 2015

St. George, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Presiding Judge:

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

Exhibit/Jury Matter.....	3
Certificate of Reporter.....	4

NO EXHIBITS WERE INTRODUCED

1 Thursday, February 19, 2015

2 (WHEREUPON, the following transpired after the
3 trial concluded and all parties had left.)

4 THE COURT: This is the record with State vs.
5 Kelvin Jones. The attorneys have left. The jury has
6 come back and found Mr. Jones guilty of both charges.

7 Officers Medlin and Sawyer are taking the file and
8 evidence back to Aiken County. After everyone left, I
9 was in the process of leaving, I was informed that during
10 the deliberations the BEST bag containing the multiple
11 bags of cocaine was opened by the jury. It doesn't
12 appear that the cocaine was tampered with; however, the
13 BEST bag has been opened.

14 I'm going to note this for the permanent part of
15 the record. I will contact the attorneys and let them
16 know. I do want to write a letter to the Clerk of Aiken
17 and let her know that that's what's happened here so that
18 it won't look like it's been tampered with.

19 Okay. Thank you.

20

21 ** End of Transcript **

22

23

24

25

C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the
Second 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 the evidence introduced in the hearing of the
captioned case in Circuit Court on the 19th day of
February 2015.

I do further certify that I am neither of kin, counsel
nor have an interest to any party hereto.

September 18, 2015

SHARON L. VIZER

CIRCUIT COURT REPORTER

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF AIKEN

2014-GS-02-01182

2012-GS-02-00133

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 KELVIN JONES,
7 Defendant.

8
9 Heard on Thursday, April 16, 2015

10 Aiken, South Carolina

11 BEFORE:

12 THE HONORABLE R. LAWTON MCINTOSH

13
14 APPEARANCES:

15 Counsel on Behalf of the State:
16 Megan Burleson Burchstead, Esq.

17 Counsel on Behalf of the Defendant:
18 Bakari T. Sellers, Esq.

19
20
21 Cheri L. Young, RPR
22 Circuit Court Reporter
23 P O Box 5232
24 Aiken, SC 29804-5232
25

EXAMINATION INDEX

MARTIN SAWYER

BY THE COURT

9

CROSS BY MR. SELLERS

11

1 ON THURSDAY, APRIL 16, 2015 AT 11:39 A.M.:

2 THE COURT: Have you had sufficient time to
3 speak with Mr. Jones?

4 MR. SELLERS: I have, Your Honor. We come
5 before you today with some post-trial motions.
6 Just to be clear and set the record straight, we
7 have Indictment 2012-GS-2-00134, which was a plea
8 in Dorchester County on November 19, 2015, to
9 possession of Ecstasy.

10 And then we had a trial, Your Honor, on
11 Indictment 2014-GS-2-01182, which is trafficking
12 cocaine 400 grams or more. This trial was in
13 Dorchester County where Mr. Jones was found guilty
14 and sentenced to 25 years in prison and a \$200,000
15 fine.

16 And we have also in the same trial,
17 Indictment Number 2012-GS-2-00133, which was
18 possession with intent to distribute cocaine within
19 proximity of a school, which he was found guilty of
20 and the sentence was run concurrently with the 25
21 years for the trafficking.

22 We put forth before the Court a motion for a
23 mistrial. Your Honor, as you know, you made
24 counsel aware that during the jury deliberations
25 the bag of cocaine was opened.

1 THE COURT: Well, let me say this. As I was
2 leaving I think we had -- I see the officers over
3 here, the clerk grabbed me and it kind of puts me
4 in the position of being not a judge, potentially a
5 witness, but --

6 MR. SELLERS: Please no more, no more profile
7 witnesses, Your Honor.

8 THE COURT: That's right.

9 Anyway, the clerk grabbed me, said we have a
10 matter. Went out in the courtroom. And the
11 cocaine, which weighed over two pounds, had been
12 separately bagged. Those independent or separate
13 bags were placed inside the BEST bag.

14 MR. SELLERS: Right.

15 THE COURT: And the BEST bag had been opened
16 but the individual bags themselves had not. Just
17 for the record to make sure we're clear on that.

18 MR. SELLERS: Okay. And, you know, we --
19 that's changed a little bit.

20 We would come before the Court and we would
21 actually ask before we actually got to a mistrial
22 motion because we feel as if we need to actually
23 get to that point, that an evidentiary hearing be
24 had and each individual juror be questioned as to
25 what actually happened with the cocaine in the

1 back.

