

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED
OCT 05 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FRANKLIN DELL HAYES,

APPELLANT

APPELLATE CASE NO 2017-002572

RECORD ON APPEAL

JOANNA K. DELANY
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. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (DECEMBER 6 – 7, 2017).....	1
VOIR DIRE	5
JURY SELECTION	14
PRETRIAL MOTIONS	20
TESTIMONY	
COREY COOK (PROFFER).....	21
THOMAS MILLER (PROFFER).....	43
OPENING STATEMENT BY MR. DANIEL.....	69
TESTIMONY	
COREY COOK.....	73
THOMAS MILLER.....	107
KIRBY RICHARDSON	122
LYNN BLACK	130
MOTION FOR A DIRECTED VERDICT	156
COURT’S RULING	157
CLOSING ARGUMENT BY MR. SCOTT	164
CLOSING ARGUMENT BY MR. VERNER.....	170
CHARGE ON THE LAW	176
VERDICT	188
SENTENCING	195
DEFENDANT’S EXHIBIT 1 (PHOTOS).....	199

INDICTMENT.....	200
SENTENCE SHEET.....	202
CERTIFICATE OF COUNSEL	203

State of South Carolina)
) Court of General Sessions
County of Newberry)

2017-GS-36-00473

State of South Carolina)
) vs.) Transcript of Record
)
Franklin Dell Hayes)
)
) Defendant)

December 6th-7th, 2017
Newberry, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Dale Scott, Deputy Solicitor
Taylor Daniel, Assistant Solicitor
Attorneys for the State

Charles Verner, Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(SW) Proffer-Corey Cook

Direct examination by Mr. Daniel:	21
Cross-examination by Mr. Verner:	33
Redirect examination by Mr. Daniel:	42

(SW) Proffer-Thomas Miller

Direct examination by Mr. Daniel:	43
Cross-examination by Mr. Verner:	48

(SW) Corey Cook

Direct examination by Mr. Daniel:	73
Cross-examination by Mr. Verner:	91

(SW) Thomas Miller

Direct examination by Mr. Scott:	107
Cross-examination by Mr. Verner:	116

(SW) Kirby Richardson

Direct examination by Mr. Daniel:	122
Cross-examination by Mr. Verner:	127

1	<u>(SW) Lynn Black</u>	
2	Direct examination by Mr. Scott:	130
3	Cross-examination by Mr. Verner:	132
4	Continue direct examination, by Mr. Scott:	133
5	Cross examination by Mr Verner:	142
6	Redirect examination by Mr. Scott:	152
7	Recross examination by Mr. Verner:	154
8		
9	Opening Arguments by Mr. Daniel:	69
10	Closing Arguments by Mr. Scott:	164
11	Closing Arguments by Mr. Verner:	170
12	Jury Charge:	176
13	Verdict of the Jury:	188
14	Sentencing by The Court:	195
15	Certificate of Reporter:	198
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBITSState's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Drug Analysis		X	142
2	Photos-Seven pages of photos (40)		X	86
3	Drugs		X	142

Defendant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Photos-One page of photos (6)	X		37

December 6, 2017

THE COURT: What is the case we are going to call today, Mr. Scott.

MR. SCOTT: This is State versus Franklin Dell Hayes indicted at 2017-GS-36-0473, true billed by Newberry County Grand Jury October 6th of this year. It is indicted on possession of methamphetamine.

THE COURT: Mr. Verner, you represent Mr. Hayes?

MR. VERNER: I do, Judge.

THE COURT: Is he not here yet?

MR. VERNER: Judge, he is on his way from Columbia and he had some car trouble but he is on his way.

THE COURT: We can go ahead and proceed with jury selection?

MR. VERNER: If the Court wants to hold off or if the Court's want to go ahead, it is up to the Court.

THE COURT: I will tell you what I will do. I am going to, I will pick two alternates just in case. Ladies and gentlemen, the second case called for trial this week, handed to me by the Solicitor's office, is State versus Franklin Dell Hayes. Mr. Hayes is represented by Mr. Verner. He is not here at the Court House yet. I am going to proceed on with jury selection and then if Mr. Hayes should get here and one of y'all doesn't know who he is, recognize him, has some issue then I can deal with

1 that if I have two alternates. That is how I am going to
2 proceed. I think that will be safe. Any objection with
3 that, Mr. Verner?

4 MR. VERNER: None, Your Honor. Franklin, his
5 nickname sometimes is Franklin Bubba Hayes.

6 THE COURT: Ladies and gentlemen, the allegations on
7 this indictment which are 17-GS-36-473 allege that on July
8 13th, 2017, he had knowingly possess a quantity of
9 methamphetamine as defined under code section 44-53-375.
10 As I told you on the first case, the indictment is a
11 notice document, its an allegation made by the State of
12 South Carolina, in the County of Newberry accusing Mr.
13 Hayes of having a quantity of methamphetamine. The State
14 bears the burden of proving those allegations. This
15 indictment is a mere notice document that Mr. Hayes and
16 Mr. Verner, telling them what to be prepared to defend
17 themselves against at trial. Any member of the jury panel
18 know anything about the allegations contained in that
19 indictment for an incident, July 17th, July 13th of 2017
20 involving Mr. Hayes. If so please stand.

21 (No response.)

22 THE COURT: No one is standing. Mr. Verner, I want
23 you to introduce yourself and I am going to come back over
24 and they met Mr. Scott and Mr. Daniel and Mr. Bentley
25 Monday. Introduce yourself to the jury also.

1 MR. VERNER: My name is Charles Verner, I am from
2 here in Newberry. I work and I practice law with my
3 father, Jay Verner. We are across the street next to the
4 Cabana on Boyce Street, Charles Verner.

5 THE COURT: Ladies and gentlemen, introduced the
6 lawyers, Mr. Dale Scott, seated; Taylor Daniel whose back
7 is to me and Walter Bentley, the Investigator with the
8 Solicitor's office. Y'all met them Monday. Any member of
9 the jury panel related by blood or marriage, close
10 personal friends to any of these four gentlemen just
11 introduced to you this morning. If so please stand.

12 (No response.)

13 THE COURT: No one is standing. Any member of the
14 jury panel ever been represented by any of the attorneys
15 in this matter. If so please stand. Tell me your name.

16 JUROR: Marlys Wooten.

17 THE COURT: Which lawyer?

18 JUROR: Mr. Verner's father represented, on our
19 mortgage.

20 THE COURT: Let me ask you this. Was Mr. Verner, Jay
21 Verner, is that matter still ongoing or has it ended?

22 JUROR: No, it was a long time ago.

23 THE COURT: Long time ago. The fact that Mr.
24 Verner's father, Jay Verner, helped you in a legal matter,
25 would that affect your ability to be fair and impartial in

1 this case?

2 JUROR: No.

3 THE COURT: Thank you very much. Tell me your name,
4 Ma'am.

5 JUROR: Laura Duckett.

6 THE COURT: Ms. Duckett, which attorney.

7 JUROR: Mr. Verner.

8 THE COURT: And Mr. Charles Verner.

9 JUROR: Yes.

10 THE COURT: Is that matter now over?

11 JUROR: No.

12 THE COURT: It is still ongoing. I need to know
13 this. If it is a legal matter, sometimes they are done in
14 a day, sometimes a week, sometimes several months of
15 representation. Is his representation of your interest
16 ended or still ongoing.

17 JUROR: It was ended years ago.

18 THE COURT: Years ago. So it is ended. The fact
19 that he represented you in the past, would that affect
20 your ability to be fair and impartial in this case?

21 JUROR: No, sir.

22 THE COURT: Thank you very much. Tell me your name,
23 please.

24 JUROR: Connie Holsonback.

25 THE COURT: Which attorney.

1 JUROR: Mr. Verner.

2 THE COURT: Jay?

3 JUROR: Yes. He did some real estate transactions.

4 THE COURT: That matter is now over?

5 JUROR: No. It is closed.

6 THE COURT: That is what I mean.

7 JUROR: Yes.

8 THE COURT: The fact that he represented you in the
9 past, to a matter that is now over with, would that affect
10 your ability to be fair and impartial here?

11 JUROR: No. Thank you so much. Potential witnesses
12 in this case in no particular order would be Lynn Black,
13 Teal O'Dell, Thomas Miller, Brian Smith, Corey Cook, Ben
14 Chapman, Michael Stribble, Michael Johnston, Jason Scott
15 Johnston. Any member of the jury panel related by blood
16 or marriage, close personal friends to any of those
17 potential witnesses, please stand. Got one, two. Ms.
18 Holsonback, let me start with you. Which of those
19 witnesses.

20 JUROR: I know a lot of them.

21 THE COURT: Tell me which ones.

22 JUROR: Corey Cook. He is a member of our church and
23 we used to advise him on our youth group.

24 THE COURT: Would that relationship with Mr. Cook
25 affect your ability to be fair and impartial?

1 JUROR: No.

2 THE COURT: Anyone else?

3 JUROR: I think that is it.

4 THE COURT: Ma'am in the black jacket. Tell me your
5 name.

6 JUROR: Natasha Hill. I worked with two of them.

7 THE COURT: Ms. Hill, which witness?

8 JUROR: Michael Stribble and Ben Chapman.

9 THE COURT: You worked with the sheriffs department
10 for a while?

11 JUROR: 14 years.

12 THE COURT: All right. Now, would the fact that you
13 worked for them at the sheriffs department affect your
14 ability to be fair and impartial in this case?

15 JUROR: No, sir.

16 THE COURT: Okay. Thank you very much. Sir, tell me
17 your name.

18 JUROR: Josh Rowe.

19 THE COURT: Which potential witness do you know?

20 JUROR: I just am an acquaintance with Thomas Miller
21 and Ben Chapman and Corey Cook.

22 THE COURT: The fact that you are acquaintances with
23 those three gentlemen, would that affect your ability to
24 be fair and impartial in this case?

25 JUROR: No, sir.

1 THE COURT: Ma'am.

2 JUROR: Monique Maw. I know several of the names.
3 My husband does their taxes. Tom Miller, Johnson, Ben
4 Chapman.

5 THE COURT: Ms. Maw, would that affect your ability
6 to be fair and impartial on this case, you work with your
7 husband in the practice.

8 JUROR: No sir, it wouldn't affect me.

9 THE COURT: Thank you so much. Tell me your name.

10 JUROR: Jennifer Wilson.

11 THE COURT: Which witness do you know.

12 JUROR: Michael Stribble, related by marriage.

13 THE COURT: And would that affect your ability to be
14 fair and impartial in this case?

15 JUROR: No, sir.

16 THE COURT: Thank you very much. Tell me your name.

17 JUROR: My name is Andrea Patterson. I know O'Dell,
18 he worked with my grandma and grandad. And, Cook, he a
19 friend of the family.

20 THE COURT: Would those relationships that you
21 described, working with your grandparents, Mr. O'Dell; and
22 Mr. Cook being friends with your family. Would that
23 affect your ability to be fair and impartial in this case?

24 JUROR: No, sir.

25 THE COURT: Thank you so much. Ma'am, in the back.

1 JUROR: Deborah Feagin.

2 THE COURT: Which witness do you know?

3 JUROR: Corey Cook. The gentleman behind me told me
4 it was possible that he worked at the same location. In
5 the plant, I am in the office.

6 THE COURT: And Mr. Cook is with the Newberry County
7 Sheriffs Office, would that be the same gentleman.

8 JUROR: No, sir.

9 THE COURT: Okay, we have no problem. Anybody else.
10 Tell me your name.

11 JUROR: Mandy Morse.

12 THE COURT: Which witness?

13 JUROR: I think I went to school with Michael
14 Stribble.

15 THE COURT: Mr. Stribble has a brother you know? Do
16 you know him?

17 JUROR: No.

18 THE COURT: Can you be fair and impartial?

19 JUROR: Yes.

20 THE COURT: Now, what I am telling y'all and I am
21 going to come to you, Mr. Steffen, what is your juror
22 number?

23 JUROR: 146.

24 THE COURT: 146. Which witness do you know?

25 JUROR: I know a Brian Smith but I do not know which

1 Brian Smith.

2 THE COURT: This Brian Smith, I know a couple myself.
3 He works at the Newberry County Sheriffs Department and
4 not with the Clemson Extension Office.

5 JUROR: I don't know him.

6 THE COURT: This is a man, not a woman. Mr. Verner,
7 you want the voir dire on the involvement with law
8 enforcement--

9 MR. VERNER: I have heard the Court's voir dire in my
10 years. The only one I want is if anybody is a member of
11 MADD, SADD.

12 THE COURT: That's what I am asking. The Solicitors
13 heard questions the first time through so it is not much
14 really need for me to go through those again. That is why
15 I asked Mr. Verner. Since he may not have heard all of my
16 questions on the first trial. His suggestion to me is, is
17 any member of the jury panel or a member of your immediate
18 family a member of the organizations such as MADD, SADD,
19 as well as any organizations which advocate the crimes of
20 violence such as CAVE, BACA, Bikers Against Child Abuse,
21 Citizens Against Violent Crimes. Any member of the jury
22 panel, a member of your immediate family a member of any
23 of those organizations. If so please stand.

24 (No response)

25 THE COURT: No one is standing. Anything else, Mr.

1 Verner?

2 MR. VERNER: No, Your Honor. Thank you.

3 THE COURT: Is the State ready?

4 MR. DANIEL: Your Honor, a juror, number 45, I would
5 like to ask her an additional question about Mr. Verner's
6 representation.

7 THE COURT: All right. Ms. Duckett, how long ago did
8 Mr. Verner help you?

9 JUROR: 14 years ago. And it was a legal custody
10 matter with a child.

11 THE COURT: Child issue, okay. And, again, would
12 that affect your ability to be fair and impartial?

13 JUROR: No.

14 THE COURT: Very well. Is that sufficient?

15 MR. DANIEL: Yes, thank you, Your Honor.

16 THE COURT: Five and five and two alternates. The
17 reason I am going to do that, Mr. Hayes comes in here and
18 a juror says, oh, I didn't know who that was. I do know
19 him and that would put me in a bad position. If I have
20 two alternates I will have that safety catch. This trial
21 shouldn't be long, should it?

22 MR. DANIEL: No, sir.

23 THE COURT: I am going to pick fourteen jurors just
24 for that abundance of caution. Ms. Brehmer, whenever you
25 are ready.

1 CLERK OF COURT: Juror number 169, Jennifer Wilson.
2 What says the State?

3 MR. SCOTT: Please present the juror.

4 CLERK OF COURT: The Defense?

5 MR. VERNER: From today's case I am going to excuse
6 you.

7 CLERK OF COURT: Number 161, Daniel Wessinger. What
8 says the State?

9 MR. SCOTT: Please present the juror.

10 CLERK OF COURT: The Defense?

11 MR. VERNER: Please seat Mr. Wessinger in the jury
12 box.

13 CLERK OF COURT: Number 45, Laura Duckett. What says
14 the State?

15 MR. SCOTT: Please present the juror.

16 CLERK OF COURT: The Defense?

17 MR. VERNER: Please seat Ms. Duckett in the jury box.

18 CLERK OF COURT: Number 143, Susan Smith. What says
19 the State?

20 MR. SCOTT: Please present the juror.

21 CLERK OF COURT: The Defense?

22 MR. VERNER: Please seat Ms. Smith.

23 CLERK OF COURT: Number 34, Kenneth Cook. What says
24 the State?

25 MR. SCOTT: Please present the juror.

1 CLERK OF COURT: The Defense?

2 MR. VERNER: Please seat Mr. Cook.

3 CLERK OF COURT: Number 65, Frank Graham, Jr. What
4 says the State?

5 MR. SCOTT: Please present the juror.

6 CLERK OF COURT: The Defense?

7 MR. VERNER: Please seat Mr. Graham.

8 CLERK OF COURT: Number 129, Cherren Sandel. What
9 says the State?

10 MR. SCOTT: Please present the juror.

11 CLERK OF COURT: The Defense?

12 MR. VERNER: Please seat Ms. Sandel.

13 CLERK OF COURT: Number 18, James Boyce. What says
14 the State?

15 MR. SCOTT: Please excuse Mr. Boyce from this trial.

16 CLERK OF COURT: Number 97, Laura Maston. What says
17 the State?

18 MR. SCOTT: Please present the juror.

19 CLERK OF COURT: The Defense?

20 MR. VERNER: Please seat Ms. Maston.

21 CLERK OF COURT: Number 115, Andrea Patterson. What
22 says the State?

23 MR. SCOTT: Please present the juror.

24 CLERK OF COURT: The Defense?

25 MR. VERNER: From today's case I am going to excuse

1 you, Ms. Patterson.

2 CLERK OF COURT: Number 172, Marlys Wooten. What
3 says the State?

4 MR. SCOTT: Please present the juror.

5 CLERK OF COURT: The Defense?

6 MR. VERNER: Please seat Ms. Wooten.

7 CLERK OF COURT: Number 152, Christian Tobias. What
8 says the State?

9 MR. SCOTT: Please present the juror.

10 CLERK OF COURT: The Defense?

11 MR. VERNER: Please seat Ms. Tobias.

12 CLERK OF COURT: Number 125, Joshua Rowe. What says
13 the State?

14 MR. SCOTT: Please present the juror.

15 CLERK OF COURT: What says the Defense?

16 MR. VERNER: From today's case I will excuse you, Mr.
17 Rowe.

18 CLERK OF COURT: Number 147, Marian Stone. What says
19 the State?

20 MR. SCOTT: Please present the juror.

21 CLERK OF COURT: What says the Defense?

22 MR. VERNER: From today's case I will excuse you, Ms.
23 Stone.

24 CLERK OF COURT: Number 36, Robert Cottom. What says
25 the State? (

1 MR. SCOTT: Please present the juror.

2 CLERK OF COURT: The Defense?

3 MR. VERNER: Please seat Mr. Cottom.

4 CLERK OF COURT: Number 104, Jimmy Monts. What says
5 the State?

6 MR. SCOTT: Please excuse the juror from this trial.

7 CLERK OF COURT: Number 3, Benjamin Amick. What says
8 the State?

9 MR. SCOTT: Please excuse the juror from this trial.

10 CLERK OF COURT: Number 75, Natasha Hill. What says
11 the State?

12 MR. SCOTT: Please excuse Ms. Hill from this trial.

13 CLERK OF COURT: Number 7, Charles Barr. What says
14 the State?

15 MR. SCOTT: Please present the juror.

16 CLERK OF COURT: The Defense?

17 MR. VERNER: Please seat Mr. Barr.

18 CLERK OF COURT: Number 31, Bessie Coleman. What
19 says the State?

20 MR. SCOTT: Please present the juror.

21 CLERK OF COURT: The Defense?

22 MR. VERNER: Please seat Ms. Coleman.

23 CLERK OF COURT: This is for the alternates. Number
24 146, Wayne Steffen. What says the State?

25 MR. SCOTT: Please present the juror.

1 CLERK OF COURT: The Defense?

2 MR. VERNER: I will excuse Mr. Steffen.

3 CLERK OF COURT: Number 2, Escobar Gabriela Alvarado.

4 What says the State?

5 MR. SCOTT: Please present the juror.

6 CLERK OF COURT: Any challenge for cause by the

7 Defense?

8 MR. VERNER: No, please seat Ms. Alvarado.

9 CLERK OF COURT: Number 80, Eric Huffstetler. What
10 says the State?

11 MR. SCOTT: Please present the juror.

12 CLERK OF COURT: The Defense?

13 MR. VERNER: Please seat Mr. Huffstetler.

14 THE COURT: Any matters of law from the State
15 regarding the selection process employed?

16 MR. SCOTT: No sir, none from the State.

17 MR. VERNER: No, Your Honor.

18 THE COURT: Very well. Let me see y'all up here.

19 (Whereupon, a bench conference was held in the
20 presence of the jury but out of the hearing of the
21 jury.)

22 THE COURT: I want to make certain, I was trying to
23 talk them into calling another trial. But they did not
24 agree to it. Y'all are free to go for the week. Thank
25 you for your service.

1 (Whereupon, the remaining jury panel was excused from
2 open court for the week.)

3 THE COURT: Folks, what I want to do, y'all go to the
4 jury room for a little bit. We are waiting on Mr. Hayes.
5 If it is not too long we will wait on him. If it is long
6 we will have a earlier lunch and then we will start
7 mid-day. Can't talk about the case. We won't hold you up
8 too long.

9 (Whereupon, the jury was excused from open court.)

10 (Whereupon, a short break was taken.)

11 (Whereupon, the jury came into open court at
12 approximately 10:59 a.m.)

13 THE COURT: Here is what I am going to do. We have
14 some pretrial motions and then we will have lunch. Y'all
15 be back at 1:30 and we will start the case. Don't talk
16 about the case.

17 (Whereupon, the jury was excused for a lunch break.)

18 THE COURT: All right, Mr. Scott.

19 MR. SCOTT: All right. So, Judge, the case that we
20 just called and released the jury. I think, my
21 understanding is one suppression of the evidence motion.
22 So we've got our officers here, so we can go ahead and do
23 that.

24 THE COURT: Is that right, Charles?

25 MR. VERNER: Yes, sir. Yes, Judge, we're challenging

1 the lawfulness, constitutionality of the, under the Fourth
2 Amendment. My understanding is the Defendant, Franklin
3 Hayes, was a backseat passenger in a vehicle at a traffic
4 safety checkpoint, who was subsequently detained and
5 searched. We would challenge that the probable cause to,
6 to have made that search in the first place.

7 THE COURT: Okay.

8 MR. VERNER: And we would ask that the evidence be
9 suppressed.

10 THE COURT: All right.

11 MR. VERNER: Your Honor, we'll proffer testimony of
12 Deputy Corey Cook.

13 COREY COOK, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Daniel:

17 Q All right. Deputy Cook, you're employed with the
18 Newberry Sheriff's Office?

19 A Yes, sir.

20 Q How long have you been with that agency?

21 A July 2013. A little over four years.

22 Q Okay. July 13th of this year, almost five months ago
23 now, were you on duty early morning hours of July 13th?

24 A I was.

25 Q Okay. And did you have the occasion to participate

1 in a, a checkpoint of, around Highway 34, Mt. Bethel
2 Garmany Road area?

3 A Yes sir, I did.

4 Q Okay. Tell us why you were conducting a checkpoint
5 in that area.

6 A It's a high traffic area. I had numerous reports of
7 accidents in the area. That's why we perform checkpoints
8 throughout the County.

9 Q Okay. And how many officers from the Sheriff's
10 Office were involved in this checkpoint, approximately.

11 A For the Sheriff's Office, at least five to six.

12 Q All right. Any other agencies participate in this
13 checkpoint?

14 A Yes. Highway patrol was there as well.

15 Q Okay. So it was right near the highway patrol
16 headquarters, DMV?

17 A Yes.

18 Q Okay. And, and what's the purpose of these
19 checkpoints?

20 A Just to enforce traffic laws, keep, try to keep drunk
21 drivers off the road.

22 Q Okay. And what's the Sheriff's Office policy on how
23 to conduct these checkpoints?

24 MR. VERNER: Your Honor, I'm not challenging the
25 legality of this checkpoint.

1 THE COURT: You talking about what happened after
2 they got to the checkpoint.

3 MR. VERNER: Just entirely. We know the purpose of
4 them. I'm not, that's not part of the challenge.

5 THE COURT: The purpose is safety of the citizens,
6 traffic laws and insuring safety.

7 MR. DANIEL: Yes, sir. So long as he's not
8 challenging that, Your Honor, I'll move on.

9 THE COURT: I think they established it was in
10 Newberry and it's a busy intersection and that is
11 empirical as far as I was told.

12 MR. DANIEL: Yes, sir.

13 Q All right. All right Deputy, Deputy Cook, at some
14 point did you stop a vehicle coming through this
15 checkpoint that had a Franklin Bubba Hayes as a occupant?

16 A I did.

17 Q All right. Tell us approximately what time this
18 vehicle came through the checkpoint.

19 A Happened approximately 1:59 in the morning.

20 Q All right. What type of vehicle was it?

21 A I do recall it was a reddish kind of small, I want to
22 say it's a S-10, but I'm, I'm not one-hundred percent sure
23 on the make.

24 Q What kind of vehicle? I'm sorry, I didn't hear you.

25 A A small truck. I want to say kinda older model S-10,

1 but I'm not one-hundred percent on the make or model.

2 Q All right. How many occupants were in this vehicle?

3 A There were three.

4 Q Okay. Who was the driver?

5 A The driver was a Jason Scott Johnson, Johnston.

6 Q Okay. And did you identify the driver through his
7 license?

8 A Yes. I, whenever he, whenever that vehicle
9 approached the checkpoint, that's the vehicle I, that's
10 the, the person I spoke with, the driver.

11 Q All right. Who was in the front passenger seat?

12 A That would be, I believe that's his son, a Mr.
13 Michael Alexander Johnston.

14 Q All right. And where was Mr. Hayes seated in the
15 vehicle?

16 A Mr. Hayes was seated in the backseat of the small
17 pickup, right behind the, the front passenger.

18 Q Okay. Rear passenger seat, was Mr. Hayes seated?

19 A Yes.

20 Q Okay. All right. And tell us what you do next when
21 Mr. Jason Johnston handed over his information.

22 A Once, once Mr. Johnston, Jason Johnston handed me his
23 driver's license, Deputy Smith was actually on the
24 passenger side of the vehicle. Deputy Smith told me that
25 he observed a broken-down shotgun on the, underneath the,

1 the front seat passengers floor board.

2 Q Okay. And what actions do you take next after being
3 notified about a shotgun in the vehicle?

4 A Well, whenever we notice there's a gun, especially
5 out in the open of the vehicle it makes us a little on, on
6 edge. I get closer in the vehicle at that point. I
7 myself even could detect an odor of marijuana. And then I
8 believe my Sergeant advised me that he seen the, Mr. Hayes
9 in the backseat fidgeting around.

10 Q Okay. So Deputy Smith notices, kinda in plain view,
11 this shotgun?

12 A A broken, yes sir.

13 Q Okay.

14 THE COURT: A broken-down shotgun.

15 A Broken down.

16 THE COURT: Describe that. What, tell me what that
17 means.

18 A It, it wasn't fully assembled. It was broken into
19 several pieces.

20 Q Okay. So it was just disconnected, the, the gun?
21 Okay. And that was in the, what area of the vehicle was
22 the shotgun observed?

23 A Was in the front passenger floorboard under,
24 underneath the, not, not the driver, Jason Johnston, but
25 underneath Mr. Michael Johnston.

1 Q And then you also mentioned, or earlier you detected
2 a odor of marijuana coming from the vehicle?

3 A Yes.

4 Q And is this kinda simultaneously when the gun is
5 observed, that you smelled marijuana?

6 A Deputy Smith advised me of the broken-down shotgun.
7 Kinda, makes me kind of ease my, want to get a peek inside
8 the vehicle. The closer I get, the easier I can smell
9 inside the vehicle and that's about the time I detected
10 marijuana.

11 Q Okay. So at that point what do you do next?

12 A We start ordering, asking subjects out the vehicle,
13 just to, since we have the probable cause to search the
14 vehicle based off the marijuana. At this point we ask
15 them out the vehicle one at a time, pat them down and
16 continue the search with the vehicle.

17 Q All right. And you mentioned something about
18 Sergeant Miller discovered something, or, or observed
19 something in the, the backseat area?

