

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY LEROY SIMMONS,

APPELLANT

Appellate Case No.2012-212560

RECORD ON APPEAL

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SC COURT of Appeals

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State of South Carolina

In the Court of General Sessions

County of Charleston

State of South Carolina,

Plaintiff,

-vs-

Jeffrey Leroy Simmons,

Defendant.

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) 2011-GS-10-6495, 6496, 6498, 6500
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April 19 & 20, 2012

Transcript of Record

B E F O R E:

The Honorable Stephanie McDonald, Judge

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

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1 April 19, 2012

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 (WHEREUPON, State's Exhibit Numbers 1 through 4 were
5 marked for identification only.)

6 THE COURT: All right. Have y'all had a chance
7 to look at the proposed voir dire from the State?

8 MR. COCHRAN: Yes, Your Honor.

9 THE COURT: Any objections?

10 MR. COCHRAN: No, Your Honor.

11 THE COURT: Okay. And Spencer, just so you
12 know, they had asked, while you were grabbing the voir
13 dire, to add another request. Has anyone been a member
14 or are you a member of a neighborhood watch, which I
15 think is a fair question.

16 MS. COMPTON: Absolutely. I have no objection.

17 THE COURT: Then I will ask these and also just
18 the usual, that y'all introduce yourselves and your
19 client, and we'll go from there. Anything else we need
20 to take up before we take up the Lyle motion?

21 MS. COMPTON: No, Your Honor. Just in the jury
22 selection -- I know some judges have asked me to do this
23 in the past. Would you like me to read the list of
24 attorneys from my office or just introduce ---

25 THE COURT: Of all the attorneys from there,

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1 no.

2 MS. COMPTON: Thank you.

3 THE COURT: Thank you though. I will ask if
4 anybody has been represented by or knows anyone employed
5 with the Charleston County Solicitor's Office, but -- all
6 right.

7 MS. COMPTON: Nothing from the State, Your
8 Honor.

9 THE COURT: Okay.

10 MR. COCHRAN: And just from me would be motions
11 that are certainly a matter of course, Rule 5 and the
12 Brady motions. It's my understanding that there was a
13 co-defendant in this case, and Mr. Simmons was arrested
14 on scene. So I just wanted to make sure there were no
15 statements at all from either of those two. But it's my
16 understanding that there aren't.

17 MS. COMPTON: No, Your Honor.

18 THE COURT: Well, y'all are ordered to give him
19 everything you have, and y'all probably already have, so
20 ...

21 MS. COMPTON: And Your Honor, just to clarify,
22 there are no custodial statements. He does talk with the
23 undercover officer as part of this transaction.

24 MR. COCHRAN: Oh, yeah. Yeah.

25 MS. COMPTON: But nothing custodial said after

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1 arrest.

2 THE COURT: Is there a written statement of any
3 kind?

4 MS. COMPTON: No, ma'am.

5 THE COURT: Okay. All right. And what else?

6 MR. COCHRAN: Nothing from me, Your Honor.

7 THE COURT: Okay. And I guess that y'all's --

8 it's the State's motion to admit 404 evidence. And I
9 will tell you I've read the cases and looked at the law a
10 little more. And I need you to explain to me why it
11 would be subject to discussion in opposite to the general
12 rule that this kind of evidence would not be admissible
13 under *Lyle*.

14 MS. COMPTON: Absolutely, Your Honor. Your
15 Honor, I do think that this evidence does go towards
16 proving the intent prong, and the State believes it's a
17 proper use under *Lyle*. He is charged with possession of
18 cocaine base with the intent to distribute that. And
19 therefore, that intent prong -- you know, I think
20 evidence of his prior distribution is very probative
21 towards that point, particularly in a case like this one
22 where the State is forced to rely on circumstantial
23 evidence to prove his intent to distribute. You know, it
24 is below the threshold level of one gram for presumption
25 to apply. So therefore, the State's forced to rely on,

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1 you know, circumstantial evidence such as how it's
2 typically done and what would be a typical amount for
3 distribution. And Your Honor, we do find it very
4 probative to that point.

5 Your Honor, further, I don't think it's overly
6 prejudicial because in the first instance he is charged
7 with possession with intent to distribute marijuana, and
8 the State has strong evidence on that point. You know,
9 the only place where it is in any way prejudicial is as
10 to his intent to distribute. And I -- you know, every
11 piece of evidence introduced against a defendant is
12 prejudicial. I don't believe it's unduly prejudicial,
13 Your Honor, because this is exactly a proper use, exactly
14 how I'm asking to use it.

15 THE COURT: Okay. Let me make sure I'm clear
16 on the facts. And I've read the brief. It's my
17 understanding that he was arrested in this case as to all
18 of these charges, or the incident happened on June 15th,
19 2011, correct?

20 MS. COMPTON: Correct, Your Honor.

21 THE COURT: And what you're seeking to inquire
22 into happened in 2008?

23 MS. COMPTON: Yes.

24 THE COURT: So three years earlier?

25 MS. COMPTON: It did, Your Honor.

1 THE COURT: Okay. Here's where I'm having
2 trouble understanding. Looking at *State v. Wilson*, which
3 was an extremely divided case because you had the Supreme
4 Court reversing the Court of Appeals, an opinion written
5 by Justice Moore who's not there anymore, and a divided
6 Court of Appeals that reversed the trial court.
7 Certainly so. And what even the Supreme Court's decision
8 says is, in light on the State's reliance on
9 circumstantial evidence to prove intent, the evidence of
10 a prior drug transaction only two days earlier at the
11 same location was especially probative.

12 MS. COMPTON: Certainly, Your Honor.

13 THE COURT: So we've got the two days versus
14 three years. And then the other case which distinguishes
15 *State v. Wilson* quite adamantly, *State v. Tuffour*, T-U-F-
16 F-O-U-R, from 2005. And they reversed Judge Nicholson, I
17 think, for allowing the inquiry.

18 MS. COMPTON: Where the Defendant was only
19 charged with trafficking as opposed to possession with
20 the intent to distribute because that intent prong wasn't
21 there.

22 THE COURT: Well, I understand that. But just
23 skipping through that opinion, and we're still dealing
24 with -- I think it was a month's proximity of time in
25 *Tuffour*?

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1 MS. COMPTON: Correct.

2 THE COURT: So get me past the three year ---

3 MS. COMPTON: Well, Your Honor, it certainly --
4 it is certainly a difference in this case. However, it
5 happened at the exact same location in exactly the same
6 way. Your Honor, I don't think the fact that three years
7 elapsed -- and that may be a question of weight for the
8 jury to consider. But I don't think the fact there's
9 that much time that elapsed makes it inadmissible under
10 Lyle. You know, I think it's just as probative that
11 three years ago he was dealing drugs as it would be that
12 two days ago he was dealing drugs.

13 THE COURT: At the exact same location?

14 MS. COMPTON: At the exact same location in the
15 exact same way where an undercover officer -- who he
16 presumably doesn't know because if he knew him, he
17 wouldn't have sold it. So presumably a stranger
18 approaches him within yards of this community center
19 asking to buy drugs, and he sells him drugs.

20 THE COURT: Within ten yards of the Persephone
21 Moultrie ---

22 MS. COMPTON: The first one was on the corner,
23 Your Honor. The 2008 case is the corner of Robertson and
24 Dunwood which is less than a block from -- the community
25 center is in between -- is on Robertson between Dunwood

1 and the next street. So of course, what happens less
2 than a block away in these current facts as alleged is
3 that it happened on the grounds of the community center.

4 THE COURT: How about that, at the exact same
5 location?

6 MR. COCHRAN: Yes, Your Honor. Well, I would
7 say first in terms of *Wilson*, you know, being support for
8 this coming in to prove intent, the reason why *Wilson*
9 allowed it in to prove intent is because it was from that
10 same location, that same hotel room, and conceivably from
11 the same stash of crack cocaine. So at that point he
12 flushes something down the toilet while the police are
13 barging in. So there's a presumption from the Court, it
14 seems like, in their opinion that he probably had some
15 other drugs that would have put him over the presumptive
16 weight. But the reason why that's relevant for intent in
17 that case is because it's a part of the collective
18 actions of the defendant to sell drugs from that
19 location.

20 An act three years prior to a single distribution of
21 crack or intent to distribute is completely irrelevant to
22 his state of mind. I mean, the State is arguing that
23 that one single act from three years prior is relevant to
24 his state of mind three years later as he's walking down
25 the street in front of his house. To me, that just does

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1 not hold water, Your Honor.

2 I would also point your attention to *State versus*
3 *Humphries*. That's a Court of Appeals case that was
4 decided around the same time as *Wilson*. And essentially
5 they keep out some prior bad acts. And the Court of
6 Appeals rules in that case that that was not -- that it
7 was harmless error, so they don't reverse the conviction.
8 They were reversed by the Supreme Court to the effect
9 that it was not harmless error, and the Supreme Court did
10 reverse the convictions in that case.

11 In *Humphries*, essentially they allowed an employee
12 of this automotive shop who is seeing all these
13 suspicious packages coming into the automotive shop, one
14 day opens one up and there's marijuana inside and
15 realizes that his coworkers are basically trafficking in
16 marijuana. There are specific instances of him receiving
17 these packages, and he testifies to those as prior bad
18 acts as part of this collective scheme to traffic in
19 marijuana.

20 THE COURT: And honestly, that's even more
21 admissible as a common scheme or plan than this three
22 years prior.

23 MR. COCHRAN: Yes, ma'am.

24 THE COURT: That's what I'm ...

25 MR. COCHRAN: Yes, Your Honor. And in that

1 case, they held that out because of problems with
2 similarity, and they actually say that it has to give
3 rise to the transaction that is before the court at the
4 time that it's on trial. There's just absolutely no way
5 that this conviction from three years prior could have
6 given rise to his state of mind on the day that he was
7 arrested in 2011.

8 THE COURT: Okay.

9 It's your motion, so you get the last word.

10 MS. COMPTON: Your Honor, simply just that
11 state of mind is a separate reason under *Lyle* that it
12 would be introduced. In this case we are arguing more of
13 intent as one of the reasons. Your Honor, I certainly
14 don't know that he would have the same state of mind over
15 the course of three years like that. But he would, in
16 fact, have a similar approach, a similar mind-set when
17 approached by a stranger in the same location and asked
18 to buy drugs in the exact same way, Your Honor.

19 THE COURT: Okay. I appreciate your argument.
20 In light of the fact that in *Wilson* the Court made such
21 -- it placed emphasis, even if it's dicta, on the two
22 days in upholding the -- well, actually, reversing the
23 Court of Appeals. The three years here, I think, is too
24 much of a stretch to get past the -- to let it show
25 intent. That at least under construction is given by our

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1 Courts in *State v. Humphries*, *State v. Wilson* and *State*
2 *v. Tuffour*. So I'm going to deny your motion
3 respectfully.

4 Okay. Anything else?

5 MR. COCHRAN: Your Honor, the only issue I
6 would have is kind of what my boundaries are in my
7 arguments at trial. I mean, if the Court is ruling that
8 it's not relevant to his state of mind on that day, then
9 I don't think I can -- I don't know that it would even be
10 possible for me to open the door to that conviction. And
11 I guess what I'm concerned with is the State is
12 potentially arguing that I've opened the door at some
13 point during my cross-examination.

14 THE COURT: Oh, you can open the door. I just
15 don't know how you can open it until it happens.

16 MR. COCHRAN: Yeah. And I mean, I guess ---

17 THE COURT: Only if somebody gets in there and
18 says, oh, he's a wonderful law-abiding citizen and has
19 never done anything in his life, the door's open.

20 MR. COCHRAN: Right. Short of ---

21 THE COURT: I don't know how you can open it on
22 cross, but I could see how that could happen. I'm not
23 going to let a police officer witness open the door on
24 you on purpose.

25 MR. COCHRAN: Okay.

1 THE COURT: If that helps at all.

2 MR. COCHRAN: Yeah, I guess -- and I guess --
3 yeah, short of somebody saying he's never been arrested
4 for dealing drugs.

5 THE COURT: Well, that's not the only example I
6 can think of.

7 MR. COCHRAN: Yeah.

8 THE COURT: I can't think it ahead of time. I
9 mean, you know, if they've got ---

10 MR. COCHRAN: Well, basically, what I'm asking
11 is I should still be able to present it as a defense that
12 he did not intend to distribute crack on that day without
13 opening the door.

14 THE COURT: I think you can probably do that.
15 But did he sell it to a member of the Speed Team?

16 MR. COCHRAN: He sold marijuana -- well,
17 allegedly sold ---

18 THE COURT: Allegedly ---

19 MR. COCHRAN: --- the marijuana to a Speed Team
20 member.

21 THE COURT: And then they found it on him when
22 they searched him?

23 MR. COCHRAN: Yeah.

24 THE COURT: Okay.

25 MR. COCHRAN: So it's a distribution for

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1 marijuana and P-WID for crack.

2 THE COURT: Okay.

3 MR. COCHRAN: So one of my concerns ---

4 THE COURT: Looking forward to hearing it.

5 MR. COCHRAN: My concern is, am I going to be
6 hamstrung by these convictions.

7 THE COURT: I don't know yet. I've got to wait
8 and see..

9 MR. COCHRAN: Okay.

10 THE COURT: I mean, I'm not going to let
11 anybody backdoor anything in, if that's what you're
12 worried about.

13 MR. COCHRAN: Yes. Yes, Your Honor.

14 THE COURT: What else?

15 MS. COMPTON: Nothing from---

16 THE COURT: Can y'all talk? Is there an offer?

17 MS. COMPTON: Your Honor, there was and we
18 would like to put that on the record if that's okay.

19 THE COURT: Sure.

20 MS. COMPTON: At plea court the week of -- the
21 weeks of November 28th, February 13th and March 19th,
22 albeit I cannot guarantee that all discovery was turned
23 over that first two plea weeks. But certainly the week
24 of March 19th ---

25 THE COURT: Sure.

1 MS. COMPTON: --- he was offered to plead to a
2 count of distribution of marijuana first, which is a zero
3 minimum, zero to five years, and possession of cocaine
4 base first, which is zero to three years. He rejected
5 that offer.

6 THE COURT: And what are the charges here? I
7 didn't count the convictions, so ...

8 MS. COMPTON: Your Honor, he has four charges
9 here today, distribution of marijuana third, which
10 carries five to twenty; distribution in proximity to a
11 school, and then possession with intent to distribute
12 cocaine base third, which carries ten to thirty, Your
13 Honor.

14 THE COURT: So basically these are thirds and
15 y'all offered him first and to dismiss the proximity?

16 MS. COMPTON: And I reduced the PWID to a
17 possession.

18 THE COURT: PWID to a possession? Okay.

19 MS. COMPTON: And this was in the proximity, so
20 it was very appropriate, Your Honor.

21 THE COURT: Yes, it sounds like it. Is that
22 still on the table?

23 MS. COMPTON: No, Your Honor.

24 THE COURT: No. What is on the table,
25 anything?

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1 MS. COMPTON: He's welcome to plead straight
2 up. But at this point he's rejected that offer a couple
3 of times, and we're ready to move forward with them as
4 charged.

5 THE COURT: Okay.

6 MS. COMPTON: Your Honor, I had not intended to
7 offer anything either at trial.

8 THE COURT: Right.

9 Okay, sir. I know you've got good lawyers. I'm
10 sure they explained the prior offers to you. It sounds
11 to me like you were offered numerous times. I'm hearing
12 now that the offers are not on the table anymore other
13 than to allow you to plead straight up. You're certainly
14 constitutionally entitled to a jury trial. I just need
15 to make sure those offers were communicated to you and
16 that you understood what you were doing in rejecting
17 them. Can you tell me about that? Or I'll hear from
18 your counsel. I just ---

19 MR. COCHRAN: Your Honor ---

20 THE COURT: I'm concerned as to why he would
21 reject such an incredible offer in light of this record
22 I'm looking at.

23 MR. COCHRAN: Yes, Your Honor. And he can
24 disagree with me if he thinks that I'm misstating how
25 this went down. But he was absolutely advised of the

1 potential risks and rewards of going to trial in a case
2 like this. We sat for some time on the day of the last
3 court date. And his previous attorney before the
4 holidays sat with him.

5 THE COURT: Who was his previous attorney?

6 MR. COCHRAN: Reese Stidham, Your Honor.

7 THE COURT: Okay.

8 MR. COCHRAN: And I've got his notes from his
9 discussions with Mr. Simmons to accept or reject this
10 plea. Mr. Simmons was very clear he wanted to reject
11 that offer on that last court date.

12 THE COURT: Okay.

13 Is that accurate, sir?

14 THE DEFENDANT: No, ma'am. The first one being
15 the offer of the cocaine with intent to distribute.

16 THE COURT: Okay.

17 THE DEFENDANT: And when they bring the offer
18 for the marijuana, it was the same. It was no different
19 than the plea. And they wanted to charge me with attempt
20 to distribute cocaine base.

21 MR. COCHRAN: And Your Honor, that was the
22 initial offer that Mr. Stidham eventually convinced Ms.
23 Compton to reduce the possession with intent to
24 distribute cocaine because he felt that that was the only
25 hangup with the offer. So he was then charged with

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1 possession of crack cocaine and distribution of
2 marijuana, and he should be abundantly more clear of that
3 at this point.

4 MS. COMPTON: I did reduce it at the November
5 plea date at Mr. Stidham's request.

6 THE COURT: So at the November plea date he was
7 going to be able to plead to distribution of marijuana
8 first, correct?

9 MS. COMPTON: Yes.

10 THE COURT: And possession of cocaine first, or
11 cocaine base first?

12 MS. COMPTON: After some negotiation with Mr.
13 Stidham.

14 THE COURT: Sir, did you understand that? I
15 mean, what you're charged with, I believe, is
16 distribution third and two proximity charges.

17 And is it possession with intent to distribute
18 third?

19 MS. COMPTON: Yes, ma'am.

20 THE COURT: Do you understand that, sir?

21 THE DEFENDANT: I understand.

22 MR. COCHRAN: Tell her.

23 THE DEFENDANT: I understand it, but my first
24 plea back for the cocaine and the second plea, when they
25 taking your plea for the marijuana, the plea's so -- it

1 seemed like that the plea didn't change it. It's still
2 zero to five. I understand that ---

3 THE COURT: Okay.

4 THE DEFENDANT: That's all I'm saying.

5 MR. COCHRAN: I think what his issue was, was
6 that from going to a distribution of marijuana and P-WID
7 crack, to distribution of marijuana and possession of
8 crack, he didn't see that that changed his situation all
9 that much because it was still an open plea with a
10 possibility of a sentence of five years.

11 THE COURT: Oh, sure. But does he understand
12 the distinction between the distribution third and
13 possession third ---

14 MR. COCHRAN: I certainly hope he does at this
15 point.

16 THE COURT: --- to distribution first and
17 possession first?

18 Do you understand that, sir?

19 THE DEFENDANT: I don't know a second or the
20 time it carry or nothing.

21 THE COURT: The thirds that you're being tried
22 on today carry significantly more time. You know,
23 they're telling me that there's nothing on the table now,
24 but, you know, that's always something we can talk about.
25 But if you want to go forward, well, I'm ready to bring

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1 the jury in and pick it today. I just wanted to make
2 sure you understood what you rejected in November.

3 MR. COCHRAN: And I would certainly ask that
4 the offer be put back on the table if for some reason Mr.
5 Simmons genuinely thought that I didn't relay to him ---

6 THE COURT: Oh, I'm not trying to imply that at
7 all. I just want to make sure he understood.

8 Did you understand all of that, sir?

9 THE DEFENDANT: I understand the charge. I
10 don't quite know what the charge carry.

11 THE COURT: He needs to know all of that. Can
12 we -- can they have a chat about all that?

13 MS. COMPTON: Absolutely, Your Honor. I would
14 only submit that he was explained by two different
15 attorneys what this charged carried. But certainly
16 please take time to assure that happens.

17 THE COURT: If y'all want to go talk for a
18 little bit, I'm fine with that.

19 MR. COCHRAN: Yes, Judge.

20 THE COURT: I just want to make sure out of an
21 abundance of caution.

22 MR. COCHRAN: Thank you.

23 (WHEREUPON, court stood at ease in this case.)

24 THE COURT: Thank y'all for doing that.

25 MR. COCHRAN: Yes, Your Honor.

1 THE COURT: Y'all had a conversation?

2 MR. COCHRAN: We have, Your Honor. Your
3 Honor, there's no question in my mind that he understood
4 the parameters and risks of rejecting the plea ---

5 THE COURT: Okay.

6 MR. COCHRAN: --- on the day that he rejected
7 it, and he does understand it today.

8 THE COURT: Okay. I appreciate that.

9 Is that correct, sir?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Thank you, sir.

12 Okay. Are y'all ready to strike the jury, or what
13 do y'all want to do?

14 MR. COCHRAN: Yes, Your Honor.

15 MS. COMPTON: Yes, Your Honor.

16 THE COURT: Do we need to let Don know to bring
17 them on up?

18 (WHEREUPON, the jury panel entered the courtroom.)

19 THE COURT: Okay. Is that everybody?

20 THE BAILIFF: Yes, ma'am.

21 THE COURT: Okay. Thank you, ladies and
22 gentlemen. Thank you for being here this morning. I
23 appreciate your patience waiting on us. We had some
24 legal issues that we had to work out, but we have been
25 able to streamline things such that we will be picking

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1 one jury this morning, and I thought we would be picking
2 two. So twelve to fourteen of y'all will be off the hook
3 when we would have had that times two. So I appreciate
4 y'all being here.

5 As some of y'all heard earlier when you were part of
6 our panel on Monday, I'm Judge McDonald. I'm based here
7 in Charleston, and it's my privilege to sit with y'all
8 this week in this term of General Sessions Court which is
9 criminal court. Some of y'all may already have been over
10 and heard from one of the other judges sitting in civil
11 court, and I recognize some of my jurors from earlier
12 this week in criminal court.

13 We're here today in the case of the State of South
14 Carolina versus Jeffrey Leroy Simmons. I'm going to read
15 to you the indictments from the case -- that's one of the
16 ways that we let you know what you'll be trying -- and
17 make sure that you don't have any familiarity with the
18 case or any kind of bias as to this kind of case. And
19 this will go through the voir dire that some of you have
20 heard already.

21 Please keep in mind -- and you may have heard this
22 before -- that the indictments are not in any way
23 evidence. These are merely -- each indictment is the
24 mechanism by which the charge comes to court so that we
25 can try it. It is not evidence. The burden of proof

1 remains on the State at all times to prove the
2 allegations in the indictment and the elements of the
3 crimes charged beyond a reasonable doubt. And the
4 Defendant remains not guilty and has pled not guilty, and
5 he is presumed innocent throughout the trial up and until
6 and if and until a jury unanimously agrees that the State
7 has met its burden.

8 The first indictment 2011-6498 states that in
9 Charleston County, South Carolina, on or about June 15th,
10 2011, the Defendant, Jeffrey Leroy Simmons, did
11 distribute or otherwise aid in the distribution and
12 delivery of cocaine base in violation of South Carolina
13 law.

14 Indictment 2011-6495 states that in Charleston
15 County on or about June 15th, 2011, the Defendant, Jeffrey
16 Leroy Simmons, did distribute, deliver or aid or abet in
17 doing so marijuana in violation of South Carolina law.

18 Indictment 2011-6500 states that in Charleston
19 County on or about June 15th, 2011, the Defendant, Jeffrey
20 Leroy Simmons, knowing and unlawfully did possess with
21 intent to distribute some quantity of cocaine base within
22 a half mile radius of the grounds of the Persephone
23 Moultrie Community Center located at 2001 Robertson
24 Avenue in North Charleston.

25 And indictment 2011-6496 states that in Charleston

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1 County on or about June 15th, 2011, the Defendant, Jeffrey
2 Leroy Simmons, did knowingly and unlawfully distribute,
3 sell, purchase, manufacture or possess with intent to
4 distribute marijuana within one-half mile radius of the
5 grounds of Persephone Moultrie Community Center located
6 at 2001 Robertson Avenue.

7 Again, these indictments are not evidence, and the
8 Defendant has pled not guilty to the charges.

9 Is any member of the jury panel familiar with the
10 allegations as set forth in the indictment, meaning do
11 you know anything about this case already? If so, please
12 stand.

13 (No response)

14 THE COURT: Okay. Finding none, I thank you.

15 I'm going to ask that the members of the Charleston
16 County Solicitor's Office who are here to stand and
17 introduce themselves to you. And then if any member of
18 the panel knows these attorneys or indeed knows any of
19 the attorneys employed with the Ninth Circuit Solicitor's
20 Office, I'm going to ask you to stand.