2 We feel as if before we can make any
3 allegations of improper influence either accidental
4 or otherwise, or incompetence of a juror, before we
5 can make any of those allegations we would actually
6 have to understand what in fact they did with the
7 cocaine, was it resealed in the back, was it
8 touched, did they actually have contact with it,
9 you know, were there any independent reasons for
10 doing it.

11 We don't want to get into deliberations and
12 we know that the Court cannot do that. But in this
13 case we do feel that this is not a 30-day sentence
14 by any stretch, but this is a 25 --

15 THE COURT: Have -- I'm sorry.

16 MR. SELLERS: Go ahead. No, no.

17 THE COURT: Have you had a chance to inspect
18 the actual drugs themselves?

19 MR. SELLERS: I have not, Your Honor. In
20 fact, the way the evidence was presented in the
21 case, the way the evidence was presented before
22 Your Honor, the way the evidence was presented to
23 me which I actually handled through the trial, it
24 was in the BEST bag.

25 THE COURT: Right.

1 MR. SELLERS: We did not know that it was
2 tampered with, and that is tampered with in the
3 very literal sense, until we received a phone call
4 from Your Honor.

5 We do feel that this is warranted in this
6 case only within the scope in camera so the jurors
7 have the opportunity to be open and honest. We do
8 feel that this is warranted simply because of the
9 gravity of the issue here. We had jurors back
10 there tossing around bags of cocaine, even baggies
11 of cocaine, doing any type of independent research
12 on their own, if any of the baggies had any
13 residues on it.

14 I mean, there could be a number of thing that
15 happened in the back. We feel as if Kelvin Jones
16 is entitled to know that before we move forward
17 with a mistrial motion before I can come before you
18 and say that there's any improper influence or
19 otherwise.

20 THE COURT: Well, let me do this. Do you
21 have any case law that would support any type
22 interviews? I know that there was a case that
23 Judge Macaulay from Oconee had where there was
24 supposedly impropriety on the juror's behalf on a
25 case.

1 MR. SELLERS: I will tell you that, that I
2 actually spent some time over the past few
3 months -- well, a couple months attempting to find
4 a case where jurors actually tampered with drugs.
5 And I haven't been able to find one --

6 THE COURT: Right.

7 MR. SELLERS: -- because that is so rare.
8 And that would actually go to the point that we
9 will make eventually for whichever juror opened it,
10 an allegation of juror incompetence which can lead
11 to a mistrial.

12 But that's neither here nor there. We're not
13 even at that point yet. But I do have a case.
14 This was actually a civil case, it wasn't a
15 criminal case. But it does give rise -- it was
16 Orkin Exterminating, it was the Vestry and Church
17 Wardens of the Holy Cross versus Orkin
18 Terminating. And the Supreme Court actually -- the
19 Court of Appeals in South Carolina actually laid
20 out the fact that a judge did have the right to go
21 back and interview whenever there were allegations
22 of improper influence. In this case though, they
23 required an affidavit from one of the other jurors
24 as to what actually happened, did someone open the
25 door.

1 In the case at present with Kelvin Jones,
2 Your Honor was made aware of this. So I don't
3 believe an affidavit from a clerk or anything is
4 necessary, and that we know that the bag was
5 opened.

6 This is a rare scenario. This case has been
7 full of rare scenarios. But out of an abundance of
8 caution and fairness to my client, we ask that if
9 there's any doubt in your mind, Your Honor, that
10 you, that you give my client the benefit thereof.

11 THE COURT: And I don't have a problem giving
12 him the benefit of the doubt. My concern is the
13 sanctity of the jury room is something that we
14 recognized for a long, long time. And for me to
15 violate that there has to be an extremely good
16 reason.

17 I would suspect more than just supposition
18 that, you know, from what I can see and I know the
19 officers are here -- and which one of guys took
20 those drugs back? What's your name on the record?
21 I forget.

22 OFFICER SAWYER: Martin Sawyer.

23 THE COURT: Okay, sir. Did you reseal that
24 bag? Just one second. Raise your right hand.

25 (Oath administered.)