20 A Yes.

21 Q All right. Explain that.

22 A As I was getting the driver, Mr. Jason Johnston out
23 the vehicle, I believe at the same time Deputy Smith was
24 getting his son, Mr. Michael Johnson. Sergeant Miller
25 advises that Mr. Hayes in the backseat, was kind of

1 fidgeting around and told us to go ahead and put handcuffs
2 on these guys, so, for officer safety reasons.

3 Q Okay. And what did, what, if anything, did Sergeant
4 Miller or the other deputies discover Mr. Hayes was doing
5 back there or had in his possession?

6 A I believe Sergeant Miller, as, whenever Sergeant
7 Miller observed this himself, then I believe Deputy O'Dell
8 went back there to handle Mr. Hayes. And I believe it was
9 Deputy O'Dell that was located a, a small plastic bag with
10 like a brownish white sand substance, believed to be meth.

11 Q Okay. And to your knowledge, I think you mentioned
12 furtive movements, this is what he was believed to of
13 possessed?

14 A Yes.

15 Q The small baggy of meth?

16 A Yes.

17 Q Or what's believed to be meth?

18 A Yes, sir.

19 Q Okay. All right. Tell us what, do you at that
20 point, so all the occupants are asked out of the vehicle
21 at that point?

22 A Yes, sir.

23 Q All right. So you conduct a search of the, the
24 vehicle?

25 A Yes, sir.

1 Q Okay. Tell us, what, if anything, did you discover
2 from searching this vehicle.

3 A Along with what was found by, I believe Deputy
4 O'Dell, there was also a, a, a bluish clear pipe located
5 along with a Newport pack of cigarettes that also had
6 another bag of, had a bag of marijuana and another bag
7 believed to be meth. And Deputy Smith also found a little
8 bag of marijuana on Mr. Michael Johnston as well.

9 Q All right. Who located the, the cigarette pack?

10 A That was myself.

11 Q Okay. And so you opened up the cigarette pack and
12 found two other baggies of contraband?

13 A Yes.

14 Q All right. And you said one of them appeared to be
15 marijuana?

16 A Yes. One of them appeared to be marijuana, the other
17 one resembled the first bag Deputy O'Dell found and
18 believed to be meth.

19 Q And where was that cigarette pack located in the
20 vehicle?

21 A It was found in the backseat of the vehicle.

22 Q All right. And is that the area where Mr. Hayes was
23 seated?

24 A Yes. It was.

25 Q All right. At that point, what do you do next?

1 A After all the contraband was found, I did seize it.
2 We, what, well, what we did at the time, was as we found
3 the contraband, we kind of found a little place after
4 everybody was out of the vehicle, we placed on the front
5 passenger seat of the vehicle. But after everything was
6 found, I gathered it, put it in a plastic bag and put in
7 my patrol truck to be logged into evidence later.

8 Q Okay. And, all right. So is Mr. Hayes in custody at
9 that point?

10 A He is in handcuffs, yes.

11 Q Okay. Were any Miranda warnings issued to Mr. Hayes,
12 by you or any other officers?

13 A Not, not that I'm aware of. I don't, not by myself.
14 I'm not, no sir.

15 Q Okay. Did you ask any of the occupants in the
16 vehicle who, who owned the methamphetamine?

17 A I did. I, I walked in front of all three of them,
18 and asked, asked them if it, who it belonged to.

19 Q All right. Did Mr. Hayes give you any type of
20 response?

21 A Mr. Hayes did. He, he claimed everything was his
22 including the bag of marijuana found in Mr. Michael
23 Johnston's pocket.

24 Q Okay. All right. And then is Mr. Hayes taken
25 straight to the Newberry Detention Center?

1 A He's not. After, shortly after questioning, he
2 informed us that he was a diabetic and he felt that his
3 blood sugar was low. So at that point in time, Deputy
4 Smith transported Mr. Hayes to Newberry County ER to get
5 checked out.

6 Q All right. And what was the diagnosis, or was he --

7 MR. VERNER: Your Honor, this, it's really kind of
8 beyond the scope of a suppression hearing, what happened
9 after.

10 MR. DANIEL: No, no it's not.

11 MR. VERNER: Well, if it's not --

12 MR. DANIEL: I'm gonna get to that.

13 MR. VERNER: And you can tie it into it--

14 MR. DANIEL: There was a strip search at, at the
15 jail.

16 MR. VERNER: Oh, okay.

17 MR. DANIEL: Is what I'm trying to get to, and more
18 drugs were found.

19 MR. VERNER: Go ahead. I'm, if he's going, if he's
20 going to the strip search at the Detention Center, Your
21 Honor.

22 THE COURT: All right. Go ahead.

23 Q All right. All right. So he was not taken directly,
24 Mr. Hayes was not taken directly to the jail, he's taken
25 to the hospital?

1 A Yes.

2 Q Was he discharged shortly thereafter?

3 A He was, he, even though he did that on the scene, did
4 claim the marijuana for, on Mr. Michael Johnston, the
5 marijuana was still found in his possession. So I did
6 issue him a ticket for that, for simple possession of
7 marijuana. And after that, I then left the checkpoint to
8 go to the ER to, with Deputy Smith and I observed Deputy
9 Smith putting Mr. Hayes back in the vehicle. Because
10 Deputy Smith advised me that he was acting out at the ER,
11 cursing at the medical personnel.

12 Q All right. So while being checked out at the ER, Mr.
13 Hayes is acting unruly?

14 A Yes.

15 Q Okay. All right. So then, at that point, is he
16 removed from the ER and then taken to the jail then?

17 A He was. I, when I pulled up, Deputy Smith was
18 putting him in the truck and then we both left and went to
19 the jail.

20 Q All right. Tell us what happened at the jail as far
21 as your procedures or anything you do.

22 A Usually whenever we arrest anybody, if drugs are
23 found in the vehicle, we ask for what's called a strip
24 search at the jail, just to make sure they're not bringing
25 any contraband at the jail. And Sergeant Richardson,

1 along with another correctional officer, they performed a
2 strip search with Mr. Hayes and found another, or, well, a
3 ziplock bag with more of the brownish white sand believed
4 to be methamphetamine on Mr. Hayes' person.

5 Q Where exactly on his person?

6 A I, it was, it was found in his underwear.

7 Q And that was done pursuant to a strip search?

8 A Yes.

9 Q At the jail?

10 A Yes.

11 Q By a correctional officer, Sergeant Richardson?

12 A Sergeant Richardson, yes. And another correctional
13 officer.

14 Q Did you observe this strip search?

15 A I did not.

16 Q Okay. Was the suspected drug evidence at the jail
17 handed over to you?

18 A It was.

19 Q All right. So you had, and did you have all the
20 drugs from the traffic stop as well?

21 A Yes. All the contraband was in my possession, so I
22 log everything into evidence later on after.

23 Q All right. Thank you, Deputy. Please answer any
24 questions Mr. Verner have.

25 CROSS-EXAMINATION

1 By Mr. Verner:

2 Q Just so we're, we're all clear, Deputy.

3 A Yes.

4 Q Again, to the best of your recollection, what drugs
5 were found in the car and in what location?

6 A Okay.

7 Q Or the truck.

8 A In the truck there was two bags of marijuana. One
9 was found on Mr. Michael --

10 Q The front seat passenger?

11 A Yes. The front seat passenger.

12 Q One is in the back, one is in the pocket.

13 A Right.

14 Q Okay.

15 A Another, the other bag, one bag of the meth was found
16 in the backseat, again, by Deputy O'Dell. I'm assuming
17 within closer proximity or on Mr. Hayes' person. And then
18 I locate another bag of weed and meth in the pack of
19 menthol cigarettes.

20 Q Where, okay. Bag of marijuana on the pat down search
21 of the front seat passenger?

22 A Yes.

23 Q Then you found a bag of marijuana where?

24 A I found the pack of Newport menthol cigarettes with
25 the, another bag of marijuana and another bag of meth.

1 Q Okay. So you located a packet of cigarettes on the
2 back, just laying on the backseat?

3 A Yes.

4 Q Okay. And this is kind of an extended cab truck, or
5 is this a --

6 A It is.

7 Q -- front seat and backseat passenger?

8 A It's an extended cab.

9 Q Okay. So in the pack of Newport cigarettes, you
10 found two separate baggies, one had small amount of
11 marijuana?

12 A Yes, sir.

13 Q And the other had what is the meth?

14 A Yes, sir.

15 Q Or believed to be meth by you at the time?

16 A Yes, sir.

17 Q Okay. And are there any other drugs located in the
18 truck?

19 A There's the two bags of marijuana, then there's two
20 bags of meth.

21 Q Okay. Where was the second bag of meth found?

22 A Again, that one was located by I believe, Deputy
23 O'Dell when him and Sergeant Miller went to the backseat
24 on initially getting Mr. Hayes out of the vehicle.

25 Q Okay. Just laying around loose?

1 A I'm not, I'm not one-hundred percent sure.

2 Q But your understanding was at the scene on the night
3 that Franklin was arrested, that there was a separate,
4 just a plastic bag of meth, not in any kind of container
5 that you saw?

6 A Correct.

7 Q Okay. And, and your understanding is that it was
8 found in the backseat area?

9 A That's correct.

10 Q Okay. But, but the only drugs that you found were
11 the drugs in the cigarette container?

12 A Yes, sir.

13 Q Okay. And the cigarette container was just laying on
14 the backseat?

15 A Yes, sir.

16 Q And Franklin Hayes is the backseat passenger?

17 A That's correct.

18 Q And no other occupants in the vehicle other than the
19 three gentlemen, or men?

20 A Yes. Only three gentlemen.

21 Q All right. And then there was a strip search at the
22 jail that you were not a part of?

23 A Yes, sir.

24 Q Okay. So what they found and where, you're relying
25 entirely on the police report later?

1 A At the, you talking about at the jail?

2 Q Yes, sir.

3 A Yes, sir.

4 Q You don't have any personal knowledge of what was
5 found, other than you've heard?

6 A Other than, other than I, I was not back there
7 performing the strip search.

8 Q Okay. All right. Now, tell me about the, were you
9 the deputy who requested the strip search?

10 A Yes, I was.

11 Q Okay. And why was that?

12 A Like I explained, any time we take somebody to jail
13 when there's drugs involved we ask for a strip search at
14 the jail to make sure contraband's not being brought in.

15 Q Okay. Now, where was the shotgun observed?

16 A The, the shotgun was located on the floorboard
17 underneath the front seat passenger, Mr. Michael Johnston.

18 Q And it was already in a disassembled state?

19 A It was.

20 Q Do you recall how many different pieces it was laying
21 in? The barrel had been removed from the butt and the
22 stock, right?

23 A Yes. I'm, I'm not, between two or three I would say,
24 but I'm not sure.

25 Q Okay. It certainly was not in a workable condition,

1 in that condition, was it?

2 A No, sir.

3 Q In fact, it didn't even have a trigger in the stock
4 or that mechanism, did it?

5 A I'm not aware. Not one-hundred percent sure.

6 Q But you would've been able to, to look at the, the
7 piece of the shotgun and know that, that was not in a
8 workable condition in that situation?

9 A Not where I was standing. I was on the driver's
10 side.

11 Q Okay.

12 A Deputy Smith just advised me there was a shotgun on
13 the floor. It was later determined it was disassembled.

14 MR. VERNER: Your Honor, I would offer for ID one.

15 (Whereupon, Defendant's Exhibit 1 was marked for
16 identification only.)

17 THE COURT: Okay.

18 Q Are you familiar with the, I handed you a piece of
19 paper, that's got what, six photographs?

20 A Yes, sir.

21 Q And are, did you take photographs or, or is that
22 another officer at the scene?

23 A Sergeant Miller I believe was the one --

24 Q Okay.

25 A -- that was taking the photographs.

1 Q And just primarily, I'm just interested in the, the
2 top picture of the shotgun. Does that appear to be the
3 condition the shotgun was in?

4 A Yes, sir. Once we started searching the vehicle,
5 that's what I remember seeing.

6 Q Okay. Now I'm not, what is on the, kind of the
7 bottom of the shotgun, there's a tube or a, is that the
8 blue pipe you're talking about? There's something with a
9 round ball on the end. Is that a pipe or is that part of
10 the shotgun?

11 A I believe that, that is the pipe.

12 Q Okay.

13 A That's the bluish clear pipe.

14 Q Okay. It's not in color, the photographs are not in
15 color, but the, your recollection is that's the pipe?

16 A Yes, sir.

17 Q Okay. So that would be the drug paraphernalia?

18 A Yes, sir.

19 Q Do you know where the pipe was found in the vehicle?

20 A Yes, sir. Sergeant Miller located that underneath
21 the front passenger seat of the --

22 Q Okay.

23 A -- on the back floorboard.

24 Q From your experience as an officer, is that a
25 marijuana pipe or a meth pipe?

1 A That's, that's a meth pipe.

2 Q It appears to be a meth pipe?

3 A Yes, sir.

4 Q Okay. Just enlighten me, I don't know the
5 difference. What would make a pipe a marijuana pipe as
6 opposed to a meth pipe?

7 A Usually the, the contents inside the actual bowl.

8 Q Well, I understand that part of it, but the, what
9 about the pipe in itself?

10 A I never smoked it. I'm not, I'm not one-hundred
11 percent sure how it, how the --

12 Q Okay.

13 A Smoking the drug works.

14 Q Well I was just curious. You said it appeared to be
15 a meth pipe as opposed to a marijuana pipe. Is there a
16 difference, or is there --

17 A It's just the kind of pipe found along with other,
18 whenever subjects have meth, not a regular marijuana pipe.

19 Q Well did you see meth residue in it or just --

20 A It appeared to be so. Yes, sir.

21 Q Okay. All right. You can hand that, give the
22 picture to Judge Griffith and he can hand it to the clerk.

23 MR. VERNER: Your Honor, just for purposes of this
24 hearing.

25 THE COURT: Okay.

1 Q Did you find any roaches or any partially burnt
2 marijuana cigarettes?

3 A Not, no, sir. Not that, I usually, whenever I do, I
4 usually add them along with the evidence.

5 Q Did you find any other evidence of other marijuana
6 pipes or any other paraphernalia used to smoke marijuana?

7 A No, sir. That's the only pipe I remember locating,
8 or was located in the vehicle.

9 Q Any joints or anything like that?

10 A No, sir.

11 Q Did anybody in the car admit that they had been
12 smoking marijuana recently?

13 A That's a question I didn't ask.

14 Q Okay. Well explain, were you the one who sensed the
15 smell of marijuana?

16 A Yes, sir.

17 Q Did it appear to have been, do you know the
18 difference between the smell, I guess, of marijuana that's
19 been smoked as opposed to just marijuana that's in
20 storage?

21 A Yes, sir. Yes, sir.

22 Q Which one are you testifying you smelled?

23 A Fresh marijuana hadn't been smoked yet..

24 Q Okay. So the, you could smell the odor of, of
25 unsmoked marijuana?

1 A Yes, sir.

2 Q Okay. Where, I would assume that, that would be a
3 little bit less fragrant than smoked marijuana?

4 A It, it's a odor like no other.

5 Q Okay.

6 A I can't describe it other than it smells like
7 marijuana.

8 Q You know it when you smell it, but the, it, it's not
9 as strong a scent as smoked marijuana?

10 A I'd say that it smells just equally strong, just a
11 little, just different.

12 Q Okay. And where were you when you noticed the, the
13 smell of the marijuana?

14 A I was still standing on the driver's side of the
15 vehicle. I'd just asked the driver for his driver's
16 license. Deputy Smith advised me of the shotgun on the
17 floorboard, I leaned in to get a better look and that's
18 when I could detect the odor.

19 Q Okay. And in the vehicle was, it was approximately
20 how much marijuana?

21 A I believe the total weight came out to be three
22 grams, but that's with, combined with both of the two
23 bags.

24 Q Okay. Three grams of marijuana?

25 A Yes.

1 Q Okay. It's fair to say that's a fairly small amount
2 of marijuana, isn't it?

3 A It is.

4 Q But is that enough to roll a joint, or is that --

5 A I've never, never rolled a joint, but I would, I
6 would think so.

7 Q Okay. And the only marijuana you found in the car,
8 was what was in the, either the pocket of the passenger,
9 or in a plastic bag in the cigarette box?

10 A Correct.

11 Q Okay. Had you started the search of the vehicle
12 prior to smelling the odor?

13 A No, sir.

14 Q Okay. All right. Thank you, Deputy.

15 REDIRECT EXAMINATION

16 By Mr. Daniel:

17 Q Deputy Cook, just to be clear, a firearm was observed
18 in plain view in the vehicle by Deputy Smith, correct?

19 A That is correct.

20 Q And then also a odor of marijuana you detected coming
21 from the vehicle?

22 A Yes, sir.

23 Q And then that, that was all prior to the search of
24 the vehicle being conducted, right?

25 A It was.

1 MR. DANIEL: That's all I have, Your Honor.

2 THE COURT: All right. You can step down.

3 MR. DANIEL: Your Honor, I have Thomas Miller.

4 Deputy Thomas Miller.

5 THE COURT: Okay.

6 THOMAS MILLER, being

7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Daniel:

10 Q Deputy Miller, were you on duty early morning hours
11 July 13th of this year?

12 A I was.

13 Q All right. Did you have an occasion to participate
14 in a safety checkpoint on Highway 34 at Mt. Bethel Garmany
15 Road?

16 A I did.

17 Q All right. All right. And at that time, did a Mr.
18 Franklin Hayes come through that checkpoint?

19 A Yes, sir.

20 Q All right. Explain how that happened.

21 A As the vehicle approached, I was further away than,
22 than Deputy Cook and Deputy Smith. To my knowledge,
23 Deputy Cook approached the driver's side and Deputy Smith
24 approached the passenger side. I was kind of standing at
25 the front driver side corner of the vehicle, along with

1 Deputy O'Dell.

2 Q Okay. And at that point, what happens next?

3 A Deputy Cook request the driver's license of the
4 operator as Deputy Smith is, is, I guess looking into the
5 passenger's side of the vehicle.

6 Q All right. And who was operating the vehicle?

7 A Jason Scott Johnston.

8 Q All right. And who else was in the vehicle with Mr.
9 Johnston?

10 A Michael Alexander Johnston was the front seat
11 passenger, and Franklin Dell Hayes was the rear seat
12 passenger positioned on the, more to the passenger side,
13 but he wasn't restrained in any type of seatbelt or
14 anything like that. He was kind of, kind of, I guess
15 you'd say loose in the backseat. But he was more towards
16 the passenger side as I observed him.

17 Q Okay. All right. And anything unusual about this
18 traffic stop from that point forward?

19 A I noticed Deputy Smith, I guess, you kind of, you can
20 read somebody's facial expression when they see something
21 that, that arouses their attention. And, and I assumed at
22 the time, or, or after the fact, that, that was him
23 observing the, the shotgun in the passenger floorboard of
24 the vehicle.

25 Q Okay. And at that point, what do y'all do when a

1 firearm is observed in a vehicle?

2 A Anytime a firearms is observed, obviously, officer's
3 safety's a, a big concern. And I, I can't speak for what
4 he saw. And, and like I said, the firearm may have been
5 obstructed by the, the passenger's feet. But I could see
6 him notifying Deputy Cook of that, and that's, that's when
7 I started to approach the vehicle. And, and Deputy Cook
8 advised me of the situation with the firearm as well as
9 the odor of marijuana being detected.

10 Q Okay.. At that point do y'all order the occupants of
11 the vehicle out?

12 A Prior to that, I'm still towards the, I guess you'd
13 say the front driver side fender of the vehicle. I can
14 see Mr. Hayes in the backseat and he kind of looks up to
15 me with a, a concerned expression. And I see him looking
16 down and he's doing something with his hands. I guess
17 what you'd call a furtive movement. And then he appears
18 to take one of his hands, and, and put it in his waistband
19 in his pants. That in conjunction with the, the firearm
20 being viewed, we removed everybody from the vehicle in a,
21 in a pretty quick manner just for officer's safety.

22 Q Okay. And do you discover any weapons or contraband
23 on Mr. Hayes when he's removed from the vehicle?

24 A Myself and Deputy O'Dell, like I said, I was at the,
25 the front driver's side corner. And Deputy O'Dell had

1 already approached the passenger side, or was approaching
2 the passenger side. I went around to him and assisted him
3 with removing Mr. Hayes from the vehicle, primarily
4 because of my concerns with, with him making the furtive
5 movements in conjunction with the firearm. And he was
6 found to be in possession of the, the baggy of meth as
7 explained in the report. It was actually found in his
8 hand. He was clinching it in his hand and Deputy O'Dell
9 had to, to command him to release it.

10 Q Did you observe that?

11 A Yes, sir. I was right there with Deputy O'Dell.

12 Q Okay. And so did you at that point, did you or any
13 other deputy¹ seize that baggy of meth that you said Mr.
14 Hayes had in his hand?

15 A I think Deputy O'Dell seized it temporarily to be put
16 with the, the other evidence located in the vehicle at a
17 later time.

18 Q All right. Did you participate in a further search of
19 the vehicle?

20 A I did.

21 Q Okay. Did you locate any other contraband?

22 A I located the, the bluish clear meth pipe. It was in
23 the floorboard in the rear of the vehicle directly behind
24 the, the front passenger seat, if you understand what I'm
25 saying. It's kind of where Mr. Hayes' feet would've been.

1 Q You said it was a pipe?

2 A Yes, sir.

3 Q Okay.

4 A The, the clear bluish pipe. The meth pipe.

5 Q And that, would that, would've been in reaching
6 distance where Mr. Hayes was seated?

7 A Easily.

8 Q All right. Any other contraband that you or other
9 officers seized in the vehicle?

10 A I, I located no further contraband. No, sir.

11 Q Did other officers, to your knowledge, locate any
12 contraband?

13 A Yes, sir. There were various items found in the
14 vehicle. At that point that everybody was secure, I
15 assisted with the, the search, primarily where Mr. Hayes
16 was originally seated, again, with the concern of firearms
17 and whatnot. At that point, I, I kind of pulled back and,
18 and went and got a camera to, to help document things.

19 Q So you documented all the drug evidence seized?

20 A Yes, sir. The pictures, I took all the pictures.

21 Q Did you take a picture of the shotgun?

22 A I did.

23 MR. DANIEL: That's all the questions I have, Your
24 Honor.

25 CROSS-EXAMINATION

1 By Mr. Verner:

2 Q Just out of curiosity Deputy, is there engineering or
3 difference between a meth pipe and a marijuana pipe?

4 A I've seen pipes in all shapes and sizes, colors,
5 forms. And I guess their use could depend on the user,
6 honestly. I mean one could be used for the other.

7 Q Okay. So I mean is there, just, and it's not so much
8 important in this case, but just is there a difference
9 between a, can you immediately see what's a meth pipe and
10 what's a marijuana pipe?

11 A Typically, a meth pipe has a long stem.

12 Q Okay.

13 A With a ball type fixture at the end, with a small
14 hole in it.

15 Q Okay.

16 A Typically a marijuana pipe, the typical marijuana
17 pipe you would see, the glass pipes are shorter. They're,
18 they're larger round and the, the opening in the end is a
19 lot larger.

20 Q That's, that's not always true, but just in general,
21 if you see a longer stemmed pipe with a bulb end, your,
22 the general assumption is that's a meth or a harder drug
23 type pipe as opposed to marijuana?

24 A Yes, sir.

25 Q Okay. Did the driver, the driver was Michael

1 Johnston or Jason Johnston?

2 A Yes, sir. Jason.

3 Q Now he had his driver's license, didn't he?

4 A Yes, sir.

5 Q And was there any problem with the registration on
6 the car or insurance on the car that you're aware of?

7 A Not that I'm aware of. Like I said, I, I wasn't
8 making contact with, with Mr. Scott Johnston or Jason
9 Johnston.

10 Q Did the driver appear to be intoxicated in your
11 opinion?

12 A Not to my opinion.

13 Q Okay.

14 A Like I said, I, I had no, no direct contact with him
15 at the time of the incident.

16 Q Okay. And this stop happened as a result of a car
17 entering a traffic safety checkpoint?

18 A Yes, sir.

19 Q Okay. And one of the things you're looking for at
20 the traffic safety checkpoint, is that the drivers are not
21 intoxicated?

22 A Yes, sir. That could also be indicted by open
23 containers in the vehicle, etc.

24 Q And that they've got the proper registration and
25 licensing?

1 A Yes, sir.

2 Q Okay. Thank you, Deputy Miller.

3 A All right.

4 THE COURT: You can step down. Anything else,
5 Solicitor Daniel?

6 MR. DANIEL: No, Your Honor.

7 THE COURT: Okay Mr. Verner.

8 MR. VERNER: Your Honor, we would ask for again,
9 while I'm not challenging the lawfulness of this
10 particular safety checkpoint, it still is that, that's the
11 type, that's what gives rise to this search. So it's
12 still in the rules of a traffic safety checkpoint. The
13 driver in this case was, had proper license. The car was
14 properly registered as the Court can see. There would be
15 no open containers or anything like that. As the Court
16 can see, there was a shotgun that had been completely
17 disassembled. The Court can see from the photographs that
18 it doesn't even have a trigger in the, that I seen, in
19 the, in the photographs. And then it's three grams, both
20 in containers of marijuana, unsmoked. Your Honor, we take
21 the position that the State exceeded the constitutionality
22 of the traffic stop. And we would ask on Fourth Amendment
23 grounds to suppress the search.

24 THE COURT: Just in the testimony I heard, if the
25 shotgun were the only thing there, I'd probably be

1 inclined to say everything suppressed. But the odor of
2 marijuana gives another additional, a little bit of
3 probable cause to law enforcement to get the passengers
4 out. It seems everything's in plain view. The pipe, a
5 pack of cigarettes with the two containers of drugs, then
6 one meth container with a baggy of some type in the hand
7 of Mr. Hayes. The officer observed the gentleman, for
8 safety, put in handcuffs with his hands clinched. They've
9 got a right to look in the hand to see what it is because
10 who knows what it is. It might be a snap and pop or
11 otherwise. But I think the, the behavior and treatment
12 and search of the vehicle by the officers was well within
13 the bounds of a proper search, and considering the weapon
14 in plain view, even though it turns out to be disassembled
15 and then the odor of marijuana. That gives them probable
16 cause to get them out and do a safety search. So I won't
17 suppress that. Anything else?

18 MR. VERNER: Just, Your Honor, and I believe
19 in-chambers, the incriminating statement by my client. I
20 think we had agreed in-chambers that, should that come up,
21 that we would preserve that objection.

22 THE COURT: Okay.

23 MR. VERNER: So we're ready, Your Honor.

24 THE COURT: Okay. All right. Let's, any other
25 pre-trial motions?

1 MR. SCOTT: No, we don't have anything.

2 THE COURT: Okay, I told the jury to be back at 1:30.
3 We have got a few minutes now. Do we have anybody that we
4 could deal with here in the audience?

5 MR. VERNER: I might need two minutes but I think we
6 have got probably two.

7 THE COURT: Okay.

8 (Whereupon, guilty pleas were taken waiting on the
9 jury to return from lunch.)

10 (Whereupon, a lunch break was taken.)

11 MR. VERNER: Well, Judge, just, can we be heard
12 before the jury comes in?

13 THE COURT: Sure.

14 MR. VERNER: On behalf of Mr. Hayes, Your Honor, we
15 are asking for a continuance. He'd like more time. He's
16 in poor health. He's got diabetes. He's had in and out
17 medical procedures because of his condition. He thinks
18 that he could more fairly and adequately prepare for a
19 defense if he had a little bit more time, Your Honor.
20 It's a relatively new charge, July incident date. But we
21 would like this one bound over until the January term.
22 And that would, he, he could more adequately and fully
23 prepare.