21 MS. COMPTON: Good morning. My name is Spencer
22 Compton. As the Judge indicated, I'm with the Ninth
23 Circuit Solicitor's Office. To my right is Burns
24 Wetmore. He's also an assistant solicitor with our
25 office. And seated here in front of me is Kenny

1 Barfield. He's an investigator with my office. He'll be
2 helping us out with the case today.

3 THE COURT: Does any member of the panel know
4 Ms. Compton, Investigator Barfield or Mr. Wetmore. If
5 so, please stand. And I'm going to ask -- start over
6 here. And I'm going to get your juror number and your
7 name. If you'll tell me how you know them.

8 THE JUROR: Mark Clark, 48. Mr. Barfield.

9 THE COURT: You know Mr. Barfield?

10 THE JUROR: (No verbal response)

11 THE COURT: Okay. And would your relationship
12 with Mr. Barfield or knowing him in any way interfere
13 with your ability to sit as a fair and impartial juror in
14 the trial of this case?

15 THE JUROR: No.

16 THE COURT: Okay. Thank you, sir.

17 Yes, ma'am?

18 THE JUROR: Elise Peeples, juror 204.

19 THE COURT: Okay.

20 THE JUROR: I know Mr. Barfield. My daughters
21 and his niece were real good friends, soccer travel
22 partners.

23 THE COURT: Okay. Would that in any way
24 interfere with your ability to sit fairly and impartially
25 in the trial of this case?

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1 THE JUROR: I don't think so.

2 THE COURT: Well, would it make you
3 uncomfortable at all to sit where he's going to be
4 sitting over at the table over there with them?

5 THE JUROR: Well, maybe a little bit.

6 THE COURT: Okay. We're going to strike you
7 from the trial of this case. So juror number 204 is
8 excused from this case. If you'll remain with us just
9 for a little while longer.

10 Yes, sir?

11 THE JUROR: Robert Wilds, juror 284. I have a
12 professional relationship with one of the solicitors on
13 my side of the profession, not his.

14 THE COURT: Okay. Would that in any way
15 interfere with your ability to sit fairly and impartially
16 in the trial of this case?

17 THE JUROR: I don't believe so.

18 THE COURT: I'm sorry? Yes or no?

19 THE JUROR: No.

20 THE COURT: Okay. Thank you.

21 Yes, sir?

22 THE JUROR: I'm David Welch, juror 275. Mr.
23 Barfield is a neighbor of mine. Other than that ...

24 THE COURT: Okay. Would that in any way
25 interfere with your ability to be impartial in the trial

1 of this case?

2 THE JUROR: No, ma'am.

3 THE COURT: Okay. Thank you, sir.

4 Yes, sir?

5 THE JUROR: David Seithel, 224. I know Mr.

6 Barfield.

7 THE COURT: Okay. Would that in any way
8 interfere with your ability to be fair and impartial in
9 the trial of this case?

10 THE JUROR: None.

11 THE COURT: No?

12 THE JUROR: No. Okay. Thank you.

13 I'm sorry, y'all. It's hard to hear up here
14 sometimes.

15 Yes, sir?

16 THE JUROR: Lance Lewandowski. I'm juror 158,
17 and I know Mr. Barfield.

18 THE COURT: You're from here too, aren't you?
19 Would that in any way interfere with your ability to sit
20 fairly and impartially in the trial of this case?

21 THE JUROR: No.

22 THE COURT: No? Okay. Thank you, sir.

23 Yes?

24 THE JUROR: I think I don't need to be taken
25 off either.

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1 THE COURT: Well, you know what, we're just
2 going to exercise an abundance of caution. And I
3 appreciate your willingness to serve. Most people try to
4 -- no, I take that back. Some people try to get back on.
5 I appreciate it. We're going to give you a pass this
6 time. But thank you though.

7 THE JUROR: Okay.

8 THE COURT: Okay. Has any member of the panel
9 or any member of your family ever had any criminal
10 charges adjudicated by or are there current charges
11 pending with the Charleston County Solicitor's Office?
12 If so, please stand.

13 (No response)

14 THE COURT: Okay. Finding none, I thank you.

15 I'm going to ask Defense Counsel to please stand and
16 introduce yourself and your client, please.

17 MR. COCHRAN: Good morning. My name is Charlie
18 Cochran, and I work for the Charleston County Public
19 Defender's Office. This is my client, Jeffrey Simmons
20 and my co-counsel, Luke Malloy.

21 THE COURT: Thank you.

22 Does any member of the panel know, have a personal
23 relationship or are you related by blood or marriage to
24 Mr. Charlie Cochran, Mr. Luke Malloy or to any member of
25 the Charleston County Public Defender's Office? Have you

1 been close personal friends with or related by blood or
2 marriage? If so, please stand.

3 (No response)

4 THE COURT: Okay. And how about Mr. Jeffrey
5 Leroy Simmons? Does any member of the panel know or are
6 you related by blood or marriage or a close personal
7 friend of Mr. Simmons? If so, please stand.

8 (No response)

9 THE COURT: Okay. I find none.

10 Has any member of the panel or any member of your
11 family ever been represented by the Charleston County
12 Public Defender's Office? If so, please stand.

13 (No response)

14 THE COURT: Okay. I find none. Thank you.

15 I'm going to read to y'all a list of potential
16 witnesses who may be called in the trial of the case. If
17 you are related by blood or marriage or are a close
18 personal friend of any of these witnesses, I'm going to
19 ask you to stand at end of the reading of the list and
20 tell me who you know and how you know them, and then we
21 will go through the bias and prejudice questions that we
22 asked earlier. Deangelo Dean of the North Charleston
23 Police Department, Kristen Jones of the North Charleston
24 Police Department, S. Janowski ...

25 Do we have a first name?

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1 MS. COMPTON: Your Honor, I believe it's
2 Stephen.

3 THE COURT: Okay. Stephen Janowski of the
4 North Charleston Police Department, Detective Elmore who
5 is formerly of the North Charleston Police Department and
6 now with Dorchester County, Officer D. Houston of the
7 North Charleston Police Department, Alex Teachey of the
8 North Charleston Police Department, L. Reynolds of the
9 North Charleston Police Department, Douglas Robinson of
10 SLED or Amy Stevens of SLED. If you know any of these
11 folks or are related by blood or marriage to them or a
12 close personal friend of them, I'll ask you to please
13 stand.

14 Yes, ma'am, if you could give us your name and juror
15 number and tell us who you know.

16 THE JUROR: My name is Shenequa Lockwood. I'm
17 juror number 160. I know Deangelo Dean.

18 THE COURT: You know Deangelo Dean?

19 THE JUROR: Yes, ma'am. He and my brother are
20 best friends.

21 THE COURT: Okay. And would that relationship
22 of he and your brother being best friends in any way
23 interfere with your ability to sit fairly and impartially
24 in the trial of this case?

25 THE JUROR: No, ma'am.

1 THE COURT: Okay. Thank you, ma'am.

2 Yes, sir?

3 THE JUROR: Did you call Oscar Douglas?

4 THE COURT: No, sir.

5 THE JUROR: No?

6 THE COURT: No Oscar Douglas. But thank you.

7 THE JUROR: Okay.

8 THE COURT: I may have misspoken, but the
9 closest to that I have is Deangelo Dean and Douglas
10 Robinson.

11 THE JUROR: Okay.

12 THE COURT: Okay. Thank you.

13 Anyone else?

14 (No response)

15 THE COURT: Okay. Would any member of the jury
16 panel have any problem following the law as the Court
17 gives it to you, even if you believe that that law is
18 inappropriate or unfair? If so, please stand.

19 (No response)

20 THE COURT: I find none.

21 Has any member of the jury panel had an experience
22 with law enforcement, the legal system, or the penal
23 system that would render you incapable of being fair and
24 impartial? If so, please stand?

25 (No response)

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1 THE COURT: Does any member of the panel have
2 any personal, political or religious belief or conviction
3 that would make it difficult for you to sit in judgment
4 of another person? If so, please stand.

5 (No response)

6 THE COURT: Is any member of the jury panel a
7 member of a neighborhood watch group or in any way
8 affiliated with a neighborhood watch group? If so,
9 please stand?

10 (No response).

11 THE COURT: Does any member of the panel know
12 of any reason why he or she could not render -- not give
13 this Defendant or the State a fair and impartial verdict
14 in the trial of this case? If so, please stand.

15 Yes, ma'am?

16 THE JUROR: Gina Cricchio, Juror 57.

17 THE COURT: Uh-huh (affirmative)?

18 THE JUROR: My husband was a drug addict and
19 committed suicide over it. I just have issues when it
20 comes to things like that.

21 THE COURT: Okay. Thank you, ma'am. I'm going
22 to excuse you from the trial of this case.

23 Yes, sir?

24 THE JUROR: Albert Sumter, 252.

25 THE COURT: Okay.

1 THE JUROR: I used to do weed.

2 THE COURT: Okay. Would that interfere or make
3 it ---

4 THE JUROR: I think so..

5 THE COURT: I'm sorry?

6 THE JUROR: I'm pretty sure.

7 THE COURT: Okay. I'm going to dismiss you
8 from the trial of this case. Number 252?

9 THE JUROR: Yes, ma'am.

10 THE COURT: Thank you, sir.

11 Yes, ma'am?

12 THE JUROR: Linda Hancock, number 114. I'm a
13 clinical psychologist and spent twelve years working with
14 victims of sex crimes and drug and alcohol and suppliers
15 of such contributed greatly to the events that put them
16 in the situation.

17 THE COURT: Okay. I take it then that that
18 would interfere with your ability to sit fairly in this
19 case?

20 THE JUROR: Yes, ma'am.

21 THE COURT: Okay. I'm going to excuse you.
22 Number 114, correct?

23 THE JUROR: Correct.

24 THE COURT: Yes. Thank you.

25 Does any member of the panel know of any reason

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1 whatsoever, any personal bias, any strong personal
2 opinions -- and some of y'all have expressed them
3 already, and I appreciate your candor -- any reason why
4 you could not sit fairly and impartially in the trial of
5 this case?

6 Yes, ma'am?

7 THE JUROR: Do you need my juror number again?

8 THE COURT: I'm sorry. What did she ...

9 THE JUROR: Shenequa Lockwood, 160. My mother
10 had a drug overdose five years ago.

11 THE COURT: Okay. And would that make you
12 uncomfortable to sit in this case?

13 THE JUROR: Five years ago. Yes, ma'am.

14 THE COURT: Okay. I'm going to excuse you from
15 the trial of this case. Number 160. Thank you.

16 Anyone else?

17 (No response)

18 THE COURT: Okay. Anything further from the
19 State?

20 MS. COMPTON: Nothing from the State, Your
21 Honor.

22 THE COURT: Anything further from the Defense?

23 MR. COCHRAN: Not at this time, Your Honor.

24 THE COURT: Okay. We will go ahead and print
25 the list.

1 Oh, yes, ma'am?

2 THE JUROR: I think I mentioned this several
3 days ago, but I'm a volunteer juvenile arbitrator for the
4 Ninth Circuit Court. I just wanted to make sure that's
5 not a conflict of interest.

6 THE COURT: I'm sorry. What?

7 THE JUROR: I wanted to make sure that was
8 known so there's not a conflict of interest.

9 THE COURT: You're a volunteer juvenile ---

10 THE JUROR: Juvenile arbitrator for the Ninth
11 Circuit.

12 THE COURT: Okay. Do you work with the
13 Solicitor's office?

14 THE JUROR: That's correct.

15 THE COURT: Okay. Yes, I'm going to excuse you
16 from the trial of this case. Thank you. What is your
17 juror number, please?

18 THE JUROR: 150.

19 THE COURT: 150?

20 THE JUROR: That's right.

21 THE COURT: Yes, ma'am?

22 THE JUROR: Heidi Gough, juror 99. I just
23 wanted to identify that I know personally Judge McDonald.

24 THE COURT: Thank you. And I was going to
25 bring that to y'all's attention. We worked together for

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1 two years pretty much every day.

2 Is anybody -- and it will not hurt my feelings. If
3 y'all are uncomfortable with that, we can strike Ms.
4 Gough. It won't interfere with my ability to sit fairly
5 and impartially. If y'all want to -- I'll excuse myself
6 for a minute, and y'all can decide.

7 MS. COMPTON: I think we're okay with it, Your
8 Honor.

9 THE COURT: Thank you. All right. Let's pull
10 the sheet.

11 MR. COCHRAN: Your Honor, may we approach?

12 THE COURT: Sure.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: Yes, sir?

16 THE CLERK: Ladies and gentlemen, as I call
17 your name, if would you please gather any belongings and
18 walk up to this podium, turn and face the parties. I'll
19 then ask the parties questions, and then I'll either
20 direct you to have a seat back in the audience or I'll
21 ask you to have a seat in the jury box.

22 Juror number 223, Dorothy Schafer.

23 (WHEREUPON, juror number 223, a white female
24 approached.)

25 THE CLERK: The strikes, Judge?

1 THE COURT: Is it five and ten or five and
2 five?

3 MR. COCHRAN: Five and five.

4 THE COURT: Five and five? Five strikes each,
5 and I think we just need one alternate. Does anybody
6 object to just having one alternate?

7 MR. COCHRAN: No, Your Honor.

8 MS. COMPTON: No.

9 THE COURT: Okay. Thank you.

10 THE COURT: Okay.

11 THE CLERK: What say you for the State?

12 MS. COMPTON: Please present the juror.

13 THE COURT: What say you for the Defendant?

14 MR. COCHRAN: Please excuse the juror, Your
15 Honor.

16 THE CLERK: Ms. Schafer, please have a seat
17 back in the audience. You have been excused from the
18 trial of this case.

19 Juror number 2, Richmond Ackerman.

20 (WHEREUPON, juror number 2, a white male,
21 approached.)

22 THE CLERK: What say you for the State?

23 MS. COMPTON: Please present this juror.

24 THE CLERK: What say you for the Defendant?

25 MR. COCHRAN: Please excuse the juror.

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1 THE CLERK: Mr. Ackerman, please have a seat
2 back in the audience. You have been excused from the
3 trial of this case.

4 Juror number 193, Sally Nelson.

5 (WHEREUPON, juror number 193, a black female,
6 approached.)

7 THE CLERK: What say you for the State?

8 MS. COMPTON: Please present this juror.

9 THE COURT: What say you for the Defendant?

10 MR. COCHRAN: Please seat the juror.

11 THE CLERK: Ms. Nelson, please have a seat in
12 the jury box. You have been selected as a juror in this
13 case.

14 Juror number 19, Pernia Bobomitchell.

15 (WHEREUPON, juror number 19, a black female,
16 approached.)

17 THE CLERK: What say you for the State?

18 MS. COMPTON: Please present the juror.

19 THE CLERK: What say you for the Defendant?

20 MR. COCHRAN: Please seat the juror.

21 THE CLERK: Ms. Bobomitchell, please have a
22 seat in the jury box. You have been selected as a juror
23 in this case.

24 Juror number 158, Lance Lewandowski.

25 (WHEREUPON, juror number 158, a white male,

1 approached.)

2 THE CLERK: What say you for the State?

3 MS. COMPTON: Please present this juror.

4 THE CLERK: What say you for the Defendant?

5 MR. COCHRAN: Please seat the juror.

6 THE CLERK: Mr. Lewandowski, please have a seat
7 in the jury box. You've been selected as a juror in this
8 case.

9 Juror number 157, Bradley Larson.

10 (WHEREUPON, juror number 157, a white male,
11 approached.)

12 THE CLERK: What say you for the state?

13 MS. COMPTON: Please present this juror.

14 THE CLERK: What say you for the Defendant?

15 MR. COCHRAN: Please seat the juror.

16 THE CLERK: Mr. Larson, please have a seat in
17 the jury box. You've been selected as a juror in this
18 case.

19 Juror number 58, David Crutchfield.

20 (WHEREUPON, juror number 58, a white male,
21 approached.)

22 THE CLERK: What say you for the State?

23 MS. COMPTON: Please present this juror.

24 THE CLERK: What say you for the Defendant?

25 MR. COCHRAN: Please seat the juror.

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1 THE CLERK: Mr. Crutchfield, please have a seat
2 in the jury box. You've been selected as a juror in this
3 case.

4 Juror number 87, Laurie Free.

5 (WHEREUPON, juror number 87, a white female,
6 approached.)

7 THE CLERK: What say you for the State?

8 MS. COMPTON: Please present this juror.

9 THE CLERK: What say you for Defendant?

10 MR. COCHRAN: I beg the Court's indulgence.

11 THE COURT: Certainly.

12 MR. COCHRAN: Please seat the juror.

13 THE CLERK: Ms. Free, please have a seat in the
14 jury box. You've been selected as a juror in this case.

15 Juror number 281, Barbara Wigfall.

16 (WHEREUPON, juror number 281, a black female,
17 approached.)

18 THE CLERK: What say you for the State?

19 MS. COMPTON: Please present this juror.

20 THE CLERK: What say you for the Defendant?

21 MR. COCHRAN: Please present the juror.

22 THE CLERK: Ms. Wigfall, please have a seat in
23 the jury box. You've been selected as a juror in this
24 case.

25 Juror number 175, Heather McIntosh.

1 (WHEREUPON, juror number 175, a white female,
2 approached.)

3 THE CLERK: What say you for the State?

4 MS. COMPTON: Please present this juror.

5 THE CLERK: What say you for the Defendant?

6 MR. COCHRAN: Please seat the juror.

7 THE CLERK: Ms. McIntosh, please have a seat in
8 the jury box. You've been selected as a juror in this
9 case.

10 Juror number 45, Debra Chaplin.

11 (WHEREUPON, juror number 45, a white female,
12 approached.)

13 THE CLERK: What say you for the State?

14 MS. COMPTON: Please excuse this juror.

15 THE CLERK: Ms. Chapman, please have a seat
16 back in the audience. You've been excused from the trial
17 of this case.

18 Juror number 282, Garry Wiggins.

19 (WHEREUPON, juror number 282, a white male,
20 approached.)

21 THE CLERK: What say you for the State?

22 MS. COMPTON: Please present this juror.

23 THE CLERK: What say you for the Defendant?

24 MR. COCHRAN: Please excuse the juror.

25 THE CLERK: Mr. Wiggins, please have a seat

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1 back in the audience. You've been excused from the trial
2 of this case.

3 Juror number 49, Rachael Click.

4 (WHEREUPON, juror number 49, a white female,
5 approached.)

6 THE CLERK: What say you for the State?

7 MS. COMPTON: Please present this juror.

8 THE CLERK: What say you for the Defendant?

9 MR. COCHRAN: Please seat the juror.

10 THE CLERK: Ms. Click, please have a seat in
11 the jury box. You've been selected as a juror in this
12 case.

13 Juror number 89, Michael Frye.

14 (WHEREUPON, juror number 89, a white male,
15 approached.)

16 THE CLERK: What say you for the State?

17 MS. COMPTON: Please present this juror.

18 THE CLERK: What say you for the Defendant?

19 MR. COCHRAN: Please seat the juror.

20 THE CLERK: Mr. Frye, please have a seat in the
21 jury box. You've been selected as a juror in this case.

22 Juror number 195, Philip Northrop.

23 (WHEREUPON, juror number 195, a white male,
24 approached.)

25 THE CLERK: What say you for the State?

1 MS. COMPTON: Please excuse this juror.

2 THE CLERK: Mr. Northrop, please have a seat
3 back in the audience. You have been excused from the
4 trial of this case.

5 Juror number 62, Necole Davis.

6 (WHEREUPON, juror number 62, a black female,
7 approached.)

8 THE CLERK: What say you for the State?

9 MS. COMPTON: Please seat this juror.

10 THE CLERK: What say you for the Defendant?

11 MR. COCHRAN: I beg the Court's indulgence.

12 Please seat the juror.

13 THE CLERK: Ms. Davis, please have a seat in
14 the jury box. You've been selected as a juror in this
15 case.

16 Juror number 275, David Welch.

17 (WHEREUPON, juror number 275, a white male,
18 approached.)

19 THE CLERK: What say you for the State?

20 MS. COMPTON: Please excuse this juror.

21 THE CLERK: What was that?

22 MS. COMPTON: Please excuse this juror.

23 THE CLERK: Mr. Welch, please have a seat back
24 in the audience. You've been excused from the trial of
25 this case.

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1 That's three strikes for the State.

2 Juror number 177, Adrian McKinley.

3 (WHEREUPON, juror number 177, a black female,
4 approached.)

5 THE CLERK: What say you for the State?

6 MS. COMPTON: Please present this juror.

7 THE CLERK: What say you for the Defendant?

8 MR. COCHRAN: Please seat the juror.

9 THE CLERK: Ms. McKinley, please have a seat in
10 the jury box. You've been selected as a juror in this
11 case.

12 We are now picking for the alternate. Strikes are
13 one and two.

14 Juror number 85, Cara Fowler.

15 (WHEREUPON, juror number 85, a white female,
16 approached.)

17 THE CLERK: What say you for the State?

18 MS. COMPTON: Please present this juror.

19 THE CLERK: What say you for the Defendant?

20 MR. COCHRAN: Please seat the juror.

21 THE CLERK: Ms. Fowler, please have a seat in
22 the jury box. You've been selected as a juror in this
23 case.

24 Your Honor, the jury has been selected and seated.

25 THE COURT: Okay. Thank you, sir.

1 Okay. Ladies and gentlemen, I appreciate your
2 patience and your time. I will not be selecting any
3 further juries this week. I don't think they're starting
4 another case in civil court.

5 Are they picking a jury?

6 THE CLERK: No.

7 THE COURT: Can they be excused for the week?

8 THE CLERK: Yes, ma'am.

9 THE COURT: Great. Thank you.

10 I am told that y'all are excused for the week.

11 I don't know if they need to turn in any paperwork
12 to you?

13 THE CLERK: No, ma'am.

14 THE COURT: Okay. Y'all are good to go. Thank
15 you so much for your service and your patience.

16 (WHEREUPON, the jury panel exited the open court.)

17 THE COURT: Ladies and gentlemen, thank you so
18 much. You will be our jury in the trial of this matter.
19 I see some familiar faces from my jury earlier in the
20 week. I do not anticipate that this case will last more
21 than until about -- y'all will probably have it before
22 lunch tomorrow, I would imagine. We'll wait and see how
23 it goes. But there's no danger of us running over into
24 the weekend, I'm told. So no worries about that.

25 We have one matter that we need to take up before we

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1 get started, but the parties are ready to give their
2 opening statements. So I'm going to give y'all about a
3 fifteen-minute break while I finish putting what they
4 need to put on the record, and then we'll bring you back
5 and we'll go ahead and get started.

6 I have a few preliminary remarks I'll give you when
7 you come back, but let's go ahead and get our jury sworn.

8 (WHEREUPON, the jury was duly sworn.)

9 THE COURT: Okay. Thank you, ladies and
10 gentlemen. If y'all will take about a ten- or fifteen-
11 minute break. Please do not discuss the case yet, and I
12 will give you further instructs when we get started in
13 about ten or fifteen minutes. Thank you.

14 (WHEREUPON, the jury exited the open court at
15 approximately 11:00 a.m.)

16 THE COURT: Okay. Mr. Cochran or Mr. Malloy?

17 MR. COCHRAN: Thank you, Your Honor. As to my
18 motion before, we would move to strike this jury just
19 based on some of the comments that the other jurors have
20 made about being so vehement about why they are opposed
21 or have prejudice against anybody charged with a drug
22 crime and kind of gave their personal experiences. I
23 even heard some of the other jurors in the pool -- not
24 necessarily our jury -- but heard some others who weren't
25 making comments actually commiserate with the people who

1 were making their comments. So I would move to strike
2 the jury.

3 THE COURT: Okay. Yes, ma'am?

4 MS. COMPTON: Your Honor, certainly nothing --
5 no one stood up that is currently on our pool indicated
6 that they would be unable to serve. And further, I don't
7 believe that anyone in our pool stood up and commiserated
8 or made any other comments during the selection.

9 MR. COCHRAN: No response.

10 THE COURT: Well, I'm going to respectfully
11 deny your motion for a couple of reasons. First, we did
12 ask a followup question afterwards if there was any
13 reason whatsoever that anybody had any personal bias or
14 problem, and no one in the venire stood. I would also
15 note that the responses that were made were in response
16 to a voir dire that the defense requested -- the defense
17 requested, but I think you're entitled to know that
18 information certainly.

19 But to address the specific comments made, I think
20 it was juror 114 who had worked in the health care field.
21 I certainly don't think her comments absolutely
22 prejudiced or in any way prejudiced the defendant. I
23 think he can get a fair trial with this jury. I find
24 that he can get a fair trial with this jury. I did not
25 hear any other comments such that they would in any way

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1 prejudice his right to a fair trial, so I'm going to
2 respectfully deny your motion. But you certainly are
3 preserved.

4 MR. COCHRAN: Thank you, Your Honor.

5 THE COURT: Okay. Anything else before we take
6 a short break?

7 MS. COMPTON: Nothing from the State, Your
8 Honor.

9 THE COURT: All right. While don't y'all be at
10 ease for about ten minutes. Y'all take a quick break and
11 we'll get going.