MARTIN SAWYER - EXAM BY THE COURT

1 OFFICER SAWYER: Martin Sawyer.

2 THE COURT: Will you come around here and
3 take the stand? I'm going to let you question
4 him, too.

5 MS. BURCHSTEAD: Yes, sir.

6 MARTIN SAWYER, having been duly sworn, was
7 examined and testified as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q. Thank you. I know I might have caught you
11 off guard.

12 A. That's all right.

13 Q. Now, going back to Dorchester County. You
14 were present, it's my understanding, in the
15 courtroom when the bag, the drugs were brought
16 back --

17 A. Yes, sir.

18 Q. -- from the jury room?

19 A. The Clerk of Court from Dorchester County
20 handed it to me and I immediately noticed probably
21 a four- to six-inch cut on the top of the bag.

22 Q. You're referring to the BEST bag, right?

23 A. Yes, sir.

24 Q. Were the other drugs individually wrapped up
25 or contained in other bags --

MARTIN SAWYER - EXAM BY THE COURT

1 A. Yes, sir.

2 Q. -- within the BEST bag?

3 A. Yes, sir. And it appeared to me that the
4 paperwork was still on top of everything but, I
5 mean, I can't tell you what they did with it in
6 there. It appeared the bag was just cut open. I
7 don't think it was even big enough for a hand to
8 get down into.

9 Q. Did you make an independent inspection of the
10 individual bags of cocaine?

11 A. I didn't pull out every bag; no, sir.

12 Q. You did not.

13 A. But I, I looked and maneuvered it,
14 immediately saw it was opened, observed no cocaine
15 falling out of the bag.

16 Q. From what you're saying it didn't appear that
17 there was any tampering or the drugs had been --
18 the drug baggies themselves had been opened or
19 tampered with?

20 A. No, sir; it didn't appear to be.

21 Q. Did you re-seal that BEST bag?

22 A. Yes, sir. Corporal Medlin and I came back to
23 Aiken, went to our slab, sealed it, put in our
24 evidence locker that night. The next day it was
25 turned over to the Clerk of Court here in Aiken.

MARTIN SAWYER - CROSS BY SELLERS

1 THE COURT: Now with those questions I'm
2 going to let Mr. Sellers first and Ms. --

3 MS. BURCHSTEAD: Burchstead.

4 THE COURT: Thank you. I forget that every
5 time. Go ahead.

6 CROSS-EXAMINATION

7 BY MR. SELLERS:

8 Q. I didn't want to call you Medlin. You two
9 have been running in my head for the past couple
10 months together.

11 A. Glad to know you're thinking of me.

12 Q. Isn't it true that you just stated that you
13 can't tell what they did with the bag in the back?

14 A. I cannot tell you what they did.

15 Q. Isn't it true that you did not inspect any
16 individual baggy that was in the bag so you don't
17 know whether or not they were opened or not?

18 A. I didn't take them out and inspect them, no.
19 I maneuvered them around the bag, didn't see any
20 loose cocaine.

21 Q. But you don't know if those bags were
22 actually tampered with, so you don't know if those
23 the bags were opened or not?

24 A. I can't tell you for sure they were. I can
25 tell you that I don't think that cut is big enough

1 for a hand to get in to to pull them out.

2 Q. Well --

3 A. It's just my opinion. So to answer your
4 question, no, I can't tell you for sure none of
5 them were tampered with in the bag.

6 Q. And but there was a cut in the bag.

7 And, Your Honor, we would actually say that
8 this jury is beyond puzzling as we move forward,
9 but I don't understand why you would actually make
10 a slither {sic} in a BEST kit bag not to actually
11 get to the drugs. So, I mean, you know, if in fact
12 they cut it --

13 THE COURT: Hang on one second. Before --
14 I'm going to hear your argument. Do you
15 Ms. Burchstead, have any questions for this
16 witness.

17 MS. BURCHSTEAD: I don't have any questions.
18 At the appropriate time I'll address the Court.

19 THE COURT: Okay. Any more questions of this
20 witness?

21 MR. SELLERS: No.

22 THE COURT: Thank you, sir.

23 OFFICER SAWYER: Okay.

24 THE COURT: Let me ask Ms. Burchstead
25 something. Nobody can say, from what I can hear,

1 whether or not anybody tampered with those bags. I
2 think the inclination from the officer certainly
3 from what I observed too was that they were not,
4 but if we do an order that allows an inspection of
5 the contents of that bag for the sole purpose of
6 determining whether or not they were opened or
7 tampered with, in which event if it is determined
8 that they were, then it may give some credence to
9 your argument; if they're not, then I say it would
10 not. I mean, so why wouldn't that not solve the
11 issue in this case?