24 THE COURT: How long has he been managing this
25 diabetic condition?

1 MR. VERNER: What's that, Your Honor?

2 THE COURT: How long has he been managing his
3 diabetic condition?

4 MR. VERNER: Well, that's a question I will let --

5 MR. HAYES: I was diagnosed with diabetes in February
6 2015.

7 THE COURT: 2015?

8 MR. HAYES: Yes, sir. And immediately after being
9 released from ICU, I was in a little bit of trouble. Go
10 figure, with Newberry County where I got sent to prison.
11 And while I was there, I, I've not really been educated a
12 lot on, on diabetes as far as food, what's what. But I
13 haven't had insurance, so now I'm at a point where I'm
14 getting everything stabilized. Trying to get stabilized,
15 my medication is right, going to a doctor. I don't have
16 insurance, so it's all being paid out of pocket. And I
17 finally, after two years, am able to try, I'm trying to
18 stabilize, learn and educate myself on the diabetes. They
19 diagnosed me with type one, which is very rare for an
20 adult to be diagnosed with juvenile diabetes. And I take
21 three shots a day, one at night. So it's kinda
22 overwhelming. But I, I reached a point in my life where
23 I'm able to finally take control of things after being in
24 such a disarray the whole beginning of my life. And I
25 understand that, you know, they charged me with this

1 charge, and I'm not contesting it.

2 MR. VERNER: We are contesting.

3 MR. HAYES: I'm contesting it, but I'm contesting the
4 fact of I just want to be straight up and be honest and
5 get everything to, to a head and move on with my life. At
6 the same time, I have a lot of things that I need to,
7 that's priority that I need to take care of, and not just
8 jump head first into this. This only happened four months
9 ago, Judge Griffith.

10 THE COURT: What happened four months ago? You
11 talking about the charge?

12 MR. HAYES: Yes, 'sir.

13 THE COURT: It was in the summer time, wasn't it?

14 MR. HAYES: The charge. And basically, I, I just
15 need, SCDC, I got sent to SCDC immediately after being
16 diagnosed with diabetes. And that is not the place to
17 have trust and faith that you're getting the right medical
18 attention. It's actually killing me. You eat all the
19 starches and rice and no shots but twice a day. I take
20 four shots a day.

21 THE COURT: You said you took three shots a day.

22 MR. HAYES: Three shots a day and one at night.

23 THE COURT: Okay.

24 MR. HAYES: One before every meal, and then at night
25 for long lasting. And they get, they give me two a day.

1 I guess it's just SCDC policy that they only have to give
2 you that much. Anyways Judge, I would, please, have a
3 little leniency on me and give me at least, to the first of
4 the year to be able to get everything stabilized and, you
5 know, let my job know and be able to switch my visa. Get
6 my money back from my lease on my apartment and
7 everything. I finally got to a point in life where I'm
8 getting ahead. I don't live in Newberry County. I live
9 in Richland and I have been for the last two months. Not
10 been in any trouble there. Working at Fogle Electric,
11 trying to be productive.

12 MR. VERNER: He did bring a paystub to me, Judge.

13 MR. HAYES: They, they paying me \$14.00 dollars an
14 hour actually. That's more money than I've ever made in
15 my life. Might not be much to anybody else, but it's a
16 start for me. And just give me an opportunity to tighten
17 everything up and tie up my loose ends before I have to go
18 face the music, so. If, if possible, hopefully --

19 THE COURT: Here's the problem for me. This is my
20 problem. Is the Chief Justice kind of hands down rules
21 and says look, this is how I want court run, these are the
22 timelines that I want y'all, meaning everybody, Mr.
23 Verner's included in this group, the Solicitor's office
24 included, the Judges in particular. I want cases
25 punctually moved forward so there's justice and access to

1 justice, the case is moved and there's not unreasonable
2 delay. And the new Chief Justice has really been pushing
3 this and he's actually pushed down a little more on the
4 prosecutors and the public defenders saying, y'all need to
5 work hard. We're not in good shape as far as moving cases
6 in an expeditiously or a reasonable manner. And
7 unfortunately, that's part of my job, is I got to help
8 administer the justice, move forward, take advantage of
9 court time that's been allocated to Newberry. Newberry
10 doesn't get a ton of court time compared to Richland,
11 Lexington, some of the bigger counties. We get a week
12 every five weeks, I believe, maybe six weeks. And they
13 want the cases moved inside a year. And, so the fact
14 yours is only five months old is good on one hand and it's
15 kind of tough on the other hand. But they're not going to
16 linger around for the length of time that they used to,
17 three or four years ago.

18 MR. HAYES: Yes, sir.

19 THE COURT: Because Chief Justice Beatty wants to
20 move them.

21 MR. HAYES: Yes, sir.

22 THE COURT: Okay.

23 MR. HAYES: That's completely understandable. And
24 another issue with this situation, would be that I feel, I
25 feel kind of trapped, sir. You know, my, Michael Stribble

1 is my brother and he's in this case as a, you know, I
2 guess a --

3 MR. VERNER: Chain-of-custody.

4 MR. HAYES: Chain of command, chain-of-custody or
5 whatnot. And you know from my understanding, that kind of
6 brings a little conflict in on it.

7 THE COURT: Okay. You getting to my job. I see to
8 it that a--

9 MR. HAYES: Yes, sir.

10 THE COURT: --fair trial is conducted. As I
11 understand it, he's part of the transportation of the
12 drugs to be analyzed from Newberry County down to SLED and
13 dropped them off, and that was his participation. So he's
14 not a fact witness, he was a chain witness is what the
15 lawyers like to call it, is he's part of the
16 chain-of-custody.

17 MR. VERNER: And on that, Your Honor, just for the
18 record in case we need to, Bubba Franklin has asked me to
19 bring a change of venue motion. And in my opinion, that
20 would not warrant a change of venue.

21 THE COURT: I agree with you.

22 MR. VERNER: It could be something that we could
23 discuss in cross or the bases of the law enforcement and
24 the individual officers. Strategically, that creates some
25 problems of possibly opening the door for other stuff to

1 come in. But just he has asked for a change of venue to,
2 to accompany the continuance motion.

3 THE COURT: All right.

4 MR. VERNER: I don't know that that would be the
5 legal grounds for venue.

6 THE COURT: I doubt it would. The thing is, under,
7 under the State v. Valentine, and the case that came
8 through from the chain. And if the chain can be
9 reasonably connected and they're not the primary person or
10 the one securing the drugs from an accused, putting in
11 the, in the evidence custody, the person analyzing the
12 drug then transmitting it back, you just one of the
13 couriers. You're really not a fact witness and there's
14 not much they can do because it's secured, it's put in the
15 evidence bag and it's sealed shut and tamper resistant or
16 tamper evident. I can't remember the different words they
17 use. And I haven't heard any testimony about what Mike
18 Stribble did, other than he was the courier and that would
19 be the basis of his need, if he was needed in the trial.
20 But I think you could challenge him if he came up and said
21 yeah, I, I carried the drugs from Newberry Sheriff's
22 Department to SLED. You could say, well, you can ask him
23 those questions. I don't think that's a conflict for him
24 because he's not the person, nor would he be allowed to be
25 the person factually in this case to say, I took the drugs

1 from you, or I analyzed the drugs and they are this type
2 of medication or illicit medication. He's not going to be
3 that witness because he's not qualified to do either one
4 in this case.

5 MR. HAYES: My main concern, Judge Griffith, is, is
6 not only, only that, as far as, I heard you say a conflict
7 for them, and that would be a conflict for me. And the
8 reason I say this, is, sir, I got a reputation about me.
9 I've created a bad, bad reputation for myself from the
10 time I was a certain age up until this point. Okay. I
11 paid for my actions and my mistakes in my past. I've been
12 to prison five times, Judge. And I've never been the type
13 to throw a rock behind my hand. With that being said, I
14 don't think that I will properly, can properly have a fair
15 trial in Newberry County simply because of not only my
16 brother being with the Sheriff's Department and his father
17 as well, my sister used to work there as well. But as far
18 as my reputation and how many people know me, there's no
19 way to really pick a jury that's fair in a town this size.

20 THE COURT: Not a single juror stood up because I
21 asked them if they knew you. Not a single person knew who
22 you were.

23 MR. HAYES: And again.

24 THE COURT: And you know what I did also? Tell you
25 what else I did.

1 MR. HAYES: Sir?

2 THE COURT: I picked, I did something extra since you
3 weren't here when I --

4 MR. HAYES: Yes, sir. I heard.

5 THE COURT: -- when they selected the jury. I picked
6 two, two alternates just in case when the jury comes out
7 here to sit down, if one of them goes wait a minute, I
8 know that young man's face.

9 MR. HAYES: Which they do. I guarantee you, my face
10 or my name. With that being said, Judge Griffith, I, I
11 was told last court term when I came and signed the papers
12 that I would be placed on the trial docket.

13 THE COURT: You did.

14 MR. HAYES: Yes, sir.

15 THE COURT: That's exactly what happened.

16 MR. HAYES: My question is this. What happened to
17 everybody before me?

18 MR. VERNER: Other cases.

19 MR. HAYES: See, it's giving us no time to prepare
20 for trial. No time for me to be able to get witnesses if
21 I need them. No time for, you know, me to analyze the
22 situation and speak with Charles enough to be able to feel
23 confident in going to trial or take his advice when he
24 says we don't need to go. I just would simply like time
25 to be able to look over the case to see if I need my

1 witnesses. See if, what I got going on, what's at hand
2 and just get my apples together. And I, I don't know,
3 sir. It's just all happening so fast.

4 THE COURT: Yeah. Well, that time was yesterday. We
5 had a trial with other lawyers. Mr. Verner's been here
6 all week, last week. That time was yesterday. You can't,
7 you can't ask me when we get ready for trial. The day of
8 trial, saying you are not ready. He's been here ready,
9 willing and able to talk to you, and you been hard to
10 find.

11 MR. HAYES: You know, sir.

12 THE COURT: From what I've been hearing.

13 MR. HAYES: I was told to come and I had a medical
14 issue. Judge Griffith, I'm not trying to be a spur in
15 anybody's saddle. I just want to have a fair chance.

16 THE COURT: All right. Well, here's your deal. You
17 got charged. I know just a little bit about the facts in
18 the case from a preliminary suppression hearing. That's
19 all I know about it. You've appeared in front of me
20 before and you've always been respectful. You need to
21 decide. You want to plea, accept your responsibility, or
22 we are going to start the trial. That is your choice,
23 because I'm tasked with getting the case heard. The State
24 is tasked with presenting the case to the jury and Mr.
25 Verner's tasked with defending you. And nothings been

1 done unfair. I don't believe a continuance would benefit
2 anyone. It's delaying the inevitable. I've got court
3 time, you're here, he's here. It's time to move forward.

4 MR. HAYES: That's perfectly understandable, Judge
5 Griffith. And I'm, and I respect your decision and your
6 authority. But at the same time, Your Honor, I would like
7 you to take into, consider that I've really not had enough
8 time to prepare for this trial, sir. Especially since
9 yesterday. I was under the understanding that I was being
10 placed on a trial docket. I talked with Stitely and Theo
11 Williams and they was charging me one thing for a trial,
12 another thing just for you know, a plea bargain or a
13 motion.

14 THE COURT: All right. Well, here's the deal. When
15 the police officers talked to you out there on the scene,
16 it was like a safety checkpoint, wasn't it?

17 MR. HAYES: Yes, sir.

18 THE COURT: They write charges down that they believe
19 you should be charged with because they're not trained as
20 lawyers. So when the case gets written up and the drugs
21 get weighed and gets brought in, and what's what and what
22 kind is it. That's when it gets handed over to the
23 lawyers in the Solicitor's Office and they make a
24 determination of what formally, not informal. The police
25 officers on the scene informally charge you blue tickets

1 and that kind of thing. But when the indictment comes
2 out, that's when the formal allegation comes out. And
3 that's what was done in this case because this one was
4 heard, heck, back in October. This is the third term of
5 court since then, isn't it? Am I right?

6 MR. DANIEL: Yes, sir.

7 THE COURT: There was one in November also.

8 MR. HAYES: So it's been presented to the Grand Jury?

9 THE COURT: Yes, sir. Right there. Can you see the
10 blue signature right here? Ms. Koon's signature?

11 MR. HAYES: My, I can't hardly see you, sir. My
12 diabetes.

13 THE COURT: Now what that means, is the Grand Jury
14 was convened last January and they meet every Friday
15 before the term of court. And they determine, not a
16 Magistrate, a Magistrate's the same thing. He does it
17 solo. The Grand Jurors, eighteen of them are together
18 when they first meet but at least twelve have to be there
19 every time they convene.

20 MR. HAYES: I'm familiar with that, sir.

21 THE COURT: All right. Twelve of the eighteen, or
22 twelve of the people there have to agree that more
23 probably than not a crime was committed. And they
24 believed that happened. I mean, it's up to you. I don't
25 want to keep debating. I can't grant your continuance. I

1 got to move forward.

2 MR. HAYES: I'm not, I'm not, you know, I understand.
3 And my, my only concern, Judge, is, is the time that I've
4 had to be able to call witnesses. For instance, we have
5 no witnesses lined up to be able to show or to even say a
6 good thing or go against what the State is accusing me of.
7 This, I have no family members. I've been able to prepare
8 for nothing.

9 THE COURT: All right. Well, here, I don't want to
10 try your case for you but it's a pretty simple case. They
11 stopped you, found something on you, possession, these
12 aren't hard facts. I mean the jury's going to get to
13 decide. Those aren't hard facts, are they? And you, you
14 already, I don't want to put words in your mouth, but you
15 already said your reputation wasn't too good so you can't
16 bring friends in saying he wouldn't do something like
17 that, which you can do in some cases. But this is not
18 that case I don't believe. Because if you've done
19 something like this before, and the State would say, oh
20 yeah, he's done something before and before and before.
21 So that's really not a good defense for you.

22 MR. HAYES: Well, sir, that, I don't, character
23 witnesses is not what I was leaning on.

24 THE COURT: I thought that's where you were leaning.

25 MR HAYES: Sir?

1 THE COURT: I thought that was where you were
2 leaning.

3 MR. HAYES: No, sir. Character, no. No one can
4 determine that. I just want to have people to be able to
5 have my back and maybe even the co-defendants to say that
6 this was what, this was what or this was what. Or even
7 say where I was at that night following, or if I even had
8 what they said I had. I just, I just want a fair
9 opportunity, Judge Griffith. Just a, even if it's not but
10 a day or something to prepare with Charles, and us get
11 together and me try to get people together in order to
12 have some type of defense in order to protect my right. I
13 understand what they are accusing me of. I'm not trying
14 to run away from it. I'm just simply trying to play the
15 game fair and have an opportunity to, to have a fair
16 chance. That's all I want, sir.

17 THE COURT: I don't think we are going to be able to
18 do that today for you.

19 MR. VERNER: Thank you, Your Honor, for hearing him.

20 THE COURT: Okay.

21 MR. VERNER: And me.

22 MR. SCOTT: Your Honor, just real quick, just before
23 we get going, we would ask, just a clerical error we have.
24 One, I'd ask that, to add to the witness list and just
25 check to see if any of these jurors are familiar with the

1 name, but it's Kirby Richardson. It's a, another
2 Sheriff's Department Deputy. Correctional officer with
3 the jail. Kirby Richardson.

4 THE COURT: All right. Y'all ready to bring them in?

5 MR. SCOTT: Yes, sir.

6 MR. VERNER: Yes, sir.

7 THE COURT: Okay. Bring them in please.

8 (Whereupon, the jury came into open court at
9 approximately 2:26 p.m.)

10 THE COURT: All right. We're about to start. As I
11 told you, the indictments are a mere allegation. The
12 State must prove factually the allegations to each of
13 y'all's satisfaction called beyond a reasonable doubt. I
14 will define that for you at the end of the trial. All
15 right, the State will go first. They will give an opening
16 comment about what they believe that the case would show.
17 Mr. Verner will give an opening statement about what he
18 believes the case will or will not show. Y'all give
19 careful attention to the lawyers understanding their
20 arguments and their suggestions are just that. Factually
21 you'll get all you need to decide the case from the
22 witness stand and the witnesses and the evidence
23 introduced. The case should go along rather rapidly
24 because there's only a handful of witnesses in the case.
25 So with that understanding, understand this, if there's a

1 need for a legal issue to be addressed, which is my job,
2 we will take a break, put y'all in the jury room and I
3 apologize for that. Maybe there's, then y'all can warm
4 up. Now, as far as that goes, I want y'all to know, Ms.
5 Folk and Ms. Brehmer and I have talked about the
6 ventilation. We can't cut it off. We can change the
7 temperature up a little bit and we've been adjusting that
8 and we get too cool and warmed up and then it gets too
9 hot. It kind of goes from one end to the other. So if we
10 could cut it off we would. Correct?

11 CLERK OF COURT: Right.

12 THE COURT: I want y'all to know that. We're not
13 thinking let's cut it off. That occurred to us a long
14 time ago and we just can't because it's controlled
15 somewhere else. And we are not able to so I apologize for
16 that. But we can adjust the temperature very minutely and
17 maybe it'll make us more comfortable. I got extra layers
18 on. So I apologize for that. If there's a legal issue
19 that comes up and I've got to address it, I'll put y'all
20 in the jury room, I'll address it as rapidly as I can and
21 get y'all back in here. There are factual questions. And
22 the lawyer's job is to address those factual questions.
23 Thus, as we go we take breaks, don't discuss the case.
24 I'll remind you of that. Keep an open mind. Ready to
25 begin. Ms. Folk will you place the jury under oath?

1 MR. VERNER: Your Honor, just, slightly prior, and I
2 didn't hear everything that's said, that the Court. Did
3 the Court ask if anybody knew the additional witness?

4 THE COURT: Yeah, the Richardson fellow?

5 MR. VERNER: Yes, sir.

6 THE COURT: And I didn't write the name down. What
7 was the name?

8 MR. SCOTT: Kirby.

9 THE COURT: Kirby Richardson. Any member of the
10 jury, there was another witness named by the State, he's
11 employed with Newberry County. Kirby Richardson is a
12 potential witness in the case. Any member of the jury
13 know him or related to him by blood or marriage, it would
14 create an issue for you not being able to be fair and
15 impartial. If so raise your hand, and I'll talk to you
16 further. No hands are raised. Fair enough.

17 MR. VERNER: And just, the Court was going to ask if
18 anybody --

19 THE COURT: Oh yeah. I did.

20 MR. VERNER: Stand up for a second so they can see
21 you.

22 THE COURT: All right. This young, this young man is
23 Franklin Dell Hayes, also called Bubba Hayes. Any member
24 of the jury panel now recognize him by visual, his face,
25 and would have an issue, work with him in the past or know

1 him from school, somewhere along those lines. Any member
2 of the jury have any relationship with him which would
3 create an issue for you not being able to be fair and
4 impartial for both the State and Mr. Hayes? Anybody? No
5 hands raised.

6 MR. VERNER: Thank you for hearing me, Your Honor.

7 THE COURT: Okay. Sure. I'm sorry, I forgot that.

8 (WHEREUPON, the jury was sworn at approximately 2:31
9 p.m.)

10 THE COURT: All right. Solicitor Daniel.

11 MR. DANIEL: Yes, Your Honor. May it please the
12 Court.

13 THE COURT: Yes, sir.

14 MR. DANIEL: Good afternoon Ladies and Gentlemen.
15 Welcome back to some of y'all who were on that first
16 trial. I'll be brief with my opening remarks. You have
17 to answer one question at the end of this case. Are all
18 of y'all firmly convinced that Mr. Franklin Hayes is
19 guilty of possession of methamphetamine. Methamphetamine
20 is illegal under our laws. And he's accused of having in
21 his possession, a certain amount of it, on July 13th of
22 this year, about five months ago now. It was a checkpoint
23 the Newberry Sheriff's Office was conducting. You know, a
24 license safety checkpoint, making sure only licensed
25 drivers are on the road, making sure there weren't any

1 drunk drivers, no equipment violations. That's why they
2 conduct these checkpoints periodically. And so July 13th,
3 early morning hours, about 2:00 in the morning, they're
4 doing this checkpoint. It's around Highway 34, Mt. Bethel
5 Garmany Road near the DMV. That's where the checkpoints
6 take place. Mr. Hayes is a passenger in a vehicle that
7 comes through the checkpoint. He's a backseat passenger.
8 Red truck. There are two other occupants in the vehicle,
9 the driver and the front seat passenger. Mr. Hayes, as I
10 stated, is in the backseat. And you have Deputy Corey
11 Cook, Deputy Thomas Miller who are seated right here.
12 They are some of the deputies who are doing this
13 checkpoint. So of course, routine questions, license,
14 registration, they ask the driver of the truck. At that
15 point some of the other deputies notice a shotgun in the
16 vehicle in the front seat area. A broken-down shotgun and
17 then they also smelled marijuana coming from the car. So
18 at that point they do have the right to search the vehicle
19 and they do that. Deputy Thomas Miller, while all this is
20 going on, he spots Mr. Hayes seated in the backseat of
21 this truck, kind of an extended cab pickup truck, kind of
22 moving around, moving his hands, suspicious type of
23 movements. Don't know if he has a weapon, drugs, whatever
24 the case may be. So then he's taken out of the car.
25 Eventually Mr. Hayes has a small baggie of methamphetamine

1 gripped in his hand. So he lets go of it, but he, he had
2 it clinched for a while. They pulled him out and it
3 turned out it was methamphetamine. Also they searched the
4 rest of the vehicle. In the backseat they find more
5 contraband, more drugs. They find another little baggie
6 of methamphetamine in the backseat where Mr. Hayes was
7 seated. Also once he was taken into custody, taken to the
8 jail, they do a strip search. Suspected he might have
9 more drugs on his person and he did. Had another baggie
10 of methamphetamine in his underwear that a correctional
11 officer seized or located during a strip search. That's
12 the case guys. So I really, don't really need to explain
13 it more than that. It's a very straight forward case in
14 essence. But he still gets a jury trial. By entering a
15 plea of not guilty, he's entitled to have a jury of his
16 peers, people from Newberry County decide guilt or
17 innocence. And no matter how overwhelming evidence of
18 guilt, people of this Country and Newberry, across the
19 United States, are entitled to have a jury of their peers
20 decide guilt or innocence. His Honor is not making a
21 determination of guilt or innocence, that's you guys. So
22 it's kind of a frustrating thing in a sense. It's
23 inconvenient for you guys.

24 MR. VERNER: Your Honor, that's an improper argument
25 to the jury.

1 THE COURT: Okay. I agree. You're not arguing.
2 This is, this is opening comments and we'll move on. I
3 sustain your objection.

4 MR. DANIEL: Our justice system is based on fairness.
5 And my, my point in essence is, is our justice system is
6 the best in the world. Is it efficient, not necessarily,
7 but is it fair, is it just. I'm trying to exalt the
8 justice system, our justice system. It doesn't make my
9 job easy. No. I don't get to make the determination of
10 guilt or innocence. People in other countries, they have
11 people in military uniforms make the decision of guilt.
12 That's, that's the system they have. Kangaroo courts in
13 other countries, but no, you guys get to do that here.
14 You guys get to be a check on that power that the State
15 has. But I welcome that burden that we have. I welcome
16 that. Just know this case, there is overwhelming evidence
17 of guilt. So I don't want you to think this is kind of a
18 trick question. We're here because he's entitled to a
19 jury trial. That's why we're here. But the evidence is
20 only going to lead you to one conclusion in this case.
21 It's going to be inescapable, unavoidable. He's guilty of
22 possession of methamphetamine. And that's my point. I'm
23 not trying to say this is inconvenient. That, that was
24 not my point. I, this justice system is the greatest
25 justice system in the world. It's fair, it's just.

1 You're away from your job and family, but that's kind of a
2 beautiful thing about this Country, because in the
3 alternative, you live in a Country where you are allowed
4 to make these decisions and not a government official. So
5 at the same time we want accountability, we want truth to
6 dictate your decision. And so we will be asking for a
7 verdict of guilty at the conclusion of this case. Thank
8 you.

9 THE COURT: All right. Mr. Verner.

10 MR. VERNER: May it please the Court, Your Honor.
11 The defense will waive opening statements to the jury.

12 THE COURT: Okay. Fair enough. All right. First
13 witness.

14 MR. DANIEL: Your Honor, the State calls Deputy Corey
15 Cook.

16 COREY COOK, being
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Daniel:

20 Q State your name.

21 A Deputy Corey Cook.

22 Q All right. Deputy Cook, you're employed with the
23 Sheriff's Office?

24 A Yes, sir.

25 Q Okay. How long you been working at the Newberry

1 Sheriff's Office?

2 A I was hired on July of 2013. A little over four
3 years now.

4 Q Okay. All right. July 13th of this year, almost five
5 months ago now, were you on duty early morning hours of
6 July 13th?

7 A Yes sir, I was.

8 Q Okay. And did you have an occasion to be involved in
9 a safety traffic checkpoint?

10 A Yes sir, I did.

11 Q Okay. And where were you conducting this safety
12 checkpoint?

13 A SC Highway 34 near Mt. Bethel Garmany Road in
14 Newberry County.

15 Q And that's near the Department of Motor Vehicles,
16 correct?

17 A Yes, sir.

18 Q Okay. And what is a safety checkpoint?

19 A It's when road officers, we stand in the roadway,
20 enforce traffic laws, make sure license drivers, nobody's
21 driving with open containers, nobody's driving drunk.

22 Q Okay. All right. Approximately what time were you
23 out there conducting this checkpoint?

24 A It was before, it was between, between 1:00 and 3:00.
25 Maybe earlier before that.

1 Q 1:00 and 3:00 in the morning?

2 A Yes, sir.

3 Q Okay. All right. And did you have an occasion at
4 that time to come into contact with a Franklin Hayes?

5 A Yes, sir.

6 Q All right. Describe how that came about.

7 A I observed a, it was a red in color smaller pickup
8 truck. I believe it, I believe it was a Chevy S-10. Mr.
9 Hayes was sitting in the backseat of this pickup truck
10 along with two other, the driver Mr. Jason Johnston and
11 the front seat passenger was Mr. Michael Johnston.

12 Q Okay. So it's a red Toyota pickup truck and you said
13 Jason Johnston is a, is the driver of the pickup truck?

14 A Chevy S-10 I believe. I believe, sorry. I believe
15 it was a Chevy S-10.

16 Q Okay. It's a red extended cab pickup truck?

17 A Yes, sir.

18 Q Okay. Jason Johnston is the driver?

19 A Yes, sir.

20 Q All right. And who, who's in the front seat, front
21 passenger seat?

22 A The front passenger seat would be a Mr. Michael
23 Johnston.

24 Q All right. And where is Mr. Hayes?

25 A Mr. Hayes is sitting in the backseat kind of towards

1 the passenger side behind, kind of towards Mr. Michael
2 Johnston on that side.

3 Q All right. So Mr. Hayes is sitting in the backseat
4 on the passenger side?

5 A Yes, sir.

6 Q Okay. All right. And what do you do when someone
7 comes through a checkpoint?

8 A I was the first officer and approached the vehicle,
9 so. The first thing we do is I ask the driver, Mr. Jason
10 Johnston, I asked him for his driver's license. Which he
11 did provide to me.