12 MR. COCHRAN: We would request that Mr. Simmons
13 remain on bond.

14 THE COURT: Oh, certainly, yes.

15 Any objection?

16 MS. COMPTON: No, ma'am.

17 THE COURT: Okay.

18 MS. COMPTON: Your Honor, in regard to the bond
19 issue, as long as he is aware that it will continue in
20 his absence should he not return after our break or if
21 that's an option, Your Honor.

22 THE COURT: Well, if he doesn't return after a
23 break, then we'll be dealing with a bench warrant
24 situation so ...

25 MS. COMPTON: And we would move at that point

1 to proceed in his absence.

2 MR. COCHRAN: Mr. Simmons.

3 THE COURT: Sir, you do understand that I'm
4 going to let you remain on bond throughout the trial.
5 However, if for some reason you don't come back, the
6 trial will be held in your absence, and that bond will
7 likely be revoked and a bench warranted issued. Do you
8 understand that?

9 THE DEFENDANT: I understand that.

10 THE COURT: All right. Thank you, sir.

11 (WHEREUPON, court stood at recess for a short
12 break.)

13 THE COURT: Okay. Is everybody ready for the
14 jury?

15 MS. COMPTON: May we make a motion to ...

16 MR. COCHRAN: Oh, could we sequester the
17 witnesses, Your Honor.

18 THE COURT: Any objection?

19 MS. COMPTON: Your Honor, may I have permission
20 to have my case agent, Officer Dean?

21 THE COURT: Yes. Is there any objection to
22 having the case agent?

23 MR. COCHRAN: No, Your Honor.

24 THE COURT: All right. Sounds good. Anything
25 else?

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1 MR. COCHRAN: No, Your Honor.

2 THE COURT: All right. If you would bring us
3 the jury. Thank you.

4 MS. COMPTON: Just for scheduling purposes, I
5 would just state that my opening will be ten minutes or
6 so. If we could move through the first witness before
7 lunch ---

8 THE COURT: Sure.

9 MS. COMPTON: --- we'd like to.

10 MR. COCHRAN: I'd say I'd be ten minutes.

11 THE COURT: Let's plan on trying to go to like
12 twelve thirty, twelve forty-five, and I'll let everybody
13 go to lunch. And then we'll come back and get started.
14 Okay. How does that sound?

15 MS. COMPTON: Thank you.

16 (WHEREUPON, the jury entered the open court at
17 approximately 11:27 p.m.)

18 THE BAILIFF: All the jurors are seated, Your
19 Honor.

20 THE COURT: Thank you, sir.

21 Ladies and gentlemen, thank you for your patience.
22 I apologize to those of you who have already heard most
23 of this on Monday. But I did want to make a few
24 introductory remarks just to explain a little bit about
25 the process and our scheduling.

1 We're going to get started with opening statements
2 and probably our first one or two witnesses. And then I
3 will let y'all have a little break for lunch and give the
4 attorneys a break as well, and then we'll continue with
5 the testimony.

6 During the breaks, you're not allowed to discuss the
7 case. You really don't know enough about it yet to
8 discuss anyway. But even after you've heard the first
9 few witnesses, you're not permitted to discuss the case
10 because it wouldn't be fair to begin considering it
11 without having heard all of the evidence. So you're not
12 allowed to discuss the case, even with each other until
13 once it is released to you for deliberations and we bring
14 you the verdict form.

15 Now, I think y'all heard earlier when I read the
16 four indictments in this matter, this is the case of the
17 State versus Jeffrey Leroy Simmons. Mr. Simmons is
18 charged with these indictments, and the elements of the
19 crimes charged therein will be explained to you later
20 when I give you the charge on the law at the end of the
21 case after all of the testimony and arguments.

22 As I said before -- and this is very significant for
23 you to remember -- these indictments are not evidence in
24 any way of the allegations contained in them. The
25 Defendant has pled not guilty to these indictments, and

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1 the State bears the burden throughout the trial of
2 proving each of the elements of each and every indictment
3 beyond a reasonable doubt. The indictments are merely a
4 mechanism by which the charges are brought before the
5 court for your consideration as the fact-finder. It will
6 be your duty, ladies and gentlemen, to determine whether
7 the State has met its burden of proof.

8 Your purpose as jurors is to determine the facts.
9 You are the sole judge of the facts. You are the fact-
10 finder. If I make any comment at all regarding the facts
11 -- and I hope I won't -- you're to disregard it because I
12 am not permitted to invade your territory as the fact-
13 finder.

14 You determine these facts from the testimony that
15 you hear in the witness box and the other evidence that
16 is introduced in court. It is then up to you to
17 determine the inferences which you feel may be properly
18 drawn from the evidence that is presented.

19 On the other hand, the same law that makes you the
20 fact-finder and the judge of the facts makes me the judge
21 of the law. The law as given by the Court is the only
22 law you may consider, and you must accept it and follow
23 it even if you disagree with it. Just like I can't tell
24 you what the facts are, y'all can't tell the Court what
25 the law is. Your job is to take the law as it is

1 provided to you and apply it to the facts that you find
2 from the testimony and other evidence that is presented.
3 If there's a mistake made, if I make a mistake on the law
4 or the procedure, I promise you there's a place in
5 Columbia where they fix that.

6 After hearing all of the evidence and being
7 instructed on the law, you then collectively,
8 unanimously, all twelve of you, render your verdict. And
9 I know it'll be a true and just verdict given pursuant to
10 the oath, the very important oath, that you just took as
11 jurors in the case.

12 Again, until I advise and the bailiff lets you know
13 that you are allowed to begin deliberations, you're not
14 permitted to discuss anything about the case with anyone.
15 Not at home, not with family, not with a significant
16 other, not with a friend and not with each other at all
17 because you will not have heard all of the evidence yet.
18 And this means discussions face to face, computer,
19 telephone, any media or mechanism of communication.

20 Likewise -- and I don't anticipate this will be a
21 problem in this particular case. But some of our more
22 high-profile cases where you've perhaps heard of them,
23 people think, well, I'll go home and research it and see
24 what I can find out by reading old material. You're not
25 allowed to do that either. You're not allowed to

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1 consider any information from any outside source. Your
2 inquiry is bound to what you hear within the walls of
3 this courtroom from the witnesses in the witness stand
4 and from the evidence that is introduced by the attorneys
5 for the State and the Defendant.

6 So you're not allowed to read any news reports or
7 any other reports that may be generated. And I don't
8 expect there to be any. I haven't gotten a request that
9 anybody wants to sit in. But please avoid that if any is
10 to come before you. Once this case is submitted to you,
11 you may discuss it in the jury room only with your fellow
12 jurors.

13 The attorneys and the parties have been advised that
14 they're not allowed to talk with you at all. So if you
15 see an attorney in the hall and they seem uncomfortable
16 or don't say hello, I promise they're not being rude.
17 They've just been instructed by law that they're not
18 entitled to interact with the jury. They're not allowed
19 to interact with you at all. They might say a quick, 'hi,
20 and run off in the other direction. Please don't hold
21 that against anybody. I promise they're not being rude.
22 They're just complying with the order of the Court and
23 our rules of procedure.

24 Likewise, please don't hold it against the attorneys
25 if they stand up and object during the trial of the case.

1 An objection -- and I'm sure y'all have seen this in
2 various courtroom dramas on TV or read in books. They'll
3 stand up and say, Your Honor, I object, and perhaps give
4 me a very short reason why they object to whatever
5 happens to be going on at the time. Those objections are
6 the way that they bring to my attention what they
7 consider to be a violation of our rules of criminal
8 procedure or our rules of evidence. That's part of my
9 job as the judge of the law to make a decision on that,
10 either overruling it or sustaining it or bringing it up
11 to the bench for further discussion. They're doing their
12 job when they stand up and object, so please don't hold
13 that against them.

14 In the same manner, please don't try to discern or
15 divine anything from the way that I might rule on an
16 objection. I'm not trying to give you any kind of
17 inference one way or another about how I feel about the
18 case. I really don't know anything about the case until
19 I hear the evidence as well and from what I have reviewed
20 in the file. And again, that would be invading your
21 providence as the fact-finder. I handle the objections,
22 each individually, one at a time. There's no pattern or
23 practice to the way they're ruled upon.

24 The evidence will be presented to you by sworn
25 testimony from the witnesses that are called by the

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1 parties. Again, the State bears the burden of proof.
2 The Defense doesn't have to put up a case at all. The
3 Defendant is presumed innocent throughout these
4 proceedings up and until you collectively determine what
5 your verdict will be.

6 In a minute, we're going to hear the opening
7 statements from the parties in this -- as I told those of
8 you who were here Monday, that's merely a roadmap for
9 what they think the case will show. You'll hear first
10 from the Solicitor, and then Defense counsel may or may
11 not present an opening argument. Sometimes they waive
12 those. Again, the Defendant has no burden at all. The
13 burden of proof remains on the State throughout.

14 Opening statements are not argument. They merely
15 are that roadmap. Nor are they evidence. The evidence
16 comes solely from the witness stand and from the
17 documentary items that are introduced and any
18 demonstrative items that you might see.

19 Ladies and gentlemen, I will ask you in a minute to
20 give your kind attention to counsel for the State.

21 But first, are there any objections by either the
22 State or the Defense to these opening remarks?

23 MS. COMPTON: None from the State, Your Honor.

24 MR. COCHRAN: No, Your Honor.

25 THE COURT: Okay. Then I'll call on -- is it

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Opening Statement by Ms. Compton

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1 Ms. Compton -- are you going to give the opening?

2 MS. COMPTON: Yes, ma'am.

3 THE COURT: Okay. Thank you.

4 OPENING STATEMENT

5 BY MS. COMPTON:

6 Well, good morning. It is still morning. Good
7 morning, ladies and gentlemen. As I told y'all earlier,
8 my name is Spencer Compton. My co-counsel, Burns
9 Wetmore, and I do represent the State in this case.

10 You know, we're all here on this rainy Thursday
11 morning, whether or not we want to be here because of
12 this man; because on June 15th, 2011, he sold marijuana to
13 an undercover officer. And then as they began to move --
14 they moved in and they arrested him for selling this
15 marijuana -- they did a search of his person. And they
16 located four crack rocks on his person. And you'll hear
17 from the officers today that that's three crack rocks
18 more than the average user has.

19 MR. COCHRAN: Objection. Can we approach, Your
20 Honor.

21 THE COURT: Sure.

22 (WHEREUPON, a bench conference was held off the
23 record.)

24 THE COURT: Okay. The objection's overruled.

25 OPENING STATEMENT

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1 CONTINUED BY MS. COMPTON:

2 And what's more is that he did this, he both
3 distributed the marijuana, and as the State is alleging,
4 he possessed this cocaine with the intent to distribute
5 on the grounds of a public playground, the Persephone
6 Moultrie Community Center located at 2001 Robertson in
7 North Charleston.

8 Now, the Legislature and the people of the State of
9 South Carolina decided that we're not going to tolerate
10 people dealing drugs and possessing drugs with the intent
11 to distribute them on our parks, our playgrounds and our
12 schools. So there's a separate law for this. And it's
13 called distribution or possession with intent to
14 distribute in proximity to a playground. And that law --
15 the Judge will instruct you as to the law. And anything
16 that I say that conflicts with what she gives you as
17 instruction, please go by what she says. But you know,
18 in easy to understand terms, that law says that you are
19 not -- it is a separate charge. You are not allowed to
20 distribute drugs or possess drugs with the intent to
21 distribute within a half mile of a school. Well, ladies
22 and gentlemen, we don't have to worry too much about that
23 because they were at the park. They actually did the
24 deal at the park. Playground, basketball courts right
25 there.

1 So based on this, as you heard from the indictments
2 this morning, there are four charges that the officers
3 and the State are bringing against Mr. Simmons. He's
4 charged with distribution of marijuana for selling to an
5 undercover officer. He's also charged with proximity, as
6 we talked about, for doing that at a playground. Second,
7 -- third, he's charged with possession with the intent to
8 distribute cocaine base, which is commonly referred to as
9 crack, crack cocaine. And you may hear either title
10 used. Please know that those are interchangeable. And
11 the fourth charge is that he's charged with proximity for
12 possessing that cocaine base with the intent to
13 distribute it at the playground, just like the marijuana
14 charge.

15 The State does have to prove this to y'all beyond a
16 reasonable doubt. That's our burden. We accept it with
17 open arms. I have no doubt that once you've heard all
18 this evidence, you'll have no choice but to convict him
19 of all four of those counts.

20 And I want to take one minute and just ask for
21 y'all's patience. As part of this, the State also has to
22 prove something called the chain of custody on those
23 drugs. We have to prove that from the moment officers
24 collected it at the scene, be it the marijuana from the
25 undercover officer or the cocaine base from the officer

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Opening Statement by Mr. Malloy

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1 who made the arrest, that those drugs were preserved
2 intact all the way to the point where they were tested by
3 the chemist.

4 And I'll be honest with you. Some of these
5 questions and some of these witness are actually a little
6 boring. I'm just asking y'all to bear with us. This is
7 part of our burden of proof. We just want to make sure
8 that y'all have all of the information that we can
9 present to you so that you know exactly what happened
10 that day, what happened with the drugs after that day and
11 how they were tested.

12 So I ask you to bear with us. And at the conclusion
13 of all of the evidence and after I know that you've paid
14 and will pay close attention to all this evidence, I'm
15 confident that you'll find him guilty. Thank you.

16 MS. COMPTON: Thank you, Your Honor.

17 THE COURT: Thank you.

18 Yes, sir?

19 MR. MALLOY: May it please the Court, Your
20 Honor.

21 THE COURT: Mr. Malloy.

22 OPENING STATEMENT

23 BY MR. MALLOY:

24 Ladies and gentlemen of the jury, you are here today
25 to decide if Jeffrey Simmons sold drugs. And you'll have

1 to decide whether the evidence presented by the State is
2 sufficient, and the State must meet your expectations.

3 And during the trial, the State is going to ask you
4 to see the world through the eyes of others. At the end
5 of the trial, the State is going to ask you to be a mind
6 reader. The State is asking you to do these things
7 because their case is simply not good enough, and they
8 need you to fill in the gaps. This is going to make your
9 job more difficult. As the State presents its evidence,
10 you will be asking yourself, what's missing? What am I
11 not seeing?

12 As you've already heard, this is a case about drugs.
13 Not simply the use and the possession of drugs, but the
14 sale and distribution of drugs. The crime is
15 transactional in nature. And throughout the trial, you
16 need to be asking yourselves, what evidence do I demand
17 in order to convict someone for the sale of drugs. And
18 what types of evidence do you need to seek in order to
19 convict someone for the distribution of drugs?

20 Ladies and gentlemen, once the State has presented
21 its case, you will be more concerned with what you didn't
22 see than with what you did see. The State is only going
23 to be able to provide you two types of evidence in this
24 trial, physical evidence and testimonial evidence. While
25 both of these types of evidence are very important, they

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1 both have their faults.

2 The physical evidence you'll see won't tell you the
3 whole story. You're going to hear from lab technicians
4 who will tell that they were able to identify illegal
5 drugs to a scientific certainty. But what those
6 technicians can't tell you is who possessed those drugs
7 and what that person intended to do with them.

8 You're also going to hear testimonial evidence from
9 people who are going to come in and take the stand and
10 testify. In this case, you'll be hearing from the police
11 officers who reported on the scene that day. These
12 officers have an agenda because their job requires them
13 to have an agenda. And that agenda is to make an arrest
14 that will result in conviction. And you must judge their
15 testimony in light of that purpose.

16 After the State has presented its case, you will be
17 left wanting more. You will be left to your own
18 imagination as you deliberate because you will be lacking
19 the most important evidence of all, visual evidence.

20 A video recording of the incident can make you a
21 witness to the crime, so you wouldn't have to use your
22 imagination or rely on the testimony of others. A video
23 recording would clear up everything that is at issue in
24 this trial. However, in the end, the State will be
25 unable to provide you with one despite your expectations.

1 And you need to ask why? Why come there is no video
2 evidence? Well, it could be because the tape -- no
3 videotapes ever existed. It could be because there were
4 tapes, but they were lost. Or it could be because the
5 tapes were destroyed. Regardless, you cannot accept any
6 excuse for the State's failure to provide you with this
7 evidence. You should demand that the State provide you
8 with concrete evidence. And if you're allowed to
9 speculate about what occurred on June 15th of last year,
10 you cannot be satisfied with the State's case.

11 Now, Judge McDonald has already told you that in
12 order to convict Mr. Simmons, you must be convinced
13 beyond a reasonable doubt that he is guilty of the crimes
14 charged. You must be convinced beyond a reasonable doubt
15 that he both committed the alleged acts and possessed the
16 required intent at the time that act was committed.

17 Now, you're probably wondering what exactly is
18 reasonable doubt. A reasonable doubt is a doubt that
19 would cause you to hesitate to act. And the State must
20 present evidence so that you will not hesitate to find
21 the Defendant guilty. And once the State has rested, you
22 will be in doubt because you will be without any visual,
23 audio or forensic evidence to guide you in your
24 deliberation. And you may hesitate to take the police
25 officers for their word, and you will be left wanting

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1 more.

2 Ladies and gentlemen, if after hearing the State's
3 case you are hesitant to return a verdict of guilt for
4 whatever reason, then you must acquit Mr. Jeffrey
5 Simmons. Thank you.

6 THE COURT: Thank you.

7 All right. Are you ready to proceed?

8 MS. COMPTON: We're ready from the State, Your
9 Honor.

10 THE COURT: All right. You may begin.

11 MR. WETMORE: The State calls Officer Keith
12 Elmore.

13 THE COURT: Okay. Officer Elmore, please come
14 forward and be sworn.

15 **KEITH PHILLIP ELMORE,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. WETMORE:

19 Q. Lieutenant Elmore, tell the jury how long you've
20 been a law enforcement officer.

21 A. I'm doing my fifteenth year as a law enforcement
22 officer.

23 Q. Fifteen years?

24 A. Yes, sir.

25 Q. Who do you work for now?

1 A. I'm presently employed with the Dorchester County
2 Sheriff's Department.

3 Q. With the Dorchester County Sheriff's Office, what
4 are your duties and responsibilities right now?

5 A. I'm assigned to the detective division where I
6 investigate crimes of violence, murders, robberies,
7 things of that nature.

8 Q. So you're a detective?

9 A. Correct.

10 Q. Now, this case happened in June, June 15th, 2011,
11 last year. Where were you working at that time?

12 A. I was employed with the City of North Charleston.

13 Q. Okay. And you were a police officer?

14 A. I was a police sergeant over a specialized unit
15 called the Speed Team.

16 Q. Tell me a little bit about the Speed Team.

17 A. The Speed Team is a community policing unit where we
18 address the issues of high crime. We have drugs,
19 prostitution, shootings. Anywhere where there's high
20 crime in that area, we're assigned to go into that
21 community, assess it and make appropriate adjustments as
22 to lowering the crime and deterring the situation.

23 Q. How do you identify communities that are
24 problematic?

25 A. Due to the calls for services from officers that's

1 regular patrol officers that do reports, we notice a
2 spike in certain areas or either we get complaints from
3 the community, people in the community or our community
4 organizations.

5 Q. Okay. And if somebody complains about an area, it
6 was your job at that time to go to that area?

7 A. That's correct.

8 Q. And as a part of the Speed Team, were you a part of
9 the team or were you the supervisor of that team?

10 A. Well, both. I'm the sergeant of the team, so I
11 pretty much organized all of the operations and oversee
12 that they go correctly. I make sure the officers are
13 safe and things of that nature. And in some cases I also
14 participate in some of the operations and work as an
15 undercover myself.

16 Q. Okay. So you sort of lead from within the ranks.
17 Is that fair?

18 A. That's correct.

19 Q. And that was what you were doing in June of 2011?

20 A. Yes.

21 Q. Now, either with North Charleston Police Department
22 or with Dorchester County Sheriff's Office, just
23 basically give this jury a brief outline of your training
24 and your experience to let them know, you know, what
25 you've received that helps you do your job.

1 A. Over the past fifteen years, I've been assigned to
2 the detective division in the City of North Charleston.
3 I spent five years as an investigator there working
4 homicide and personal crime. I was promoted to corporal.
5 I went back to the streets, worked five months there as a
6 corporal on the streets.

7 After five months of that, I went into the narcotics
8 division as a corporal where I worked the highest members
9 of the narcotics undercover. I was promoted to the rank
10 of sergeant. And when I took over the Speed Team -- and
11 I'll just explain what we do there. My position in
12 Dorchester County is investigations which is the same as
13 what I did in Charleston County. I've been trained in
14 several narcotics classes, supervisor classes, leadership
15 classes and things of that nature.

16 Q. Thank you. I just wanted to make sure these folks
17 understood your experience. Specifically, do you have
18 extensive drug experience?

19 A. Yes.

20 Q. Do you have, you know, extensive experience
21 involving controlled buys or buying drugs from suspects?

22 A. Yes.

23 Q. Do you have experience doing buys from suspects
24 using undercover officers?

25 MR. COCHRAN: Object to leading.

1 THE COURT: Overruled.

2 Q. Do you have experience doing controlled buys from
3 defendants using undercover officers?

4 A. Yes.

5 Q. Okay. Have you done a lot of those? Have you been
6 involved in a lot of those?

7 A. Yes, I have.

8 Q. Just ballpark, how many of those do you think you've
9 been involved in?

10 A. Personally, as an undercover officer, I've been
11 probably involved in, I would say, easily thirty or more
12 over the course of my time in narcotics and on the Speed
13 Team. And that's, you know, being generous or moderate,
14 which I would say thirty at least, me personally. And as
15 a supervisor overseeing Detective Dean and the other
16 officers that were -- that I was supervising, making sure
17 that they're safe and doing their job correctly while
18 doing this -- in addition to my thirty, I would say close
19 to over a hundred of them easily.

20 Q. Okay. So you've had a lot of experience with
21 controlled buys?

22 A. Yes.

23 Q. All right. Now, let's take you directly to the
24 incident at hand, June 15th, 2011. Were you involved in
25 the case involving the Defendant, Jeffrey Simmons?

1 A. Yes, I was.

2 Q. Okay. And that was in your role as supervisor,
3 correct?

4 A. That's correct.

5 Q. Tell me where this case took place.

6 A. This happened in what we call the Ten Mile Community
7 which is also known as the Oak Grove Community.

8 Q. Is that in the City of North Charleston?

9 A. It is.

10 Q. Is that in Charleston County?

11 A. It is.

12 Q. Okay. Now, was -- this case against Mr. Simmons,
13 was this a controlled buy using an undercover?

14 A. It was.

15 Q. As the sergeant, as the supervisor, did you set out
16 a plan for how the undercover buy was supposed to go
17 down?

18 A. Yes.

19 Q. Can you tell me, you know, in general terms how you
20 usually plan for that sort of an operation?

21 A. Well, like I stated before, we answer calls,
22 complaints given by citizens in the community, so it
23 started with that. And we assessed it, like we said. We
24 have a technical person who does the wiring and audio
25 type stuff. He prepares the undercover officer with wire

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1 devices, whatever they may be, sometimes video. And that
2 may be on the person or either on the vehicle, depending
3 on however they decide to set it up.

4 And then we will go into that community. There'll
5 be approximately five other officers that's in polo-style
6 shirts. Our uniform says Speed Team on it, police on the
7 back, B.D.U. pants, duty belts so they're identified as
8 police officers. They'll be in a plain SUV-style vehicle
9 parked in a hidden, secluded area so that people in the
10 community won't recognize them as police officers.

11 Myself will be dressed in plain clothes. I may be
12 with a technical person sometimes monitoring the
13 recording device, or I may be in a separate vehicle for
14 added support as far as takedown or just, you know,
15 surrounding the area for officer safety.

16 This particular day, I was alone in my vehicle
17 dressed down. The other teams were set up in the area.
18 As the undercover officers approach the neighborhood,
19 we're already staged so we've got a general idea where
20 that undercover officer is going for his safety.

21 The audio, we can hear him, and he tells us what
22 street that he's turning on, what he sees. Who he's
23 getting ready to approach, he'll give a description. For
24 instance, a black male, blue shirt, blue shorts, walking
25 in front of -- and he may give an address or a

1 description of something. That gives us a pinpoint as to
2 what street he's on so we'll know if something goes
3 wrong. We'll come in and help him out if, you know, the
4 deal goes bad. And pretty much keep an eye on him that
5 way.

6 Or if the deal -- once the deal is done, the
7 transaction with the drugs, the undercover will say, the
8 deal is good, meaning that he's given recorded money that
9 I keep track of that I've given to him to give to the
10 drug dealer for said, whatever amount, quantity of drugs.
11 And once he says the deal is good, surrounding officers,
12 the takedown team, comes in. Before they come in, we've
13 already given them a description of the person, the
14 location, so we already know what we're looking for, who
15 we're looking for. And that person is then taken down
16 and arrested, and a description is normally given back,
17 and the undercover will confirm that is the person in
18 fact he just bought the marijuana or the narcotics from.