12 MR. SELLERS: My question would be how -- my
13 question would be what would we be looking for? I
14 mean, did they re-weigh -- I mean, you know, Your
15 Honor --

16 THE COURT: Listen. I'm not a forensics
17 guy. But I think that there's sufficiently-trained
18 people in South Carolina within the AG's or law
19 enforcement who are, or independently can look at
20 those bags and say these things haven't been
21 tampered with or, yes, this is the case, they may
22 have been tampered with.

23 Because if they weren't, they merely opened
24 the bag, then with that being the only act,
25 although unusual --

1 MR. SELLERS: That would be --

2 THE COURT: -- I don't see any prejudice or
3 harm to your client whatsoever, and I would deny
4 your motion if there's not.

5 MR. SELLERS: I understand.

6 THE COURT: If there was tampering, then I
7 think we must go forward and may do some kind of
8 inquiry with the jury which I am not loathe to do
9 whatsoever.

10 MR. SELLERS: I completely understand, Your
11 Honor. Would we be asking SLED to do this?

12 THE COURT: I was going to ask you guys to
13 put your head together. Do you have a procedure
14 although -- this is not one we know of.

15 MR. SELLERS: This is --

16 MS. BURCHSTEAD: No procedure.

17 THE COURT: I don't know why SLED in their --
18 when SLED is credentialed, they're supposed to be
19 neutral; right?

20 MR. SELLERS: Correct.

21 THE COURT: So why couldn't --

22 MR. SELLERS: We would have an issue, in
23 fact, with the organization who were witnesses in
24 the case --

25 THE COURT: Well, that's law enforcement.

1 And I know SLED'S law enforcement but you're not
2 SLED, right?

3 MR. SELLERS: That's why I recommended SLED
4 because if the Aiken Public Safety did it they were
5 witnesses in the case and we feel that that would
6 be --

7 THE COURT: First. Number one, they haven't
8 done anything wrong.

9 MR. SELLERS: Not at all.

10 THE COURT: So, number one, they're not
11 suspect of anything. But, number two, I would
12 agree for everybody's benefit to have a neutral
13 person. Do you disagree with that?

14 MS. BURCHSTEAD: Let me just make sure I
15 understand what Your Honor's suggesting. Have SLED
16 or some neutral agency, law-enforcement type,
17 inspect the bag to find out if the individual bags
18 of cocaine within the BEST kit have been tampered
19 with?

20 THE COURT: Right.

21 MS. BURCHSTEAD: That sounds fair to me.

22 THE COURT: And I think it's reasonable. And
23 I think you would have to do a chain of custody
24 like you normally would anyway. If this thing
25 comes back around we don't have a problem down the

1 road or somebody else doesn't have a problem.

2 MS. BURCHSTEAD: Yes, sir. And I'm not sure
3 how we would fashion an order to do that, but I'm
4 confident Your Honor would make it happen.

5 THE COURT: Well, you're a very creative
6 writer and I'm going to let you prepare me an
7 order. Oh, no, I'm going to let Mr. Sellers since
8 he brought this up --

9 MR. SELLERS: No, no. I think you were right
10 in the first --

11 THE COURT: No, no, no. I'm going to let you
12 draw up the order.

13 But just do this. I'll certainly edit it but
14 I want you to draft me an order, really, that says
15 that the authorized representative from Public
16 Safety, right, Aiken County Public Safety?

17 OFFICER SAWYER: Aiken Department of Public
18 Safety.

19 THE COURT: Okay. Is going to transport the
20 drugs pursuant to their normal procedures to SLED,
21 along with chain of custody documentation. Come up
22 here and tell us and then for individual
23 inspection.

24 OFFICER SAWYER: Well, we don't have
25 possession of them right now. The clerk's office

1 has possession of it.