12 Q Okay. And at that point did anything unusual happen?

13 A Yes. Deputy Smith, Brian Smith, he's a, he was also
14 at the checkpoint on our shift. He, he approached the
15 passenger side of the vehicle and he alerted me, told me
16 that there was a shotgun on the passenger floorboard, on
17 the passenger, the front seat passenger floorboard which
18 got my attention. And I kind of leaned into the vehicle
19 to try to get a look at it and that's when I could detect
20 an odor of marijuana.

21 Q So you're notified by another deputy that he sees a
22 firearm in the floorboard?

23 A Yes.

24 Q Okay. So at that point you kind of lean closer to
25 the vehicle?

1 A Yes.

2 Q And then you detect an odor of marijuana?

3 A Yes, sir.

4 Q Okay. All right. So what happens next?

5 A Asked the driver out of the vehicle. I, I'm on the
6 driver side. I smelled marijuana. I've got probable
7 cause to search the vehicle and then make sure no
8 contrabands in there. So I asked the driver out. Deputy
9 Smith is getting the front seat passenger, Mr. Michael
10 Johnston out, and we're patting them down, searching their
11 persons. That's when my Sergeant, Sergeant Miller advised
12 that he could see the backseat passenger, Mr. Hayes --

13 MR. VERNER: Your Honor, I would object to anything
14 somebody else told him if it's being offered for the --

15 THE COURT: I agree. Make sure, answer the question
16 he asked you.

17 Q All right. Deputy Cook did you observe Deputy Miller
18 interact with Mr. Hayes?

19 A I did. After, as I was getting the driver out and as
20 Deputy Smith was getting them out that's when I heard my
21 Sergeant tell us to detain the subjects because he,
22 because of what he saw.

23 Q Okay. All right. And at that point what had the
24 officer seen to warrant further search of this vehicle?

25 A I'm sorry?

1 Q What had Deputy Miller seen in the backseat to
2 warrant further search of this vehicle?

3 A He had advised that he seen the backseat passenger,
4 Mr. Hayes, moving his hands like he's hiding something or
5 didn't know what he was reaching, whether he's reaching
6 for a gun or whatnot. For officer's safety reasons, he
7 told us all, to us all to go ahead and detain everybody.

8 Q Okay. So Mr. Hayes is, is brought out of the
9 vehicle? Is removed from the vehicle?

10 A Yes. But I, again, I was dealing with the driver.
11 Deputy Smith was dealing with the front seat passenger and
12 Sergeant Miller and Deputy O'Dell, they went to the
13 backseat with Mr. Hayes.

14 Q Okay. And at that point though was it discovered
15 that Mr. Hayes had something in his possession?

16 A Yes sir, it was.

17 Q All right. Do you know what that was?

18 A It was a --

19 MR. VERNER: Your Honor,--

20 MR. DANIEL: He can testify to what he seen.

21 MR. VERNER: If he saw or heard it, then I certainly
22 have no objections. If he's testifying that I heard from
23 another officer that they found such and such, I object.

24 THE COURT: He can testify to what he saw and what he
25 heard, but not what he heard another officer saw.

1 Q Deputy Cook, did you see anything that officers
2 located from Mr. Hayes when they pulled him out the
3 vehicle?

4 A Yes, sir. I did see something that they had seen,
5 taken from it, yes sir, I have.

6 Q Okay. And what was that?

7 A It's a small plastic bag with like a brownish white
8 sand like substance believed to be meth.

9 Q Okay. In your training experience, the substance
10 looked like methamphetamine?

11 A Yes sir, it did.

12 Q Okay. All right. And that was found in Mr. Hayes,
13 where was it discovered?

14 A In Mr. Hayes' hand.

15 Q Okay. All right. What happens next?

16 A Everybody gets detained and continue to, we, well, I
17 say detained, everybody gets placed in handcuffs. We
18 continue the search of everybody's persons and then the
19 search of the vehicle.

20 Q Okay. And so you participate in searching this red
21 truck?

22 A I did. I, my, I had the driver. I searched the
23 driver's person and also I assisted with the search of the
24 vehicle.

25 Q Okay. And did that search, did you discover anything

1 upon searching the vehicle?

2 A Yes, sir. I did. I located, in the backseat, a
3 Newport pack of menthol cigarettes inside of which had two
4 plastic bags. One of them had a green leafy substance
5 believed to be marijuana, and the other one also had some
6 more brown white-ish sand like substance believed to be
7 meth.

8 Q Okay. So once you searched the backseat, and again,
9 Mr. Hayes was seated in the backseat?

10 A Yes sir, he was.

11 Q You found a cigarette pack in the backseat, like on
12 the actual seat?

13 A Yes, sir.

14 Q Okay. And then you looked inside this cigarette
15 pack?

16 A Yes, sir.

17 Q And it contained two other plastic bags?

18 A Yes, sir.

19 Q And then one bag looked like marijuana?

20 A Yes, sir.

21 Q And the other bag appeared to be methamphetamine?

22 A That's correct.

23 Q Okay. All right. And so you're the one who sees
24 these drugs in the backseat?

25 A Yes, sir.

1 Q Okay. And also the drugs that you say was seized
2 from Mr. Hayes' person on the scene, in his hand, did you
3 also see that evidence as well?

4 A Deputy Teal took that whenever him and Sergeant
5 Miller went there. And as we were searching the vehicle,
6 as we found numerous contraband, we all placed it on the
7 front passenger seat. And then once the, once the search
8 was completed of everybody's person and the vehicle, I
9 gathered all the evidence to be logged into evidence.
10 Yes, sir.

11 Q Okay. All right. And I assume Mr. Hayes is taken
12 into custody, would he go straight to the Newberry
13 Detention Center?

14 A No, sir. He did not. Mr. Hayes advised that he, he
15 was a diabetic and his blood sugar was low. So Mr. Hayes
16 was then transported by Deputy Smith to Newberry County
17 Memorial Hospital ER to get checked out.

18 Q All right. And what was the diagnosis or what
19 happened at the hospital?

20 A As I was clearing up from the checkpoint, I was
21 actually headed to the hospital to meet with Deputy Smith.
22 Whenever I got there I could see Deputy Smith loading Mr.
23 Hayes back into a patrol vehicle. Deputy Smith advised me
24 that --

25 MR. VERNER: Your Honor, I object to what Deputy

1 Smith advised him.

2 THE COURT: No hearsay. I agree. Sustained to
3 hearsay.

4 Q All right. Deputy Cook, all right, so eventually,
5 though he is transported from the hospital to the jail?

6 A Yes, sir.

7 Q Okay. Tell us, were you a part of the booking
8 procedure at the jail?

9 A No, sir.

10 Q Okay. When someone's taken to the jail on a drug
11 case, are there certain protocols for that individual?

12 A Yes. Usually whenever we take anybody to jail if
13 there's drugs involved in any way, to ensure that no
14 contraband is going into the jail, we have a strip search
15 done on those, anybody involved.

16 Q Okay.

17 A So I asked for a strip search on Mr. Hayes.

18 Q All right. Did you perform the strip search?

19 A No sir, I did not.

20 Q All right. Who, who performed the strip search of
21 Mr. Hayes?

22 A Sergeant Richardson and --

23 MR. VERNER: Your Honor, is he testifying to
24 something he knows from his personal knowledge because he
25 witnessed it, or he's just reading a report?

1 A I,--

2 THE COURT: Wait a minute. Wait a minute before you
3 answer. Testified, I heard him say that he was there at
4 the detention center when he was booked.

5 MR. VERNER: I don't think that's?--

6 THE COURT: -- if he was referring to something in
7 his memory that would need to be refreshed, then I agree
8 with you.

9 MR. VERNER: I'll re-listen, Your Honor. My
10 understand was he said he was not there for the search,
11 but we'll, I'll, I'll listen more attentively.

12 THE COURT: Okay. Rephrase that or ask the question
13 again Mr. Daniel.

14 Q Okay Your Honor. All right. Deputy Cook, you went
15 to the jail when Mr. Hayes was initially brought in?

16 A Yes, sir.

17 Q Okay. All right. And did you request the jail to
18 perform a strip search on Mr. Hayes?

19 A Yes sir, I did.

20 Q And is that protocol in drug cases?

21 A Yes sir, it is.

22 Q So did you communicate with a correctional officer at
23 the jail to perform this strip search?

24 A Yes, sir. I spoke with Sergeant Richardson at the
25 jail personally.

1 Q And did you ask Sergeant Richardson to perform a
2 strip search?

3 A Yes, sir.

4 Q Okay. Were you present while this strip search was
5 conducted?

6 A No, sir. I was not in the same room that they
7 performed the strip search in.

8 Q Okay. To your knowledge did this strip search reveal
9 or any contraband located during the strip search?

10 MR. VERNER: Your Honor, how's he going to testify to
11 that if he wasn't --

12 THE COURT: If he wasn't there, it is not proper. I
13 agree with that.

14 MR. DANIEL: All right, Your Honor, I will move on.

15 Q All right. So you, all the drugs located at the
16 scene, the check point, you logged into evidence? Is that
17 correct?

18 A Yes, sir.

19 Q And then the drug evidence, did you receive any drug
20 evidence at the jail?

21 A Yes sir, I did.

22 Q Okay. Who did you receive drug, drug evidence from
23 at the jail?

24 A Sergeant Richardson.

25 Q Okay. Did you log that into evidence?

1 A Yes sir, I did.

2 Q Okay. And again, where this checkpoint was being
3 conducted, I have to ask this question, is the Highway 34
4 at Mt. Bethel Garmany Road, is that in Newberry County?

5 A Yes sir, it is.

6 Q Okay. And I'm going to, were photographs taken in
7 this case?

8 A Yes sir, they were.

9 Q Okay. I'm going to hand you what's been marked for
10 ID purposes, State's number two. Do you recognize these
11 photos?

12 A Yes, sir.

13 Q Okay. And are they, and what, what are they
14 photographs of?

15 A They are photographs of the vehicle inside and all
16 the contraband that was located there within, right there
17 on the front passenger seat.

18 MR. DANIEL: Your Honor, I'd offer State's number 2,
19 a grouping of photos for admission into evidence.

20 THE COURT: Any objection?

21 MR. VERNER: Is, how many photographs is that? Is
22 that the whole series of them?

23 THE COURT: Seven pages, 40 photographs? Y'all have
24 exchanged those, haven't you?

25 MR. DANIEL: Yes, sir.

1 MR. VERNER: I've got them. No objection, Your
2 Honor.

3 THE COURT: All right.

4 (Whereupon, State's exhibit 2 is admitted into
5 evidence.)

6 THE COURT: And Ladies and Gentlemen of the jury,
7 since that's now evidence, y'all will have that in the
8 jury room. You'll get to see it, so you don't have to
9 commit to memory. We'll have it back there. All right.
10 Go ahead.

11 Q All right. Deputy Cook, tell us what--

12 MR. DANIEL: Your Honor, with the Court's permission
13 can Deputy Cook step down here?

14 THE COURT: Sure.

15 Q Deputy Cook, if you could, just kind of go through
16 these photographs and explain them.

17 A Start with this one?

18 Q Yeah. Go ahead.

19 MR. VERNER: Are y'all introducing color photographs
20 or black and white?

21 MR. DANIEL: Color.

22 THE COURT: I think they're colored copies.

23 A This is the subject vehicle. This is Deputy Smith
24 back here. He's standing by with--

25 Q Deputy Cook, speak up for the court reporter.

1 A This is Deputy Brian Smith. He's standing by with
2 one of the subjects back here at the rear of the vehicle.
3 And this is myself, Sergeant Miller and Deputy O'Dell
4 going through searching the vehicle. This is just a
5 photograph of the front of the vehicle which I do
6 apologize, it does appear to be a red Toyota.

7 MR. VERNER: Speak up.

8 A I do apologize, it does appear to be a red Toyota.
9 Another photograph of the front. Deputy O'Dell searching
10 the vehicle. This is the photograph of the vehicle in the
11 front passenger seat. This is the broken-down shotgun
12 that was found. It's, you can't see any of the small bags
13 of the drugs, that's where--

14 COURT REPORTER: Wait a minute.

15 MR. VERNER: Speak up.

16 A I'm sorry. Again, this is the broke down shotgun,
17 pack of cigarettes that I found, two bags in. This is a
18 bluish pipe that was also, meth pipe that was also located
19 inside the vehicle. This is, right here, this is the bag
20 between the, the barrel of the shotgun and between the
21 pipe, that's the bag that Mr. Hayes had in his hands
22 whenever, whenever Sergeant Miller and Deputy O'Dell got
23 to him. Again, pack of cigarettes opened up, you can see
24 the, it's kinda hard to see but green leafy substance
25 believed to be marijuana in there. Another photograph of

1 the cigarettes, the marijuana. That's me looking in the
2 back of the vehicle just to see if there is any further
3 evidence. I don't, after this point I don't believe any
4 further evidence was found. Photographs of me searching.
5 Again, photograph of the front passenger seat. Also tried
6 to get pictures of the floorboard, located down there.
7 More photographs of the shotgun broken down, the blue meth
8 pipe. Again, the bag Mr. Hayes had on him with the meth
9 pipe.

10 Q Okay. And you don't have to go through each one of
11 them if you already covered it. Some of them might be
12 redundant.

13 A Yeah. I think that's about it.

14 MR. DANIEL: Walter, if you could go back up to the
15 backseat photograph.

16 Q All right. Deputy Cook, point exactly where you
17 located the cigarette pack in the backseat.

18 A It was right around here toward the middle of the
19 seat, toward this side. It's right, I guess where the
20 middle person would seat, if there was a driver side
21 person. Right on the crease, right behind there is where
22 I located the pack of cigarettes.

23 Q All right. I think, I think we've covered most of
24 the photos. All right. So you can have, you can sit back
25 in the witness box. All right. So we're talking about

1 three baggies of what y'all believed to be
2 methamphetamines were seized in this case?

3 A Yes. Yes, sir.

4 Q All right. Two on the scene at the checkpoint,
5 correct?

6 A Yes, sir.

7 Q And then one was seized following a strip search at
8 the jail?

9 A Yes, sir.

10 Q Okay. And so you logged these baggies of
11 methamphetamine into evidence?

12 A Yes, sir. I did.

13 Q All right. Explain that process.

14 A I gather all the contraband located. Any bags of
15 meth or weed, the crack pipe, even the broke down shotgun.
16 That was all logged into evidence. Pretty much the
17 process is, I just go to the evidence, list everything,
18 list what locker it's going to be in, seal it all up in
19 nice boxes or bags. Then I place it in evidence locker,
20 hit the lock button, shut the door and it stays in there
21 until our evidence custodian goes through it to, for
22 further testing and process.

23 Q So that's a secure locker?

24 A Yes, sir.

25 Q Who has access to the evidence locker?

1 A As far as I'm, as what I've been told, only two
2 people in the whole Sheriff's Office has a key to that
3 locker.

4 Q And again when was the evidence logged in?

5 A It was logged in, I don't know the exact time, but it
6 was logged in probably between, my incident cleared at
7 3:00 a.m. It was logged in probably between 3:00 and 6:00
8 a.m.

9 Q And I'm going to hand, and what kind of bags do you
10 put the drug evidence in?

11 A We have, I don't, I'm not sure the technical term, we
12 have a plastic bag we, we put all our stuff in and then we
13 have like a heat sealer. I guess it seals the bag with a
14 heat thing. We clamp it down, put that in there and throw
15 it in the evidence locker.

16 Q Okay.

17 A Sometimes we even had the old school ones where just
18 had the sticky things and we peeled it back and they would
19 shut.

20 Q All right. State's number 3, do you recognize these
21 packages contents?

22 A Yes sir, I do.

23 Q And what is State's 3?

24 A This whole, this whole thing?

25 Q Yes. All the contents.

1 A One, well one of State's 3's is the actual bag Mr.
2 Hayes had on his person. The other was a bag I found in
3 that Newport cigarette box. And the other one is a zip
4 lock bag that Sergeant Richardson handed to me at the
5 NCDC. The jail whenever, after the strip search was
6 performed on Mr. Hayes.

7 Q Is there a case number associated with this arrest?

8 A There is. It's 17-06687.

9 Q Is that how you guys would know which evidence is
10 associated with which case?

11 A Yes, sir.

12 Q Please answer any questions Mr. Verner has.

13 CROSS-EXAMINATION

14 By Mr. Verner:

15 Q Deputy, on July 13th of this year, you were one of
16 several deputies at a traffic safety checkpoint?

17 A That's correct.

18 Q Okay. I don't, I'm not asking for a long definition,
19 but just in short substance, what is a traffic safety
20 checkpoint?

21 A Just where --

22 Q What's the purpose of it?

23 A Minor traffic law enforcement, DUI's.

24 Q Okay. It's for, well first and foremost, it's
25 basically what we think of as a road, police road block or

1 checkpoint?

2 A Yes, sir.

3 Q There are several police units located at the scene?

4 A Yes, sir.

5 Q Are there any, are the blue lights on the cars, or
6 how do you let cars know that there's a checkpoint up
7 ahead?

8 A We have checkpoint signs that we place out on the,
9 on, further down the road so people could see it prior to
10 approach.

11 Q So kind of like construction, temporary construction
12 signs, you put signs on the side of the road?

13 A Yes, sir.

14 Q Checkpoint ahead or slow down type?

15 A Yes, sir.

16 Q Okay. Are the, do the police have their lights on?

17 A Some of them do, yes sir.

18 Q Okay. And it's kind of a combination, there are
19 highway patrolmen and county deputies at the scene?

20 A Yes, sir.

21 Q Any other police units?

22 A Not at this one. No, sir. Sometimes City, the City
23 might join us, Newberry City, but they weren't at this
24 particular checkpoint.

25 Q Okay. And what are you looking for at a traffic

1 safety checkpoint?

2 A Making sure drivers, nobody's driving without a
3 license, no expired tags, no open containers, no unlawful
4 drugs.

5 Q The primary purpose of it is, the policy is to make
6 sure that people are, are driving lawfully licensed and
7 lawfully registered cars, right?

8 A Yes, sir.

9 Q It's not just so you can stop cars and look into
10 them, right?

11 A That might not be the primary objective, but.

12 Q Okay. Well is it an objective of the Sheriff's
13 Department to look into cars, to use the checkpoints just
14 so you can get into cars and look around?

15 A It's plain view. Yes, sir.

16 Q Okay. So if, if I approach a traffic safety
17 checkpoint, and let's say I present you with a valid
18 driver's license and valid registration.

19 A Yes, sir.

20 Q Is there any reason that you can think of, either by
21 Sheriff's Department Policy or law, that entitles you to
22 expand the scope of that duration?

23 A You have a valid driver's license, valid registration
24 and no, no other contraband. Shotgun in the vehicle, yes
25 sir.

1 Q That's right. All things being equal, if I come to
2 your checkpoint.

3 A Yes, sir.

4 Q And I present my driver's license or show it to you.

5 A Yes, sir.

6 Q And I present the proper insurance, registration of
7 the car.

8 A Yes, sir.

9 Q Lawfully there's no reason to continue to detain me
10 at that point at a traffic safety checkpoint, right?

11 A No, sir.

12 Q Because you hadn't, I haven't committed any traffic
13 infractions. It's not a case where you stop me for bad
14 driving. It's a case where I'm acting lawfully and then
15 you are, now you are saying if you see in plain view
16 evidence of criminality, or such as an open container --

17 A Right.

18 Q -- then that raises doors to examine it further,
19 doesn't it?

20 A Yes sir, it does.

21 Q Okay. So if you saw a, a beer can or something like
22 that in my console, would you feel you've got the
23 authority to continue the detention of my vehicle?

24 A Yes, sir.

25 Q Okay. And you would examine and, and check the beer

1 and see if it was --

2 A -- open. Yes, sir.

3 Q Okay. But short of seeing something that gives you
4 probable cause to, to search the vehicle, you would agree
5 that there's no right to continue to detain my vehicle?

6 A I'm sorry. Could you repeat that please?

7 Q Short of you coming across, innocently coming across
8 something in plain view in my car, that's against the law.
9 You've got no legal right to go into my glove boxes or
10 under my car seats or anything like that, would you?

11 A No, sir.

12 Q Okay. In this case, who, whose car was this, truck?

13 A I'm not one-hundred percent of the owner, I want
14 to --

15 Q Okay. Who was the driver of the car?

16 A The driver was a Jason Scott Johnston.

17 Q Okay. And Mr. Johnston presented his lawful driver's
18 license to you?

19 A Yes, sir.

20 Q Was there anything out of order about his driver's
21 license?

22 A No, sir.

23 Q What about registration and/or insurance? Was that
24 presented to you?

25 A No, sir. Usually we just check the back tag.

1 Q Okay.

2 A The tag, sticker on the tag. But nothing was out of
3 ordinary about the tag.

4 Q Okay. I guess if there are questions about the
5 registration you can ask him for more information. But
6 generally the way y'all do it by policy, is just he's got
7 his driver's license and you look at the back tag and make
8 sure the stickers are proper?

9 A Yes, sir.

10 Q And match up and then you would ordinarily --

11 A -- let him go on his way.

12 Q -- release him. And I think you testified just a
13 second ago that his tags were also proper?

14 A Yes, sir.

15 Q Okay. And Jason is in the front seat, right?

16 A Yes, sir.

17 Q He's the passenger, he's the driver?

18 A Yes, sir.

19 Q And then there's another man in the car in the
20 passenger seat?

21 A Yes, sir.

22 Q And that is Michael Johnston, right?

23 A That's correct.

24 Q Okay. And then my client, Mr. Hayes, is in the
25 backseat passenger?

1 A Yes, sir.

2 Q Okay. I think you testified to the jury that one of
3 the other officers testified that there was a shotgun on
4 the floorboard?

5 A That's correct.

6 Q And was that the probable cause to search the
7 vehicle?

8 A No. That was not in itself probable cause but it
9 didn't, for officer safety reason, we wanted to make sure
10 that nobody was --

11 Q -- well, that's what first --

12 A -- that's what raised interest. Yes, sir.

13 Q That's what the first, when you heard that there was
14 a shotgun on the floorboard, that is what first generated
15 this stop from a traffic safety checkpoint stop into more
16 of a, a investigative detention?

17 A Correct.

18 Q Is it unlawful for someone to drive with a shotgun in
19 a car?

20 A No, sir. It's not.

21 Q Okay. And in fact, did y'all bring the shotgun? Do
22 you know if the Solicitor's Office has the shotgun?

23 A No, sir.

24 Q Have you seen it since this case?

25 A Not since that night. No, sir.

1 Q Okay. But this is a fair and accurate photograph of
2 the condition of the shotgun?

3 A Yes sir, it is.

4 Q Okay. And it's fair to say the, it's a disassembled
5 shotgun, that the, the barrel is not connected to the
6 stock or the butt?

7 A No, it wasn't.

8 Q And I don't see in that photograph if there's even
9 like a trigger mechanism that's connected to that, is
10 there?

11 A It doesn't appear to be.

12 Q Okay. So I'm not in law enforcement, but it would
13 appear that, that, the shotgun in that condition is
14 clearly not in a workable condition?

15 A Right. That photograph was taken after it's been
16 placed on the passenger seat.

17 Q Okay.

18 A Deputy Smith saw it when it was still laying on the
19 floorboard. He probably wouldn't realize it was
20 disassembled at the time.

21 Q But it was another deputy who found it?

22 A Yes.

23 Q Okay. And it was on the floorboard when he found it?

24 A He advised it was on the passenger floorboard. Yes,
25 sir.

1 Q Okay.

2 A Front passenger floorboard.

3 Q But if you had seen the shotgun in that condition, as
4 it's laid out for the jury in that photograph, it's clear
5 that that's not a present danger. That the gun's not in
6 any kind of present, you could get hit with it, but as a
7 shooting weapon, it's certainly not a threat.

8 A That's correct.

9 Q And that would be fairly noticeable fairly quickly if
10 you looked at it?

11 A Yes, sir.

12 Q Okay. Now, my understanding is, well, not my
13 understanding, but my guess is, at least when you do these
14 stops at nighttime, don't on TV, you usually see the
15 officer has a mag light or something that he's holding
16 when he's looking in the vehicle.

17 A Right.

18 Q Is that how--

19 A And we all have flashlights. Yes, sir.

20 Q Okay. Is that, would you of had a flashlight when
21 you came to the vehicle?

22 A Yes, sir. I did.

23 Q Okay. So when you look, even though it's nighttime,
24 when you're looking into a car cab, you've got a, what I
25 call a mag light or a more powerful flashlight that aids

1 you?

2 A Yes, sir. But there's things like the console and
3 the passenger's legs, again, I might not of been able to
4 see.

5 Q Okay. It would certainly be under the passenger's
6 legs and possibly, to some extent, underneath the seat, if
7 that's where he found it?

8 A I would assume so. Yes, sir.

9 Q And who was the passenger that was under?

10 A That was Michael --

11 Q Thompson?

12 A Michael --

13 Q Johnston.

14 A Johnston. Yes, Johnston.

15 Q Okay. And also under Michael Johnston, was that,
16 where was the blue meth pipe? Is, do you have the meth
17 pipe into evidence?

18 A I--

19 Q Okay.

20 A Not that I'm aware of.

21 Q You've got a photograph of it, but you, you hadn't
22 seen it as part of your presentation today?

23 A No, sir.

24 Q But that's consistent with what you found?

25 A I didn't locate the, the meth pipe.

1 Q Okay. Now I guess I asked you this a little bit
2 earlier outside the presence of the jury, but the, that
3 could also be a marijuana pipe, is that fair?

4 A As, I don't, I don't know, I don't know who, what
5 they, what makes one what.

6 Q Okay. But it's certainly not the old fashion wooden
7 pipe like you used, like your grandfather used to smoke?

8 A Definitely not a tobacco pipe.

9 Q Okay. But the, and you were not the officer who
10 found the meth pipe?

11 A No, sir. I was not.

12 Q Okay. Did you find it on the backseat?

13 A I found the pack of cigarettes in the backseat.

14 Q Okay.

15 A Not the meth pipe.

16 Q The only thing that you found was on the backseat,
17 all right, when you searched the vehicle, was Franklin
18 Hayes still in the backseat?

19 A No, sir. He was not.

20 Q He had already been removed?

21 A Yes, sir.

22 Q Okay. And when, know that there are three men in the
23 car, the two Johnstons and Bubba Hayes in the back?

24 A Correct.

25 Q And everybody had been removed when the car was

1 searched?

2 A Yes, sir.

3 Q And the only part of the car or the primary part of
4 the car you searched was the backseat area?

5 A I, yes sir. I searched the driver himself, Mr. Jason
6 Johnston. Then I, I searched the, pretty much the driver
7 front side and the driver backside.

8 Q Okay. So you searched the driver's area and the
9 backseat. And the second officer searched the passenger
10 front seat. And there may have been some duplication.

11 A There's not really any rhyme or reason to how we
12 searched them. I got the driver out, I searched him, I
13 stayed on the driver's side and searched the driver's
14 front side and the driver's backside.

15 Q Is there anything that connects the cigarette package
16 on the backseat to Bubba Hayes other than he was the
17 backseat passenger?

18 A He, he being the closest proximity to it. Yes, sir.

19 Q Okay. It's logical to think that he was the closest
20 one and most likely. But, but the proximity in the
21 vehicle is, is alone the connection to him on that?

22 A As far as I'm aware of, yes sir.

23 Q Okay. Now, if you've got three men in a car.

24 A Yes, sir.

25 Q You find a shotgun, it's not in a workable condition,

1 but you find a shotgun in the vehicle?