19 Q. All right. Let's talk specifically about the
20 incident that happened that we're here for today
21 involving Mr. Simmons. Why was your unit in this
22 community?

23 A. Complaints of street-level narcotics sales open air.

24 Q. Who made those complaints?

25 A. The citizens in that community.

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1 Q. Okay. So actually the people that lived there
2 called the police department?

3 A. Correct.

4 MR. COCHRAN: Objection, leading.

5 THE COURT: Sustained.

6 Q. What was the nature of their complaints?

7 MR. COCHRAN: Objection. Calls for hearsay.

8 THE COURT: Y'all approach.

9 (WHEREUPON, a bench conference was held off the
10 record.)

11 THE COURT: Objection sustained.

12 Q. All right. So after receiving the complaints, your
13 unit was dispatched to that area, correct?

14 A. Well, when we get the complaint, we set up an op to
15 intervene in that community.

16 Q. And by op, you mean operation?

17 A. Correct.

18 Q. Okay. Now, what was the goal? What was your
19 objective? What was your -- what did you hope to achieve
20 by being in that community?

21 A. Our objective is to go in and make as many drug
22 arrests as possible to deter any open-air street-level
23 narcotics sales.

24 Q. In that community?

25 A. In that community.

1 Q. Now, as the supervisor, did you determine which one
2 of your officers would play the role of the undercover or
3 the buyer?

4 A. Yes.

5 Q. Who did you select for that role?

6 A. Officer Dean.

7 MADAM COURT REPORTER: Judge, I'm having
8 trouble hearing him.

9 THE COURT: I'm having a little bit of trouble
10 hearing. If you could just speak up for us a little bit
11 officer. Thank you.

12 THE WITNESS: Okay. Yes, ma'am.

13 Q. Yeah. Speak into the microphone.

14 Now, Officer Dean, the undercover. Describe, if you
15 will, kind of his -- how was he going to get into the
16 community?

17 A. He's our undercover officer, so he's dressed down in
18 plain clothes. Officer Dean is young spirited and young
19 looking. And so we normally get, you know, the younger
20 looking officers that can go in and buy and has, you
21 know, relationships with the community and knows how to
22 interact when dealing in narcotics sales. Officer Dean
23 has worked with me in narcotics, so I knew he's
24 experienced. And he's done this before, so I had him go
25 in. He would get an unmarked car, which we would get a

1 rental vehicle from one of the local rental facilities in
2 the city. He would go in after we set up, the takedown
3 crew, the tech crew and myself. He would then -- I would
4 tell him, okay, come on in. He would just drive around
5 the community and approach people that would be out in
6 the community standing on the corners, interacting with
7 other people and just ask them where could he purchase
8 whatever set amount of marijuana or cocaine or crack and
9 just make contact with whoever's in that community.

10 Q. Now, how was he supposed to pay for the drugs?

11 A. I would have supplied him with prerecorded currency,
12 and that's money supplied to me by the City which I take
13 and I make copies of the serial numbers to that money,
14 photocopies, and that money is recorded. We'll get the
15 copies so that when we do arrest a person that we did the
16 buy with, that money should be on that person. And it
17 was for -- so if we got marijuana for twenty dollars,
18 they should have twenty dollars on them, which is my
19 money. And I have the serial number of it. They should
20 have that on their person. And that helps us identify
21 the person that just sold the marijuana to Investigator
22 Dean.

23 Q. Okay. And so you gave the undercover, Officer Dean
24 -- you gave him how much money in this case?

25 A. I gave him ---

1 Q. Just for this particular buy.

2 A. I think he may have had thirty dollars or twenty
3 dollars.

4 Q. And did you record or photocopy that money?

5 A. Yes. It was forty dollars.

6 Q. Okay. And did you say that you photocopied the
7 money?

8 A. Correct.

9 Q. Okay. And what is the reason that you'd want to be
10 able to identify that particular twenty dollar bill or
11 that forty dollars or whatever?

12 A. Well, obviously drug dealers are out selling drugs,
13 so they would have, you know, large quantities of
14 marijuana -- excuse me, money on them, so we identify our
15 money as opposed to their money.

16 Q. All right. So you've covered how he was to get into
17 the community, how he was to buy the drugs. How -- was
18 there any plan to get him out? Was there any kind of
19 safety plan if there was any problems?

20 A. Well, if there's a problem, then we would
21 immediately come in. You know, all bets are off. We
22 come in. Officer safety is number one first and
23 foremost. So if the deal went bad, we would come in. We
24 wouldn't worry about it, get Officer Dean out of the
25 situation, secure the scene and handle whatever necessary

1 things there is to be handled. If the deal goes good and
2 everything's fine, Officer Dean is instructed to leave
3 the scene with the personal narcotic which he would place
4 into a sealed, plastic evidence bag, and then he would go
5 back to the office and start processing the evidence and
6 start paperwork. But he was to leave the area
7 immediately after purchasing the drugs.

8 Q. So in this case you kind of helped to organize the
9 plan and supervise certainly. How was he to signal? How
10 is the undercover to signal that everything had gone down
11 and he had just bought from Mr. Simmons?

12 A. Once the money has been given to the Defendant and
13 the drugs are received, he indicate the deal is good.
14 That lets us know that everything is in order. He has
15 the drugs; the Defendant has the money. And that's when
16 the takedown team is alerted to go in and make the
17 arrest.

18 Q. All right. So we've covered the undercover officer.
19 Did you also assign members of your unit to sort of
20 monitor what was going on?

21 A. Correct.

22 Q. What was their responsibility?

23 A. The takedown team, Officer Janowski is pretty much
24 the head of it as far as driving the vehicle and coming
25 in and taking people down. What that means is once the

1 person is walking away with the money that we just gave
2 them for the said amount of drugs, their job is to get
3 the person. Most times they run; sometimes they just
4 stop. But they're to effect the arrest, stop and detain
5 the person.

6 Q. All right. I want to hear about those guys too.
7 But let me ask you -- what I was trying to say -- and I'm
8 sorry I didn't express it very well. Did you assign
9 anybody in your unit to monitor or listen or keep tabs on
10 the undercover?

11 A. Oh, correct, yes. We have a technical support team
12 which is the guys that wire the undercover car up.
13 They're the one's that's listening on whatever devices
14 they have. It may be a cell phone or some type of audio
15 device inside the vehicle. And they're listening to the
16 whole entire deal and then transmitting on a hand-held
17 walkie to us, meaning myself in my separate car and to
18 the takedown team.

19 Q. So can they hear essentially what the undercover
20 officers are hearing?

21 A. Yes.

22 Q. And do they communicate to you and to the rest of
23 the unit?

24 A. Yes, they do.

25 Q. Okay. Do they make any kind of recording of what's

1 going on, or do they just listen?

2 A. They do make recordings, audio and video.

3 Q. Okay. Do they -- I mean, as their supervisor, do
4 you call upon and do you instruct them to take that
5 recording and to save it?

6 A. Correct. At the end of the deal, they download
7 their audio devices and save it to a DVD.

8 Q. Okay. Do you know if they actually did save it in
9 this case?

10 A. Yes. To my knowledge, they did.

11 Q. Okay. But that wasn't something that you personally
12 handled?

13 A. No, I don't.

14 Q. Now, that monitoring team, are they -- is it a
15 primary responsibility to listen?

16 A. Yes. That's their job is to listen and make certain
17 that the officer's not getting robbed or assaulted or,
18 you know, there's a gun drawn on him. They're to listen
19 to every sound, movement that this officer -- that the
20 undercover is doing.

21 Q. Okay. And these people that are monitoring that are
22 making the recordings, is that their most important
23 responsibility, officer safety?

24 A. Correct.

25 Q. Okay. Also, recording that stuff, that's another

1 responsibility, right?

2 A. That's correct.

3 Q. But what's the most important responsibility?

4 A. The most important is the audio because we cannot
5 see them with video. We can only hear.

6 Q. And these individuals that are listening in, is
7 their -- what's the more important factor, listening and
8 being assure the officer's safe or to actually download
9 the audio/video? What's more important out of those?

10 A. It's officer safety is number one. That's what is
11 important.

12 Q. Is that what you've ask them to make their key
13 concern is listening in to make sure everything's okay?

14 A. Yes. Yes.

15 Q. All right. So that's -- we've talked about the
16 undercover and we've talked about the monitoring team.
17 You mentioned the takedown team. Describe who these
18 individuals are and how they're dressed again and what
19 kind of vehicle they're in.

20 A. Like I say, they're normally in the SUV because
21 they're pretty good sized guys and they've got a lot of
22 equipment on. And it's about five of them in the
23 vehicle. You've got three -- the driver, one in the
24 front and there are three in the back, so normally it's
25 five. They're dressed in B.D.U. pants, their duty belt

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1 and a polo-style shirt similar to what I'm wearing that
2 says North Charleston Speed Team, police on the back.
3 And their job is to detain and catch fleeing suspects or
4 aid to the team.

5 Q. So they're certainly -- it's well-known that those
6 guys are cops?

7 A. Correct.

8 Q. Unlike the monitoring team which is undercover,
9 unlike obviously the undercover which is undercover?

10 A. That's correct.

11 Q. And does the takedown team then wait until
12 everything's done and then they come in?

13 A. Once the deal -- once the technical person listening
14 to Officer Dean, when Officer Dean said the deal is good,
15 he immediately says, deal is good on the walkie, which
16 they're listening to as well as myself. And that's when
17 they come in once the word, the deal is good, is given.

18 Q. Okay. So you have this operation set up on June
19 15th, 2011. That's your operation that you set up; is
20 that correct?

21 A. That's correct.

22 Q. So this isn't just some ---

23 MR. COCHRAN: Objection. Leading.

24 THE COURT: Sustained.

25 Q. All right. Is an operation like this something that

1 you plan out and you take a good bit of thought -- put a
2 good bit of thought into it?

3 A. That's correct.

4 Q. Do you send undercover officers in just on a whim to
5 see if they can buy drugs, or do you put a good bit of
6 thought into the planning?

7 A. Yes, it's definitely thought put into it. I ran a
8 team that consists of twelve people. And out of twelve
9 people, there was only three people that I allowed to buy
10 drugs. And that's Officer Dean, myself and another
11 female officer.

12 Q. Okay. All right. I think we understand where
13 everybody is and their positions. Tell me exactly how
14 this buy went down and from your perspective, what you
15 were doing and how you came in contact with Mr. Simmons?

16 A. Okay. On that date, we set the deal up. Officer
17 Dean -- from me listening to the walkie, monitoring, as a
18 supervisor, Officer Dean made contact with a black male
19 on the corner of one of the streets. I would have to go
20 through and take a look. And I will do so if you need me
21 to. But he made contact with the gentleman to buy a said
22 quantity of marijuana. The gentleman said, I have to go
23 get it. So the gentleman said, meet me at the community
24 center. Go on out to the community center. I'll meet
25 you there. The gentleman then left and went to another

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1 residence somewhere on the street there, along the
2 street. Excuse me. Officer Dean went down the street
3 and parked at the community center.

4 Once we moved -- we had a location where the
5 Defendant was going to meet back with Officer Dean, I was
6 able to position myself where I could observe Officer
7 Dean for his safety. So I knew if I parked a couple of
8 houses down and hid myself, I can watch the deal go down
9 and make sure that he's safe and he wasn't getting set up
10 for a robbery.

11 So Officer Dean drive up and park in the community
12 center parking lot, which is, if I can pronounce this
13 name, the Persephone Moultrie Community Center in the Ten
14 Mile Community, which there were kids and other citizens
15 out playing and using the facility. So as I was just
16 parked there, we got word back over the radio -- Officer
17 Dean had communicated that the suspect defendant was
18 coming back towards him, approaching at the community
19 center. The tech guys then relayed that information over
20 the walkie so I knew that they would be seeing a black
21 male, from the description Officer Dean gave earlier that
22 he made contact with to get a said quantity of marijuana,
23 was approaching. So I watched.

24 Some seconds later, a black male approached Officer
25 Dean's vehicle. A transaction took place. And once that

1 transaction took place, seconds after the Defendant was
2 walking away from his vehicle, Officer Dean gave the
3 signal, deal good, deal good. As Officer Dean went to
4 pull off, he was giving another description. We give
5 another description of the suspect so that we know we're
6 getting the correct person. The whole entire time, I got
7 him in my sights. I was waiting for the takedown team to
8 go in and take him, take down the suspect, but I was
9 closer. So I drove up before he could get into a
10 residence or disappear. As he was walking, I drove past
11 him, turned my vehicle in front of him, exited my
12 vehicle, said, hey, come here. At that time, he noticed
13 I was police, took off to run the direction that he just
14 came.

15 At that time, the takedown team had pulled up,
16 blocked him off. He tried to run between two vehicles.
17 He may have ran from -- not even to that podium, maybe
18 half the distance from where I am to the carpet area
19 right there. He was taken down.

20 Prior to that, he threw out with his left hand some
21 money, which was the twenty dollars -- excuse me -- the
22 forty dollars that he used to purchase -- which Officer
23 Dean used to purchase the marijuana with. It was
24 recovered. And a search incident to an arrest led to
25 four crack rock, which we field-tested presumptively for

1 cocaine, was found in his crotch area during a search
2 incident to an arrest.

3 Q. So from where you were, you could actually watch the
4 Defendant sell to an undercover?

5 MR. COCHRAN: Objection to leading.

6 THE COURT: Overruled.

7 A. Correct. I saw him out of the passenger side window
8 doing the deal.

9 Q. Did you see the Defendant?

10 A. This Defendant, yes.

11 Q. I mean, how close were you to where they were doing
12 the deal? I mean, was it like from me to you or farther
13 away?

14 A. Oh, a little ways farther. I would say thirty yards
15 maybe.

16 Q. I mean, was it as far as like the front door there?

17 A. Probably to the hallway where the entrance is to
18 come in.

19 Q. Okay. But from that vantage point, you could see
20 the Defendant sell to the undercover?

21 A. That's correct.

22 Q. And tell me exactly where -- you mentioned it
23 happened in the community center. I'm probably not going
24 to pronounce it any better. But the Persephone Moultrie
25 Community Center. Where -- within that park or that

1 playground, where did the deal actually go down?

2 A. In the parking lot. Officer Dean was parked in the
3 parking space of the community center, and he was
4 instructed to go there by the Defendant.

5 Q. So the Defendant picked the park?

6 A. Correct. As a matter of fact, his words were --
7 when Officer Dean asked about, where can I get some --
8 something to smoke, some weed or whatever, he says, I
9 have to go get it. Go to the community center. I'll
10 meet you there. I'll be back.

11 Q. So the Defendant chose that location?

12 A. That's correct.

13 Q. Now, is that location in the City of North
14 Charleston, Charleston County?

15 A. Correct.

16 Q. What time of the day was this when he met with the
17 undercover in the park?

18 A. It was approximately six thirty in the evening.

19 Q. Six thirty at night?

20 A. Yes, sir.

21 Q. It was June 15. Was it still light out at that
22 time?

23 A. We had light, yes.

24 Q. Daylight?

25 A. (No verbal response)

1 Q. Was anybody -- that park, I'm not real familiar with
2 it. But it's -- obviously, it's public. It's open to
3 anybody, right?

4 A. Correct.

5 Q. Was there anybody out there using the park
6 playground?

7 A. It was several children out there playing
8 basketball. And I'm not a hundred percent sure. There
9 may be even some type of little daycare there because I
10 remember some parents coming to pick their kids up. But
11 it was definitely being occupied by children and some
12 adults at the time.

13 Q. At the time when the Defendant made the sale?

14 A. Yes, sir.

15 Q. Okay. And so as soon as you watched it happen, did
16 you say that you first confronted the Defendant?

17 A. Correct.

18 Q. What did he do when he saw you?

19 A. When he saw me, he just kind of -- his eyes got big,
20 and he was like -- and he went into his pockets. And
21 that's when he turned. And right when he saw the other
22 car, as he turned to walk away, he immediately make
23 another turn. And that's when he reached into his pocket
24 and threw out with his left hand into a small little side
25 area -- which was kind of tall grass -- and threw out and

1 he tried to run. But the takedown team, Officer
2 Janowski, got to him before I did.

3 Q. So he obviously knew you were a police officer?

4 A. Well, I'm sure he -- I was dressed in plain clothes.
5 But I said, come here, you're under arrest. And when I
6 say -- I'm sure he knew then that I identified myself as
7 police and said, you're under arrest, North Charleston
8 Police, he took off. And then he saw the actual
9 uniformed guys pulling up quick and exiting their
10 vehicle, yes.

11 Q. Okay. And how far did he run or did he get
12 anywhere?

13 A. Not even as far as that podium. From the distance
14 from where I was when I cut him off -- you know, he kind
15 of like -- kind of like stopped. Like, whoa, who's this
16 crazy driver type deal. And when I opened the door, he
17 kind of backed up. When I opened the door and said, come
18 here, you're under arrest, North Charleston Police,
19 that's when he was like in his pocket kind of like
20 backing up. And he turned to run and he saw the other
21 car. So from, let's say, this area he got to the halfway
22 mark and then he ---

23 MR. COCHRAN: I'm going to object to this, Your
24 Honor. I think this is the third time we've heard the
25 same story.

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1 THE COURT: Okay. Let's move on.

2 MR. WETMORE: All right..

3 Q. So he had time to get rid of the money?

4 A. Correct.

5 Q. Like you said basically?

6 A. Correct.

7 Q. Now, did you take part in the actual arrest of the
8 Defendant?

9 A. Yes, I helped detain him.

10 Q. Okay. But you didn't search him or do anything like
11 that?

12 A. No. I was standing next to him when they put the
13 handcuffs on him. He was taken to the ground. They
14 picked him up, dusted him off and asked him if he was
15 okay.. And that's my job to make sure that he's not
16 injured or anything or need medical attention. I spoke
17 with him and made sure he was okay, if he was hurt,
18 needed medical attention. He said he was fine. Brushed
19 him off and, you know, stood him up and told him he was
20 under arrest for distribution of marijuana and patted him
21 -- one of the other officers then patted him down for any
22 other evidence.

23 Q. And then is there any question in your mind that
24 this Defendant is the one that sold it?

25 A. There ain't no question at all. I never lost sight

1 of him, not one second.

2 Q. Thank you.

3 THE COURT: Thank you.

4 Cross-examination?

5 MR. COCHRAN: Thank you, Your Honor. May it
6 please the Court.

7 CROSS-EXAMINATION

8 BY MR. COCHRAN:

9 Q. Did you write a report in this case?

10 A. A supplemental report? No, sir.

11 Q. Any incident report, supplemental report, any kind
12 of report?

13 A. Not me myself, no.

14 Q. But as the supervising officer, you did review any
15 reports that were written about this case, right?

16 A. Yes, I did.

17 Q. Okay. And forty dollars was the purchase of
18 marijuana? That was your testimony today?

19 A. It was actually twenty dollars. But it was forty
20 dollars that I had made a copy of. So if the quantity
21 needed to be more, he would have extra money. But the
22 deal was actually done for the twenty-dollar bill.

23 Q. Okay. So you were mistaken before when you said
24 forty dollars?

25 A. I made a copy of forty dollars of prerecorded money.

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1 Q. That's not what I asked you. I asked if you were
2 mistaken before when you ---

3 A. Yes. If I -- yes, it would have been a mistake.

4 Q. All right. And that's a photocopy of the two
5 different twenty-dollar bills?

6 A. Correct.

7 Q. Okay. And which one was used?

8 A. That is my mark that is mine.

9 Q. Okay. You talked about, with the Solicitor, the
10 importance of marked currency in these deals, right?

11 A. That's correct.

12 Q. And you take down serial numbers of the money to be
13 used, correct?

14 A. Correct.

15 Q. Because that's an identifier when that money is
16 found on the person who sold the drugs, right?

17 A. Yes, sir.

18 Q. That specific serial number, correct?

19 A. Correct.

20 Q. And you have no idea what the serial number of the
21 twenty-dollar bill that was given to the person who sold
22 Mr. Dean drugs is?

23 A. To my knowledge, it was one of the two that I had
24 the copies of that we recovered.

25 Q. Okay. But you record -- you prerecord the specific

1 serial number, correct?

2 A. Yes, by the photocopies that we have.

3 Q. Okay. And each piece of U.S. currency has a unique
4 serial number, correct?

5 A. Correct.

6 Q. Okay. And you cannot give the unique serial number
7 for the twenty-dollar bill that you say was given to Mr.
8 Simmons, correct?

9 A. Correct.

10 Q. And you testified earlier that that's an important
11 identifier in an undercover drug case, correct?

12 A. That's correct.

13 Q. And you said that at least one of those twenty-
14 dollar bills was in the hand of Mr. Simmons, correct?

15 A. Correct.

16 Q. And the marijuana you say he sold was in a brown
17 paper bag, correct?

18 A. I don't know what it was in whenever he did the
19 deal. I didn't take any of the evidence.

20 Q. Okay. And you witnessed the arrest, correct?

21 A. Correct.

22 Q. And you witnessed the recovery of crack cocaine,
23 correct?

24 A. That's correct.

25 Q. And that was in a plastic baggie, correct?

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1 A. Yes.

2 Q. One plastic baggie?

3 A. Yes, one plastic baggie containing four rock.

4 MADAM COURT REPORTER: I'm sorry. I'm having
5 trouble hearing you.

6 A. One plastic baggie containing several broken up
7 crack rock.

8 Q. Okay. Now, we talked about the serial number on
9 money as a potential identifier. But fingerprints are
10 also a potential identifier if somebody has committed a
11 crime, correct?

12 A. That's correct.

13 Q. And there's something called touch DNA that can also
14 be used to identify somebody who's committed a crime?

15 A. Yes, there is.

16 Q. Okay. And law enforcement does actually use testing
17 on touch DNA and fingerprints, correct?

18 A. Yes, they do.

19 Q. Okay. That's not just something you see on TV,
20 right?

21 A. That's correct.

22 Q. Okay. You did not submit the money to be tested for
23 fingerprints, correct?

24 A. That's correct.

25 Q. You did not test the money or submit the money to be

1 tested for touch DNA, correct?

2 A. That's correct.

3 Q. You did not submit the container of the marijuana to
4 be tested for fingerprints, correct?

5 A. That's correct.

6 Q. You did not submit the container of the marijuana to
7 be tested for touch DNA, correct?

8 A. That's correct.

9 Q. You did not submit the plastic bags containing the
10 crack cocaine for fingerprints, did you?

11 A. No, we did not.

12 Q. And you did not submit the plastic bags containing
13 the cocaine for touch DNA either, correct?

14 A. Correct.

15 Q. You said on direct testimony that one reason why you
16 prerecord currency is to make sure that that person has
17 the currency that law enforcement gave to them. One big
18 reason is that a lot of times drug dealers have large
19 quantities of cash on them, right?

20 A. Correct.

21 Q. So you'll arrest a drug dealer and a lot of times
22 fan out dozens of twenty-dollar bills, right?

23 A. Yes, they will.

24 Q. Because they make a lot of money doing that, right?

25 A. Correct.

1 Q. No money was recovered on Mr. Simmons, correct?

2 A. I don't -- well, we didn't confiscate any money from
3 him. He may have had some money on him.

4 Q. You didn't confiscate any money?

5 A. No, we did not.

6 Q. As the supervising officer, you said it was your job
7 to make sure that everything was done correct during this
8 operation, right?

9 A. Correct.

10 Q. And we talked about fingerprints and touch DNA not
11 being something that you see on TV -- or not just
12 something you see on TV, it actually happens. And
13 something else that actually happens in law enforcement
14 is video surveillance, correct?

15 A. Yes.

16 Q. Okay. And video surveillance is particularly
17 important in law enforcement today, right? It's an
18 important tool that y'all use, correct?

19 A. It's helpful, yes.

20 Q. Patrol cars are equipped with video cameras, right?

21 A. Correct.

22 Q. You encourage businesses and public buildings to
23 equip themselves with surveillance videos, correct?

24 A. Correct.

25 Q. And during undercover buys you can even equip the

1 undercover officer with a hidden camera, correct?

2 A. At times, yes.

3 Q. And these videos can help the person who watches the
4 video actually become an eyewitness to the crime being
5 committed, correct?

6 A. Correct.

7 Q. And there's no video in this case, correct?

8 A. That's correct.

9 Q. But y'all tried to take a video, correct?

10 A. Correct.

11 Q. It was your understanding that a video was recorded?

12 A. Correct.

13 Q. And it was your understanding that a video recording
14 was saved?

15 A. Correct.

16 Q. You have no idea what happened to that video
17 recording?

18 A. It malfunctioned somehow during either the operation
19 or during the downloading of the device. It was the
20 audio -- excuse me -- the video was actually lost.

21 Q. So you don't know if it was -- if it recorded the
22 entire incident and then was lost or if it was lost or
23 malfunctioned during? You're actually not sure?

24 A. Don't know when it was lost, no.

25 Q. Okay. But either way, you intended to get a video

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1 recording of this transaction, correct?