2 THE COURT: Okay.

3 OFFICER SAWYER: I don't know how --

4 THE COURT: Would your agency have a problem
5 picking them up from here with the chain of custody
6 from here?

7 OFFICER SAWYER: Nothing against
8 Mr. Sellers. I don't want any accusations made
9 that --

10 THE COURT: Nobody is making any accusations
11 to you guys. And that way you would have --

12 OFFICER SAWYER: I would prefer SLED pick
13 them up.

14 THE COURT: Sir?

15 OFFICER SAWYER: I would prefer SLED pick
16 them up. Okay?

17 THE COURT: Do you think we can talk them
18 into doing that?

19 OFFICER SAWYER: If it's in the order.

20 MS. BURCHSTEAD: That's what I was going to
21 ask, Judge. We're going to have to figure out how
22 to fashion it to direct SLED to get involved and
23 move it along a little bit faster, does SLED have a
24 backlog and all that.

25 THE COURT: Well, I can call Mr. Keel if I

1 need to and ask him.

2 MS. BURCHSTEAD: Right.

3 THE COURT: But we need to make sure we have
4 the chain of custody --

5 MS. BURCHSTEAD: Right. Yes, sir.

6 THE COURT: -- documentation in order to
7 start from the clerk and back to the clerk from
8 that.

9 MS. BURCHSTEAD: Yes, sir. I think we all
10 agree on that.

11 OFFICER SAWYER: I would just rather stay out
12 of that.

13 THE COURT: Okay. I hear you. I don't blame
14 you, especially having Mr. Sellers up here throwing
15 guns at you.

16 MR. SELLERS: I'm not throwing guns at him.
17 I love him..

18 THE COURT: I'm kidding you, but that to me
19 would seem like a reasonable resolution at this
20 juncture and continue the case motion, pending the
21 outcome of that inspection.

22 MR. SELLERS: Sounds good to me, Your Honor.

23 THE COURT: Okay. Would you prepare me an
24 order and let Ms. Burchstead look at it?

25 MR. SELLERS: Yeah, that's fine.

1 THE COURT: If you have any problems, I would
2 think that your firm might have some have
3 connections over there at SLED but if you have any
4 problems let me know and I'll you call and see if
5 we can get them up.

6 MR. SELLERS: I think we can handle that
7 part, Your Honor.

8 MS. BURCHSTEAD: We'll work on it.

9 THE COURT: Okay. Thank you.

10 MS. BURCHSTEAD: Thank you, Judge.

11 THE COURT: Take care.

12 END OF CASE: 10:55 P.M.
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Aiken County, on the 16th day of April, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

I have hereunder set my hand this 2nd day of December, 2016.



Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF GENERAL SESSIONS
OF THE SECOND JUDICIAL CIRCUIT

State of South Carolina,)

ORDER

vs.)

Warrant Number(s): I093303, I093304,
I093305

Kelvin Jones,)

Defendant.)

On February 19, 2015, the defendant was found guilty after a three-day jury trial held in Dorchester County on a change of venue from Aiken County, pursuant to The Honorable Edgar Dickson's order dated November 5, 2014. The Honorable Lawton McIntosh presided over the defendant's trial.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
The Clerk of Court do hereby certify that the foregoing constitutes a true and correct copy of the original document as the same was filed in my office this

JUN 15 2015

On February 26, 2015, Judge McIntosh contacted Defendant's attorney, along with Assistant Attorney General Michael Ross and disclosed that it had come to his attention that the jurors tampered with the drug evidence during their deliberations. Specifically, the seal of the bag or "BEST Kit" containing the cocaine had been ripped open. Defendant filed a timely Motion for a Mistrial on February 26, 2015 and requested a hearing. A hearing on Defendant's motion was held in Aiken County on April 16, 2015.

After hearing from both sides regarding the defendant's motion, it is apparent that there is a need to further investigate the extent of any actions on the part of the jurors which led to the opening of the "BEST Kit" containing the drug evidence in this case. Such investigation is necessary to determine whether there was any improper influence upon the jurors, or whether there was any resulting prejudice to the defendant.

It is therefore ordered that:

FILED 15 JUNE 2015

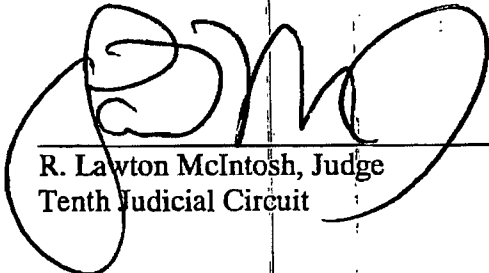
Luis Godard
C.C.P. & G.S. Judge
Shannon D. Rosenkrantz
Deputy Clerk

1 cert. copy - Bakari Sellers, Def. Atty.