2 A Yes, sir.

3 Q You find a meth pipe, and by you, I mean you, law
4 enforcement, in plural.

5 A Correct.

6 Q You have a meth pipe that is, your understanding was
7 found under the front passenger seat, or if you'll defer
8 to the other officer. But assuming you find a meth pipe
9 under the front passenger seat.

10 A Yes, sir.

11 Q And I know there will be another officer who'll
12 testify about finding that, and you find marijuana on the
13 front passenger seat, front passenger?

14 A Correct.

15 Q And you find drugs loosely in the backseat?

16 A Yes, sir.

17 Q Okay. Was Jason Johnston charged with possession of
18 meth?

19 A No sir, he was not.

20 Q Okay. Was he charged with possession of marijuana?

21 A Yes, he was.

22 Q Okay. And he's the driver?

23 A Oh, I, excuse me, I, you said Jason, I'm, I meant to
24 say Michael Johnston was.

25 Q Okay.

1 A He, he had the marijuana.

2 Q But the driver was not charged, as far as we know
3 it's a legal shotgun. So nobody got a gun charge?

4 A No, sir.

5 Q Jason, the driver, Johnston, was he charged with
6 marijuana?

7 A No, sir.

8 Q Was he charged with meth?

9 A No, sir.

10 Q Okay. The passenger, Michael Johnston, was he
11 charged with meth?

12 A No, sir. He was not.

13 Q Okay. But he was charged with marijuana?

14 A Yes, he was.

15 Q And, and that's because they found a small amount of
16 marijuana in his front pocket?

17 A Yes, sir.

18 Q Okay. And then the third client or the third
19 possible person to be charged in this car was Bubba Hayes
20 and he picked up all of the charges, right? With the
21 marijuana and for meth?

22 A Correct.

23 Q Okay. You have been a deputy since 2013?

24 A Yes, sir.

25 Q Were you employed here in Newberry prior to that

1 time? Well, let me, let me, all right, where are you
2 from?

3 A I'm from Newberry County.

4 Q Okay.

5 A Whole life.

6 Q When did you start working for law enforcement?

7 A July 13th.

8 Q Okay.

9 A When I started here.

10 Q So it's a situation where you went straight from
11 whatever you were doing into law enforcement, not like the
12 city police or anything along the way?

13 A Correct.

14 Q Okay. Did you personally know Franklin Hayes at
15 that, since you been a deputy?

16 A No, sir. Not personally.

17 Q Okay. Are you familiar with Michael Stribble?

18 A Are we talking about now, or prior to?

19 Q Right now.

20 A Yes, sir. I am.

21 Q Okay. How about in, did you know Mike Stribble in
22 2013?

23 A Not until I got hired on. No, sir.

24 Q Okay. But was he a deputy at the time you got hired?

25 A Yes, sir.

1 Q Okay. And Mike Stribble is a deputy with the
2 Sheriff's Department?

3 A Yes sir, he is.

4 Q Okay. Is it fair to say that he is estranged, he
5 would be the half-brother of Bubba Hayes? Do you know
6 that, or?

7 A I, I just learned that information earlier this week.

8 Q Okay. So what kind of relationship they have
9 together, you don't know?

10 A I did not, I knew they, I heard that they were
11 related, but I did not know they were half-brothers.

12 Q Okay. But if they are on good terms or bad terms,
13 you wouldn't know?

14 A No sir, I would not.

15 Q Okay. Thank you, Deputy. If the Solicitor has any
16 follow-up.

17 MR. DANIEL: No, Your Honor, I don't.

18 THE COURT: All right. You may step down.

19 MR. VERNER: Your Honor, I think I need, could I take
20 just a short, if we could do like a short laboratory
21 break.

22 THE COURT: We can do that. Y'all step in the jury
23 room and have you right back out here.

24 (Whereupon, the jury was excused from open court for
25 a break.)

1 (Whereupon, a short break was taken.)

2 THE COURT: Let's bring them in.

3 (Whereupon, the jury came into open court at
4 approximately 3:30 p.m.)

5 THE COURT: All right. Call your witness.

6 MR. SCOTT: All right. Thomas Miller, Your Honor.

7 THOMAS MILLER, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Scott:

11 Q State your name.

12 A Thomas Miller.

13 Q All right. Officer Miller, you, July 13th of 2017,
14 about 2:00 a.m., were you out there, Highway 34 near Mt.
15 Bethel Garmany Road?

16 A I was.

17 Q Okay. And you were participating in a traffic safety
18 checkpoint?

19 A I was.

20 Q You were supervising?

21 A Yes, sir.

22 Q All right. Do you recall when this car was stopped
23 that Mr. Hayes was in?

24 A Yes, sir. I was in proximity to it. Yes, sir.

25 Q Tell me, we already heard Cook say he approached the

1 driver side.

2 A Yes, sir.

3 Q All right. Where were you when this was going on and
4 he was talking with the driver?

5 A I was standing at, I guess you'd say like right in
6 front of the driver side front head light at the front of
7 the vehicle.

8 Q Okay. And what were you doing?

9 A Supervising the Deputies conducting the checkpoint.

10 Q All right. At what point did you have the need to
11 approach the car?

12 A Initially I saw Deputy Smith. He kind of had a
13 concerned look on his, look on his face. And he's a
14 relatively new officer and he was advising Deputy Cook of
15 something. I observed that. I couldn't necessarily tell
16 what they were saying. But I, I could tell that they were
17 having some type of conversation through the vehicle.

18 Q Okay. So Cook, the officer we just heard from, he's
19 on the driver's side and Deputy Smith is where, on the
20 passenger?

21 A Yes, sir.

22 Q All right. And how far away are you from the car?

23 A A few feet. Three or four feet.

24 Q Could you hear what they were talking about?

25 A Not, not details. But I could, I could hear that

1 they were saying something.

2 Q All right. You saying that caused you to approach to
3 figure out --

4 A A little.

5 Q -- what was going on?

6 A A little closer. Yes, sir. And I think I inquired
7 with Deputy Cook about that, about, about, you know, kind
8 of what the issue was. And he advised me of the, of the
9 firearm in the floorboard on the, on the passenger side.

10 Q Did you see it, did you see that firearm?

11 A At that time, no.

12 Q Okay.

13 A And Deputy Cook at that time, he also advised that
14 he, he detected the odor of marijuana coming from the
15 vehicle.

16 Q Okay. And did you approach closer to the car?

17 A I did. But I, I still stayed at the front.

18 Q All right. Well, walk us through. I don't want you
19 to be in the front of the car the whole time.

20 A Okay. Okay. As that's going on I noticed Mr. Hayes
21 in the backseat, used my flashlight as, as Deputy Cook
22 stated. And just to kind of get a overview of everybody
23 in the car due to the deputies behavior, I want to see
24 what's going on inside the car for their safety.

25 Q Okay.

1 A And I noticed he's, he's got something in his hand
2 and he's going towards his waistband. And, and somewhat
3 in view, but then out of view as he's moving around.
4 He's, he's towards the passenger side in the rear seat of
5 the vehicle, but he's not like in a seat belt or restraint
6 or anything. Obviously, you know, plays into our concerns
7 with the traffic laws. But he's kind of not situated in
8 one particular spot. And he's, he's moving a lot and that
9 raises my concern that he might be reaching for a weapon
10 or, or trying to conceal contraband.

11 Q All right. Who are you talking about who's doing
12 this movement?

13 A Mr. Hayes.

14 Q Okay. And he is in, you say kind of the rear
15 passenger side of the car?

16 A Yes, sir.

17 Q And just sort of show what you are talking about to
18 the jury. What is he doing with his hands?

19 A He's got his hands and it looks like he's trying to
20 either put something in his pants or take something out of
21 his pants, one way or the other.

22 Q What actions did the, did you deputies take when
23 y'all saw him doing this?

24 A Deputy O'Dell was, was standing towards the front of
25 the vehicle with me. And he had already initially started

1 approach the passenger side when we had some issues going
2 on. And I advised Deputy O'Dell to go ahead and, and
3 specifically get Mr. Hayes out due to the, the furtive
4 movement. So movement he was making, my concern for
5 safety and we'd already established probable cause to
6 search the vehicle. I, I didn't see any issue with
7 removing him from the vehicle for our safety.

8 Q Okay.

9 A Based off his movements and, and the advisement a
10 firearm was located in plain view in the vehicle.

11 Q And tell us once again, we talked about earlier with
12 the last witness, there's nothing illegal about driving
13 with a shotgun in your car, is there?

14 A No, sir.

15 Q All right. What about marijuana?

16 A That, that's a different story.

17 Q Okay.

18 A It's, it's not legal.

19 Q Did, what cue did you have that there may be
20 marijuana in the car?

21 A At the time Deputy Cook's advisement. When I, I
22 eventually went around to Deputy O'Dell's side of the car,
23 as we were taking Mr. Hayes from the vehicle, I could, I
24 could smell the odor of marijuana.

25 Q Okay. So do y'all have the idea that there would be

1 marijuana because you could smell it, you're saying?

2 A Yes, sir.

3 Q All right. And did you help Officer Teal O'Dell take
4 Mr. Hayes out of the car?

5 A I didn't physically help him. But I, I was more over
6 there supervising.

7 Q Okay.

8 A Yes, sir.

9 Q Did you watch Officer O'Dell take him out of the car?

10 A I did. Yes, sir.

11 Q Okay. And what else did you observe between Officer,
12 or Deputy O'Dell and Mr. Hayes?

13 A Mr. Hayes, in the same hand that appeared, he
14 appeared to be either removing something or, or placing
15 something in his waistband, he still had that hand
16 clinched up. And Deputy O'Dell was advising him to
17 release what, whatever was in his hand, later determined
18 to be that, that bag of meth.

19 Q Okay. Well, did you see at some point Mr. Hayes
20 relinquished what was in his hand?

21 A To Deputy O'Dell. Yes, sir.

22 Q And did you watch that exchange?

23 A I did. Yes, sir.

24 Q Okay. And so you saw what Deputy O'Dell took from
25 Mr. Hayes?

1 A Yes, sir.

2 Q Okay. Let me see, Walter, in State's number 2.

3 Scroll, scroll to the next one. Keep going. Yeah, right

4 there. State's number 2, in this picture here --

5 MR. VERNER: I'm assuming he's talking about page

6 two, Exhibit 3?

7 Q This picture here. Page two, it's the, I guess if

8 you're looking at the page on the left column it's the

9 second one down. In the picture, you see the barrel of

10 the shotgun and the blue ceramic pipe and then a plastic

11 baggy.

12 A Yes, sir.

13 MR. VERNER: You can step down, Deputy, if you need

14 to.

15 Q Okay. And what is this, this baggie right here that

16 we see?

17 A That's, that's the baggie that Deputy O'Dell removed

18 from Mr. Hayes' hand.

19 Q Okay. You saw him pull it out of his hand?

20 A Yes, sir.

21 Q And put it there. All right. And then, while you're

22 down, the glass pipe.

23 A Yes, sir.

24 Q Who, who found that?

25 A I did.

1 Q And where did you find it?

2 A It was in the backseat floorboard directly behind
3 the, the passenger seat. So it would have been right at,
4 at the, the feet of, where Mr. Hayes was seated.

5 MR. SCOTT: Go back to the first page, Walter. All
6 right. Stop.

7 Q All right. I'm going to show, this is on the first
8 page of State's number 2, it's the bottom right picture.

9 A Yes, sir. It was located right here in this area.

10 Q Okay. And again, where was Mr. Hayes seated in this
11 picture?

12 A He was seated right here..

13 Q Okay. So Mr. Hayes is the back, the rear passenger.
14 So the backseat passenger side, and the pipe was located
15 where?

16 A Right here behind the passenger seat in the
17 floorboard where his feet would've been.

18 Q All right. So where his feet were. Okay, you can
19 sit down. Did you see, Deputy Cook was talking about a
20 cigarette pack, it had some stuff in it?

21 A I did. I, I recall, I didn't know what was in it. I
22 just recalled seeing a, a Newport pack of cigarettes on
23 the seat as Deputy O'Dell removed Mr. Hayes from the
24 vehicle.

25 Q Okay. Where was it in the truck when you observed

1 it?

2 A In the center of the backseat. Near the center of
3 the backseat.

4 Q Okay. Center portion of the backseat. Did you
5 observe anybody else in the backseat of the car?

6 A No, sir.

7 Q Just Mr. Hayes?

8 A Yes, sir.

9 Q Show you State's number 3. Do you see in State's
10 number 3, which one of the baggies was in Mr. Hayes' hand?

11 A It's going to be the bag with the, the excess of, of
12 the bag hanging off of it, the long tail. The plastic
13 hanging off of it.

14 Q Okay.

15 MR. SCOTT: Just let the record show, there's three
16 baggies in State's number 3. He's pointing to the one, I
17 guess for lack of a better description, it's got kind of a
18 long tail where the plastic has been stretched out. And
19 it's sort of indicated in the picture we were just
20 showing.

21 Q Okay. That, that was pretty much your involvement
22 with that?

23 A With the exception of taking the pictures. Yes, sir.

24 Q Okay. And so you took all these pictures then?

25 A Yes, sir.

1 Q All right. Answer any questions Mr. Verner has
2 please.

3 A Yes, sir.

4 CROSS-EXAMINATION

5 By Mr. Verner:

6 Q Deputy, were you on regular duty? You were
7 interviewing cars yourself at the traffic safety
8 checkpoint?

9 A As needed.

10 Q Okay.

11 A My, my primary duties as a supervisor, I tend to keep
12 a overview of everything that's going on.

13 Q So if it got crowded in traffic you could go and get
14 a license from the driver as well as any other deputy.
15 But when it is slower, you are kind of making sure
16 everything's going smoothly?

17 A Yes, sir.

18 Q Okay. And what were y'all looking for at this safety
19 checkpoint?

20 A Impaired drivers, want to make sure everybody's
21 licensed, no traffic violations.

22 Q Now is a DUI checkpoint different than a safety
23 checkpoint, or are they pretty much the same?

24 A One in the same to my experience.

25 Q Okay. But your, your two concerns are to make sure

1 car passengers are not impaired?

2 A Drivers.

3 Q Drivers?

4 A Yes, sir.

5 Q And that the cars are in safe workable, that the
6 people driving the cars are, are licensed and the cars are
7 safe and registered?

8 A That's correct.

9 Q Okay. Did Mr. Jason Johnston appear to be impaired?

10 A No, sir.

11 Q Okay. Had he, is it fair to say he also had his
12 credentials in, in order for the car?

13 A Yes, sir.

14 Q Okay. It's a little bit unclear, who saw the shotgun
15 first?

16 A Deputy Brian Smith.

17 Q Okay. So and I thought I heard you say Cook said he
18 saw a shotgun.

19 A Cook was advised of the shotgun by Deputy Smith.

20 Q Okay. But he was the one who informed it then to
21 you?

22 A Yes, sir.

23 Q Okay. Did you see the shotgun in the truck?

24 A At the point that I got to the passenger side of the
25 vehicle and doors were opened. Yes, sir.

1 Q Had it been moved by either the officers or anybody?

2 A I'm unsure at that time.

3 Q Okay. And you took, at some point, one of the
4 deputies would have taken the shotgun and put it along
5 with other evidence, on the front seat of the vehicle, and
6 taken photographs of it?

7 A That's correct.

8 Q Okay. Is it fair to say that even a lay person can
9 see that the shotgun is not in, assembled?

10 A In the pictures taken, yes sir.

11 Q Yes. Okay. And obviously, if somebody said they
12 only saw the butt end of a shotgun under a seat, that
13 would be, but it's clearly a disassembled shotgun that was
14 found in the car?

15 A Yes, sir.

16 Q Okay. Which ordinarily would not put an officer in
17 imminent apprehension of being attacked by the shotgun.

18 A Ordinarily, but I'm not sure to what degree Deputy
19 Smith observed the shotgun.

20 Q Right. No, I mean you can see it in different angles
21 and, but just as it is presented to the jury, you, you
22 would agree with me that, that is not a threat as a
23 firearm to be used?

24 A Y'all's perception of it at this point, yes sir.

25 Deputy Smith's perception of it at 2:00 a.m. when it's

1 dark on a highway, seeing it in a floorboard could be a
2 different story.

3 Q But even at 2:00 a.m. on a dark night on the
4 floorboard, it is still legal to drive with a shotgun.

5 A By State law, yes sir.

6 Q Okay. When you first, and did you know Bubba Hayes
7 prior to this stop?

8 A I have, I've known him for many years.

9 Q Okay. Are you on good terms, or, or friendly terms,
10 or unfriendly terms with Bubba, or just working terms?

11 A Just indifferent.

12 Q Okay. Where, so you recognized him when you first
13 came to the vehicle?

14 A When I got to the passenger side.

15 Q Okay.

16 A Yes, sir.

17 Q At least when you first took a good look at him you
18 would have?

19 A Yes, sir.

20 Q Okay. Where was he seated when you first approached
21 the vehicle? I know in the backseat, but what part of the
22 backseat?

23 A Towards the passenger side.

24 Q Okay. Would you agree with me, that there, and after
25 any kind of arrest incident like this, you are required,

1 the officers who participate in any kind of arrest are
2 required to do a written report shortly after an arrest in
3 case we're here later on, to document what happened?

4 A Yes, sir.

5 Q Okay. Would you agree with me, there's a difference
6 between under the front passenger seat and in the backseat
7 floorboard? Something can be on the backseat floorboard
8 without being under the front seat passenger seat, right?

9 A Could be under the front of the passenger seat or
10 under the rear of the passenger seat.

11 Q Right. But just in general, if I'm driving my car,
12 you could see something that's clearly in the backseat
13 floorboard without it being underneath the passenger seat
14 or either seat?

15 A Depends on where I'm viewing it from.

16 Q Okay. And likewise, things could be under the
17 passenger seat that either can be towards the front or
18 towards the back?

19 A That's correct.

20 Q Okay. In, in your report you indicated that it was
21 under, that this meth pipe that we're talking about was
22 under the front passenger seat but towards the back. Is
23 that a fair--

24 A Yes, sir.

25 Q -- recollection of where it was located?

1 A Yes, sir.

2 Q Okay. Is there any reason to assume that the front
3 seat passenger could not have put it there?

4 A It would've been, it would've been easier for
5 somebody from the, the backseat of the vehicle to place it
6 at the location it was found than it would be for somebody
7 in the front half of the vehicle.

8 Q The proximity of it being located was closer to the
9 backseat passenger than it was for the front seat
10 passenger?

11 A That's correct.

12 Q But, but my question is, is it possible for somebody
13 to have put it, if I was riding in the front passenger
14 seat, is it within the realm of possibility that, that
15 person could have put it under the seat?

16 A Sure.

17 Q Okay. Okay. Thank you for answering my questions
18 Deputy.

19 THE COURT: Anything else?

20 MR. SCOTT: Nothing further.

21 THE COURT: You can step down, Deputy.

22 MR. DANIEL: Your Honor, the State calls Kirby
23 Richardson.

24 KIRBY RICHARDSON, being
25 first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Daniel:

Q State your name.

A Kirby Richardson.

Q All right. Mr. Richardson, you are a correctional officer at the Newberry County Detention Center, correct?

A Yes, sir.

Q Okay. How long you been working at the jail?

A A little over five years.

Q Okay. And what are your duties at the jail?

A I'm a shift supervisor. I oversee the officers and inmates at the jail. Make sure the day-to-day duties get done.

Q Do you participate when inmates, or excuse me, when individuals are first brought into the jail do you participate in the booking process?

A Yes, sir. I am trained in booking.

Q What does that intel, the booking process?

A The booking process starts when they first come in.

We do a pat down of the inmates while they're still in

handcuffs to make sure they don't have any weapons,

contraband on them at that point in time. Then we

actually book them into the system. We take a picture,

get their information and put charges in the system. And

if the officers request it, or we find something during

1 the pat down search we perform a strip search.

2 Q Okay. So someone's arrested out in the street,
3 they're initially searched by the officers who arrest them
4 and then you do a further search once they're brought to
5 the jail?

6 A Yes, sir.

7 Q Okay. And that's just to insure the safety at the
8 jail, no weapons or, or drugs are brought in?

9 A Yes, sir.

10 Q Things like that. All right. You mentioned strip
11 search of individuals brought into the jail.

12 A That's correct.

13 Q And you typically do those in what kind of cases?

14 A Drug cases, weapon, sorry, cases involving weapons,
15 and occasionally shoplifting cases if they believe there's
16 more items that the person may have on their person.

17 Q So not everyone who's brought into the jail is
18 subjected to a strip search, correct?

19 A No, sir. We have to have a reason.

20 Q Okay. And typically, why, why do you do a strip
21 search? Is it arresting officer, will they request it, or
22 how's that work?

23 A Either the arresting officer will request it or if
24 during the pat down procedure we find something on the
25 inmate that's been brought in.

1 Q Okay. All right. I want to go back to July 13th of
2 this year, about five months ago, were you working at the
3 jail during the early morning hours of July 13th?

4 A Yes, sir.

5 Q Okay. And did you have an occasion to come into
6 contact with a Franklin Hayes?

7 A Yes, sir.

8 Q All right. And was that individual taken into
9 custody on that date and brought into the jail?

10 A Yes, sir.

11 Q Okay. Tell us what your involvement was with Mr.
12 Hayes.

13 A Mr. Hayes was brought in by Deputy Smith and Deputy
14 Cook. When they walked into the jail, they requested a
15 signal six, strip search. And we performed a strip search
16 on Mr. Hayes. When we went into the dress out room with
17 him, while conducting a strip --

18 MR. VERNER: Your Honor, at this point, just subject
19 to my earlier objections I raised at pre-trial. I'll
20 raise those that the Court has already ruled on.

21 THE COURT: All right. Yeah. And your objection is
22 noted. You're protected on the record. I'm going to
23 allow the testimony.

24 Q All right. Officer Richardson, so you were, Deputy
25 Cook requested that you perform a strip search on Mr.

1 Hayes?

2 A Yes, sir.

3 Q Okay. All right. Continue from there, so you're
4 performing a strip search?

5 A Yes, sir. While performing the strip search, when we
6 got to taking off Mr. Hayes' pants, while we were
7 searching his pants, he moved, and two bags fell out of
8 his underwear. One contained a substance believed to be
9 meth. The other bag we believed to be empty. After
10 completing the strip search we turned it over to Deputy
11 Smith.

12 Q What kind of bag was it?

13 A Clear plastic bag.

14 Q Was it, did it have a zip or some kind of locking
15 seal, anything like that, anything significant about it?

16 A Yes, sir.

17 Q Okay. I'm going to hand you what's been marked for
18 ID purposes, it's State's number 3. Do you recognize the
19 contents in that package?

20 A Yes, sir.

21 Q Okay. And what, what is it?

22 A This is the, the bag and the two smaller pieces of
23 plastic that fell out of Mr. Hayes' underwear.

24 Q All right. And which, there's multiple bags in here,
25 which bag or bags fell out of Mr. Hayes' underwear?

1 A I believe it was all three.

2 Q All right. Now, you said that there is a, there is
3 one zip lock bag in here.

4 A That would be this one.

5 Q Okay. And so you do recognize that as the, as the
6 bag, bag that fell out of his underwear on July 13th?

7 A Yes, sir.

8 Q And did you remove Mr. Hayes' underwear and then the
9 bag fell out or how did that go, the sequence.

10 A He actually had not removed his underwear yet. He
11 was, we had just got his pants off and he was, we were
12 searching that. And while we were watching him it fell
13 out when he moved.

14 Q Okay. And did you recognize that to be contraband?

15 A Yes, sir.

16 Q And what, what'd you do with the drugs at that point?

17 A It was turned over to Deputy Smith once the strip
18 search was concluded.

19 Q Okay. You turned it over to Deputy Smith?

20 A Yes, sir.

21 Q Okay. Or did, would it of been Deputy Cook? I know
22 you don't have an incident report but you turn it over to
23 one of the deputies at the Sheriff's Office?

24 A Yes, sir.

25 Q Okay. Immediately, you turned it over?

1 A Yes, sir.

2 Q Okay. All right. And this might seem like a silly
3 question, but is the Newberry County Detention Center in
4 Newberry County?

5 A Yes, sir.

6 Q Please answer any questions Mr. Verner has.

7 CROSS-EXAMINATION

8 By Mr. Verner:

9 Q Office Richardson, were you the, what was your role
10 for the jail that night? You were working in the booking
11 department?

12 A Shift supervisor.

13 Q Okay. Is part of your job would have been booking
14 your inmates?

15 A Yes, sir.

16 Q Now, I want to clear something up, is, strip search
17 is, is not an automatic procedure for anybody being
18 arrested here in Newberry County, is it?

19 A No, sir.

20 Q It's fair to say that's kind of an intense and
21 invasive process and, for both the officer and the inmate.
22 So it's kind of preferred not to do it unless there's a
23 particular reason to do it?

24 A Yes, sir.

25 Q Even for drug cases, it's not necessarily always

1 performed, is it?

2 A If we're aware that they have a drug charge, yes sir,
3 it is conducted.

4 Q So it's policy for everybody who has even a simple
5 possession of drugs, that they'll be strip searched?

6 A Yes, sir.

7 Q Okay. And that's to make sure it's not hidden
8 underwear or other?

9 A Yes, sir.

10 Q Step down if you would.

11 A Yes, sir.

12 Q Officer Richardson. This is the, well, the big
13 square bag that I'm holding is just kind of the evidence
14 bag that law enforcement would have used?

15 A Yes, sir.

16 Q Okay. And the same probably for the square bag
17 inside of this?

18 A Yes, sir.

19 Q Okay. Show the jury, I'll, which ones did you find?

20 A This one here.

21 Q Speak up. He said this one here and he, I think he
22 identified the roughly three inch by three inch plastic
23 bag. Now the lettering on this bag, is, is that, do you
24 know who put the lettering or the numbers on the bag?

25 A No, sir. We didn't put the letters on there.

1 Q Okay. You found what, what you're claiming is this
2 squarish small zip lock bag?

3 A Yes, sir.

4 Q Okay. Not this bag? The little, looks like toilet
5 paper or saran wrap type bag?

6 A No, sir.

7 Q And not this one?

8 A No, sir.

9 Q Okay. What was in this square bag?

10 A Small white-ish brown crystal like substance.

11 Q Okay. Do you know, I thought you said you thought you
12 saw two or three bags in his underwear?

13 A There was a clear plastic bag that fell out that was
14 similar to this bag that actually did not have anything in
15 it.

16 Q Is that in the evidence container?

17 A No, sir.

18 Q Okay. Do you know why it's not in the evidence
19 container?

20 A No, sir.

21 Q Okay. Now did, who was with you when you performed
22 this search?

23 A Officer Cleveland.

24 Q Cleveland?

25 A Yes, sir.

1 Q Is that a Correctional Officer or is that a Deputy?

2 A Correctional Officer.

3 Q Okay. I, I would assume by the nature of the
4 procedure that you would try to keep the attendees of a
5 strip search fewer. It wouldn't be that, something all
6 the deputies there could come in and watch?