2 A. Correct.

3 Q. And when you make an arrest of somebody in a
4 situation like this, later on you present probable cause
5 to a magistrate to obtain an arrest warrant, correct?

6 A. That's correct.

7 Q. And probable cause is something that the judge
8 requires to authorize that arrest, correct?

9 A. Correct.

10 Q. And an officer swears under oath, just like you did
11 today, to the probable cause to get the judge to
12 authorize the arrest, correct?

13 A. Correct.

14 Q. And in this case, an officer swore under oath that
15 there was video surveillance of this crime being
16 committed to obtain probable cause and to obtain an
17 arrest warrant in this case, correct?

18 A. That's correct.

19 Q. So a judge was told that there was video
20 surveillance in order to obtain an arrest warrant in this
21 case?

22 A. Correct.

23 Q. And that was not true?

24 A. It ended up not being true. Later we found out that
25 the video recording did not -- it malfunctioned sometime

1 during it. Which not only the probable cause was the
2 video, but the fact that officers there observed and
3 witnessed the selling of the marijuana, especially
4 myself, and observed the Defendant doing that. So there
5 was other probable cause factors that allowed the
6 affidavit to be signed and evidence to prosecute the
7 Defendant.

8 Q. But the existence of that video was claimed in order
9 to obtain that warrant?

10 A. It was not the only probable cause to obtain the
11 arrest warrant. It was a helping factor. Like I just
12 stated, myself witnessing the deal go down, Officer Dean
13 witnessing and being the undercover officer, the fact
14 that he had the -- one of the twenty dollars that was
15 recorded that I had made a copy of, even though it was
16 not marked which exact one. It was only two that I
17 recorded, and he had one of the two and Officer Dean had
18 the other. So therefore, that was another piece of
19 evidence of the probable cause to obtain the arrest
20 warrant. And we don't usually -- we don't never --
21 fingerprint evidence such as the marijuana or baggies and
22 things of that nature is just something we don't do. I
23 mean, we could have fingerprinted the side of the car
24 where he was touching the side of the car. We don't do
25 it. It's just certain things we don't have to do. We

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1 have more than enough to make the charges on a defendant.

2 Q. You had more than enough in this case?

3 A. I feel so, yes.

4 Q. And when you were telling the magistrate judge about

5 all that you had, you just said -- you gave a very long

6 answer to my question. You said that -- I mean, we've

7 established you said that you had a video that you didn't

8 have, right?

9 A. That's correct.

10 Q. Okay. And you said that you had prerecorded

11 currency that you didn't prerecord, correct?

12 A. It was recorded. Yes, it was recorded.

13 Q. You just don't know which one it is now?

14 A. Correct.

15 Q. It certainly defeats the purpose, doesn't it?

16 A. Well, not when we got the two that -- he had to have

17 one or the other, which when we left after the deal was

18 done, lo and behold, I had the same two twenty dollars I

19 recorded from my office fax machine sitting -- returned

20 back to me to my property which I reused to buy more dope

21 later with the same money.

22 Q. You didn't talk about this in your direct

23 examination at all. But y'all actually went back to the

24 house where you saw, that you saw Mr. -- or whoever sold

25 the marijuana, you saw them go to a house, correct?

1 A. Yes, you could see him go into a residence. Yeah.

2 Q. And you searched that house, correct?

3 A. That's correct.

4 Q. And that house was the home of Clara Simmons,
5 correct?

6 A. Correct.

7 Q. A woman about seventy-eight years old, correct?

8 A. Correct.

9 Q. And it's your understanding that that is Jeffrey
10 Simmons' mother, correct?

11 A. That's correct.

12 Q. Okay. And that's where Jeffrey lives, correct?

13 A. Yes, sir.

14 Q. You've been involved in lots of investigations; is
15 that right?

16 A. Yes, sir.

17 Q. And you've been involved in lots of searches of
18 homes of people you think are drug dealers, right?

19 A. Correct.

20 Q. And you've prepared search warrants in order to be
21 able to enter those homes, correct?

22 A. Correct.

23 Q. And when you talk -- when you set forth the probable
24 cause to get a search warrant, you talk about the typical
25 things that a drug dealer might have in his house,

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- 1 correct?
- 2 A. Typical things he may have in his house?
- 3 Q. Or on his person?
- 4 A. Money. Lots of money, correct.
- 5 Q. Large amounts of cash like you said before, right?
- 6 A. At times, yes.
- 7 Q. Large amounts of drugs?
- 8 A. At times.
- 9 Q. Guns?
- 10 A. Sometimes.
- 11 Q. Scales?
- 12 A. Correct, sometimes.
- 13 Q. Things like razor blades with residue on them?
- 14 A. We've found those, that's correct.
- 15 Q. Large amounts of plastic baggies?
- 16 A. Correct. We've found those.
- 17 Q. Ledgers?
- 18 A. Yes, some.
- 19 Q. Okay. And a search of Jeffrey's home was done in
- 20 this case, correct?
- 21 A. That's correct.
- 22 Q. You did not find guns?
- 23 A. No, we did not.
- 24 Q. You did not find large amounts of cash?
- 25 A. No, we did not.

1 Q. You did not confiscate any cash?

2 A. No, we did not.

3 Q. You did not find any scales for weighing drugs?

4 A. No, we did not.

5 Q. You did not find anything like razor blades or other
6 things to separate drugs?

7 A. No, we did not.

8 Q. You did not find large amounts of baggies to
9 separate drugs, to make separate sales?

10 A. Not inside the house. But there was a bunch of them
11 busted up just laying around in the garage. In the front
12 and back yard and around the garbage can, there were.

13 Q. And did you put that in your report?

14 A. They were empty bags. They were really just trash
15 bags that to be used for opening up marijuana and cocaine
16 baggies, things of that nature. But you know, they were
17 in the trash, laying around the property.

18 Q. And you did not confiscate them?

19 A. No, we did not.

20 Q. And you do confiscate all of the drug contraband,
21 correct?

22 A. No, we do not.

23 Q. You leave drug contraband laying around?

24 A. Well, if it's just plastic baggies there and the
25 homeowner don't mind them that have been there for, you

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1 know, God knows how long -- you know, we're not working
2 for the sanitation department. So if they don't mind
3 them, we don't either.

4 Q. Okay. So baggies that could have drug residue on
5 them, you just leave them laying around?

6 A. Yes.

7 Q. Okay. So you didn't find any of those, but you also
8 didn't find any additional drugs, correct?

9 A. Just the drugs that he had in his crotch area.
10 That's all.

11 Q. Okay. And your officer approached the person who
12 sold the drugs, correct?

13 A. Yes.

14 Q. And asked for marijuana, correct?

15 A. Correct.

16 Q. Okay. And you say that Mr. Simmons asked him how
17 much he wanted?

18 A. He said, how much, yeah.

19 Q. Okay. And you said that Officer Dean eventually
20 bought one point seven grams of marijuana; is that
21 correct?

22 MR. WETMORE: Objection, Your Honor. He was
23 the supervisor. He didn't weigh the drugs, didn't test
24 them. He didn't weigh them in the lab. He didn't know
25 the exact weight.

1 MR. COCHRAN: Your Honor, he's the supervisor.

2 He's probably aware of things like that.

3 THE COURT: Why don't you rephrase the
4 question.

5 Q. Were drugs obtained in this case?

6 A. Yes, they were.

7 Q. Were those drugs weighed?

8 A. Yes, they were.

9 Q. Okay. And you're the supervisor in this case,
10 correct?

11 A. Correct.

12 Q. So you're supposed to be aware of all aspects of
13 this case, correct?

14 A. That's correct.

15 Q. Including the weight of the drugs, correct?

16 A. Correct.

17 Q. Okay. So how much marijuana was sold?

18 A. There was recorded, green plant-like material which
19 weighed approximately two point seven grams and point
20 eight grams of crack cocaine.

21 Q. Okay. And that was what's called a field test by
22 the officers, correct?

23 A. That's correct.

24 Q. But they're actually sent to a lab afterwards,
25 right, to give it a more accurate weighing, correct?

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1 A. Correct.

2 Q. Okay. It didn't weigh that much in the lab, did it?

3 A. I have not gotten any of the lab reports back.

4 Q. Okay. You didn't look at the lab reports in this
5 case?

6 A. No, I did not.

7 Q. Okay. And you're the supervisor in this case,
8 correct?

9 A. Well, the lab reports are sent to SLED, and that
10 comes back later and it goes to the case file, which the
11 arrest and all the paperwork's already been done. I'm
12 not the case agent. I am the supervisor. So that SLED
13 report would have come back to Investigator Dean for him
14 to prosecute during trial, not myself.

15 Q. Okay. And you supervise everything that Officer
16 Dean does, right, with this case?

17 A. Yes.

18 Q. Okay. So your officer approached and bought this
19 exact -- that exact amount of marijuana, correct?

20 A. Approximately, correct.

21 Q. And Mr. Dean -- I'm sorry. Mr. Simmons did not have
22 any more marijuana, correct?

23 A. Correct.

24 Q. And there was no more marijuana in his house,
25 correct?

1 A. Correct.

2 Q. There was no more marijuana in the back yard,
3 correct?

4 A. Correct.

5 Q. So the officer just randomly comes up to him and
6 buys the exact amount of marijuana that he had on him,
7 correct?

8 A. The amount that he sold, correct.

9 Q. Which happened to be twenty dollars worth of
10 marijuana, correct?

11 A. Correct.

12 Q. Which is exactly what the officer asked for,
13 correct?

14 A. Correct.

15 Q. You didn't take any photographs of the house?

16 A. Correct.

17 Q. You didn't take any photographs of the incident
18 location, the park, correct?

19 A. There was photos taken of the park by some of the
20 guys that was standing out there. And I did instruct
21 someone to take pictures. That officer probably just
22 didn't download them.

23 Q. So you instructed them to take pictures of this
24 community center?

25 A. Correct.

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1 Q. Okay. But those don't exist anymore?

2 A. No one did what I instructed them to do, or they
3 just didn't download it. That happens.

4 Q. Okay. So you wanted them to take pictures of kids
5 running around playing at this park?

6 A. Take a picture of the community center that was
7 occupied, and that was the location where the deal went
8 down.

9 Q. Okay. You wanted photographs of that?

10 A. Yeah, I would have wanted it.

11 Q. But we don't have it?

12 A. It's not pertinent.

13 Q. Then why did you ask for them?

14 A. Just to have it. I mean, I can have a cold soda. I
15 might want to put ice in it just to make it taste a
16 little bit better, but I don't need it.

17 Q. Okay. And you're not drinking a soda today, right?
18 You're trying to get a guy convicted of selling drugs,
19 right?

20 A. That's correct.

21 Q. You supervised or reviewed the reports written in
22 this case, correct?

23 A. I'm sorry?

24 Q. You reviewed the reports written in this case?

25 A. Yes, sir.

1 Q. Correct?

2 A. Yes.

3 Q. And those reports are supposed to be truthful,
4 correct?

5 A. Yes, sir.

6 Q. And accurate, correct?

7 A. Yes, sir.

8 Q. And complete, correct?

9 A. Yes, sir.

10 Q. Okay. The fact that somebody's selling drugs with a
11 bunch of little kids running around them is pretty
12 important, isn't it?

13 A. It is.

14 Q. That's a pretty important fact, isn't it?

15 A. Correct.

16 Q. That's not in any of the reports, is it?

17 A. That there was young kids running around?

18 Q. Yeah.

19 A. I don't see where it's mentioned in the report, no.

20 MR. COCHRAN: No more questions, Your Honor.

21 THE COURT: Thank you.

22 Any redirect?

23 MR. WETMORE: Yes, ma'am.

24 REDIRECT EXAMINATION

25 BY MR. WETMORE:

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1 Q. Detective Elmore, Mr. Cochran asked you about the
2 money involved in this case. Just so we're clear, how
3 much money did you give to the undercover?

4 A. I gave him forty dollars.

5 Q. Okay. And did you record those forty dollar -- I
6 assume it's two twenties; is that correct?

7 A. That's correct.

8 Q. Did you record those bills?

9 A. Yes, I did. And this is how I recorded them. One
10 twenty and there's the other twenty.

11 Q. I don't think that's been introduced yet, so put
12 that down.

13 A. Oh, I'm sorry.

14 Q. That's okay. Now, did the undercover officer have
15 to use all forty dollars?

16 A. No, he did not.

17 Q. How much did he have to use?

18 A. Just twenty.

19 Q. Okay. And after the deal went down, were you able
20 to match the money that you gave the undercover with the
21 money that the Defendant threw down?

22 A. That's correct. When we picked up the twenty
23 dollars -- like I stated earlier, we have -- I issue
24 copies to everybody on the team so whoever finds the

25 money, if -- because we've had times where they've tried

1 to eat it, they throw it away or try to pass it off to
2 someone else. Once we get the money, every officer has a
3 printed copy of whatever amount of money it is, and they
4 match it up. They say, this is our money. We got it.
5 We confiscate it back. And it's returned back to me.

6 Q. So is it your testimony that the money he threw down
7 matched ---

8 MR. COCHRAN: Objection. Leading.

9 THE COURT: Sustained. Don't lead.

10 Q. Did the money he threw down match the money that you
11 gave the undercover?

12 A. It did. It was the twenty dollars that I gave --
13 one of the twenty dollars that I gave the undercover,
14 Officer Dean, to buy said quantity of drugs.

15 Q. And where did you find the other twenty that you had
16 recorded?

17 A. The other twenty dollars Officer Dean still had it
18 in his possession.

19 Q. Now, Mr. Cochran asked you a good bit about whether
20 you fingerprinted or tested for DNA on this money. But
21 you said you didn't do that, right?

22 A. That's correct.

23 Q. Okay. In your experience as a law enforcement
24 officer and detective, are fingerprints and DNA used to
25 identify unknown suspects?

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1 A. Yes.

2 Q. In this case did you know who the suspect was?

3 A. Yes, we did.

4 Q. Did you see the drug deal go down?

5 A. Yes, we did.

6 Q. Did you see the money in his hand being thrown on
7 the ground?

8 A. Yes, I did.

9 Q. Okay. Did you need to test for fingerprints or DNA?

10 A. No, I did not.

11 Q. Because you had seen it in his fingers, correct?

12 A. Yes, in his possession.

13 Q. Now, I want to talk to you about the audio/video,
14 the audio or the video, that was utilized in this case.

15 What is the primary purpose of this monitor?

16 A. For officer safety.

17 Q. Is the primary purpose to save it and present it as
18 evidence?

19 A. No.

20 Q. I didn't hear what you said.

21 A. No, sir.

22 Q. So the primary purpose for that is to make sure this
23 undercover officer is safe?

24 A. That's correct.

25 Q. Now, when you're deciding whether or not to arrest

1 somebody, do you base that decision on the audio and the
2 video, or do you base it on the undercover officer?

3 A. To answer your question, no, we don't base it solely
4 on that because of the fact, like I stated before, once
5 the deal is done and the handcuffs go on and he's
6 arrested for distribution of marijuana, crack cocaine,
7 whatever the case may be, he's under arrest, he's being
8 charged. We're not watching video and we're not even
9 listening to audio at that moment in time. That
10 defendant is being transported to the county jail.

11 Officers go back and process evidence and the warrants.
12 Affidavits are typed up and then we obtain warrants. The
13 tech guy goes back to the office and observes the video
14 and audio.

15 Normally, you know, we know that we have audio and
16 video if everything works out. So normally, we will put
17 in the affidavit that, you know, to our knowledge in good
18 faith, we have our recording equipment working properly,
19 the video recording working properly during the time of
20 the incident. But we have other means for probable cause
21 and evidence. You know, my testimony, Officer Dean's
22 testimony. Like I stated, that would be additional
23 probable cause and/or maybe evidence if needed, but it's
24 not solely it.

25 Q. Okay. So was this Defendant arrested based on what

1 happened with the undercover officer?

2 A. That's correct.

3 Q. Was this Defendant arrested based on what you
4 observed?

5 A. That's correct.

6 Q. And it turns out there is no audio/video that was
7 saved. Do you still feel like you arrested the right
8 man?

9 A. A hundred percent, yes.

10 Q. Were you able to use all of your video during the
11 deal for its primary purpose, officer safety?

12 A. Correct. And that was to listen to the deal go
13 down, take place, where Officer Dean was and what was
14 going on during the time he was out with this Defendant.

15 Q. So you monitored using audio/video, but you made the
16 arrest based on what you observed and what the undercover
17 observed?

18 A. That's correct.

19 Q. Now, they -- Mr. Cochran had asked you about after
20 this had gone down, looking into the Defendant's house
21 where he lived. And I think you said that there was no
22 additional drugs in the house?

23 A. Correct.

24 Q. Do you know if any additional drugs were found on
25 the Defendant?

1 A. Yes. There was crack that was found in his crotch
2 area.

3 Q. Describe for me exactly how it was in his crotch
4 area. Like, what did you find? I don't mean for you to
5 describe his crotch. But where -- like, what did you
6 find? Describe to me precisely what was found.

7 A. A clear plastic baggie, probably about that big
8 around. It was twisted together, tied up, in his groin
9 area.

10 Q. And what was inside of that?

11 A. Broken up, off-white rock-like substances which we
12 tested, field tested, and they all tested positive for
13 crack cocaine or cocaine base.

14 Q. Do you know about how many rocks of crack were in
15 there?

16 A. Four.

17 Q. Four?

18 A. Yes, sir.

19 Q. Do you know about the way that crack is smoked?

20 A. Yes, sir.

21 Q. Are you familiar with that?

22 A. Yes.

23 Q. Do you smoke four rocks at a time?

24 MR. COCHRAN: Objection.

25 THE COURT: Sustained.

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1 Q. What does four rocks of cocaine indicate to you?

2 MR. COCHRAN: Objection.

3 THE COURT: Y'all approach.

4 (WHEREUPON, a bench conference was held off the

5 record.)

6 Q. Officer, I'm going to -- before I ask you about your
7 opinion on things, you've shared a good bit of your
8 experience and your training. Tell me again just what
9 kind of training or experience do you have that helps you
10 understand drug activity and drug law enforcement?

11 A. Well, pretty much -- most of the time, if you've got
12 a drug user, a drug user is also associated with a drug
13 seller. And what I mean by that is, I may, for instance,
14 be a drug user, marijuana or crack or even cocaine. To
15 support my habit, I may have additional crack, marijuana,
16 cocaine ---

17 MR. COCHRAN: Objection.

18 THE COURT: Okay.

19 MR. WETMORE: I'm sorry. I can rephrase that.

20 THE COURT: Sure.

21 Q. What I'm trying to do is I'm trying to back up a
22 little bit. Not what your opinion is about that just
23 yet. I need to get down your experience and your
24 training in terms of classes or in terms of the job that
25 helps you understand drug activity.

1 THE COURT: Let me streamline this maybe just a
2 little bit. He did testify to that on redirect. Do you
3 have any objection -- I expect he's getting ready to
4 offer him as an expert based on what we argued at the
5 bench. Do you need to do any additional voir dire, or do
6 you have any objection to his offering him as an expert
7 witness?

8 MR. COCHRAN: I object, Your Honor.

9 THE COURT: You object? Okay.

10 Ladies and gentlemen, normally, I like to try to get
11 through a whole witness before we take a break, but we do
12 have a matter of law to take up that may take a few
13 minutes. So why don't we break for lunch now and y'all
14 come back at -- let's see, y'all need a little bit of
15 time to have lunch. So come back at two fifteen. That
16 should give y'all time to get something to eat and come
17 back. Please do not discuss the case yet. We will deal
18 with our matter of law, and then we'll come back and hear
19 the rest of this officer's testimony. Okay. Thank you.

20 (WHEREUPON, the jury exited the open court at
21 approximately 12:15 p.m.)

22 THE COURT: Okay. Just so we make sure we
23 properly preserve your objection ...

24 Mr. Wetmore, why don't you go ahead and offer him
25 based on what he testified to in his direct testimony,

1 and then I'll hear what we need to put on the record.

2 MR. WETMORE: Judge, we do believe that based
3 on his training, his experience -- and he's been doing
4 almost exclusively drug cases. And he's got a great deal
5 of experience with it, how it's used on the street, how
6 it's packaged, how it's consumed, all that stuff. And we
7 think he'd probably be the ideal person to talk about,
8 you know, drug activity or drug enforcement, whatever is
9 the appropriate field of expertise. We'd offer him as
10 such.

11 THE COURT: Okay. And did you want to do any
12 additional voir dire, or do you just want to object to
13 his being qualified as an expert in police narcotics?

14 MR. COCHRAN: Yeah. I don't know that I need
15 any additional voir dire, but I do want to make an
16 objection.

17 THE COURT: Go ahead. Go ahead.

18 MR. COCHRAN: Well, basically he's -- the cases
19 say that it's totally fine with admitting officers like
20 him as experts in things like drug jargon. Like the fact
21 that he -- I didn't object when he, you know, testified
22 to things like referring to something as a twenty,
23 meaning twenty dollars of marijuana. He could have --
24 he's a witness to that sort of thing in his expertise.

25 THE COURT: Okay.

1 MR. COCHRAN: And this is different from that.
2 This is a question about social behavior of a particular
3 community. I mean, unless he's a sociologist or a
4 cultural anthropologist, I don't think that he can
5 testify to the behavior of crack users and crack dealers
6 and that sort of -- and the other thing that really
7 raises a red flag is that he's getting ready to testify
8 that four crack rocks or point seven grams of crack is
9 more than a crack user would merely possess. The fact
10 that that's different than what the Legislature decided
11 after listening to actual experts and listening to
12 research and testimony to make the determination of what
13 the presumptive weight is for intent to distribute, the
14 fact that he's different from that, you know, we would be
15 entitled, I think, at that point to call a rebuttal
16 witness as an expert to reply to that. And you know, I
17 just don't think he's qualified to testify to that sort
18 of thing.

19 THE COURT: Okay. And I respect your --
20 respectfully respect your objection, but I did look at
21 some law on this after it came up and the objection in
22 the opening statement. Specifically *United States v.*
23 *Hopkins*, which is a Fourth Circuit Case from 2002, deals
24 exactly with police officers being qualified as expert
25 witnesses as to the behavior of alleged drug dealers.

1 The specific officer here had extensive formal training
2 in conducting narcotics investigations. I think I've
3 gotten testimony that he's had fifteen years of
4 experience and took specialized narcotics classes. He's
5 the supervisor of the team that does the narcotics
6 takedowns in the City of North Charleston, which I think
7 we can all agree is a pretty specialized area. And there
8 are a lot drug deals that go down there, so a narcotics
9 supervisor for the City of North Charleston Police
10 Department is going to have a lot of investigative
11 experience.

12 In addition, *State v. White* and *State v. Durham*
13 control here, and those are South Carolina cases. What
14 *Durham* says is that, counsel next argues that the Court
15 committed prejudicial error in permitting the police
16 officer to testify over objection that seized scales were
17 commonly used to weigh fine amounts of drugs. It is
18 argued that the testimony was merely conclusions and
19 opinions. The police officer was shown to be qualified
20 to render such an opinion. As an experienced narcotics
21 officer, he had information relative to such a scale not
22 commonly within the knowledge of a juror. It was clearly
23 relevant on the issue of intent to distribute.

24 And I think he has specialized knowledge. He's
25 clearly qualified. He has specialized knowledge that

1 will aid the jury in its determination. If you disagree
2 with his finding, that's fine. You can certainly cross-
3 examine him on it.

4 What the Legislature decided were the proper weights
5 for trafficking or distribution really have no relevance
6 from a lay or expert opinion. That's a legal distinction
7 as to what they decided to separate it out as.

8 MR. COCHRAN: And Your Honor, I guess my
9 response to that would be that it does, however, provide
10 a record of other people making a different decision than
11 him.

12 THE COURT: Right.

13 MR. COCHRAN: If they confine it to him, I'm
14 not ---

15 THE COURT: I thought he was charged with
16 possession with intent to distribute. Is that not
17 correct?

18 MR. COCHRAN: He is, Your Honor.

19 THE COURT: So this amount falls within the
20 statute, right?

21 MR. COCHRAN: No, Your Honor.

22 THE COURT: If -- then we're trying him on the
23 wrong charge.

24 MS. COMPTON: Your Honor, there's a presumptive
25 weight at which a jury is allowed to be charged that they

1 can presume it's possession with intent to distribute.
2 Just because it doesn't fall above that weight doesn't
3 mean it can't still be possession with intent to
4 distribute.

5 THE COURT: Well, that's my point. I mean,
6 that's my exact point. I guess I'm not following what
7 your point is. I'm sorry.

8 MR. COCHRAN: It's a possession level under the
9 law.

10 THE COURT: Right.

11 MR. COCHRAN: You can still find that he had an
12 intent to distribute based on things like the fact that
13 he had just sold marijuana to indicate that he is
14 somebody who sells drugs, so that he was likely to be
15 selling drugs. That's appropriate. That's an
16 appropriate argument for them to make. But to infer that
17 this weight, this amount of crack, is an amount such that
18 it would be more than someone would merely possess for
19 personal use is at odds with what the Legislature has
20 found, and I think that his expertise in that -- that's
21 fine if he's proffered as an expert on that. But I
22 should be able to call an expert to rebut that.