1 cert. copy - Megan Burchstead, Atty General

- (1) A qualified individual at the South Carolina Law Enforcement Division (SLED) shall retrieve the drug evidence in this case from the Aiken County Clerk of Court to examine the evidence and its packaging.
- (2) SLED shall make a determination as to whether the drug evidence was accessed, handled, or tampered with. If SLED determines that there is evidence of access, handling, or tampering, SLED shall detail the extent of any access, handling or tampering.
- (3) SLED shall be responsible for the retrieval, transportation and custody of the drug evidence and shall maintain a clear chain of custody at all times.
- (4) SLED shall report its findings concerning the drug evidence in this case to this Court as soon as said findings are available.

AND IT IS SO ORDERED.



R. Lawton McIntosh, Judge
Tenth Judicial Circuit

This the 11th day of June, 2015
Anderson, South Carolina

JUN 18 2015

The South Carolina Court of Appeals

The State, Respondent,

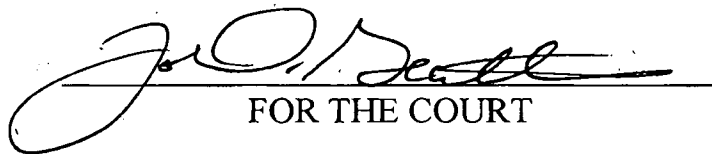
v.

Kelvin Jones, Appellant.

Appellate Case No. 2015-000510

ORDER

The consent motion to dismiss this appeal without prejudice so the circuit court may rule on Appellant's post-trial motion is granted.


FOR THE COURT

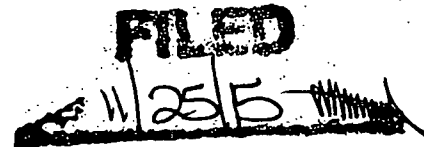
Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Salley W. Elliott, Esquire

Lara Mary Caudy, Esquire



STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

State of South Carolina)

v.)

Kelvin Jones,)

Defendant)

IN THE COURT OF GENERAL SESSIONS
FOR THE SECOND JUDICIAL CIRCUIT

Case No.: 2012GS02132, 133, 134

MOTION FOR A NEW TRIAL

COPY

COMES NOW the defendant, Kelvin Jones, by and through his undersigned attorneys and moves this Honorable Court for a declaration a new trial based on after-discovered evidence.

Defendant was arrested on April 21, 2011 and charged with Trafficking Cocaine >400g, PWID Cocaine within ½ mile proximity to a park or school and Possession of MDMA. The lead detective on the case was John C. Medlin of the Aiken Department of Public Safety.

On February 17, 2015, this case was tried by a jury in Dorchester County pursuant to a change of venue. On February 19, 2015, the jury returned a guilty verdict. A motion for a mistrial on unrelated grounds was filed on February 27, 2015. The motion for mistrial is still currently pending.

On April 1st 2016, The Washington Post ran an article entitled, "Video shows white cops performing roadside cavity search of black man." In this article and embedded video it becomes clear that Cpl. John C. Medlin unconstitutionally violated the victim. On April 2, 2016, Defense counsel was made aware of a complaint filed on October 3, 2014 at 5:30pm with the Aiken Department of Public Safety regarding the actions of Cpl. John C. Medlin in this incident (Complaint Attached).

Prior to the trial of Defendant, defense counsel made a motion and while on record, requested the redacted personnel files of any and all officers testifying at the trial of Kelvin Jones, including that of Detective John C. Medlin. The State failed to turn over the aforementioned complaint to defense counsel, thereby prejudicing Mr. Jones.

RECEIVED

NOV 28 2017

APPELLATE DEFENSE

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz O'Leary, Clerk of Court of General Sessions and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

ALP 06 2016

CLERK OF COURT
Liz O'Leary
CLERK OF COURT
Liz O'Leary
CLERK OF COURT
Liz O'Leary

Deputy Clerk

Based on the above information, and pursuant to Rule 29 (b) of the South Carolina Rules of Criminal Procedure, Defendant respectfully moves for a New Trial in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Bakari T. Sellers', with a large, stylized 'B' and 'S'.

Bakari T. Sellers
Alexandra M. Benevento
Attorneys for Defendant
STROM LAW FIRM, LLC

This the 4th day of April, 2016
Columbia, South Carolina