7 A Correct.

8 Q Okay. Did you have any further activity--

9 A -- no, sir.

10 Q -- role in this case other than that scene?

11 A No, sir.

12 Q Okay. Okay. Thank you, Officer.

13 A Yes, sir.

14 THE COURT: Anything else?

15 MR. SCOTT: No questions, Your Honor.

16 THE COURT: Next.

17 MR. SCOTT: All right. The State calls Lynn Black.

18 LYNN BLACK, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Scott:

22 Q State your name for the record.

23 A My name is Lynn Black.

24 Q Okay. Ms. Black, you work with SLED?

25 A That's correct.

1 Q Okay. And you're in the forensic department?

2 A Yes, sir. The forensic services laboratory and the
3 drug analysis department.

4 Q All right. And a part of your job is testing
5 substances brought in by law enforcement to determine
6 whether or not they may contain legal narcotics?

7 A , Correct.

8 Q Part of your job?

9 A Yes, sir.

10 Q And how long have you worked in that capacity?

11 A At SLED I've worked for a little over nine years.
12 Prior to my job at SLED I worked the same capacity at the
13 Georgia Bureau of Investigation in Atlanta, Georgia for
14 about eight years.

15 Q All right. How many, any idea how many times you've
16 tested substances to determine whether or not they may
17 contain illegal narcotics?

18 A At SLED I think last count was over 8,000 cases and I
19 believe in Georgia it's probably about the same.

20 Q Okay. Okay. 16,000 give or take?

21 A Give or take, yes.

22 Q And you ever been in big court like this before?

23 A Yes, sir.

24 Q You ever testified as a expert?

25 A Yes, sir.

1 Q In what field was that?

2 A Drug chemistry.

3 Q Drug chemistry. Okay. How many times have you
4 testified as an expert in drug chemistry?

5 A 131.

6 MR. SCOTT: Your Honor, the State offers Lynn Black
7 as an expert in drug chemistry.

8 THE COURT: Any voir dire?

9 CROSS-EXAMINATION

10 By Mr. Verner:

11 Q Who is your employer?

12 A South Carolina Law Enforcement Division.

13 Q Does that make you an officer?

14 A I am a class three officer. Yes, sir.

15 Q Okay. Does, does that give you authority to arrest?

16 A No, sir.

17 Q Okay. But you are a law enforcement officer?

18 A Correct.

19 MR. VERNER: Okay. Your Honor, just, I don't
20 challenge the credentials but I'm not stipulating.

21 THE COURT: Okay. Ms. Black will be qualified as a
22 witness in the field of drug chemistry. She can offer
23 opinions to the extent her expertise, education and
24 experience allows her to do so because that's what she's
25 trained in and that's what she's probably going to testify

1 about. Go ahead.

2 CONTINUE DIRECT EXAMINATION

3 Q Okay. Ms. Black, are you familiar with the SLED lab
4 number L17-11843?

5 A Yes, sir.

6 Q Okay. And does that, does that coincide with a
7 Sheriff's Department case number of 1706687?

8 A Yes, it does.

9 Q Okay. And is that a report on a suspect, Franklin
10 Hayes?

11 A Yes, sir.

12 Q Okay. And what incident date do you have listed for
13 that SLED lab number?

14 A July 13th, 2017.

15 Q Okay. And when did you have an occasion to test
16 substances associated with this case?

17 A Would you like a date?

18 Q Yeah.

19 A Is that what you're going to want?

20 Q Please.

21 A I received this case, if I may refer to my notes
22 here. Well, the case, excuse me, was received in the
23 laboratory on August the 4th, 2017. I received it on
24 September the 14th, 2017.

25 Q Okay. And then testing November 8, 2017?

1 A Testing, October 25, 2017.

2 Q And then report issued November 8, 2017?

3 A Yes.

4 Q Okay. And what items were you, is this a Newberry
5 Sheriff's Department case?

6 A Yes, it is.

7 Q Okay. And what items were you asked to test?

8 A I received two plastic bags and a zip lock bag, all
9 of them contained crystal substance.

10 Q Okay. And let me show you State's number 3. Do you
11 recognize this?

12 A I do.

13 Q And does it contain the two plastic bags you
14 referenced as well as the zip lock bag?

15 A It does.

16 Q Okay. Whenever you receive that, tell us the
17 condition or what it was received in rather.

18 A When we receive evidence at SLED, we typically
19 receive it in what's called a best kit. And best is an
20 acronym for best evidence sample testing. And that's just
21 a way that SLED came up with years ago to stream line drug
22 evidence submissions. And what that consist of, is like
23 a, it's a large manila envelope that has a unique number
24 on it. It's called a best number because it starts with a
25 B and it usually has, I believe it's like six, yeah, six

1 numbers after it and that's a unique number. So that's
2 something that we can use to track the evidence and also
3 the law enforcement agency can use that to track the
4 evidence as well. And inside that manila envelope is a
5 tamper evident plastic bag, plus some, the paperwork that
6 the law enforcement agency needs to fill out before they
7 bring it in to SLED. So they'll put the evidence inside
8 that tamper evident bag, seal it up. Usually they stick
9 it all back in that manila envelope and bring that into
10 SLED where they bring it into our evidence control
11 department. And one of our evidence technicians will take
12 that, they'll get the paperwork and they'll enter all that
13 information, suspect name, law enforcement agency, the,
14 their case number and all that into our computer system.
15 And then they will generate a unique crime lab case
16 number. And on this, this evidence, it's actually inside
17 this bag, there's a yellow sticker. You can hardly see
18 it. That's the, it's a bar code. That's the unique crime
19 lab case number that was assigned to this case. And what
20 we use that for is we will use that bar code to track this
21 evidence within SLED. So anybody who handles it, they
22 scan it to themselves and then that'll show in our
23 computer, that, that person either had it in their custody
24 at some time or transferred it to someone. But once they
25 do that, the, excuse me, the evidence technicians will

1 place that into their, the drug, excuse me, the vault
2 downstairs. And then when I'm ready to do the testing
3 I'll come down and pick up the evidence and they'll scan
4 this bar code and this evidence to me. And so then it
5 shows that it's in my custody and I take it upstairs to
6 the drug lab and place it in our vault until I'm ready to
7 test it.

8 Q Okay. Why are these procedures, you know, all these
9 bar codes and signatures and tamper evident bags, why,
10 why's all that important in your line of work?

11 A It's important just to make sure that the evidence is
12 sealed, that has not been tampered with. That whatever
13 the law enforcement officer, you know, places in the bag
14 has not been, you know, altered in any way. That when he
15 places it in there, when I get it it's the same, in the
16 same condition. And also, you know, as I said before, the
17 bar codes are to track it so we know where this evidence
18 is at any given time. And we can look at our chain of
19 custody and see that, you know, it came in on this day,
20 this evidence person took it and put it in the vault.
21 Then they gave it to me and then I took it back and then
22 it was sent back to the law enforcement agency.

23 Q Okay. Do you have the chain-of-custody?

24 A I do.

25 Q Okay. And so, who with the Sheriff's Department

1 would have brought it to you guys?

2 A According to my records it was Michael Stribble.

3 Q Okay. And then it, I guess it's checked in at SLED?

4 A Correct.

5 Q And who's, is Doris Yarborough still doing that?

6 A Yes. She did that. She took the evidence in, placed
7 it into the evidence vault and then another evidence
8 technician, Jackie Davis, gave it to me.

9 Q Okay. All right. And now, when you receive it, you
10 talk about tamper evident, was there any evidence that,
11 that bag had been tampered with when you got ready to test
12 it?

13 A No. And I check it before I open it up. And also, I
14 can't really tell, this was in another bag. But
15 underneath this paper you, you can see that I'd written on
16 the tamper evident bag that the seal was intact and the
17 date that I opened. And I also write that on my
18 worksheet. So if there had been anything, you know, amiss
19 with this I would have noted it and it would have been
20 reflected on the report.

21 Q Okay. Well, I'm just curious, if you get one that
22 has been tampered with and you can tell, do you even test
23 it?

24 A We do. And it's a new policy that we just instated
25 this year, that we will test it. We will note that it

1 was, you know, either it wasn't sealed. A lot of times
2 some of the bags just have, you know, imperfections in
3 them or sometimes, you know, maybe the officer or
4 something forgot to stick something in there and they try
5 to mess with it. And we'll just note it on our worksheet
6 and also it will reflect it on the report. It will say,
7 you know, the best kit seal was, was not in place or
8 something like that.

9 Q Okay. But there were no defects that you noted in
10 this bag?

11 A No.

12 Q All right. And then you performed test on those
13 substances?

14 A Correct.

15 Q And issued a report November 8th. Let me show you
16 State's number 1. Do you recognize that?

17 A I do.

18 Q Okay. Did you, did you render, or did you form an
19 opinion as to what the item in, in the bag listed as
20 State's number 3 contained?

21 A Yes, sir.

22 Q Okay. And what, what was your opinion?

23 A The bag that I tested I found methamphetamine. The
24 net weight was 0.21 grams.

25 Q Okay. And you say the bag you tested, which one was

1 the bag that you tested?

2 A As I said before, there were, there were two plastic
3 bags and then there's a zip lock bag. The two plastic
4 bags were kind of knotted. So I tested one of those. And
5 it's, it's labeled as the case number L17-11843-1.1.1-1.

6 Q Okay. Show me which one that is.

7 A That would be that one.

8 Q All right. Now you're pointing, for the record, is
9 this the one with the kind of the long tail on it?

10 A Yes.

11 Q That you see here, one with the, with kind of, I
12 guess, looks like the plastic has been pulled out like
13 taffy kinda.

14 A Yes.

15 Q Okay. Now the other bags, you tested this one, what,
16 what sorts of tests did you do on the other plastic baggy
17 and the zip lock bag?

18 A I did not do anything on the other plastic bag. I
19 weighed, aside from weighing it.

20 Q Okay.

21 A The zip lock bag, I weighed it and did a preliminary
22 test.

23 Q Okay. What is a preliminary test?

24 A A preliminary test is just a test that we do that
25 would just give an indication of what the substance may

1 be. It's not a confirmatory. It doesn't tell me exactly
2 what it is. It gives me just a, kind of a class of drugs
3 or, or just a direction to go to in the result of my
4 analysis.

5 Q Okay. And, now you, you were explaining to me
6 earlier, you did the full battery of tests, I guess, on
7 that, the baggy we're talking about that's got the long
8 kinda pulled out tail on it.

9 A Yes.

10 Q You tested that one. Why didn't you perform the same
11 test on the zip lock bag and then the other plastic baggy?

12 A That was because the weight of the, the bag I tested
13 was 0.21 grams. The weight of the second plastic bag was
14 0.14 grams. And then the weight of the zip lock bag was
15 less than .1 gram. So if you total all those up you don't
16 get to the, the threshold which is the statutory threshold
17 in the law which is one gram. All those barely come up to
18 less than a half a gram. So according to our policy as
19 SLED, you know, we are able to test one out of all those
20 three because all those samples looked similar in
21 consistency and color. And also based on my experience I
22 was able to determine that, you know, I could test one bag
23 out of the three just to get one sample, you know, totally
24 confirmed.

25 Q Okay. So your expert opinion on item 1.1.1, again,

1 the plastic bag with the long tail on it, your expert
2 opinion as to what was in that, is what?

3 A Methamphetamine.

4 Q Okay. What about the zip lock bag and the other
5 plastic baggy? Do you have a expert opinion as to what
6 those could contain based on your observations and what do
7 you call them, preliminary test?

8 A Preliminary test. They were indicative as also, the
9 word that's also used in the report. Indicative
10 preliminary is the same, means the same thing. Based on
11 that, I, you know, I can't say for certain that it's
12 methamphetamine. But based on the testing that I did, you
13 know, I'm confident that, you know, I have met the
14 threshold for methamphetamine, that no further testing
15 needed to be done.

16 Q Okay.

17 MR. SCOTT: Your Honor, the State offers number 1,
18 her report for admission into evidence. And the State
19 offers State's number 3 which is the bag containing the
20 methamphetamine for admission into evidence.

21 THE COURT: Any objection other than the prior
22 objection?

23 MR. VERNER: I thought the photographs were number 1,
24 Your Honor.

25 THE COURT: They were 2.

1 MR. VERNER: Okay. So the State marked number 2 in.
2 Okay. So the photographs are number 2.

3 THE COURT: Am I right, Joy?

4 COURT REPORTER: Number 1 is drug analysis; number 2
5 is the photos of 40 photos and number 3 are the drugs.

6 MR. VERNER: So we got three things into evidence
7 now. The photographs, the drugs and then the report will
8 be separate. Okay. All right. I don't have any
9 objection to the admission of 1, 2 or 3, Your Honor.

10 THE COURT: Very good. They're all in.

11 (Whereupon, State's Exhibits 1, 2 and 3 were admitted
12 into evidence.)

13 MR. SCOTT: Okay. No further questions.

14 CROSS-EXAMINATION

15 By Mr. Verner:

16 Q I want to call you doctor, but you're not a doctor
17 by--

18 A No. No, sir.

19 Q -- education, are you?

20 A No, sir. I have a Master's Degree, not a Doctorate.

21 Q So that's close on that track, but not quite there?

22 A One could say that, yes.

23 Q And your degree is, your undergraduate degree is in
24 what?

25 A My, I have a Bachelors of Chemistry.

1 Q Okay.

2 A Master's degree in Chemistry, pardon me.

3 Q Okay. So just out of curiosity where did you go to
4 college?

5 A Kentucky Wesleyan College.

6 Q Okay. And your Masters is in what?

7 A Forensic science.

8 Q Okay. Is that necessarily forensic science that,
9 that's just kind of the general in crime scene
10 investigation as opposed to, or is that related
11 specifically to drugs?

12 A It's not crime scene, it's, it's all of forensic
13 science. It was, I, I learned a little bit about all the
14 different disciplines including crime scene. But it had
15 a, kind of a direction with chemistry and DNA.

16 Q Okay. Just, well, when we talk about forensic
17 studies though, that's just kind of a, a study of
18 everything as it relates to the investigation or each
19 other?

20 A Forensic science. All the different scientific
21 disciplines in relation to crime, crime investigation.
22 Yeah.

23 Q But, but this, I guess my point is, that's not
24 necessarily related to chemistry or, or specifically to
25 drug cases?

1 A Well, we had a, kind of a, chemistry was one of the
2 main parts of this study, yes.

3 Q Okay. And you talked about the one gram threshold
4 for drugs. That is because if you have more than a gram,
5 it could, it could bring in other charges or greater
6 charges. So that's kind of where the gram comes in, or
7 what, where does that come in?

8 A That's, the gram is, is not just specific to any
9 drug, it's specific drugs.

10 Q Okay.

11 A According to the law, you know, cocaine has a drug,
12 has a weight threshold, methamphetamine, heroin,
13 marijuana, there's various ones. But in this particular
14 case methamphetamine has a one gram threshold. If you
15 have less than a gram that's called possession. If you
16 have a gram or more, up to 10 grams, that's called
17 possession with intent to distribute. Over 10 grams is
18 trafficking. And then there's different levels of that as
19 well.

20 Q So that's kind of a charging threshold is why y'all
21 have chosen that one gram?

22 A Correct.

23 Q Okay. And the legislature comes up with that one
24 gram theory?

25 A Correct. Yes.

1 Q And y'all kind of enforce it?

2 A Yes, sir.

3 Q And you are stationed out of Columbia?

4 A That's correct.

5 Q So, you, as far as what happened here in Newberry,
6 you wouldn't know what happened on July 13th of 2017?

7 A No, sir. I have no personal knowledge.

8 Q All you know is that you got from the Sheriff's
9 Department, this paper size plastic bag that was heat
10 sealed shut?

11 A Actually, it's the bag inside.

12 Q Oh, the bag inside of it. The smaller one. Okay.

13 A It's, it's two bags inside.

14 Q Okay.

15 A Actually.

16 Q So you got the smaller one and then when you were
17 through, then you heat sealed it and sent it back?

18 A Correct.

19 Q In the secured envelope. And its heat sealed so
20 nobody can --

21 A That's, that, actually the bag, that's a bag I think
22 that the Solicitor's Office put it in. There's another
23 bag inside of that.

24 Q Okay.

25 A And then the folded bag is the best kit bag.

1 Q Eventually, would you, it's like those little dolls
2 inside of dolls.

3 A Yes.

4 Q Eventually you find drugs in here.

5 A That's correct.

6 Q Okay. My question is this, we've got three unique
7 drugs or containers for drugs in this, eventually we'll
8 find three separate baggies for drugs, right?

9 A Yes.

10 Q Two of them are, appear to be drugs wrapped in
11 cellophane or saran wrap type?

12 A Plastic bag. I call them plastic bags. Sometimes
13 they are saran wrapped. Yes, sir.

14 Q Okay. Are these plastic bags? Are these cellophane,
15 or --

16 A I would consider those corner bags. Like if you took
17 a plastic bag and you just cut the corner out of it and
18 then they tie it up.

19 Q Like a shopping bag or like a zip lock?

20 A I've seen shopping bags, could be a zip lock bag,
21 could be, you know, a sandwich bag.

22 Q And then the, they're fairly similar looking, aren't
23 they?

24 A Yes.

25 Q Okay. And then you've got the third one which is

1 this squarish, about two and a half inches, or three
2 inches by three inches bag?

3 A Yes. The zip lock bag.

4 Q Okay. So if you got the report and it said that the
5 square bag or the zip lock bag was found in such and such
6 a location, you can distinguish that from a report later
7 on, from these other two bags, right?

8 A Correct.

9 Q But these other two bags, do you know where they were
10 found on the location?

11 A I do not. It did not say on our request.

12 Q Can you tell me which bag was found in the cigarette
13 package and which bag was found in the car?

14 A I cannot. No, sir.

15 Q One of them you have field tested. I mean not field
16 tested, you have, is there a difference between
17 preliminary testing and confirmation testing?

18 A Yes, sir.

19 Q If you were going to send me to prison based on
20 results of a drug test, would you feel confident as a
21 chemist and an expert witness, just relying entirely on a
22 preliminary investigation to justify me going to prison?

23 A I would prefer confirming the test.

24 Q You think the confirmed test is a lot more reliable?

25 A That's correct.

1 Q And on these two individual bags, you only tested one
2 of them?

3 A Yes.

4 Q Okay. Ordinarily, you agree with me, that's not a
5 problem if somebody's in possession of all of them? You
6 don't need, you just need some meth to prove possession of
7 it, right?

8 A You need less than a gram, yes.

9 Q What if we're in a situation where drugs are found in
10 different locations and there are possibly other people
11 with access to the drugs, do you think it would become a
12 little bit more relevant which bag was found where?

13 A Possibly, but that's not up to me.

14 Q Okay. But we know that one of these two bags tested
15 positive for drugs?

16 A That's correct.

17 Q You did not test the second bag?

18 A I did not do a full analytical scheme on the second
19 bag. No.

20 Q And on the third bag, the little square bag, you just
21 did kind of a preliminary test?

22 A Yes, sir.

23 Q Okay.

24 A Hang on. Just a second. Let me back up. The, the
25 one bag, I did a full analytical scheme. The other

1 plastic bag that was similar to it, I did not, all I did
2 was weigh that one. The zip lock bag, the square one that
3 you're referring to, I only did a preliminary or
4 indicative test.

5 Q Okay. Now is that like a chemical that turns a
6 certain color?

7 A Yes.

8 Q If you put like a sample in it, and it will turn
9 purple in the test tube or something like that?

10 A Yes. Similar to that, yes sir.

11 Q Okay. Kind of like if I'm testing pool water for PH,
12 it will change colors based on --

13 A I don't know. I'm not familiar with pools.

14 Q -- I don't have one either. That's a lot less
15 reliable than the actual spectroscope examination. Or
16 what's the instrument that you use?

17 A On this particular one, I used, it's a big word or
18 big words. Fourier transform infrared spectroscopy.
19 FTIR. All right.

20 THE COURT: Can you give her the acronym for it?

21 A FTIR. That's the easy way to say it.

22 Q FTI. You can write it down for her later.

23 A Sure.

24 Q If you need to. But you would consider that a very
25 sophisticated accurate device?

1 A That's a, yes, that's a confirmatory instrumentation.

2 Q Okay. Would you consider just a preliminary test
3 that accurate as the FTIR?

4 A No, and that's why we don't use it only.

5 Q Okay.

6 A You know, we do both of those tests.

7 Q And then even as many years as you've been in the
8 business, an eye test of substances to determine if that
9 is specific drugs, would you agree with me that's probably
10 the least reliable?

11 A Probably, yes sir.

12 Q If you've been doing it a long time, you're a lot
13 better at it, but it's still an opinion at the end of the
14 day?

15 A Correct.

16 Q Okay. And this is the report that I believe the
17 State introduced as number 1?

18 A It's--

19 Q -- or 3, okay.

20 A I think it's 1.

21 Q State's 1. And I'm going to hand you this, that's
22 the, appears to be the same copy. Under item 1.1.1, you
23 can scroll down just little bit more, Mr. Bentley. Okay.
24 Please. You took into evidence two plastic bags
25 containing crystal substance, correct?

1 A Yes, sir.

2 Q And those would be whatever the little bag material
3 is, but those would be the ones that look like toilet
4 paper, the kinda flimsy ones?

5 A Correct. Not a zip lock bag.

6 Q Not the square zip lock bag.

7 A Correct.

8 Q And you tested one of them?

9 A That's correct.

10 Q And you confirmed the test at 99.7 percent accuracy?

11 A That is for the weight actually.

12 Q Okay. And the other one you did not test, you just
13 weighed the substance, but it was untested?

14 A Correct.

15 Q Okay.

16 A The one that weighed 0.14 grams.

17 Q And then the, the zip lock bag, the square one, you
18 just did the, basically the test tube, the preliminary
19 test?

20 A That's correct.

21 Q Okay. Now again, as where each of these items at the
22 crime scene were found, or the car, or where ever they
23 were found, that is beyond your knowledge and what you've
24 been asked to do?

25 A That's correct. I have no personal knowledge of

1 that.

2 Q All right. Thank you for your testimony today.

3 MR. VERNER: Oh, I'm sorry. I was going to take the
4 drugs.

5 MR. SCOTT: All right. Judge, just to clarify.

6 REDIRECT EXAMINATION

7 By Mr. Scott:

8 Q 1.1.1 is the one, again, that, that I, it's got the
9 long kind of pulled out taffy tail on it?

10 A Yes. Yes.

11 Q And that's the one that you did the full battery, and
12 then, the acronym, what is the machine?

13 A FTIR.

14 Q FTIR examination on and conclusively you can say
15 that's the methamphetamine?

16 A Correct.

17 Q And the zip lock bag you did a indicative testing,
18 presumptive testing?

19 A Correct.

20 Q All right. Based on what you observed, 1.1.1
21 physically. And then based, based on what you physically
22 observed in the zip lock bag, 1.1.2. And then based on
23 the presumptive testing, do you, can you form an opinion
24 as to what you think is in the zip lock bag?

25 A Based on the indicative testing results, you know,

1 I'm confident that the substance is methamphetamine, that
2 it is, the statutory threshold was met.

3 Q Okay.

4 A For it.

5 Q So, you have a 99.7 percent confidence level that
6 1.1.1 is methamphetamine. You can safely say that's
7 methamphetamine. You confirmed it?

8 A Actually, I can say it with a one-hundred percent.

9 Q Oh.

10 A That it's methamphetamine. 99.7 is the confidence
11 level for the weight.

12 Q I got you. Okay.

13 A Yes.

14 Q With one-hundred percent certainty that's
15 methamphetamine?

16 A Correct.

17 Q And then you can confidently say, based on your
18 experience, based on observation, based on indicative
19 testing, that the zip lock bag also contains
20 methamphetamine?

21 A Yes..

22 Q All right. Thank you.

23 THE COURT: Anything else, Mr. Verner?

24 MR. VERNER: Very briefly, Your Honor.

25

RECROSS-EXAMINATION

1 By Mr. Verner:

2 Q Just, just again, if the only evidence that you had
3 been asked to submit was the square zip lock bag, would
4 you feel confident as an expert witness, testifying
5 conclusively, that that is methamphetamine?

6 A If that was the only thing I have?

7 Q That's the, we don't have the other two drugs, that's
8 the only one I had.

9 A I, I would not have even issued a report.

10 Q Okay.

11 A Based on indicative results.

12 Q You would not be here telling this Newberry County
13 jury to convict somebody based solely on the square bag?

14 A If that was all I had.

15 Q Okay.

16 A Correct.

17 Q Now here's my other question, we got two, which they,
18 the two other bags look fairly similar, right?

19 A Yes.

20 Q In this case, we got what's alleged, that one of
21 these bags would of alleged to be held by my client. And
22 one of them would have been found in a separate location
23 in the car, in a cigarette box. Which one of these two
24 bags was found in the cigarette box and which one of these
25 two bags was found on my client?

1 A I do not know.

2 Q And you tested one of them. So you know one of them
3 is, you're pretty sure is meth?

4 A I'm one-hundred percent sure that one of them is
5 meth.

6 Q Okay. But you cannot testify that is the meth that
7 was found on Franklin Hayes?

8 A I cannot. No, sir.

9 Q Okay. Thank you.

10 (Whereupon, a bench conference was held in the
11 presence of the jury but out of the hearing of the
12 jury.)

13 THE COURT: Mr. Scott.

14 MR. SCOTT: The State rests, Judge.

15 THE COURT: All right. All right folks, we are done
16 for the day. Sorry, but I have got to bring you back in
17 the morning at 9:30, be back here in the jury room. I
18 apologize. You can't discuss the case, but we're really
19 close, almost done. I'm not certain whether the defense
20 is going to put up any evidence, they may, they may not.
21 That's up to them, and that's for us to find out in the
22 morning. Okay. And y'all have a good evening, be back in
23 the jury room at 9:30.

24 (Whereupon, the jury is excused from open court for
25 the day.)

1 THE COURT: All right. The State has rested. Mr.
2 Verner, you have a motion?

3 MR. VERNER: I do, Your Honor. Thank you. We would
4 move for a directed verdict on this charge, Your Honor.
5 The three items of narcotics, or contraband in my client's
6 possession, alleged to have been. Two are fairly fungible
7 looking if the Court looks at the evidence. The third is
8 unique in terms of the square bag that, the square would
9 of found, been found on Dylan, not Dylan, I'm sorry, Bubba
10 Franklin at the jail cell has not been tested. She
11 indicated that she just did the preliminary test. She
12 also testified that she could not, as a chemist, testify
13 beyond a reasonable doubt that that would be meth. She
14 only, of the two fungible bags, by her admission, she only
15 tested one of them. She didn't even do a preliminary on
16 the other sample. In this case, it's important because we
17 know that one bag was found, allegedly, on Bubba Hayes in
18 his possession. The second bag would be found in what
19 would be the, in the constructive possession area, I would
20 assume what the State would argue at least. But the, we
21 would ask for a directed verdict on that ground. In the
22 alternative, Your Honor, that the contraband found at the
23 detention center by Officer Richardson, the Court would
24 instruct the jury that they could not base a decision of
25 guilt on that one for lack of confirmation, that is meth.

1 That they would have to use one or the other. It's, it's
2 really the, the only one at this point that I think the
3 jury could, beyond a reasonable doubt, find him guilty of
4 would be the meth in the cigarette pack.

5 THE COURT: What about the one in his hand?

6 MR. VERNER: Well, which one is that, Judge?

7 THE COURT: Well the weight of all three of them came
8 into evidence. It goes to weight.

9 MR. VERNER: It's only relevant in the fact that we
10 don't know which one was tested.

11 THE COURT: And that's a weight question, isn't it?

12 MR. VERNER: Well, it's, if one of them is meth and
13 one of them is not, it is not. It's a whether it's drugs
14 question.

15 THE COURT: Okay. I appreciate your argument, but I
16 disagree with it. I think you can argue it, it sounds
17 like a closing argument to me.