23 THE COURT: Well, you should, but I don't see
24 one that's been listed.

25 MR. COCHRAN: Well, I don't have an expert,

1 Your Honor. But I wasn't necessarily aware until last
2 Friday that these things were going to be issues. You
3 know, I mean, to me, from the reading of this case, they
4 obviously charged him with possession with intent to
5 distribute and they can charge him with that under the
6 law because there is some indicia of dealing, according
7 to them, that he is caught dealing drugs. But I just
8 think that his expertise is not in that field.

9 THE COURT: His expertise is in the field of
10 narcotics and narcotics investigation, and that's the
11 ruling of the Court. Any presumptive weight or other
12 issue that may have been legislatively determined -- I
13 don't know what the legislative history is. We don't
14 have that in front of us right now -- really doesn't bear
15 on whether there's a finding under Rule 702 if he's
16 qualified or not to testify to that. You may disagree
17 with it. I mean, you may want to ask him something along
18 the lines of was it separated out into baggies. I mean,
19 to me, it would be more indicative. But I don't think
20 that weights and cut-offs that the Legislature imposed,
21 say, to reach a presumptive weight or a trafficking
22 weight deem him unqualified or unknowledgeable in this
23 field.

24 MR. COCHRAN: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. COCHRAN: And if I may, I would draw a
2 distinction between the case that you cited in terms of
3 the scale. That --, you know, even I questioned him about
4 that. That somebody that's commonly in possession of
5 drugs.

6 THE COURT: I think I cited four different
7 cases.

8 MR. COCHRAN: Yes, ma'am.

9 THE COURT: I'll be happy for you to take a
10 look at them. And I appreciate your zealous advocacy on
11 behalf of your client, but I've ruled.

12 MR. COCHRAN: Yes, Your Honor.

13 THE COURT: And we're done.

14 MR. COCHRAN: Thank you, Your Honor.

15 THE COURT: Okay. Anything else before we take
16 a break for lunch? I'm going to let him -- I'm going to
17 qualify him as an expert. I'm not sure how much it
18 really helps since it was all, as I understand the
19 testimony, in one bag and not that much. But you know,
20 if you want to ask him questions about his experience as
21 a narcotics detective in a limited manner -- because
22 we're on redirect now. I'm not going to say the door was
23 opened to anything. But you know, we did ask all the
24 questions about what did you not find at the house which
25 I think was a good line of inquiry. I do think they're

1 entitled to say, well, what did you find that made you
2 think that you may have him dealing, you know, other than
3 the bills that he's got. Okay?

4 MR. WETMORE: Thank you, Judge.

5 THE COURT: All right. Why don't y'all take a
6 break for lunch. We'll start back at two fifteen. If
7 there are any other issues of law that come up, I'll be
8 around.

9 MR. COCHRAN: Thank you.

10 MS. COMPTON: Thank you, Your Honor.

11 (WHEREUPON, court stood at recess for a lunch
12 break.)

13 THE COURT: All right. Anything we need to
14 take up before we bring the jury in? They're all back.

15 MS. COMPTON: Nothing from the State, Your
16 Honor.

17 THE COURT: Okay.

18 MR. COCHRAN: No, Your Honor.

19 THE COURT: Okay. Are you going to put Elmore
20 back up, or are we ---

21 MR. WETMORE: Yes, ma'am. I'm going to ask him
22 a few questions as an expert and then that's it for me.

23 THE COURT: Okay.

24 MS. COMPTON: Do you want to have him on the
25 stand before the jury comes in?

1 THE COURT: Yeah, you can go ahead and bring
2 him in. I'm going to let him follow up, you know, since
3 ...

4 All right. Sir, come on back.

5 THE COURT: Burns, if you will offer him again,
6 I'll give them a little expert spiel.

7 MR. WETMORE: I'm going to call it an expert in
8 drug enforcement, drug law enforcement.

9 THE COURT: Over his objection.

10 MR. COCHRAN: And, Your Honor, now that I think
11 about it -- I said the opposite before. But I was
12 thinking about it over lunch. And I would object as this
13 being outside the scope of cross because I did question
14 him about indicia of distribution, but nothing about
15 weight. You know, I didn't say, you know, this is below
16 the presumptive weight or anything like that.

17 THE COURT: And that is, as I brought up at the
18 bench, a concern that I had, that we were exceeding the
19 scope of the redirect. But then I think -- Mr. Wetmore,
20 if you want to put that back on the record -- you
21 reminded me of the team going through everything in the
22 house.

23 MR. WETMORE: I mean, what I want to argue is
24 that Mr. Cochran talked about, you know, paraphernalia
25 and practices of things you see in drug arrests in terms

1 of dealing and opened, you know, a large door as to me
2 asking that same sort of thing. That's what was found on
3 the Defendant. I mean, the other areas -- and he didn't
4 find anything at his house because it was in his crotch.

5 THE COURT: Okay.

6 MR. WETMORE: And that's why I think he's
7 opened that door, and that's why I think it's within the
8 scope.

9 THE COURT: Okay. I'm going to let him go
10 ahead and do that, but I am going to let you come back up
11 and recross him briefly. I mean, I think they've all got
12 the point. Y'all, I really do. So let's, you know --
13 okay.

14 MR. COCHRAN: I understand.

15 THE COURT: Okay. But I note your objection
16 not only to qualifying him as an expert but also to the
17 objection that it's beyond the scope of proper redirect.

18 MR. COCHRAN: Thank you, Your Honor.

19 THE COURT: Respectfully overruled for the
20 record.

21 Are y'all ready? All right.

22 (WHEREUPON, the jury entered the open court at
23 approximately 2:25 p.m.)

24 THE BAILIFF: All are seated, Your Honor.

25 THE COURT: Thank you, sir.

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1 Welcome back, ladies and gentlemen. I hope y'all
2 had a nice lunch. And we are ready to continue with Mr.
3 Wetmore's redirect examination.

4 MR. WETMORE: Thank you, Judge. Judge, based
5 on Deputy Elmore's training and experience, we'd like to
6 offer him as an expert in drug law enforcement.

7 THE COURT: Okay. I will qualify Deputy Elmore
8 as an expert witness in the area of drug law enforcement,
9 narcotics enforcement, over Defendant's objection.

10 Ladies and gentlemen, normally, a person cannot give
11 opinion testimony. Usually, when a person testifies,
12 they must testify as to something that they saw, heard,
13 sensed, felt, something of that nature. There's an
14 exception in our code of laws when someone is qualified
15 because of their education or experience to testify as an
16 expert witness. Those witnesses are permitted to give
17 their opinion in certain areas when the Court qualifies
18 them in those areas.

19 This witness will be qualified in the area of
20 narcotics and drug enforcement to give opinion testimony
21 in that area only. The fact that this witness is so
22 qualified does not mean that you must accept his opinion.
23 It is simply evidence for you to use in any way that you
24 see fit. And you give it the weight and credibility that
25 you believe is appropriate just as you would with any

1 other witness.. Okay?

2 Yes, sir?

3 MR. WETMORE: Thank you, Judge.

4 REDIRECT EXAMINATION

5 CONTINUED BY MR. WETMORE:

6 Q. Officer Elmore, I'm going to talk to you about the
7 crack cocaine that was found on the Defendant.

8 A. Okay.

9 Q. And I'm going to ask you some questions about it and
10 what that says to you based on your experience and
11 training. Tell us again what the street weight, the
12 field weight, was when you guys recovered it out of his
13 crotch.

14 A. It was point eight grams approximately.

15 Q. Eight-tenths of a gram?

16 A. Yes.

17 Q. Tell me how the substance was physically found. You
18 know, was it in one big piece, two little pieces? How
19 was it found?

20 A. It was packaged in one big plastic baggie about this
21 big around. And within it -- it was contained together.
22 And it was four pieces broken up, not four pieces as if
23 you had a cookies wrapped up in some plastic that might
24 have crumbled up. It was physically broken up. People
25 normally use -- drug dealers use razor blades to break it

1 down evenly so that each piece is weighed to twenty or
2 for whatever amount of -- the amount that they're
3 planning on selling it for, which in this case, it was
4 four twenty pieces totaling the point eight grams.

5 Q. Okay. So based on your experience, it appeared that
6 that crack was intentionally cut in four equal pieces?

7 A. That's correct.

8 Q. And the value of each piece is how much?

9 A. Twenty dollars.

10 Q. All right. And the value of the total amount that
11 was found would be?

12 A. Eighty dollars.

13 Q. Eighty dollars? Okay. And how could you tell it
14 had been intentionally broken up like someone intended to
15 distribute it versus just cracking in someone's pants?

16 A. Because like I stated, when you press down on it --
17 basically, when the crack is cooked up, it's a hard
18 cookie like. And sometimes you can buy crack and they
19 call it a cookie. And when it's broken up, you press
20 down with the razor so it will cut straight down, so it
21 will cut whatever desired amount. And they weigh it.
22 Most drug dealers know what size to cut, so they cut just
23 that amount. Those four pieces of rock that was on the
24 Defendant were almost equal in size. If you would have
25 stuck it -- put it in your pocket -- just say, for

1 instance you had a cookie and you stuck it in your pocket
2 and you walked around and you fell and you crushed it, it
3 wouldn't be exactly four pieces the same size and almost
4 same weight. It would be smaller crumbs and, you know, a
5 lot more smaller pieces than what you -- you know, they
6 don't want that because they're losing money. You can't
7 -- you know, some crack heads -- excuse me -- crack users
8 will use, you know, several crumbs, which whatever
9 residue is in the bag -- they're so addicted to it,
10 they'll say, well, just give me five dollars and you can
11 just have whatever crumbs is in this bag. But the main
12 objective is to sell those four or larger twenty pieces.
13 That's how they make their money.

14 Q. And in terms of the packaging, how is crack usually
15 packaged? Does it have to be in separate bags?

16 A. It's packaged several ways. Sometimes it'll be one
17 big bag individually wrapped. You may have seven in one
18 big bag, but they're wrapped separately so when they open
19 up the big bag, you got seven small pieces in its own
20 plastic wrapping. Or you know, some of them just have
21 one big bag with -- when you open that big bag up,
22 you've just got four rocks. That's what we call it,
23 crack rock. Four rocks just sitting there. And they'll
24 just pick out whichever one they want to sell or, you
25 know, distribute.

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1 Q. Now, does crack, like a small amount of crack have
2 to be packaged in a bag to be sold like, say, marijuana
3 or powder cocaine or heroin or ...

4 A. No, it does not have to be packaged at all to be
5 sold. I've done -- myself and Detective Dean has bought
6 crack where it's been in their mouth, buttocks, groin.
7 They'll just have it in their hand, wherever they can
8 hide it on their body, person. Or they may put it next
9 to a tree in a soda can or wherever. As long as they can
10 get to it to get the desired amount of money, they'll
11 hide it there.

12 Q. And the fact that it's -- that when you searched or
13 this guy was searched by your team, the fact that it was
14 hidden in his groin, what does that tell you when it's
15 concealed there versus like in your pants pocket or
16 something? Does that tell you anything?

17 A. First of all, it tells me that he concealing it. He
18 doesn't want it to be found. That's, you know, the main
19 objective is for the police not to find it. Second of
20 all, if he's carrying four rocks around, he's got it in
21 his buttocks and he's walking around -- or his groin area
22 and he's walking around the community in an area, it's
23 for to be sold. If he decided to use it for consumption,
24 you don't want to be walking around in the City of North
25 Charleston with four crack rocks on your person because

1 then you're looking at distribution of crack rock just
2 because of the amount of it as opposed to being in
3 possession if you just had the one. So drug dealers know
4 the law because they've been charged with it before or
5 know family and friends that dealt with it. So it's
6 better to get caught with one because either they'll
7 swallow it, destroy it. It's hard to get rid of four, so
8 they put it in areas where we can't get to it on a
9 regular pat-down. So they have it. When the deal is to
10 be done, they're, I'll be right back.

11 So like Detective Dean's situation, he said, I want
12 'X' amount. I'll be right back. He'll go either get it,
13 he'll go behind a tree or beside of a residence, get that
14 amount out and then bring it to him. Either way, it's on
15 his person or wherever they keep it. So that's how they
16 sell the crack and/or marijuana. It's the same
17 situation.

18 THE COURT: Okay. I think we're getting,
19 starting to get more afield of the proper scope of
20 redirect, so let's wind it up.

21 MR. WETMORE: Okay.

22 Q. Did you have any information or any belief that this
23 man was using crack? Was that in your report or
24 anything?

25 A. I have no knowledge of him being a crack user, but

1 it wouldn't be a surprise if he was, in fact, a user.
2 Users are known to sell drugs to support their habit.
3 Some transport for other dealers. They're basically
4 considered horses or transporters. I may be a drug
5 dealer. Detective Dean, I may say, listen, go sell this
6 twenty rock for me or these two rocks for me, and I'll
7 give you a rock. And he'll go actually do the deal.

8 We've made distribution buys on drug users,
9 prostitutes that would do the deal themselves in order to
10 be compensated crack or whatever the drug dealer present
11 to them. And there are times when they have more than
12 one, in this case, four rocks that they have on their
13 person that they're selling for themselves to continue
14 their use or to make money as well.

15 Q. So you definitely didn't see him use any drugs, but
16 you did watch him sell it?

17 A. That's correct.

18 Q. Just before he was arrested?

19 A. Correct.

20 Q. Just before the crack was found?

21 A. That's correct.

22 Q. One final point I want to make to you. Mr. Cochran
23 asked you about your report writing or your team's report
24 writing and that there's no mention of any kids on that
25 playground in the report.

1 A. Correct.

2 Q. That detail did not make the report; is that right?

3 A. Correct.

4 Q. Is there any doubt in your mind, any confusion in
5 your mind that that place was being used by children at
6 the time?

7 A. There was definitely children there because when I
8 went to go help in the process of detaining him, I made
9 sure I drove at a decent rate, monitoring children
10 walking and running out. Just kids in general that lived
11 across the street from the community center could have
12 been running over to the community center. But there was
13 definitely, in fact, cars coming and going, children on
14 bicycles passing by going to and from that community
15 center.

16 Q. And North Charleston didn't pick that location to
17 make the deal, did they?

18 A. No, sir.

19 Q. Who picked that location?

20 A. The Defendant.

21 MR. WETMORE: Nothing further.

22 THE COURT: Thank you.

23 Yes, sir?

24 MR. COCHRAN: Thank you, Your Honor.

25

RECROSS EXAMINATION

1 BY MR. COCHRAN:

2 Q. You said that drug dealers a lot of times know the
3 law, right?

4 A. That's correct.

5 Q. And you know the law, too, right?

6 A. I know it.

7 Q. And you know that the Legislature has determined an
8 amount of crack cocaine that would be deemed -- if you
9 had that amount, it would be an intent to distribute,
10 possession with intent to distribute, correct?

11 A. There's an amount, yes.

12 Q. There's an model amount set by the Legislature,
13 correct?

14 A. Correct.

15 Q. And that model amount is one gram or more, correct?

16 A. Correct.

17 Q. And this was less than one gram, correct?

18 A. That's correct.

19 Q. So contrary -- when you were talking to Mr. Wetmore,
20 you said that nobody would walk around -- no user would
21 walk around with this much crack because they could get
22 charged with possession with intent to distribute?

23 A. Correct.

24 Q. Okay. But this is below that presumptive weight
25 that the Legislature set, isn't it?

1 A. The weight is under, correct.

2 Q. Okay. And you said that there was no indicators
3 that day that Mr. Simmons had been using crack on that
4 day?

5 A. I wouldn't have that knowledge.

6 Q. Okay. You would not have that knowledge?

7 A. If he, in fact, used crack unless he told us,
8 correct. I don't know if he was.

9 Q. Okay. You didn't test his blood?

10 A. No, we didn't test his blood.

11 Q. You can test somebody's blood to see if they've been
12 using narcotics, correct?

13 A. That's correct.

14 Q. Okay. And you've reviewed the reports that were
15 made in this case, correct?

16 A. Correct. There was no ---

17 MADAM COURT REPORTER: I'm sorry. I'm having
18 trouble.

19 THE COURT: Would you please speak up for us,
20 please?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: I appreciate it.

23 Q. There's a portion of that police report -- do you
24 recognize that report?

25 A. Yes, I do.

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1 Q. Okay. There's a portion on that report that
2 indicates whether or not the arresting officers felt that
3 the suspect may have been using some kind of controlled
4 substance, correct?

5 A. That's correct.

6 Q. Okay. And on that report, they indicated that, yes,
7 they thought maybe he had, correct?

8 A. Correct.

9 Q. Okay. They said that they thought that maybe he'd
10 been using crack, correct?

11 A. I would have to look through the police report to
12 see if that's exactly how they worded it. But it's
13 circled on there and states, subject using alcohol, and
14 they checked yes. And it just states drugs, not any
15 detail on this, checked, yes.

16 Q. Okay. But looking over ---

17 A. Okay. Yes, it does say crack.

18 Q. Okay. Thank you. Drug users don't walk around
19 holding drugs up over their head, right? They conceal
20 their drugs?

21 A. Yes.

22 Q. Okay.

23 MR. COCHRAN: No more questions.

24 THE COURT: Thank you. Okay. Any objection to
25 this witness being excused?

1 MR. WETMORE: No, Your Honor.

2 THE COURT: Okay. Sir, you may step down and
3 you are excused.

4 THE WITNESS: Thank you.

5 MS. COMPTON: The State calls Officer Deangelo
6 Dean.

7 THE COURT: Sir, if you'd come forward and be
8 sworn, please.

9 **DEANGELO DEAN,**

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. COMPTON:

13 Q. Officer Dean, where are you employed?

14 A. With the City of North Charleston.

15 Q. And in what capacity?

16 A. Right now I'm assigned to the Speed Team.

17 THE COURT: And sir, I'm going to ask you to
18 speak up a little bit too. Yeah, if you'll pull the
19 microphone, that would be great. Thank you.

20 THE WITNESS: Yes, ma'am.

21 MS. COMPTON: If you need to just shout, that's
22 all right.

23 MADAM COURT REPORTER: I'm sorry.

24 THE COURT: I know if she can't hear you, then
25 I know I can't hear you either.

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1 Q. Now, how long have you been in law enforcement?

2 A. Altogether six years.

3 Q. Okay. And how long have you been doing drug-type
4 work?

5 A. For the past five years.

6 Q. All right. Now, on June 15th of 2011, were you
7 employed with the Speed Team at that point?

8 A. Yes, ma'am.

9 Q. Okay. And did you have an occasion to meet up with
10 the Defendant, Mr. Simmons, on that date?

11 A. Yes, ma'am.

12 Q. Tell the jury about that.

13 A. Pretty much we selected the neighborhood, as Officer
14 Elmore said. We go inside the neighborhood pretty much
15 and drive around and look for people that I would
16 normally make contact with about buying -- I was in a
17 patrol uniform trying to ---

18 MADAM COURT REPORTER: I'm sorry.

19 A. I'm sorry. Sorry, sorry. I was in a patrol uniform
20 trying to see if this person had any type of illegal
21 narcotics on them, and so I just grasp that type of --
22 know that type of person. So I just drive around the
23 neighborhood looking for someone I would normally get out
24 and talk to.

25 Q. Okay. And in part of this operation, were you

1 working in an undercover capacity?

2 A. Yes, ma'am.

3 Q. And so what were you wearing?

4 A. Probably a white t-shirt, blue jeans and a baseball
5 cap.

6 Q. Okay. Were you driving a police car?

7 A. No, ma'am. A rental car.

8 Q. Just an unmarked ---

9 A. Just rental ---

10 Q. Could have been anybody?

11 A. Yeah.

12 Q. Did you approach the Defendant, or did he approach
13 you?

14 A. I approached the Defendant.

15 Q. And can you tell the jury in the words you used that
16 day what you said to him when you approached him?

17 A. Pretty much depending on the neighborhood we in, you
18 gage what's the normal sales, so -- and that day, I be
19 like, hey, boy, you know where I can get some tree from?

20 Q. And can you tell the jury -- can you -- first of
21 all, say it slowly again for the record.

22 A. Okay. Hey, boy, do you know where I can get some
23 tree from which means ---

24 Q. So hey, boy, do you know where I can get some tree
25 from?

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1 A. Yes, ma'am.

2 Q. That's for the record. And now will you tell the
3 jury what you meant by that?

4 A. Do you know where I can get some marijuana from?

5 Q. Okay. Now, what did the -- how did the Defendant
6 respond to that question?

7 A. He directed me to -- first, he asked me how much I
8 wanted.

9 Q. Okay. And what did you tell him?

10 A. I want a twenty, twenty dollars worth.

11 Q. Okay.

12 A. And he directed me to the community center. Well,
13 he said the park, which is also know as Persephone ---

14 Q. Persephone ---

15 A. Persephone Moultrie Community Center.

16 Q. Okay. I think you've already testified about this.
17 But this is open to the public, correct?

18 A. Yes, ma'am.

19 Q. All right. Now, I'm going to show you ...

20 MS. COMPTON: Well, first, Mr. Cochran ...

21 (Off record discussion)

22 Q. I'm showing you what has been marked as State's
23 Exhibit 1 just for identification purposes only.

24 A. Okay.

25 Q. Does this -- the contents of this photograph, do you

1 recognize that?

2 A. Yes, ma'am.

3 Q. And what do you recognize them to be?

4 A. Pretty much it's the playground at the community
5 center.

6 Q. Okay. And that's not a picture from the date --
7 that's not June 15th?

8 A. No, ma'am.

9 Q. That's just a standard Google Map?

10 A. Yes, ma'am.

11 Q. But is it a fair and accurate representation of the
12 park as it appeared that day?

13 A. Yes, ma'am.

14 MS. COMPTON: Your Honor, at this time, we'd
15 move to admit that as State's Exhibit 1.

16 MR. COCHRAN: No objection, Your Honor.

17 THE COURT: State's 1 is admitted without
18 objection.

19 (WHEREUPON, State's Exhibit Number 1 was admitted
20 into evidence.)

21 Q. All right. Now, so -- and I'm not going to put that
22 up over the overhead just because it will be in your
23 eyes. But you were here at this park. Can you indicate
24 to me where on the picture -- do you see the parking lot
25 or is it not in this picture?

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1 A. It's not here.

2 Q. Okay. All right. But this is the community center
3 where you were waiting?

4 A. Yes, ma'am.

5 Q. Okay. And is there a ---

6 A. On the other side of the trees, there's an actual
7 building, and there's a little driveway and cars park
8 there, cars park at. It's right there, you can see.

9 Q. Okay. Thank you. Now, while you were waiting at
10 the park, could you see the Defendant?

11 A. Yes, ma'am.

12 Q. What did you see him do?

13 A. He walked down -- I think it's Long Leaf.

14 Q. Okay.

15 A. Yes. Long Leaf. And it was like the second or
16 third house on the left-hand side. He walked into that
17 yard.

18 Q. Okay. Did you later determine through investigation
19 whose house that was?

20 A. Yes, ma'am. He stated that it was his residence.

21 Q. Okay. What happened next? Did you see him again?
22 Did he come back?

23 A. Yeah. No more than two to three minutes later, he
24 came back to the park. He handed me the weed -- I'm
25 sorry -- the marijuana in a brown paper bag, and I gave

1 him the prerecorded currency.

2 Q. Okay. Now, when you say prerecorded, meaning it was
3 photocopied before?

4 A. Yes, ma'am.

5 Q. And you handed him how many -- a twenty-dollar bill?

6 A. Twenty dollars.

7 Q. So one of those bills?

8 A. Yes, ma'am.

9 Q. And you kept the other bill, correct?

10 A. Yes, ma'am.

11 Q. Okay. Now, I'm going to show you what's been marked
12 as State's 2 for identification. Do you recognize this
13 photocopy?

14 A. Yes, ma'am.

15 Q. And what is that? What do you recognize it to be?

16 A. Pretty much it's what we do to -- before we do a
17 buy, we make copies of the currency so that the whole
18 team can have them.

19 Q. And this is the actual photocopy from this case?

20 A. Yes, ma'am.

21 Q. All right. And is it a fair and accurate photocopy
22 of the money?

23 A. Yes, ma'am.

24 MS. COMPTON: Your Honor, at this time, I would
25 move to admit that as State's 2.

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1 MR. COCHRAN: I would object, Your Honor.

2 THE COURT: Okay.

3 MR. COCHRAN: They haven't specified the serial
4 number of the twenty-dollar bill that was used.

5 THE COURT: Y'all approach.

6 (WHEREUPON, a bench conference was held off the
7 record.)

8 THE COURT: State's 2 is admitted over
9 Defendant's objection.

10 (WHEREUPON, State's Exhibit Number 2 was admitted
11 into evidence.)

12 MS. COMPTON: Thank you, Your Honor.

13 Q. Now, after you gave him the money and you received
14 this marijuana, what did you do? Did you radio anyone,
15 talk to anyone?

16 A. Pretty much, depending on what's happening, I will
17 tell them it's a good deal and give them another
18 description of what he was wearing and what direction
19 he's headed.

20 THE COURT: Can you speak a little more into
21 the microphone for the court reporter?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Thanks. And you know what -- and I
24 know it's nerve-wracking in court. But if you could just
25 slow down a tiny bit. I think that's what's causing us

1 trouble. You need to talk to the jury because they need
2 to hear you, but just slow down a tiny bit.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Thank you. Appreciate it.

5 A. Where was I?

6 Q. I'm sorry. If you could tell the jury what you did
7 after you received the marijuana and gave him the twenty
8 dollars.

9 A. I pretty much I told the guy on the recording that
10 it was a good deal, gave them the description, what he
11 was wearing and what direction he was headed to and
12 pretty much kept an eye until I can see at least the
13 takedown or saw Officer Elmore coming in, and then I
14 drive away.

15 Q. So you -- I'm sorry. You said you remained there
16 until you saw who they arrested?

17 A. No. I could see it was taking a long time to back
18 up. I was checking the product. And that way I can keep
19 an eye and see at least what direction he's headed into.

20 Q. Okay.

21 A. And so once I see either the takedown or Sergeant
22 Elmore coming in, I'll try to drive away real slowly, so
23 that way thinking I can make sure they got the right
24 person versus any Joe Blow walking in the roadway.

25 Q. And in this case, were you able to tell them and

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1 confirm with them that they had arrested the correct
2 person?

3 A. Yes, ma'am. I came back and ---

4 Q. After he had been arrested?

5 A. Yes, ma'am.

6 Q. Okay. Do you see that man in court today?

7 A. Yes, ma'am, I do.

8 Q. Can you point him out and tell me what he's wearing?

9 A. Orange and brown plaid shirt.

10 MS. COMPTON: Your Honor, can the record
11 reflect he's identified the Defendant?

12 THE COURT: Yes, ma'am.

13 Q. Now, what did you do with the marijuana that he sold
14 to you?

15 A. Inside our vehicle we have evidence bags so just in
16 case the deal happens. As soon as the deal is ready, we
17 put it inside the evidence bag and we seal it and take it
18 back to evidence.

19 Q. All right.

20 MADAM COURT REPORTER: I'm sorry. I'm going to
21 pull this up to you. I can't hear you.

22 THE WITNESS: I'm sorry.

23 Q. I wonder if it might help a little bit, if I may, if
24 we kind of move this, you can both speak to the jury and
25 speak into the microphone.

1 Now, I'm not going to move to admit this at this
2 point. But I'm showing you what's been marked as State's
3 Exhibit 3. Do you recognize this?

4 A. Yes, ma'am.

5 Q. And what do you recognize -- how do you recognize
6 it?

7 A. Pretty much, it's the evidence bag that I put inside
8 of it -- put it inside, and that's the brown paper bag
9 that contained the marijuana that he gave me.

10 Q. Okay. Now, when you finished up, this is the bag
11 that you put it in?

12 A. Yes, ma'am.

13 Q. And what did you do with that bag after you -- later
14 that day?

15 A. Pretty much we'll fill the bag out, we'll seal it
16 and drop it inside like a -- we call it like a big
17 depository where we'll ---

18 MADAM COURT REPORTER: We call it? I'm sorry.

19 A. A big depository box where like I drop it inside and
20 no one else can get it outside of the evidence techs.

21 Q. Is that the same thing as an evidence locker?

22 A. Yes.

23 Q. So once you put it into the evidence locker, could
24 you go back later that day and retrieve it if you wanted
25 to?

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Deangelo Dean - Cross-examination by Mr. Cochran

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1 A. No, ma'am. No, ma'am.

2 Q. Who all has access to that evidence locker?

3 A. Just the evidence staff.

4 Q. Now, there's been some talk in this trial -- and

5 you've been in here -- of the recordings. Now, was it

6 your understanding at the time of arrest that this had

7 been captured on audio/video recording?

8 A. Yes, ma'am.

9 Q. Is there any reason that you know of that that

10 recording is not able -- that we can't produce that here.

11 in court today?

12 A. No, ma'am. In January of this year, our tech

13 computer crashed, and, therefore, we lost a lot of cases.

14 We tried to save as much as possible. But the ones that

15 couldn't be saved, we didn't know about until recently,

16 so ...

17 Q. And you were not able to recover this case?

18 A. No, ma'am.

19 Q. Okay.

20 MS. COMPTON: I have nothing further on direct,

21 Your Honor.

22 THE COURT: Okay. Thank you.

23 Cross-examination?

24 MR. COCHRAN: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. COCHRAN:

2 Q. Did you write a report in this case?

3 A. Yes, I did.

4 Q. And when you approached the person who sold you
5 marijuana, you -- he said to you, go to community center?

6 A. He said, go to the park.

7 Q. Go to the park?

8 A. Yes.

9 Q. Okay. And were you the only officer who was there
10 purchasing from him?

11 A. No, sir.

12 Q. Okay. And so another officer approached him with
13 you?

14 A. She was a passenger inside the vehicle.

15 Q. Okay. Did she go to the park as well?

16 A. Yes.

17 Q. And what's her name?

18 A. Kristin Jones.

19 Q. Okay. Did you see Mr. Simmons get arrested?

20 A. Yes.

21 Q. You did?

22 A. Yes.

23 Q. Okay. You saw him run from officers?

24 A. Not run. Try to evade, I guess.

25 Q. Okay. He tried to evade officers?

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1 A. Yes, sir.

2 Q. Okay. Did you put that in your report?

3 A. No.

4 Q. Okay. You want your report to indicate everything
5 that happened that day, don't you?

6 A. I do.

7 Q. And evading officers can indicate guilt, correct?

8 A. Yes.

9 Q. Okay.

10 A. But also, if he actually got in a foot pursuit with
11 the officers more than ten to fifteen yards, we could
12 have called it a foot pursuit. But he made it from --
13 almost from here to here. So, therefore, it wasn't
14 really an actual foot pursuit or a lengthy pursuit after
15 him. He was taken into custody right there.

16 Q. And you did not recover crack cocaine from him at
17 all that day?

18 A. No, sir.

19 Q. Okay. Just marijuana?

20 A. Yes, sir.

21 Q. Okay. And you submitted the marijuana to be tested
22 as a -- whether or not it was a narcotic, correct?

23 A. Yes.

24 Q. Okay. You did not submit the paper bag and get it
25 fingerprinted, correct?

1 A. No.

2 Q. You said that he went -- after directing you to the
3 park, went to his house or went behind the house for two
4 to three minutes; is that right?

5 A. He disappeared from my eyesight to where --
6 approximately two to three minutes. It could have been
7 longer; it could have been shorter. But it wasn't ten to
8 fifteen minutes later. It was just that brief.

9 Q. But it was a few minutes?

10 A. Yes, sir.

11 Q. Okay. And before he disappeared, he met up with
12 another man, correct?

13 A. Yes, sir.

14 Q. Okay. And that man was eventually arrested as well,
15 correct?

16 A. Yes, sir.

17 Q. Okay. And that was a man, a black man, correct?

18 A. Yes, sir.

19 Q. In his mid-fifties about?

20 A. Yes, sir.

21 Q. And Mr. Simmons is also a black man, correct?

22 A. Yes, sir.

23 Q. In his mid-fifties?

24 A. Yes, sir.

25 Q. Were you present for the arrest of this other man?

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1 A. No, sir.

2 Q. Okay. Were you aware that he was arrested?

3 A. After the team got back to the office.

4 Q. Were you equipped with audio recording devices that
5 day?

6 A. On my person?

7 Q. Yeah.

8 A. Yes.

9 Q. Okay. And it was your understanding that this
10 entire incident was being videotaped, correct?

11 A. Yes, sir.

12 Q. And that's what you put in your report, right?

13 A. Yes, sir.

14 Q. And that's what was sworn to under oath, correct?

15 A. Yes, sir.

16 Q. And that was supposed to catch the actual incident,
17 correct? The actual sale, right?

18 A. No.

19 Q. No?

20 A. It may have, but it's only for officer safety. That
21 is the most important part. You heard that before. But
22 it is for officer safety, for them to know where my
23 actual location is.

24 Q. Okay.

25 A. It is not to catch. But it can and it has in the

1 past and in the present as well.

2 Q. Okay. It's pretty strong evidence, isn't it, video
3 evidence?

4 A. Yes, sir.

5 Q. Okay. And it's to keep an eye on you while you're
6 out there making the buy, correct?

7 A. Yes, sir.

8 Q. Okay. So that they can make sure that you're safe,
9 right?

10 A. Because of officer safety as well.

11 Q. Okay. And when you are closest to a person, a drug
12 dealer, that's when you're most in danger, correct?

13 A. Yes, sir.

14 Q. When you're making exchanges with them, right?

15 A. Yes.

16 Q. So that's what would be on video, right?

17 A. Yes, sir.

18 MR. COCHRAN: No more questions.

19 THE COURT: Thank you.

20 Any redirect?

21 MS. COMPTON: Briefly, two questions, Your
22 Honor.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION

25 BY MS. COCHRAN:

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1 Q. Officer Dean, when you received the drugs from the
2 Defendant, did you have any question in your mind who had
3 given you those drugs?

4 A. No, ma'am.

5 Q. Did you need to fingerprint that bag?

6 A. No, ma'am.

7 Q. And do you have any question in your mind that this
8 man is the man that sold you the marijuana in exchange
9 for twenty dollars?

10 A. No, ma'am.

11 MS. COMPTON: Nothing further, Your Honor.

12 THE COURT: Thank you.

13 Any objection to this witness being excused?

14 Well, actually, you're staying with us at the table;
15 is that correct?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Okay. Thank you, sir. You may
18 step down.

19 MS. COMPTON: The State calls Officer Janowski.

20 THE COURT: Thank you, sir. Please come
21 forward to be sworn.

22 (WHEREUPON, the witness was duly sworn.)

23 MS. COMPTON: And we're having trouble today
24 making sure everybody can be heard. Make sure you're
25 speaking right into the microphone for us.

1 THE WITNESS: Yes, ma'am.

2 MS. COMPTON: Okay. Make sure the court
3 reporter gets everything that you say.

4 THE WITNESS: Yes, ma'am.

5 **SHAWN MICHAEL JANOWSKI,**

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. COMPTON:

9 Q. Officer Janowski, where are you employed?

10 A. The City of North Charleston.

11 Q. And what do you do for them?

12 A. I'm a police officer.

13 Q. Is there a particular unit you're assigned to?

14 A. I'm assigned to the Speed Team.

15 Q. Can you tell the jury what the Speed Team is about?

16 A. The Speed Team stands for Selective Police
17 Enforcement to Enhance and Deter. We're mainly involved
18 in the community where we're having narcotics complaints
19 or prostitution complaints or high crime areas.

20 Q. Okay. And what are your duties and responsibilities
21 as part of the Speed Team?

22 A. Right now, I'm the team leader.

23 Q. Okay. What does that involve typically?

24 A. We do undercover operations involving persons in
25 narcotics, prostitution, weapons violations.

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Shawn Michael Janowski - Direct Examination by Ms. Compton

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1 Q. And were you on the Speed Team back in June 15th --
2 June 15th of 2011?

3 A. Yes, ma'am.

4 Q. Were you the team leader at that point?

5 A. No, ma'am.

6 Q. What were your duties and responsibilities at that
7 point?

8 A. I was part of the apprehension team on that date.

9 Q. Okay. Now -- so on that date you said you were part
10 of the apprehension team. Can you tell the jury what the
11 goal of that is on the day of June 15th, 2011?

12 A. Yes, ma'am. The apprehension team is nothing more
13 than four officers in an unmarked vehicle. When we find
14 out from an undercover officer that a deal has been made,
15 we will immediately go and apprehend the person.

16 Q. Okay. Now, on that day, where were y'all generally
17 working that day? What area of town?

18 A. Generally we work in the city, but that day we were
19 working in the Oak Grove Community.

20 Q. Okay. And did you have an occasion to run into the
21 Defendant that day?

22 A. I'm sorry?

23 Q. Did you have occasion to see the Defendant that day?

24 A. Yes, ma'am.

25 Q. Tell the jury how that happened, how that came

1 about.

2 A. The undercover officer made contact with the
3 Defendant, at which time a quantity of narcotics were
4 purchased. Once the word ---

5 Q. I'll stop you there. When you were -- when Officer
6 Dean first made contact, where were you in relation to
7 Officer Dean? How far away?

8 A. Approximately fifty yards, but behind a tree line so
9 the Defendant couldn't see us.

10 Q. Okay. And at any point during the deal, did you
11 move anywhere or anything like that, or did you remain
12 about fifty yards away throughout the entire interaction
13 between the Defendant and Officer Dean?

14 A. We stayed stationary.

15 Q. Okay. Now, at any point -- you said after the buy
16 was -- did you get the signal that a buy was complete in
17 this case?

18 A. Yes, ma'am.

19 Q. And what did you do at that point?

20 A. At that point we moved in and took the Defendant in
21 custody.

22 Q. Okay. And how did you know who to pick, who to
23 arrest?

24 A. Our officer explained details, clothing, what he was
25 wearing, where he was going. And he was arrested at that

1 point.

2 Q. Okay. He was arrested -- you had been aware of what
3 was going on because you had been updated via your radio
4 or bluetooths or cell phones that day, correct?

5 A. Yes, ma'am.

6 Q. Now -- so were you told by Officer Dean at any point
7 after the arrest that in fact you had arrested the
8 correct person?

9 A. Yes. He drove back by and gave a positive
10 identification.

11 Q. Okay. Now, did you actually -- were you actually
12 the officer that made the physical arrest of the
13 Defendant?

14 A. Yes, ma'am.

15 Q. And as part of that arrest, did you search his
16 person?

17 A. Yes, ma'am.

18 Q. Did you recover anything -- first, from his person,
19 did you recover anything?

20 A. From his person, yes, ma'am.

21 Q. What was that?

22 A. I recovered four white rock-like substances which
23 field tested positive for -- I'm sorry -- presumptive for
24 cocaine from his crotch.

25 Q. When you say field tested, what do you mean?

1 A. We have field tests that can test whether there's
2 cocaine in the product or not. It will give a definite
3 blue color. And it turned blue and it was positive.

4 Q. So, at that point you say that is something of
5 interest as evidence, correct?

6 A. Yes, ma'am.

7 Q. What did you do with it?

8 A. I secured it on my person and then eventually put it
9 into a -- we went back to the station -- put it into a
10 heat-sealed BEST kit envelope, tamper proof.

11 Q. Okay. And again, not seeking to admit it at this
12 time. But I'm showing you what's been marked as State's
13 Exhibit 4. Do you recognize this?

14 A. Yes, ma'am.

15 Q. And what do you recognize that to be?

16 A. The SLED BEST kit where I placed the presumed
17 narcotics.

18 Q. And did you initial anywhere on that bag?

19 A. Yes, ma'am.

20 Q. How do you know that's the same one?

21 A. I initialed it and signed it and dated it.

22 Q. Okay. And what did you do with that bag after you
23 sealed it and signed it and dated it?

24 A. I placed it in the evidence locker.

25 Q. Okay. Were you able to go back and retrieve the

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Shawn Michael Janowski - Cross-examination by Mr. Cochran

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1 drugs out of the evidence locker after that?

2 A. No, ma'am. The evidence locker is like a night
3 depository. Once you put it in, you can't -- there's no
4 way to get it back out.

5 Q. Okay. Now, do you see the man that you arrested on
6 June 15th, 2011, in court today?

7 A. Yes, ma'am.

8 Q. Can you point him out and indicate for the jury what
9 he's wearing?

10 A. He's wearing a brown plaid shirt with glasses on his
11 forehead.

12 MS. COMPTON: Can the record reflect that he,
13 in fact, identified the Defendant?

14 THE COURT: It does. Thank you.

15 MS. COMPTON: Thank you, Your Honor. Nothing
16 further at this time.

17 THE COURT: Thank you.

18 Cross-examination?

19 MR. COCHRAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. COCHRAN:

22 Q. So you retrieved the crack cocaine that was in a
23 plastic bag, right?

24 A. Correct.

25 Q. Okay. And the crack cocaine was submitted to be

1 tested, correct?

2 A. Correct.

3 Q. Okay. The plastic bag was not submitted to be
4 analyzed for fingerprints or touch DNA, was it?

5 A. I don't believe so. I'm not -- I don't get into
6 that part. I just submit the ---

7 Q. Okay. That's not your responsibility, but it's your
8 understanding that that did not happen?

9 A. Correct.

10 Q. And you did arrest one other person that day,
11 correct?

12 A. I did not, no.

13 Q. You did not?

14 A. I did not.

15 Q. Okay. Did your team? Were you aware that your team
16 did?

17 A. Yes.

18 Q. Okay.

19 MR. COCHRAN: Thank you, Your Honor. No more
20 questions.

21 THE COURT: Thank you.

22 MR. COCHRAN: No redirect. Nothing further
23 from the State, Your Honor.

24 THE COURT: Sir, you may step down.

25 THE WITNESS: Thank you, ma'am.

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Alexandria Teachey - Direct Examination by Mr. Wetmore

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1 MR. WETMORE: The State calls Alex Teachey.

2 THE COURT: Yes, ma'am. If you'd come forward
3 to be sworn, please. Thank you.

4 **ALEXANDRIA TEACHEY,**

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. WETMORE:

8 Q. Officer Teachey, how long have you been with the
9 North Charleston Police Department?

10 A. About eight years.

11 Q. What do you do for the police department?

12 A. I deal with the evidence coming in from the officers
13 on the street.

14 Q. Okay. And have you performed that same role for all
15 eight years?

16 A. No, sir.

17 Q. What else have you done for the agency?

18 A. Dispatcher and duty officer.

19 Q. Any kind of training or just anything other than
20 your experience that helps you process all that evidence
21 coming in?

22 A. No, sir. That's about it.

23 Q. And did you receive any evidence regarding this
24 case?

25 A. Yes, sir.

1 MR. WETMORE: If I may approach the witness,
2 Your Honor.

3 Q. I show you what's been marked as State's 3. Did you
4 come in contact with that piece of evidence?

5 A. Yes, sir, I did.

6 Q. Okay. How can you tell you handled that?

7 A. By the chain of custody.

8 Q. Okay. And how did you come in contact with the
9 evidence?

10 A. On June 16th, 2011, I retrieved it from the locked
11 drop box and made sure all paperwork had the correct case
12 numbers.

13 Q. All right. So it had been dropped in there before
14 you came into work, and then you came into work and got
15 it?

16 A. Yes, sir.

17 Q. And who was it dropped into the evidence box by?

18 A. By Officer Dean.

19 Q. Now, where did you keep that evidence as the
20 custodian?

21 A. Once it was properly labeled and assigned, it was
22 kept in a locked drop box inside the evidence room.

23 Q. Okay. Is that a -- sounds like a pretty secure
24 place; is that right?

25 A. It is, yes, sir.

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Daryl R. Houston - Direct Examination by Mr. Wetmore

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1 Q. Does anybody have access to that besides you?

2 A. The other evidence custodians.

3 Q. Okay. The other employees ---

4 A. Yes, sir.

5 Q. --- in the evidence department? Now, in looking at
6 that piece of evidence, can you tell where it went after
7 you took it in?

8 A. After I took it in, it went into the drop box that
9 was locked for drugs. And then Officer Houston retrieved
10 it for testing.

11 Q. Okay. And that piece of evidence, is it in
12 substantially the same condition as when you received it?

13 A. Yes, sir.

14 Q. And you don't believe it's been tampered with or
15 anything?

16 A. No, sir.

17 MR. WETMORE: No further questions.

18 THE COURT: Thank you.

19 MR. COCHRAN: No questions, Your Honor.

20 THE COURT: Thank you. Ma'am, you may step
21 down. Thank you.

22 THE WITNESS: Thank you.

23 MR. WETMORE: The State would call Officer
24 Houston.

25 DARYL R. HOUSTON,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. WETMORE:

4 Q. Officer Houston, how long have you been with North
5 Charleston?

6 A. Since 1993.

7 Q. What are your duties with the Department?

8 A. Right now I'm assigned in the traffic division, but
9 I was assigned with the evidence division.

10 Q. So you're in traffic now, but in June of 2011, you
11 worked with evidence?

12 A. Correct.

13 Q. Okay. Did part of your duties in that capacity ever
14 require you to analyze suspected marijuana?

15 A. Yes, it did.

16 Q. Okay. Did you do that quite a bit?

17 A. Yeah. Probably a couple of hundred a week or so.

18 Q. Couple hundred a week?

19 A. Yeah.

20 Q. Did you receive any kind of training to help you
21 analyze that marijuana?

22 A. Yes, I did. I had to attend a marijuana analysis
23 training at SLED.

24 Q. Okay. And did SLED certify you to perform the
25 analysis?

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Daryl R. Houston - Direct Examination by Mr. Wetmore

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1 A. Yes, they did.

2 Q. Have you ever been qualified in these courts as an
3 expert?

4 A. Yes.

5 Q. Now, the equipment that they give you at North
6 Charleston to use, is it precise, is it accurate?

7 A. Yes, it is.

8 MR. WETMORE: Your Honor, at this point, I
9 would like to offer Officer Houston as an expert on
10 marijuana analysis.

11 THE COURT: Any objection?

12 MR. COCHRAN: No objection.

13 THE COURT: The witness is so qualified in the
14 area of marijuana analysis.

15 MR. WETMORE: Thank you, Judge. May I
16 approach?

17 THE COURT: You may.

18 Q. Officer Houston, I want to show you what's being
19 marked ---

20 MADAM COURT REPORTER: I need to -- hold on a
21 - just a second.

22 MR. WETMORE: Okay.

23 (WHEREUPON, State's Exhibit Number 5 was marked for
24 identification only.)

25 MADAM COURT REPORTER: Okay. Thank you.

1 Q. I'm going to show you what's been marked as State's
2 Number 5. Can you take a look and see what this piece of
3 evidence is, this document?

4 A. Yes. This is the test sheet that I conducted our --
5 or I completed.

6 Q. So you prepared this?

7 A. Yes, I did after I did the analysis on it.

8 Q. Okay. You prepared it as part of your testing?

9 A. Correct.

10 Q. Okay. Did you sign it?

11 A. Yes, I did.

12 Q. Okay. Now, who is the subject, the Defendant, that
13 that report ---

14 A. Jeffrey Simmons is who I have down as the subject
15 there.

16 Q. Jeffrey Simmons?

17 A. (No verbal response)

18 MR. WETMORE: Your Honor, at this point, we'd
19 like to admit State's Number 5.

20 MR. COCHRAN: No objection.

21 THE COURT: State's 5 is admitted without
22 objection.

23 (WHEREUPON, State's Exhibit Number 5 was admitted
24 into evidence.)

25 Q. Officer Houston, I'd like to now direct your

1 attention to this which is State's Number 3. Would you
2 take a look at that? Can you identify that piece of
3 evidence?

4 A. Yes, I can.

5 Q. And did you receive that evidence from the evidence
6 locker?

7 A. Yes, I did.

8 Q. Okay. Did you analyze that to determine if it was,
9 in fact, marijuana?

10 A. Yes, I did.

11 Q. Tell the jury, just briefly, what kind of testing
12 you did on that suspected marijuana.

13 A. Well, we conduct a two-part test. One is analysis
14 through a microscope. We take a sample and look for a
15 particular type of fibers. And then also once that's
16 conducted, there's a chemical analysis that you're
17 required to do also. And both of those have to come back
18 positive to get a positive analysis.

19 Q. Okay. And using your report, can you share with the
20 jury what were the results of your analysis?

21 A. With this, the microscopic test came back positive,
22 and the chemical test also came back positive.

23 Q. Positive for what?

24 A. THC.

25 Q. What is THC?

1 A. Tetrahydrocannabinol. It's the content in
2 marijuana.

3 Q. Okay. So there's no doubt that that piece of
4 evidence there is, in fact, marijuana?

5 A. That's correct.

6 MR. WETMORE: Your Honor, at this point, I'd
7 like to admit State's Number 3.

8 THE COURT: Okay.

9 MR. COCHRAN: I would object, Your Honor.
10 Objection, incomplete chain.

11 MS. COMPTON: He tested it.

12 MR. COCHRAN: Oh, never mind. No objection.

13 THE COURT: Is this 3, State's 3?

14 MR. WETMORE: State's 3, I believe it is.
15 State's 3.

16 THE COURT: State's 3 is admitted without
17 objection.

18 (WHEREUPON, State's Exhibit Number 3 was admitted
19 into evidence.)

20 Q. And after you performed those tests and discovered
21 that was, in fact, marijuana, what did you do with that
22 evidence?