18 MR. VERNER: Thank you, Judge.

19 THE COURT: It's a reasonable doubt, but not a, not a
20 directed verdict. There is weight of evidence present for
21 the jury to consider issuing guilt or innocence, but
22 that's kind of my basis. Now the weight of the drugs and
23 which one is which, certainly you're allowed to argue
24 those, those points in your closing.

25 MR. VERNER: Second issue, Your Honor, is now that

1 trial has started, the jury's been sworn, Mr. Hayes is in
2 the custody of the Court. I will represent, he presented
3 himself for trial today. He was here earlier in the week.
4 He did show up for appearances. He would ask to remain on
5 his bond. I've certainly explained to him that if we go
6 forward and he doesn't show up, that the case, I do not
7 foresee the case not going forward tomorrow and continuing
8 and that he would not have the opportunity to present in
9 it, that would prejudice him. But he's out on bond, Your
10 Honor. He's met the conditions of the bond by presenting
11 himself for trial. So we would ask that he remain out on
12 bond.

13 THE COURT: I understand your request. He was late.
14 He's supposed to be here at 9:30, he had some issue, he's
15 was not here. He will be in custody. You're not going to
16 have car trouble in the morning.

17 MR. VERNER: 9:30, Your Honor.

18 (Whereupon, the trial will resume the next morning at
19 9:30 a.m.)

20 DECEMBER 7, 2017

21 THE COURT: All right. We talked yesterday and did
22 the motions. And Mr. Verner, you were thinking whether or
23 not you were going to present a defense or not. Testimony
24 wise, you're not?

25 MR. VERNER: Your Honor, we are going to rest. Then

1 I would, I hate to bring them in, rest and then remake the
2 DV motion, but that's probably --

3 THE COURT: We don't have to do that. You can rest,
4 make your motion, and we don't have to send them in and
5 out. That's, that's not required.

6 MR. VERNER: Or I can make the DV motion. I just
7 wanted to put just, I guess, can I go ahead and make the
8 DV, we anticipate resting.

9 THE COURT: Yes.

10 MR. VERNER: And then if the court will let me, I
11 know it holds them back just a little bit longer. But if
12 I make the DV motion, then we won't have to bring them in,
13 rest and then do it that way?

14 THE COURT: That's what I understood you were asking.

15 MR. VERNER: Okay.

16 THE COURT: You and I are on the same page, you just
17 didn't realize it.

18 MR. VERNER: Not the same page, but maybe the same
19 book, Judge.

20 THE COURT: All right. I'll agree. I'm looking at
21 the writing and you're reading the pictures.

22 MR. VERNER: But Judge, just a directed verdict.
23 Again, the State, there are three items of meth that are
24 part and parcel to this charge, found in three different
25 locations. The cigarette box, the one that they are

1 claiming was in Franklin's hand. And then what was found
2 at the detention center. The two, the one found at the
3 detention center, the SLED expert testified that she would
4 not be here testifying if that was the only analysis that
5 she had done. That she just did the preliminary color
6 sample. And while it tested the color that indicated that
7 family of drugs.

8 THE COURT: I remember what she said. She had three
9 samples, she tested one fully, one not at all, and one a
10 preliminary.

11 MR. VERNER: But on the preliminary she said that she
12 would not be testifying.

13 THE COURT: I understand. You're going, you're
14 arguing weight of the evidence.

15 MR. VERNER: I think it's more than weight though,
16 Judge, because the--

17 THE COURT: What I mean by weight, there's three
18 products. All three were testified to, were found in
19 either his possession, in his underwear or is constructive
20 possession.

21 MR. VERNER: Right.

22 THE COURT: So that's where I'm, that's where I'm
23 saying weight.

24 MR. VERNER: But the, the only one that did test
25 positive was one of the two cellophane bags.

1 THE COURT: Right.

2 MR. VERNER: We don't know which one that is.

3 THE COURT: Well, that's what I'm saying, it goes to
4 weight because there's constructive possession of one.

5 MR. VERNER: Right.

6 THE COURT: There's actual possession of one and then
7 there's underwear possession of the one that wasn't tested
8 under the preliminary. That's the weight argument I'm
9 suggesting was the basis of my initial denial.

10 MR. VERNER: Right. And so on that basis, Judge,
11 the, because we know that the, the drugs that the officers
12 found at the scene would of had to be the two cellophane
13 bags. And because the square one was found by the
14 detention officer.

15 THE COURT: Yes.

16 MR. VERNER: And she testified that she could not
17 testify to the reasonable degree of certainty, that that
18 was the meth. I would ask the Judge to charge the jury,
19 that they would have to consider just the two because we,
20 it is a fifty/fifty chance which one was found on him, in
21 the officer's hand. I understand the Solicitor's arguing
22 it's the one that's slightly larger bag or longer. I
23 think he said it was the one with the tail.

24 THE COURT: Yeah. He said like a tail like taffy
25 wrapper or something.

1 MR. VERNER: Right. But the, but we don't know which
2 one was actually the one in his hand, and which one, and
3 the, only one of them was tested. Okay. So that's our
4 argument, Judge. I think the Court has afforded me the
5 opportunity to put that on the record.

6 THE COURT: I know your record is sufficiently
7 protected. So what we'll do, we'll bring the jury in.
8 I'm going to tell them the States rested, and you have
9 rested. And we'll go forward, and the, then the motions
10 are protected at that point.

11 MR. VERNER: Yes, sir.

12 THE COURT: On the record.

13 MR. VERNER: I, just, Your Honor, I'll prefer to rest
14 for myself though.

15 THE COURT: Okay.

16 MR. VERNER: And then the, and then I would ask that
17 the State charge the law first. And that I, that I would
18 be entitled to close.

19 MR. SCOTT: He didn't put up any evidence. I got to
20 do everything.

21 THE COURT: That's right. You don't, you only get
22 one shot.

23 MR. SCOTT: Right.

24 MR. VERNER: That's my understanding, Judge.

25 THE COURT: That's the only rule, that's the only

1 rule I knew of.

2 MR. VERNER: I'd like to rest in my own words.

3 THE COURT: All right. Bring me the jury, please.

4 (Whereupon, the jury came into open court at
5 approximately 10:40 a.m.)

6 THE COURT: All right. We're ready to continue. The
7 State has finished its presentation. Mr. Verner.

8 MR. VERNER: Your Honor, if that's the State's case,
9 we're prepared to argue it to the jury.

10 THE COURT: Okay. Defense rests?

11 MR. VERNER: We rest.

12 THE COURT: All right. Pardon,--

13 JUROR: Someone is in the bathroom.

14 THE COURT: Oh, someone in the bathroom.

15 MR. VERNER: Can you let him know we've rested,
16 Judge?

17 THE COURT: Oh, we are going to tell them again.

18 MR. VERNER: Okay.

19 THE COURT: Thank y'all. We all in here now? Okay.
20 All right. The States presented its case. And, Mr.
21 Verner, you've now rested?

22 MR. VERNER: Your Honor, again, I rest.

23 THE COURT: All right. Now, last man in, would you
24 be my foreperson?

25 JUROR: Be glad to.

1 THE COURT: Very good. Tell me your name.

2 JUROR: Daniel Wessinger.

3 THE COURT: Daniel Wessinger. Mr. Wessinger will be
4 our foreperson. You've been on the front row most of the
5 time.

6 MR. WESSINGER: Yes, sir.

7 THE COURT: And my normal practice when I have a
8 lengthy jury trial, is to appoint someone foreperson. And
9 my bailiffs generally make that person be the last one in
10 and that way everybody's out of the jury room. And so,
11 you, you were appointed because that's your job. It
12 works. All right. Now is the time for the attorneys, and
13 for the record, all the motions made by both parties are
14 made post resting by the State and the Defense. So I
15 don't forget that. Each party can summarize and close
16 what they believe the facts presented. Mr. Scott will go
17 first and Mr. Verner will be given his opportunity. Mr.
18 Scott.

19 MR. SCOTT: Thank you, Your Honor. May it please the
20 court. All right, y'all. Possession case. Possession of
21 methamphetamine. I hope you're not, I hope you weren't
22 looking forward to a passion speech that I was going to
23 give you where, you know, I had a bunch of great quotes
24 and everything. A lot of hard seed vocabulary. It, it, I
25 hate the saying, it kind of was used a lot more a few

1 years back. But it is what it is. You know, that's,
2 that's what this case kind of really is all about. Did
3 Franklin Bubba Hayes on the night of July 13th of this
4 year have methamphetamine in his possession. Pretty
5 straight forward. I don't know what Charles will get up
6 here and say. When he backs me up, he is going to argue
7 last. Maybe he's going to say this is a very complex,
8 very complicated case. I just don't see it. I don't know
9 how y'all see this case. But what the facts were, it's a
10 checkpoint that they are conducting. The driver produces
11 the things he needs to produce. He has his driver's
12 license. I think they testified he had insurance. I
13 don't know if they checked that or not. But the thing
14 that really kind of puts law enforcement on edge is when
15 they see a gun laying in the floorboard at 2:00 a.m. I
16 understand it's broken down, but I don't know exactly what
17 the viewpoint of the officer was that night. 2:00 a.m.,
18 he sees the butt of a shotgun. I don't know that he can
19 sit there and evaluate right then but he does want to
20 make sure that he's not in danger. What you do when
21 you're in law enforcement, and it's 2:00 a.m. and you're
22 stopping a car at a checkpoint. But as he's evaluating
23 that shotgun, he smells the marijuana. Okay. So while it
24 may be true that riding around with a shotgun is legal, we
25 all know riding around with marijuana is illegal. So he

1 does what law enforcement is supposed to do, and he has
2 him exit the car. And while he determines what's going
3 on, is there marijuana and he's questioning these guys.
4 And then what they testify to is, Bubba, that's what he
5 goes by, Bubba. We'll call him Bubba. He's in the back
6 and he's doing something with his hands. He's moving his
7 hands around. And if you're a cop, you've already seen a
8 weapon in the car. And then you see somebody making what
9 they call furtive movements, he puts his hands in his
10 pants and not showing them. That's pretty concerning,
11 right, at 2:00 a.m. So the officers goes back there, he's
12 got his fist clinched. There's something in it. What you
13 got in your hand, they open his hand up. And there it is,
14 there's the first baggy of meth we have. I made kind of a
15 big deal. Corey Cook was that first officer who was
16 there. And he talked about, you know, watching them get
17 this baggy, out of Mr. Hayes' hands. Go to that picture.
18 And, you know, I don't know, you have different ways to
19 distinguish this baggy that was in the best kit bag. I
20 talk about a tail, you know, looks like whenever they're
21 pulling out his hands, he stretched the cellophane out.
22 And there's three bags in there. We already heard about
23 the zip lock bag, it's kind of a rectangular shape. And
24 then there's two other cellophane bags. They look
25 different from one another. The one that SLED did the

1 full battery of tests on is this one. It's got that long
2 tail on it. And I said it looked like stretched out
3 taffy. Had all kinds of descriptions, but that is kind of
4 what it looks like. And that's what was in his hand. You
5 see that pipe right there? That's what was at his feet.
6 He was directly behind the passenger seat in the rear,
7 that pipe was in the rear up under the passenger seat.
8 The officer testified it was at his feet. I mean that in
9 and of itself, that's enough. That's enough to find him
10 guilty of possession. That's what's called actual
11 possession. If you come to me and pull this phone out of
12 my pocket, I'm in actual possession of this phone. The
13 Judge is going to talk about something else called
14 constructive possession. I have it in actual possession
15 right now. If I set it down while I'm talking to you,
16 and, and we keep talking and everything, now it's
17 constructive possession. Just because I set it down
18 doesn't really take it out of my possession. You
19 understand what I mean. The Judge is going to explain it
20 more in depth. But he had this, the one with a tail on it
21 in his actual possession. But when they get him out of
22 there, Walter, show me a picture of the backseat. When
23 they pull him out of the backseat, they look kind of, I
24 think the testimony was, there is Corey right there, that
25 in this middle section, kind of in the crease there was

1 that cigarette box, arm's length from him, right. In the
2 back of a extended cab pickup truck. So that cigarette
3 box that had a little bit of marijuana and had the other
4 baggy of methamphetamine is in his constructive
5 possession. So that's where these two bags come from.
6 Y'all are going to have this back there with you. This
7 baggy right here is the one that was in the cigarette box.
8 That's what the testimony indicated. It does not have the
9 tail on it. SLED didn't test that. She said it was
10 consistent with the other methamphetamine that they did
11 find. Here's the one down here at the bottom with that
12 long tail. That's the one that was in his hand. Y'all
13 see that, it has the long tail on it. All right. There
14 is methamphetamine, right. And it doesn't end there
15 because then they take him over to the jail. Do you have
16 anything else on you. Let's do a strip search. They
17 already found two bags of meth on him, let's go ahead and
18 do a strip search. Bubba's got a zip lock bag of meth in
19 his underwear. All right. And that's the one that's in,
20 it's kind of the rectangular shape here. Lynn Black with
21 SLED said she did a presumptive test on that. She
22 testified in her expert opinion that she could confidently
23 testify that that was methamphetamine. A one-hundred
24 percent sure that the one with the tail on it, the one in
25 his hand, in his hand was methamphetamine. But said she

1 could confidently testify that the one that was in his
2 underwear was meth as well. That's it. That's the case.
3 I don't know really what else to argue. It's kind of a
4 common-sense thing. Some of these cases that we try here,
5 we have to connect a bunch of dots to get to a conclusion.
6 This, again, you know, I first remember Sean Payton, head
7 coach of the New Orleans Saints saying, it is what it is.
8 And I hate that saying, but I guess that's kind of what
9 this case is really, really is about. A guy who is found
10 in the backseat of a pickup at 2:00 a.m., with a ceramic
11 pipe at his feet, a baggy of methamphetamine in his hand,
12 a cigarette box sitting next to him with marijuana and
13 meth in it and then meth in his underwear. That's kind of
14 what the case is about. Just use your common sense.
15 That's all I can ask. You know, logic and common sense.
16 Go back there and if you are firmly convinced that he
17 possessed that methamphetamine, that is what all the
18 evidence shows you find him guilty, okay. That's all I
19 ask. If you have a real reasonable doubt that maybe he
20 didn't know meth was in his underwear, maybe he didn't,
21 know what that was in his hand, or maybe you just don't
22 believe law enforcement. You don't believe all the
23 evidence that was testified to, then you find him not
24 guilty. Okay. Easy as that. You're not going to hurt my
25 feelings either way. I submit to you though, that you

1 stand by your oath that you took. You'll have no choice
2 but to be firmly convinced that he's guilty of possession
3 of methamphetamine. Okay. Thank you.

4 THE COURT: Mr. Verner.

5 MR. VERNER: Mr. Foreman, members of the jury, I'm
6 going to go ahead and tell you now upfront, I'm going to
7 give you probably the game, most gainest playing argument
8 that I've ever did in 17 years. And I'm telling you this
9 because it is legally right. I'm an attorney. These
10 people are attorneys here in Newberry County. I'm also
11 the Public Defender. As a lawyer, I'm concerned with
12 protecting the rights of individuals. And in this case,
13 Franklin Hayes. I'm also the Public Defender. I've got a
14 duty to the community to make sure, we're, this is not a
15 game. We understand at that end of the day this is
16 prison. I mean, you are a General Sessions jury. It's
17 not an academic debate. The jury system is not here to
18 solve academic questions of physics or anything else. The
19 jury is here to protect citizens from the State, unless
20 twelve people in a man's community, or a woman's, you're
21 an obstacle to the State. The State has to get over the
22 jury to take a man's life, liberty or property. But this
23 is not an academic exercise. And a part of my concern, is
24 before people go to prison, that everything technically is
25 done. All the I's are dotted, all the T's are crossed. I

1 mean it's just that simple. If they are going to put
2 somebody in prison for years, they need to get everything
3 correct. Is that fair?

4 MR. SCOTT: Your Honor, I think the objection would
5 be, just the, prison has been indicated a number of times,
6 that's not necessarily a consideration.

7 MR. VERNER: Well --

8 MR. SCOTT: That's not even--

9 THE COURT: Argue the facts, Mr. Verner. The,
10 whether or not the sentencing phase of the trial is in the
11 province of the Court.

12 MR. VERNER: Right. I've got great respect for Judge
13 Griffith. He's entirely correct. You're just here, if,
14 and I live with it, you know, I've tried cases every month
15 with the prosecutors for years. People get convicted, I
16 live. People get found not guilty, they live. We move on
17 because we got another case next month. We've got cases
18 this week. I promise you nobody's going to hold anything
19 against you. I won't. I just ask that you do it fairly
20 and give him, Bubba Hayes, the benefit of any doubts. And
21 Judge Griffith will do what he thinks is right. And to
22 some respects, Judge Griffith is the least important
23 person in the courtroom today. And I'm a little bit
24 scared of him, but the reason he's least important is he's
25 got no say in this case at all about facts. If you find

1 that it was a rainy day, the Judge cannot overrule you.
2 And I get juries who come in all the time, well, if we get
3 it wrong, you know, there's somebody else who will look at
4 what we did and consider it. No. I promise you, the buck
5 ends today. What you do, I hope you get it right. But
6 there's no Calvary coming after your decision. There's no
7 court that can change a jury's findings of fact. And it,
8 I'll tell you it's almost like you're playing a game. And
9 that's, this is not my typical way of doing it. But it's
10 just the way the case came to me. And here is the law.
11 We have different drugs. There are a lot of different
12 drugs and different drug schedules, and they are all
13 treated different. This is a meth case. We have three
14 items of meth that the State is claiming that Bubba Hayes
15 has. Two of them are in the little cellophane wraps,
16 wraps, and then one of them in that little square zip
17 lock. Go back, if you have any questions about what that
18 SLED agent said, Ms. Joy writes down every word in court,
19 you can ask her to replay it for you or read it to you.
20 That expert said, if I just had the zip lock square bag, I
21 would refuse to come to court to testify that this was a
22 meth case. I only make that opinion in consideration of
23 A, B, and C. She told me for a fact, I would not be here
24 if this one was the only one that they sent me. I would
25 refuse to testify. Because all she did was the initial

1 test on it. And that it was in the family of the
2 amphetamines. So we know, if you believe the corrections
3 officer, you know he's got, Bubba Hayes' has this square
4 one in his underwear they find at the jail. Which the
5 SLED agent testified was in the family of the
6 amphetamines, but I cannot testify that is meth. So which
7 leads, if you are going to be conclusive, it's one of
8 those two cellophane bags, or both. Here's the problem
9 with that. I tested only one of them. I know for a fact
10 bag A is meth. But I do not know whether bag A was found
11 in the pack of cigarettes or the one that the officers are
12 claiming they took from Bubba's hands. But I know for a
13 fact it is in, A is drugs. I did not even bother to test
14 B. Didn't even do a preliminary test on it. We don't
15 know if B was the one in his hands or in the pack of
16 cigarettes. Why does that matter. If you want to take
17 these, the evidence is yours. Once y'all go back into the
18 jury room, if y'all want to open this bag, it belongs to
19 you. I'm sure the Solicitors can find a new cellophane
20 bag or something like that. I promise you, if you want to
21 open it up and look. I understand the officer said, you
22 know, well, this is the one that looks more like the one I
23 took from his hand. What's the problem with that
24 analysis? Well, they are both wrapped in the same
25 cellophane and they are not in his possession. But what

1 has happened? Well what has happened is they put these in
2 the evidence bag, they had sent it to the SLED examiner,
3 she has unwrapped the cellophane bags. How do you think
4 she test drugs? She unwraps the cellophane bag, she
5 weighs it, she does the spectrometry test on it, she puts
6 it back in the bag. She takes this one out, she unwraps
7 it, she weighs it and then she puts it back into the bag.
8 That is not the condition they are saying either one of
9 these came from Bubba Hayes in. This is a condition after
10 the officers take it, they weigh it, they send it to SLED,
11 she unwraps it, she weighs it, she test it, she re-wraps
12 it, she puts it back in the bag. And they want you to
13 find, as a matter of fact, that this is absolutely, and
14 they're both lying rather loose in the bag. I mean, you
15 might think that they're connected to different things, but
16 they're both lying around loose. That could have been on
17 the top two days ago and this one is on the bottom. But
18 that's the condition the drugs were found in. That's the
19 condition they've been returned after chemical testing
20 from SLED by admission, at least in two other hands. Here
21 is the case. You've got a fifty/fifty chance that the
22 drugs, that drug in the bag A, in the cellophane bag A was
23 the one in Bubba's hands. If y'all feel confident beyond
24 any doubt, that that was the one that he had, y'all are
25 entitled to find him guilty. You can find him guilty even

1 if you're not sure but only under this condition. Y'all
2 have to be just as confident as y'all can be, without a
3 hesitation to act, that if the drugs that tested positive
4 for methamphetamine that were found in the cigarette pack,
5 y'all have to, that's really the only basis y'all can find
6 him guilty on, is if you find that meth in the cigarette
7 pack was without a doubt Bubba Hayes'. Because that would
8 be in his constructive possession. But if y'all are
9 confident that the drugs found in the cigarette pack was
10 meth and there's a fifty/fifty chance of that, y'all
11 should find Bubba Hayes guilty. If y'all find that
12 there's a chance that these men, you know, and they didn't
13 get charged. Jason Johnston, he didn't get charged.
14 Michael Johnston, he didn't get charged. I can guarantee
15 you, whom, they are gone. You know, you're not going to
16 see them back around here testifying in court. Thank you
17 for not charging us, we are gone. What is the evidence
18 that the drugs could have belonged to one of the Johnston
19 fellows or all of them. Well, it's Mr. Johnston's car.
20 There's marijuana found in the bag of cigarettes. There's
21 marijuana found on Michael Johnston. There's a marijuana
22 or a meth pipe found under the seat of Michael Johnston.
23 They're also saying it was towards the back. So it also,
24 they're claiming it was also close to Bubba Hayes, but
25 it's under the seat.

1 If there is even a chance that one of those men, when
2 they came, they suddenly got stopped, this is them rolling
3 into a traffic stop. If there is a chance they could have
4 put the cigarettes in the backseat, either at that moment,
5 or even earlier, he's entitled to a not guilty verdict.
6 It's just that simple. There's no way y'all can legally
7 convict Bubba Hayes unless y'all are sure that the drugs
8 in the cigarette pack were his. Because that's the only
9 way that it's anything more than a fifty/fifty guess,
10 which one is his. If you're sure that one-hundred percent
11 that, if y'all are one-hundred percent sure that all three
12 bags were meth then y'all need to find him guilty. But
13 that's not what the SLED, that's not what their own
14 chemist testified to. And I'll grant you, you know, I,
15 I've been here, I've been the public defender since 2005,
16 I'll tell you now, I'll, I'll play my cards up. That,
17 that is almost a game playing defense. I don't think
18 that's too much to ask that they follow every rule before
19 we get to the end of this case. If there is any
20 reasonable chance that the cigarette pack belonged to one
21 of the Johnston men, then he's entitled to a not guilty
22 verdict. Thank you.

23 THE COURT: All right, folks. I've got some
24 instructions to give you regarding the law of South
25 Carolina and what you can do as far as evaluating the

1 testimony and evidence which is presented. As I told you,
2 the photographs, they come back in the jury room. The
3 evidence introduced comes back in the jury room for
4 y'all's review until your hearts content. Regarding the
5 law of South Carolina, can y'all hear me okay with the fan
6 blowing anyway. It's been awhile since I been, they
7 rotate the Judges around. I've been holding court mostly
8 in Lexington County. This is my home Court House and I'm
9 still not back used to it. And I'm going back to
10 Lexington in the next six months, for six months, want be
11 back in Newberry but one week. Is that right Ms. Folk?

12 CLERK OF COURT: Yes, sir. No, two weeks.

13 THE COURT: Two weeks for the next six months. So,
14 they rotate us around. Mr. Wessinger, and members of the
15 jury, the State of South Carolina has charged and accuses
16 Franklin Hayes with the offense of possession of
17 methamphetamine. You will bear in mind that he has pled
18 not guilty to that and he denies the charges in that
19 indictment. The indictment, as I told you early, is an
20 accusation made by the State and the State must prove the
21 elements of that accusation beyond a reasonable doubt from
22 the testimony and evidence which the State has presented.
23 A person accused, such as Mr. Hayes, comes into court
24 clothed with a presumption of innocence. And this
25 presumption of innocence continues throughout the case and

1 entitles him to a verdict of not guilty until that
2 presumption is dispelled by the evidence satisfying you,
3 the jury, beyond a reasonable doubt of his guilt. The
4 State must prove each and every element of an offense
5 beyond a reasonable doubt. And the Constitution of South
6 Carolina, the law of South Carolina makes you the finders
7 of fact, makes me the sole and only instructor of the law.
8 You must accept the law as I am instructing it here today.
9 And if you, understand this, if I should make an error in
10 the instruction of the law to you today there's another
11 time and place for the error that I made to be considered
12 and corrected if necessary. But as far as the findings of
13 fact, those will be y'all's decision today.

14 Now regarding my instructions, you must accept the
15 law as I am providing it to you. If you have a different
16 understanding of what the law is or what it ought to be
17 you must disregard that and accept it as I am instructing
18 it today. Now as I told you, you as a group, are the
19 finders of fact in this case. I am not allowed to have an
20 opinion as to the facts. That is your province, your
21 decision. You cannot assume or infer from anything I've
22 said or done, that I even have an opinion about the guilt
23 or innocence of anyone. You are making that decision, and
24 thus, you must make decisions based upon the evidence and
25 testimony which has been presented. Thus you must make

1 judgment decisions and be judges of the credibility and
2 believability of the witnesses who have testified and the
3 evidence which has been presented. And I tell you, you
4 can use anything in your collective common sense and
5 common experiences which you use in your everyday lives to
6 make decisions on who you believe or who you choose not to
7 believe regarding the witnesses. I'll tell you other
8 things that juries can consider regarding the
9 believability or the credibility of witnesses. You can
10 consider the manner and appearance of a witness who
11 testified. You can consider whether the witness was
12 straight forward or hesitant in answering. You can
13 consider whether the witness, how did they come to know
14 the facts to which he or she testified to. What was the
15 ability of that person to recollect these facts. You can
16 consider whether a witness would want to provide testimony
17 which would help one side or the other, whether they were
18 biased or prejudice in any manner. You can consider
19 whether a witnesses testimony was strengthened or weakened
20 by other testimony or other evidence. You can believe as
21 much or as little of the testimony of each witness as you
22 deem appropriate. You can believe a single witness
23 against that of others, several against one or any
24 combination that you deem appropriate considering your
25 decision making.

1 Now in a criminal trial and a civil trial there are
2 generally two types of evidence presented. There's direct
3 evidence and also circumstantial evidence. Direct
4 evidence is testimony by a witness. They testify as to
5 what they saw, heard, smelled, things of that nature.
6 They claim to have actual knowledge of certain facts.
7 Circumstantial evidence is slightly different. It is a
8 proof of chain of facts and circumstances indicating
9 another fact. Our law makes no distinction between the
10 weight or the value to be given to either direct evidence
11 or circumstantial evidence. But I tell you to the extent
12 the State relies upon circumstantial evidence, all the
13 circumstances and facts must consistently or, consistent
14 point to the existence of the ultimate fact. I tell you
15 this, you should weigh all of the evidence no matter, no
16 matter whether it's direct evidence or circumstantial
17 evidence. Consider it all, weigh it all in making your
18 determinations of guilt or innocence. And after weighing
19 all the evidence, if you're not convinced of the guilt of
20 the Defendant, beyond a reasonable doubt, you must find
21 him not guilty.

22 Now I observed, and this trial has not been that
23 long, and I apologize for having the breaks we did. But
24 you listened closely to the evidence and you should weigh
25 it using your good judgment and common sense. Weighing

1 evidence is entirely a mental process and you must weigh
2 the evidence and find which convinces you of the truth.

3 I also recognize that during this trial a expert
4 witness was qualified to testify in a field of expertise.
5 An expert witness is one witness who, by education and
6 experience, has expertise in an art or science or
7 profession. This person can testify regarding opinions in
8 that field of expertise. I tell you also that you should
9 consider the expert opinion received in evidence in any
10 case just like the other evidence and give it the weight
11 you deem appropriate. If you decide the opinion of the
12 expert is not based upon sufficient evidence or experience
13 or education or you conclude the reasons given in support
14 of the opinion are not sound, or it's outweighed by other
15 evidence, you make the findings of fact based upon y'all's
16 collective findings of fact, opinion on the greater
17 weight, the believability of the evidence which was
18 presented in this case.

19 Now in all criminal cases, Courts of General Session,
20 the State has to prove its case to the burden of proof
21 called beyond a reasonable doubt. A Defendant has no
22 burden, whatsoever, as they are presumed innocent. In our
23 State the prosecution must prove its case beyond a
24 reasonable doubt before a finding of guilt can occur. If
25 the State fails to meet that burden then a finding of

1 acquittal or not guilty is the verdict to be assigned. I
2 told you I will define reasonable doubt for you at the
3 beginning of my preliminary instructions. A reasonable
4 doubt is the doubt which makes an honest, sincere person
5 hesitate to act. It is proof beyond a reasonable doubt,
6 it is proof which leaves you firmly convinced of a
7 Defendant's guilt. If you have a doubt for which you can
8 assign a reason as to the guilt of the Defendant then he
9 is entitled to a verdict of not guilty. Reasonable doubt
10 may arise from evidence which is in the case or from a
11 lack or absence of evidence in the case. You must make a
12 determination of whether or not reasonable doubt exists as
13 to his guilt. Now the very fact that a jury engages in a
14 full and free discussion of the issue of guilt or
15 non-guilt in this case does not automatically create a
16 reasonable doubt or create the fact that a reasonable
17 doubt exists. You must collectively decide whether or not
18 the State has proven its case beyond a reasonable doubt.

19 I tell you also that several elements of the crime
20 the State must prove, criminal intent is a necessary
21 element of each crime. Criminal intent is a matter that
22 must be determined by the jury from the circumstances
23 surrounding the situation. There is no way to prove
24 intent to a mathematical certainty. No way medical
25 science can dissect a person's brain and determine what

1 they had in mind. Our law states criminal intent may be
2 inferred from the circumstances shown to have existed both
3 before and after the fact. Criminal intent is a state of
4 mind, operates jointly with an act or omission in the
5 commission of a crime. It is a mental state of conscious
6 wrongdoing. You must determine what the Defendant
7 intended to do based upon the circumstances shown to have
8 existed. The State must prove this element beyond a
9 reasonable doubt.

10 Now the law specific on this case is not very long.
11 The State must prove possession of methamphetamine. To
12 sustain a conviction for this offense the State must prove
13 beyond a reasonable doubt that Mr. Hayes had both the
14 power and intent to control disposition or use of
15 methamphetamine. Possession of either methamphetamine may
16 either be actual or constructive. Actual possession means
17 the methamphetamine was in his actual, physical custody.
18 Constructive possession means that the, Mr. Hayes had
19 dominion and control or the right to exercise dominion and
20 control of either the methamphetamine itself or the
21 property upon which the methamphetamine was found. The
22 mere presence at the scene where the drugs were found is
23 not enough to prove possession. A person's knowledge and
24 possession may be inferred and the substance found and the
25 property which is under their control. This is an

1 inference which is an evidentiary fact to be taken into
2 consideration along with the other evidence and be given
3 the weight you decide it should. Now the State must also
4 prove that the substance was methamphetamine as defined in
5 our law.

6 I tell you also, this is very important, I emphasize
7 to you that the fact that Mr. Hayes chose to not testify
8 is very important. That is not a factor to which you
9 should even discuss or consider in your deliberation on
10 the question of his guilt or his innocence. It must not
11 be considered in your deliberations or your consideration
12 in any manner whatsoever. Every person has a
13 constitutional right to not testify at a trial. An
14 assertion of that constitutional right must not be
15 considered by you. Therefore you are to draw no
16 conclusions whatsoever from the fact that he did not
17 testify. The fact that he did not testify should not even
18 be discussed in the case, in the deliberations in the jury
19 room. This case should be decided based upon the evidence
20 which was presented by the State. And decide whether or
21 not the State proved its case beyond a reasonable doubt.

22 Now I tell you this. You, as a jury, must reach a
23 unanimous verdict. And I tell you that you don't get
24 called on very often to serve as jurors. And I want you
25 to remember the instructions I gave you early on. What

1 you need to decide in this case will be given to you in
2 the courtroom. Evidence received from the witness stand,
3 the evidence received into the record, the law as I've
4 instructed to you, considering that alone and making a
5 decision based upon what you believe the facts as you find
6 them. Your verdict must be unanimous, twelve, one way or
7 the other. All right.

8 Now, I have a verdict form which I need to print out.
9 I tell you also, I don't want you to begin discussing the
10 case until I talk with the lawyers to make certain my
11 instructions were complete. They get to make comments
12 when I put you in the jury room. And I need to print the
13 verdict form out. It's fairly simple, Mr. Wessinger. I'm
14 going to show it to you in a moment. But I'm going to ask
15 that y'all step to the jury room, all fourteen of you and
16 as soon as I talk with the lawyers about my instructions
17 and whether they were sufficient and complete, it may be
18 they say Judge, you glossed over the definition of
19 reasonable doubt. Go back and redefine that, please. And
20 I may do that. Now once you begin your deliberations,
21 something comes up and you have a question, Judge, you
22 read reasonable doubt quite fast, could you redefine it
23 for us. I'll be happy to provide you a copy of what I
24 read to you regarding that particular aspect of the law.
25 Also, if you need to hear testimony replayed, Ms. Holston

1 has that ability to replay testimony but she needs to know
2 what it is. Like who was it testifying, that way she can
3 cue it up. If you want to do something like that, that's
4 a good time for y'all to take a break and to relax a
5 little bit while she finds it but give us a few minutes
6 because we'll tend to some other work while y'all are
7 deliberating. So if you have any questions, write them
8 down, hand them to the bailiff. If you need to hear
9 testimony again, let me know. I think that's it. You
10 need to take a break you don't need to ask. You need to
11 tell each other, all right, let's take a break, want to
12 step outside and get some fresh air. Unless all twelve of
13 you are in the room you can't discuss the case. So if you
14 need a break, say, tell Ms. Wardlaw, we're going to take a
15 break. You don't have to ask her. Tell her we would like
16 to take a short break and we'll let you do that. Okay.
17 But no discussing of the case unless all twelve of you are
18 there in the room together. All right. Y'all step into
19 the jury room. We'll have you back out here or send the
20 evidence and verdict form to you as soon as we get
21 everything squared away.

22 (Whereupon, the jury is excused from open court.)

23 MR. VERNER: No objection from defense, Your Honor.

24 THE COURT: Okay. Any objections?

25 MR. SCOTT: No. None from the State.

1 THE COURT: Any objection as using the indictment as
2 the verdict form?

3 MR. VERNER: No, Your Honor. I was just asking
4 whatever, let me, just, I don't mind the Court going back
5 in there. I assume the Court's just going to have to
6 explain, either write guilty or not guilty. Do you need
7 to see it, Prosecutor?

8 MR. SCOTT: No.

9 MR. VERNER: Who is going to explain the verdict
10 form?

11 THE COURT: Beth.

12 MR. VERNER: Okay.

13 (Whereupon, the jury starts deliberations at
14 approximately 11:20 a.m.)

15 (Whereupon, the two alternates were excused at
16 approximately 11:21 a.m.)

17 THE COURT: I understand we have a verdict. Bring
18 the jury in.

19 (Whereupon, the jury came into open court with a
20 verdict at approximately 11:42 a.m.)

21 THE COURT: Mr. Wessinger, you are the last one in.
22 Perfect. Have y'all reached a verdict?

23 MR. WESSINGER: We have.

24 THE COURT: And was it unanimous?

25 MR. WESSINGER: Yes, it was.

1 THE COURT: Hand it to the bailiff. All right, Madam
2 Clerk, you may publish the verdict.

3 CLERK OF COURT: Indictment number 2017-GS-36-473.
4 The State versus Franklin Dell Hayes, as possession of
5 methamphetamine. The verdict is guilty. Signed Daniel
6 Wessinger, Foreperson. Ladies and gentlemen, if this is
7 your verdict please indicate by raising your right hand.
8 Thank you.

9 (Whereupon, all hands were raised by the jurors.)

10 THE COURT: All right. If y'all will, your checks
11 will be in the mail, you can give them their letters
12 today.

13 CLERK OF COURT: I have got their statements and will
14 mail their checks.

15 THE COURT: Okay. I want to thank y'all but I want
16 to put you in the jury room and come in there to talk to
17 you. Go back to the jury room and I will send you on your
18 way.

19 (Whereupon, the jury was excused from open court at
20 11:51 a.m.).

21 THE COURT: All right, are we ready for sentencing,
22 Mr. Verner?

23 MR. VERNER: Yes, Your Honor.

24 THE COURT: Mr. Scott, give me just a brief summary
25 of the prior convictions and then I will hear from Mr.

1 Verner. Because I know that y'all tried to work the case
2 out, I heard you saying during some breaks, y'all were
3 trying to work it out way before we went to trial. I am
4 aware of that, y'all's efforts, Mr. Verner's efforts and
5 Mr. Franklin's efforts. Just tell me his prior record.

6 MR. SCOTT: It's not going to be brief. 2004,
7 trespass, publicly disorderly conduct, public drunk,
8 resisting arrest, use of vehicle without permission. '05,
9 forgery, \$1 to \$5,000.00. Two counts of petty larceny,
10 fraudulent check. 2007, petty larceny, public drunk,
11 resisting arrest. 2009, two counts of simple possession
12 of marijuana. 2011, CDV, PWID, marijuana. 2012, public
13 disorderly conduct, use of 911 unlawfully, possession of a
14 controlled substance, throwing bodily fluids. 2014,
15 public disorderly conduct, open container, simple
16 possession of marijuana, driving under suspension, assault
17 and battery third. 2015, possession of meth, simple
18 possession of marijuana, assault and battery second. And
19 then another possession of meth. 2016, public disorderly
20 conduct, possession of a controlled substance. He has
21 been on probation five times, revoked five times.

22 THE COURT: How many meth convictions have you got?

23 MR. HAYES: I say three.

24 THE COURT: Three?

25 MR. HAYES: I don't know, sir.

1 THE COURT: I am not talking about marijuana, I am
2 talking about meth.

3 MR. HAYES: This is the second, convicted. I have
4 been charged. But this should be my second conviction.

5 THE COURT: But you have got several pills,
6 marijuana, other odds and ends. Okay, Mr. Verner, let me
7 hear from you.

8 MR. VERNER: Judge, Franklin, I have known him a long
9 time, he is 31. Long time Newberry County resident, comes
10 from a good family. It is a meth case, he has got a long
11 record but the vast majority of it would be the Magistrate
12 Summary Court level. He just had a long standing
13 addiction. We are hoping, Your Honor, the Court will
14 consider a three year sentence with the recommendation
15 that he attend the ATU program. I guess, how many days
16 were you in jail.

17 MR. HAYES: Four.

18 MR. VERNER: He did four days in jail plus last night
19 would be five. He had moved to Columbia to try to make
20 kind of a fresh start outside of Newberry. Anything you
21 want Judge Griffith to know, now is your opportunity, if
22 you have got anything you want to get off of your chest.

23 MR. HAYES: I know it was always going to come to
24 this one way or another. Like I say, I have been in and
25 out of trouble my whole life. I think it really does

1 consist of a drug problem, hard headedness kind of thing.
2 I don't throw rocks in and out of my hand, I am guilty, I
3 am guilty. So be it. I am the only individual that I
4 know of in Newberry County, sir, that has not worked for
5 the policemen, an informant. And I always took my charges
6 and manned up for what I have to do. I have never been,
7 never been afforded the chance of rehab. I am not crying
8 for it now, sir. In a way I just, would this help me
9 going to prison. I have been five times, sir.

10 THE COURT: What did you find down there. You never
11 could get into ATU.

12 MR. VERNER: He had never had a really long
13 sentence--

14 MR. HAYES: Yes, I have, Charles. I have had lengthy
15 enough sentences to get ATU. Sir, to tell you the truth
16 ATU is held in Lee County, Level three maximum security
17 prison holds the worse of the worse in the State of South
18 Carolina. It is no help, it does nothing. I do know that
19 there are programs--

20 THE COURT: I had a fellow, tell me this, you have
21 been in enough times. There is a fellow, similar
22 situation as you, he was over in Greenwood. And I said,
23 do you want ATU. He said, no sir. I have been there and
24 I don't think it is very effective but if you will give
25 me, not give me ATU, there is a Christian based program at

1 the Department of Corrections that I would like to
2 participate in. And if you will do that then I can
3 possibly be allowed to do that by not giving him ATU. So
4 he kind of knew about, I don't know what he was exactly
5 speaking of. But do you know anything about those?

6 MR. HAYES: There is nothing, the only, that is at
7 any person. You are able to attend regardless if you, you
8 cannot sentence me to a Christian program and they allow
9 me to go. SCDC is SCDC. Once I get there it is the wrong
10 thing.

11 THE COURT: That is what I understood. I couldn't
12 recommend it. It was something that he was asking for and
13 could get.

14 MR. HAYES: Judge, there are, I mean, there are other
15 options. You know, they have year programs, two-year,
16 programs. You know, I have been through a lot, Your
17 Honor, and obviously I have put Newberry through a lot.
18 And, you know, I just want help now, I just want to be
19 able to change my life so it won't reoccur again in the
20 future, whether it is ten years, five years, one year.
21 And an addict, this is an addict, and until I can get help
22 there is no fixing it. And I would like to do something
23 that works and not just leave it up to SCDC for my best
24 interest. They don't have it, sir. I am a number there.
25 Am I trying to get out of jail and prison, no sir. But I

1 would like for one chance to have some help, man. Please,
2 they have one-year programs, two-year programs into rehab
3 and I am sure that Voc Rehab or whoever is in charge of
4 that can better tell me and you what is there to be
5 offered.

6 THE COURT: So, let me ask you, I want to ask you a
7 dumb question. Sometimes it is just because it didn't
8 take. You had a chance to go to rehab before and
9 sometimes it doesn't take. How do I know you, you are
10 telling me now, you were telling me things yesterday about
11 continuing and going forward and this and that. And then
12 that wasn't quite all the truth until last night, was it.

13 MR. HAYES: Your Honor, I know what it seems but that
14 is a bigger cry for help than anything that you can see.
15 I don't know what to say, sir.

16 THE COURT: Back to my question. If you have the
17 tools to go to a rehab facility, probation doesn't want
18 you.

19 MR. HAYES: I don't want probation.

20 THE COURT: Nobody wants you. So if I do a suspended
21 something after a very, I am thinking ATU and something
22 else is what I am thinking, just telling you. What else
23 can I give you that you think would help you.

24 MR. HAYES: I think that, I think that, sir, I would,
25 I would need something, yes, with a definite structured

1 environment. There is, there is many different programs
2 that I have seen and I have looked into. I have just
3 never had to kick to go into it. I wanted to change since
4 the day I found out who I was, sir. And that is kind of
5 oblivious to you but I have, I have always wanted to do
6 better. You know, in the Bible where it says, I want to
7 do right, I want to do right but I just can't do right.
8 It is something, man, is in me that I need to kick. Is it
9 prison, maybe, sir. I might can go to prison to do ten,
10 five years, come out and be changed. But I doubt it. I
11 need something, Judge, Bubba Griffith, to allow me a
12 chance at life, man. I have hindered myself from using
13 drugs and being around the negative people. And do, ATU,
14 sir, is the waste of the State's time. Honestly, just
15 looking, how are you going to put an individual that wants
16 to change in a room full of animals, literally, animals.
17 Okay. Can I survive back there, yes sir. Do I want to,
18 no sir. Is it helping me, no sir. I need help, sir. I
19 need help, I need help, I need help. Prison is not any
20 help for me.

21 THE COURT: Mr. Simmons, how, this is a non-violent
22 offense because it only carries ten years. Whatever I
23 give him, he is eventually going to be parole eligible.
24 And he is going to make parole, what I can put on the
25 parole side providing him some counseling for drug and

1 alcohol addiction.

2 MR. SIMMONS: You can make any recommendation you
3 want, Your Honor, and we will include that.

4 THE COURT: I mean, try not to overload the probation
5 side of it but he is going to be parole eligible
6 eventually.

7 MR. SIMMONS: And they look at parole on drug cases.

8 THE COURT: Okay. The sentence is nine years, credit
9 for five days. Written down on here, substance abuse
10 counseling while on parole if possible. All right. Good
11 luck.

12 MR. VERNER: Thank you for hearing this, Your Honor.

13 MR. HAYES: Nine years, nine years. You see how
14 Newberry is doing me, that is how Newberry always do.
15 Nine years, nine years, nine years. And you are trying to
16 help me? Come on, man, y'all do me in this damn, y'all
17 railroad me from the start.

18 (Whereupon, officer escorts Mr. Hayes out of the
19 courtroom.)

20 THE COURT: Bring him back in here.

21 MR. VERNER: Let them get the leg anchors on him
22 first, Judge. I will talk to him, Judge, and then I will
23 tell them to bring him back in here.

24 THE COURT: Okay.

25 (Whereupon, Mr. Hayes was brought back into the

1 courtroom.)

2 THE COURT: Mr. Hayes, everybody treated you with
3 respect and now you are disrespecting the Court.

4 MR. HAYES: No, sir.

5 THE COURT: You were very disrespectful to the police
6 officers there, most particularly the Court.

7 MR. HAYES: Sir, I didn't do nothing, was thrown up
8 against that wall.

9 THE COURT: No, you were saying things that shouldn't
10 be said in the courtroom, right through here disrespecting
11 the Court, I have accorded you all sort of respect.

12 MR. HAYES: Well, Your Honor, nine years, ten years
13 is all the same. Do what you are doing. You can't do
14 nothing else, I am not being afforded nothing. I have
15 been railroaded in drugs in this courtroom like basically
16 to sit on a gavel with my head being chopped off. Y'all
17 all know what y'all are doing and this is not right. And
18 I will fight until the day I die. Nine years, ten years,
19 it don't matter. Give me a hundred, I will still make
20 out. And you know what, right will prevail. Y'all say
21 the justice system is so fair. It is so fair, I have been
22 begging for help, begging.

23 THE COURT: You got your help.

24 MR. HAYES: I have got my help, yeah, thank you so
25 much, Your Honor. I smile and thank you for your time,

1 thank you for your help, sir.

2 THE COURT: Good luck.

3 MR. VERNER: Thank you for hearing us, Judge.

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2
3
4 State of South Carolina)
5 County of Newberry)

6
7
8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the 6th and 7th days of December, 2017.

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

17
18 April 14, 2018

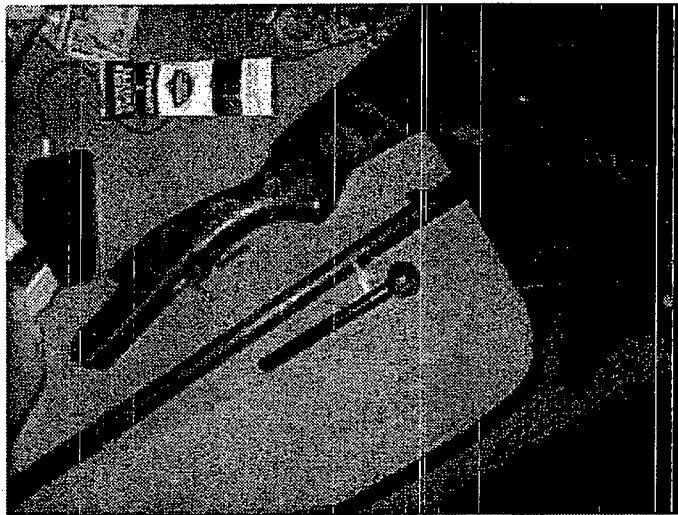
19
20 *Joy Holston*

21
22 Joy E. Holston, Court Reporter

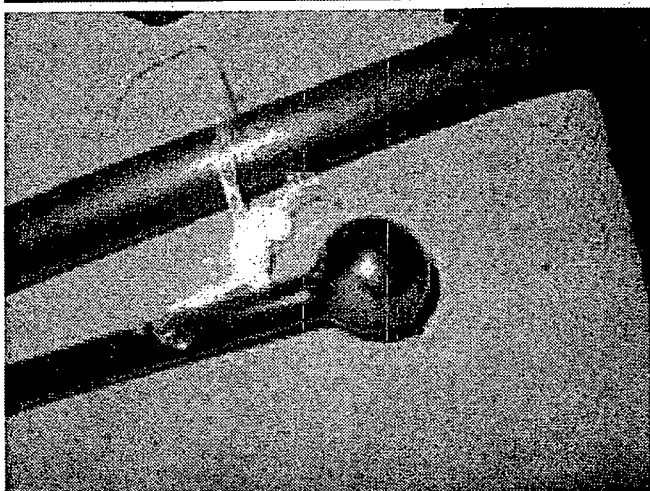
23 My Commission expires: May 2, 2026
24
25



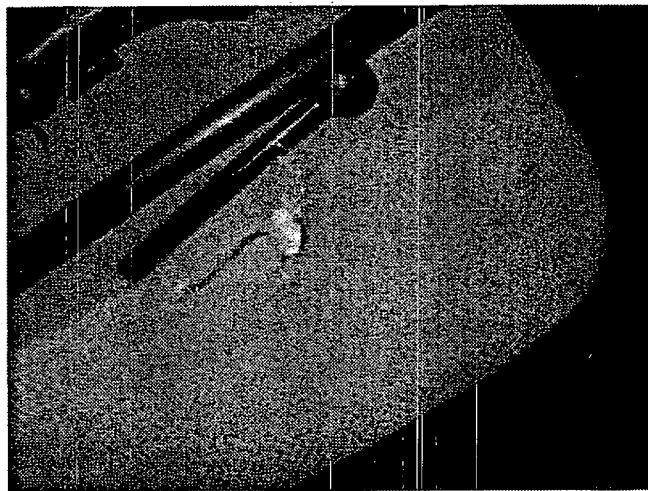
17-06687(12).JPG



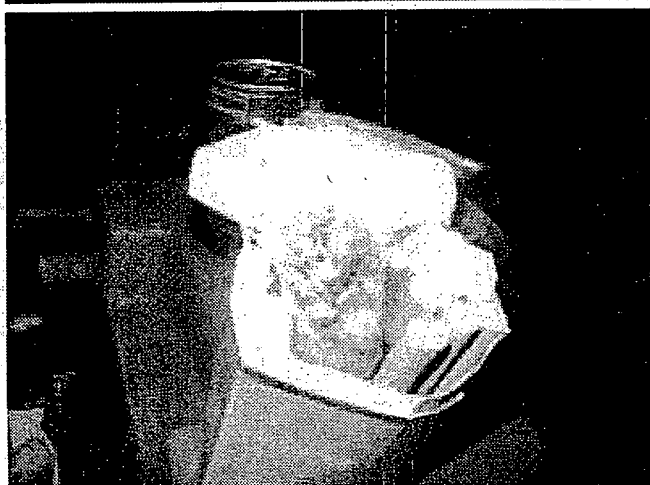
17-06687(13).JPG



17-06687(14).JPG



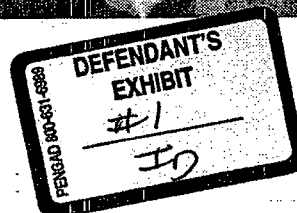
17-06687(15).JPG



17-06687(16).JPG



17-06687(17).JPG



WITNESSES

Robert Dennis
Newberry County Sheriff's Department

WARRANT NUMBER

2017A3610100368

TRUE BILL

mpkoon
Foreman of the Grand Jury
Date: 10.6.17

VERDICT

Guilty
Daniel Wessinger
Foreman

12-7-17

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

October Term, 2017
Indictment # 2017-GS-36-00473

THE STATE

vs.
FRANKLIN DELL HAYES

INDICTMENT FOR

Possession of Methamphetamine
SC Code: § 44-53-375(A)

CDR: 3016

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

RECEIVED
DEC 20 2017
SC Court of Appeals

THE STATE OF SOUTH CAROLINA**COUNTY OF NEWBERRY****INDICTMENT FOR****Possession of Methamphetamine
§44-53-375(A)**

At a Court of General Sessions, convened on the 6th day of October, 2017, the Grand Jurors of Newberry County present upon their oath:

The defendant, Franklin Dell Hayes, did on or about July 13, 2017, in Newberry County, South Carolina, knowingly or intentionally possess methamphetamine as defined in Section 44-53-110, all in violation of Section 44-53-375(A), Code of Laws of South Carolina (1976, as amended).

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



Taylor W. Daniel
Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY
STATE VS.

FRANKLIN DELL HAYES

AKA: _____
 Race: White Sex: M Age: 31
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Newberry, SC
 DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Possession of Methamphetamine 3rd or Sub. Offense

In violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3016

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017-GS-36-00473
 A/W: 2017A3610100368
 Date of Offense: 07/13/2017
 S.C. Code §: 44-53-375(A)
 CDR Code #: 3016

SENTENCE SHEET

☒ CONVICTED OF or

PLEADS

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lowd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Taylor W. Daniel, Assistant Solicitor SC Bar # 100588 Defendant Attorney for Defendant SC Bar # 10033

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 9 days/months/years-or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
 are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 5 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: _____

Payment Terms: _____

☐ Ordered FTUP _____
_____ days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPS

DEC 20 2017

SC Court of Appeals

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (If paid in installments) \$ \$ 8.95TOTAL \$ 283.95Clerk of Court/Deputy Clerk: Beverly G. BrubakerCourt Reporter: Gay Holston

SCCA/217 (07/2016)

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid in Public Defender Fund

Other: SAF. vehicle on parole if possible.

☐ Appointed PD or appointed other counsel,

Proviso §61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

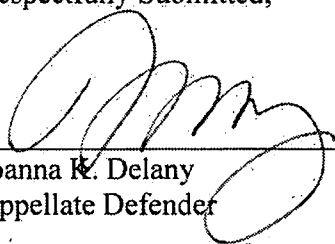
any other fees.

Presiding Judge: [Signature]Judge Bar ID: 7154Sentence Date: 12-7-17

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

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

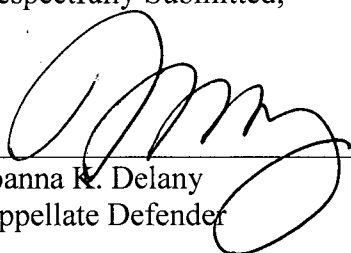
ATTORNEY FOR APPELLANT

This 5th day of October, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna R. Delany
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 5th day of October, 2018.

RECEIVED
OCT 05 2018
SC Court of Appeals