23 A. It's placed back in the drug locker where it's kept
24 until such time as it's needed for court.

25 Q. Is it in substantially the same condition as when

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1 you got it?

2 A. Yes.

3 Q. Any evidence it's been tampered with?

4 A. No, sir.

5 MR. WETMORE: I have no further questions.

6 THE COURT: Thank you.

7 Cross-examination?

8 MR. COCHRAN: No questions, Your Honor.

9 THE COURT: Thank you.

10 Sir, you may step down.

11 THE WITNESS: Thank you.

12 MR. WETMORE: The State calls Laura Reynolds.

13 **LAURA A. REYNOLDS,**

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. WETMORE:

17 Q. Officer Reynolds, how long have you been with North
18 Charleston?

19 A. For four years.

20 Q. What do you do for North Charleston?

21 A. I'm an evidence technician.

22 Q. Okay. Receive any specialized evidence training?

23 A. Yes, in testing marijuana.

24 Q. And do you have experience in handling pieces of
25 evidence as they come into your department?

1 A. Yes. We take it and put it into our system.

2 Q. Now, did you receive any evidence in this particular
3 case against the Defendant here, Jeffrey Simmons?

4 A. Yes, sir.

5 MR. WETMORE: May I approach this witness, Your
6 Honor?

7 THE COURT: You may.

8 Q. Gosh. It's already up here. I'm going to show you
9 State's Number 4. Did you handle that piece of evidence?

10 A. Yes, sir.

11 Q. How can you tell? How can you be so sure?

12 A. I signed the chain of custody.

13 Q. Where did you get that evidence from?

14 A. Out of our drug locker.

15 Q. Can you tell who submitted that evidence?

16 A. Officer Janowski.

17 Q. So Janowski put it in the evidence box, and you got
18 it out?

19 A. And I took it out, yes, sir.

20 Q. What did you do with it when you got it out?

21 A. Once I got it out, I input it into our system, and
22 then on the 16th, I took it to SLED.

23 Q. Okay. While it was in your watch, was it kept in a
24 secure area?

25 A. Yes, sir.

1 Q. Who had access to it?

2 A. Just the evidence technicians.

3 Q. And you mentioned that you -- then you took it to --

4 you took it somewhere. Where did you take it?

5 A. We took it to SLED.

6 Q. Okay. By SLED you mean the State Law Enforcement

7 Division?

8 A. Yes, sir.

9 Q. Up the road in Columbia?

10 A. In Columbia, yes, sir.

11 Q. Why did you take that evidence to SLED?

12 A. So it could be processed and analyzed.

13 Q. Now, tell me about how you hand over a piece of
14 evidence like that to SLED?

15 A. Once I take it up there, then I give it to their
16 technicians who put it into their system.

17 Q. So you actually hand it over to an individual; is
18 that right?

19 A. Yes, sir.

20 Q. Can you tell us who you gave that piece of evidence
21 to?

22 A. I gave it to -- I handed it over to Amy Stevens.

23 Q. Amy Stevens?

24 A. Stevens, yes, sir.

25 Q. And that's the person at SLED that you surrendered

1 that piece of evidence to?

2 A. Yes, sir.

3 Q. Okay. And she physically took it from you and took
4 it to their evidence facility ---

5 A. Yes, sir.

6 Q. --- at SLED?

7 A. Yes, sir.

8 Q. Can you tell what she does with it, or are you able
9 to watch what she does with it or ...

10 A. Well, she takes it and then puts it in their
11 evidence bag, into another bag, and seals it.

12 Q. Okay. So you saw her take it from you and then seal
13 it in one of their bags?

14 A. Yes. And then I initialed the top of the bag.

15 Q. Oh, so you initialed it again?

16 A. Right. Once it's sealed, then I initialed it.

17 Q. And you can see all of those markings on the piece
18 of evidence there in front of you?

19 A. Yes, sir.

20 Q. So any concerns, any observations that you had that
21 it was compromised or tampered with while it was in your
22 control?

23 A. No, sir.

24 Q. You didn't see this Amy Stevens do anything with it
25 other than put it in a bag? She didn't tamper with it or

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1 destroy it in any way?

2 A. No, sir.

3 Q. Is it in substantially the same condition as it was
4 when you first got it?

5 A. Yes, sir.

6 MR. WETMORE: I don't have any further
7 questions, Your Honor.

8 THE COURT: Thank you, sir.

9 Cross-exam?

10 MR. COCHRAN: No questions.

11 THE COURT: Thank you, ma'am. You may step
12 down.

13 MR. WETMORE: The State calls Douglas Robinson,
14 State Law Enforcement Division.

15 **DOUGLAS ROBINSON,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. WETMORE:

19 Q. Mr. Robinson, can you tell the jury how long you've
20 been with the State Law Enforcement Division?

21 A. Yes. I have been with SLED for a little over four
22 years now.

23 Q. Okay. What do you do for SLED?

24 A. I'm a forensic chemist assigned to the drug analysis
25 department.

1 Q. Okay. What kind of duties do you have as a chemist?

2 A. My primary duty in the drug analysis department is
3 the testing or analysis and identification of controlled
4 substances or suspected controlled substances.

5 Q. Okay. Now, do you have any kind of training or
6 experience to help you to do that?

7 A. Yes, sir. I graduated from the University of South
8 Carolina with a bachelor's of science in chemistry.

9 After that I spent a little over three years performing
10 chemical analysis in the environmental chemistry field.

11 Upon being hired at SLED, I completed law and legal
12 training and the South Carolina Criminal Justice Academy
13 as well as completing in-house training through SLED in
14 job-specific training with the analysis of controlled
15 substances.

16 Q. Have you ever come to court and been admitted as an
17 expert in drug analysis?

18 A. Yes, sir.

19 Q. Do you have any idea how many times?

20 A. Nine.

21 Q. Now, the equipment they give you at SLED for
22 testing, is it precise, is it accurate, calibrated and
23 all of that stuff?

24 A. Yes, sir.

25 Q. Okay.

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1 MR. WETMORE: Your Honor, at this point, I'd
2 like to offer him as an expert in drug analysis.

3 MR. COCHRAN: No objection.

4 THE COURT: Okay. He is so qualified.

5 Q. Mr. Robinson, did you prepare a report in this case?

6 A. Yes, I did.

7 Q. Did you bring it to court with you?

8 A. I do have a copy, yes, sir.

9 Q. Can you please produce it so I can get an evidence
10 sticker for it?

11 (WHEREUPON, State's Exhibit Number 6 was marked for
12 identification only.)

13 Q. I'm going to hand it right back to you as State's
14 Number 6 and ask you to take a look at it. Is that the
15 report you prepared in this case?

16 A. Yes, sir.

17 Q. You signed it?

18 A. I did.

19 Q. And you can tell that this is your product, your
20 work product?

21 A. Yes. This was printed out on our system this
22 morning in preparation for court. I brought this with me
23 from Columbia.

24 Q. Perfect. Now, who is the subject or the Defendant?

25 A. It's a Jeffrey Simmons.

1 Q. Okay.

2 MR. WETMORE: Your Honor, at this point I'd
3 like to admit this as State's Number 6.

4 MR. COCHRAN: No objection.

5 THE COURT: State's 6 is admitted without
6 objection.

7 (WHEREUPON, State's Exhibit Number 6 was admitted
8 into evidence.)

9 Q. I'm going to approach again and I'm going to show
10 you what's been marked as State's Number 4. Can you tell
11 what that piece of evidence is?

12 A. Yes, sir, I can.

13 Q. Okay. What is it?

14 A. It's actually a few things that are contained within
15 this bag. The outer packaging is what we refer to as the
16 K-pack. This is a heat-sealed plastic container that we
17 use to repackage all the evidence once it's done with
18 analysis. At the very bottom -- it's probably a little
19 hard to see from the jury box. But it does bear my
20 initials and the date. And there's a heat seal across
21 the bottom to close it and hold everything in. The large
22 bag inside is what's referred to as a BEST kit. That's
23 short for Best Evidence Sample Testing Kit. This is what
24 we provide local law enforcement agencies when they
25 collect evidence that they would like analyzed through

1 drug analysis. They will seal it in this bag. It's a
2 tamper-evident bag. You may be able to see across the
3 top there's a green glue strip. And then going across
4 either side and also the bottom, there is a blue swirl
5 pattern. And if the bag is pulled or stretched in any
6 way to try to get into it, it would distort the patterns.
7 So it's tamper evident.

8 Also, there are two other packages inside of here.
9 There's a piece of plastic, and there's also a Ziploc bag
10 that contains a rock substance.

11 Q. All right. So can you tell from your paperwork
12 where that bag came from?

13 A. Yes. This specific bag matches the case that was
14 submitted from the North Charleston Police Department.
15 It was given the SLED lab case number of L1106933.

16 Q. Okay. And who received that piece of evidence at
17 your agency, SLED?

18 A. I don't have that information in front of me.

19 Q. Can you tell where you received the bag from?

20 A. Yes, sir. I retrieved it from the evidence control
21 department from evidence control technician Doris
22 Yarborough.

23 Q. Okay. Can you tell internally who Ms. Yarborough
24 got it from?

25 A. Again, I do not have that information in front of

1 me.

2 Q. Does the State Law Enforcement Division -- do they
3 prepare any documentation to memorialize the chain of
4 custody?

5 A. There's always an electronic chain of custody
6 generated. Upon request for court purposes, we also can
7 issue a certified chain of custody, yes.

8 Q. If I hand you this, can you take a look at the chain
9 of custody and use it to refresh your memory or generate
10 your memory?

11 A. Sure.

12 Q. Can you tell the path these drugs followed when they
13 came into your agency?

14 MR. COCHRAN: I object, Your Honor. He's not
15 really refreshing his recollection. He's just looking it
16 up. I mean, it's not something that he knew necessarily
17 at any point.

18 THE COURT: Come forward, please.

19 (WHEREUPON, a bench conference was held off the
20 record.)

21 THE COURT: Ladies and gentlemen, I'm going to
22 give y'all a quick break right now while we hash this
23 through. If y'all will run to your jury room. Please do
24 not discuss the case yet. Thank you.

25 (WHEREUPON, the jury exited the open court at

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1 approximately 3:30 p.m.)

2 THE COURT: All right. Y'all, let's be at ease
3 about five minutes or so. We'll take a quick break and
4 be right back.

5 (WHEREUPON, court stood at recess for a short
6 break.)

7 THE COURT: Okay. We've got an objection as to
8 the chain of custody?

9 MR. COCHRAN: Yes, Your Honor. Just for the
10 sake of getting to the point.

11 THE COURT: Okay. So your objection is to the
12 document coming in in light of the incomplete chain?

13 MR. COCHRAN: Yes, Your Honor. Well, not in
14 light of incomplete -- I guess -- the reason I objected
15 was out of caution to prevent that document from
16 supplementing the chain because I don't think that it
17 can. But ...

18 THE COURT: I mean, to me, this is just
19 cumulative of what they're testifying to as to the chain.
20 What is it being offered to show?

21 MS. COMPTON: Your Honor, at this point, I
22 don't know that he was even going to be offering the
23 exhibit. It was just being offered to help him recall
24 and identify who all within his agency, according to this
25 record, had handled those drugs.

1 THE COURT: Well, I think the objection was
2 that he didn't recall. So it wasn't being used to
3 refresh any recollection.

4 MS. COMPTON: Correct, Your Honor. And if we
5 may be allowed, I think, Judge, that we'd like to offer
6 it. But, you know, he could offer it as a business
7 record that he can testify from or, you know, to allow
8 him to use it in the manner without -- we don't need that
9 particular document to be in evidence. But if we could
10 allow it to be used in the manner of a business record so
11 that he can identify who within his own agency has
12 handled those drugs for the purposes of establishing ...

13 MR. COCHRAN: I guess my objection was -- I
14 mean, the reason I objected, again, was they asked him to
15 refresh his recollection and he had just said that he had
16 no idea. He didn't indicate that he forgot. He just
17 didn't know. So that was my objection.

18 THE COURT: Okay.

19 MR. COCHRAN: I think what the State is doing
20 is trying to get him to read that to fill in the gaps of
21 their chain. So I guess ---

22 THE COURT: Well, and while I find this to be a
23 mind-numbing exercise, you have to prove the chain.

24 MS. COMPTON: Absolutely, Your Honor. We were
25 -- at the point in which we introduced the evidence or at

1 least attempted to introduce it, I was going to rely on
2 *State v. Hatcher*, Your Honor

3 THE COURT: Okay.

4 MS. COMPTON: ... in which -- and I have a copy
5 of it to hand up.

6 THE COURT: All right.

7 MS. COMPTON: And in *Hatcher*, Your Honor, they
8 produced the officer who -- should we go on to this or is
9 Your Honor ...

10 THE COURT: I'm okay. Thank you.

11 MS. COMPTON: In *Hatcher*, they produced the
12 officer who collected the drugs. This is a very similar
13 case, an undercover case. The officer collected them as
14 part of an undercover buy. They produced that officer,
15 and he testified in fact that he would put it into a
16 tamper-evident bag. And then they produced the SLED
17 chemist, and he testified that, in fact, this was a
18 tamper-evident bag. It had not been tampered with. And
19 the Court in *Hatcher* found that this was a reasonable --
20 you know, as far as reasonably practical. And in this
21 case, Your Honor, we have produced the witnesses who are
22 local to Charleston and the chemist, Your Honor, and we
23 would argue that that is sufficient under *Hatcher*.

24 THE COURT: Why is that not sufficient under
25 *Hatcher*?

1 MR. COCHRAN: Well, there's no question that
2 they don't have to have a perfect chain. It has to be
3 completed as far as practical. But you know, I don't
4 know that it's impracticable to bring some other folks in
5 here.

6 THE COURT: It costs a lot of money, doesn't
7 it?

8 MR. COCHRAN: I don't know. I don't know. I
9 don't do stuff like that. So I mean, it's a case-by-case
10 decision to determine whether or not these certain people
11 in the chain can be brought in practically or whether
12 it's impractical for the State to have to bring them in.

13 THE COURT: But when you're arguing something
14 that takes up court time and costs the State resources, I
15 think that we need to be -- what's the word here --
16 candid about what's reasonable and what's not reasonable.
17 And I'm going to rely on *Hatcher* for the proposition that
18 we have never held the chain of custody rule requires
19 every person associated with receiving be available to
20 testify or identify it personally depending on the facts
21 of the case. And I've seen every indicia of reliability
22 in this one so far from the bag, from the depository
23 that's somewhat like a bank depository, that once it's
24 deposited, you can't get to it again, the arresting
25 officers and the investigating officers. What is your

1 contention -- what are you trying to accomplish here is
2 what I'm trying to get at and that we've now spent twenty
3 minutes on?

4 MR. COCHRAN: Well, Your Honor, I was just
5 putting the State to their burden to introduce the chain
6 of custody. I mean ---

7 THE COURT: Where is the gap is what I'm trying
8 to find out.

9 MR. COCHRAN: Oh. Well, Amy Stevens and Ms.
10 Yarborough, I think.

11 THE COURT: Because they handled it at SLED?

12 MR. COCHRAN: Yeah, basically. I mean, we had
13 one woman named Reynolds took it and gave it to Amy,
14 Stevens. And then Amy Stevens, I think, gave it to Ms.
15 Yarborough, and Ms. Yarborough gave it to the gentleman
16 on the stand now. So there was two people.

17 THE COURT: And your contention is that they
18 all three ought to drive down from SLED and testify?

19 MR. COCHRAN: My contention is that the chain
20 is incomplete and that my client would have a right to
21 have a complete chain, but ---

22 THE COURT: Here's my question. It's a yes or
23 no question. Your contention is that they all three need
24 to drive down from SLED and testify?

25 MR. COCHRAN: That is not my contention under

1 the case law that it's legally required.

2 THE COURT: What are you trying to accomplish?

3 MR. COCHRAN: Just to have my client have the
4 right to confront all people who handled the evidence
5 that's being introduced against him.

6 THE COURT: Okay. So the answer to my question
7 is, yes, you think all the three people from SLED in
8 Columbia need to come down and testify.

9 MR. COCHRAN: Yes.

10 THE COURT: Okay. Well, why did it take me
11 four times to get an answer to my question?

12 MR. COCHRAN: Because I agree with Ms. Compton
13 that the case law is clear that you don't have to have a
14 perfect chain.

15 THE COURT: Okay.

16 MR. COCHRAN: So I'm not -- I don't want to
17 misrepresent the law because I don't think that the law
18 requires a perfect chain.

19 THE COURT: I don't think the law does either.
20 We've already got that point. I was just asking you a
21 factual question and what your argument is for the
22 purposes of this specific case.

23 MR. COCHRAN: Right. And my argument is that
24 those two people should also come and testify.

25 THE COURT: Okay. That's all I wanted to get

1 an answer to.

2 MR. COCHRAN: Yes.

3 THE COURT: I thoroughly agree that he has a
4 right to confront witnesses. So far, all the chain
5 witnesses have had no questions asked of them because
6 there has been nothing to ask, but that doesn't mean that
7 there wouldn't be if ---

8 MR. COCHRAN: Right.

9 THE COURT: --- there was some problem.

10 MR. COCHRAN: Right.

11 THE COURT: I think if there were a problem
12 with the chain, that would have been brought up pretrial.
13 You know, Solicitor, it's your case. It's y'all's
14 case. If this is going to be a problem that you're going
15 to have to deal with, it's up to you whether you want to
16 bring them or not. But I do find that South Carolina law
17 is clear -- and I think counsel even acknowledges -- that
18 you don't have to bring every person associated with
19 every procedure to establish the chain. And I've been
20 pretty impressed with the way the chain's been
21 established so far. So are we ready to bring the jury
22 back, or ---

23 MR. COCHRAN: Yes.

24 THE COURT: I mean, I understand that you
25 didn't like the way it was categorized as, can you

1 refresh your recollection. So we'll go back on that.

2 But he's certainly qualified as an employee of SLED under

3 803(6), I think -- I'll just check the specific number --

4 to testify to a business record. That doesn't mean I'm

5 going to let them put it in. But it's probably

6 admissible as a business record.

7 Okay. Anything else?

8 MS. COMPTON: Nothing further from the State,

9 Your Honor.

10 (WHEREUPON, the jury entered the open court at

11 approximately 3:45 p.m.)

12 THE BAILIFF: They're all seated, Your Honor.

13 THE COURT: Okay. Thank you.

14 Ladies and gentlemen, I think y'all had a nice brief

15 break. We are ready to continue.

16 MR. WETMORE: Thank you, Judge. I'll rephrase.

17 THE COURT: Thank you.

18 Q. What I was trying to ask you, Mr. Robinson, is does

19 SLED keep a record of how a piece of evidence passes

20 through the Agency?

21 A. Yes. Once any piece of evidence comes through our

22 door and is logged in in the evidence control department,

23 it starts a unique chain of custody electronically so

24 that we can track any piece of evidence that comes

25 through our doors from person to person, person to

1 location, department to department. It tracks its
2 movements.

3 Q. And can you tell through which hands that piece of
4 evidence passed using that business record that your
5 agency produced?

6 A. Yes. According to this certified chain of custody,
7 on June 16th, 2011, evidence technician Amy Stevens
8 received the evidence in this case from Laura Reynolds of
9 North Charleston Police Department.

10 Q. Okay. And then from Ms. Stevens, where did it go?

11 A. Ms. Stevens transferred it from her custody to the
12 drug evidence intake storage. This is a secure vault
13 location within their department. This is where evidence
14 is kept for safekeeping until it makes its way to the
15 actual whichever department it's bound for. In this case
16 drug analysis. It stayed here until June 17th, the next
17 day, when evidence technician Doris Yarborough retrieved
18 it from that room and scanned it to -- transferred it to
19 herself. At this point, the evidence was transferred
20 from her to myself when I came down to retrieve it for
21 analysis.

22 Q. Okay. Now, when you got it, what condition was it
23 in?

24 A. It was in a -- it was a standard submission. The
25 BEST kit, when it's sealed, is placed inside a large

1 manilla envelope. That envelope, during analysis, is
2 taken out. It holds no evidentiary value, so it's
3 shredded after analysis. The actual BEST kit was inside
4 of that envelope and was in -- all seals were intact. It
5 was not evident that it'd been tampered with in any way.

6 Q. Okay. So when you got it, you were the first one to
7 open it up since it had been sealed?

8 A. That's correct.

9 Q. So those are the drugs that you tested in this case?

10 A. Yes, it is.

11 Q. Okay. And how can you be so sure about that?

12 A. Every piece of evidence that's sealed inside of this
13 larger K-pack that I was referring to bears the lab
14 number and, if applicable, the sub item number as well as
15 my initials. And in this case, the Ziploc bag that the
16 rock substance is contained in has the lab number

17 L1106933 which matches the case that it was submitted

18 under. It also has a one point one. This is a sub item
19 number that I created during the analysis to assign

20 specifically the rock substance. It has my initials and
21 it also has the word, bag added, because the Ziploc bag
22 was not originally in the case. This was a bag that I
23 added to the case so that I could secure the evidence to
24 keep it from falling loose within the K-pack.

25 Q. Okay. So did you open up those drugs from the BEST

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1 kit and test them?

2 A. Yes. They were inside the BEST kit. Inside the
3 BEST kit, there was a piece of plastic and the rock
4 substance. The piece of plastic is also in the K-pack,
5 and the rock substance was loose within the K-pack.

6 Q. Okay. Did you test those rock-like substances?

7 A. Yes. The rock substance was removed, separated from
8 all packaging. It was placed on the scale to get an
9 initial weight. And then it was analyzed using a
10 preliminary presumptive test followed by a confirmatory
11 test.

12 Q. Okay. And what did those tests determine?

13 A. Now, the preliminary test was done using a chemical
14 reagent. They give us a color change. It's called spot
15 test. This initially indicated that it could be cocaine
16 base or crack. This was followed by a hexane extraction
17 and ran on gas chromatography-mass spectroscopy. It's
18 also known as G.C.M.S. That gave me a confirmation
19 result of cocaine base.

20 Q. So no doubt those drugs you tested ended up as
21 cocaine base, otherwise known as crack?

22 A. I am confident of the result of cocaine base crack,
23 yes.

24 Q. Okay. Can you tell what your weight was that you
25 found for the crack?

1 A. Yes. The results of the analysis were cocaine base
2 crack C2 found, zero point six grams, nine point two
3 grains.

4 Q. Now, as part of your testing, did you have to break
5 pieces of the crack off or anything?

6 A. During analysis, the very first thing you do is sort
7 of do a visual examination of it to see if it looks
8 consistent throughout. It did. It looked consistent.
9 And then after -- once established that it's of the same
10 consistency, you take a representative sample. In this
11 case, there were several pieces that were loose inside.

12 A representative sample was taken and analyzed.

13 Q. Okay. How did you take the sample?

14 A. Again, once the initial weight was taken just
15 basically at random during the -- you know, from the
16 sample, a small amount was taken to do the analysis.

17 Q. Okay. Did you break a large piece of crack up into
18 little pieces, or did they come to you as little pieces?

19 A. I don't have that in my notes. It really -- for
20 evidentiary purposes, from an analysis standpoint, it
21 really doesn't make a difference.

22 Q. So you don't have any belief that you had cut it up
23 into little pieces?

24 A. It's possible. But again, I don't have a note of
25 it. And it wouldn't have changed the way the analysis

1 was performed.

2 Q. If you had cut it up into little pieces, would you
3 have noted that?

4 A. No. Again, it's just part of taking a
5 representative sample.

6 MR. WETMORE: Your Honor, at this point, I
7 would like to admit the crack as State's Number 4 into
8 evidence.

9 THE COURT: Subject to the Defense's prior
10 objection?

11 MR. COCHRAN: Yes, Your Honor.

12 THE COURT: Okay. That is admitted over
13 Defense objections.

14 MR. COCHRAN: Thank you, Your Honor.

15 (WHEREUPON, State's Exhibit Number 4 was admitted
16 into evidence.)

17 Q. Now, after that testing that you just described to
18 us, what did you do with those drugs?

19 A. As soon as the sample was taken, that representative
20 sample, I spoke of, a final weight was taken just to
21 confirm the initial weight. At that point it was placed
22 in that Ziploc bag that I spoke of and then heat sealed
23 in that K-pack. After that, it was returned back to the
24 evidence control department several days later. Between
25 the analysis and when it was returned, it was secured in

1 our draw vault within the department.

2 Q. So no evidence at all it was tampered with?

3 A. Not that I'm aware of, no.

4 MR. WETMORE: Nothing further. Thank you.

5 THE COURT: Thank you.

6 MR. COCHRAN: No cross-examination, Your Honor.

7 THE COURT: Okay. Any objection to his being
8 excused?

9 MR. COCHRAN: No, Your Honor.

10 THE COURT: Thank you, sir. You may step down
11 and be excused. Thank you.

12 MADAM COURT REPORTER: Please make sure he
13 doesn't have any exhibits.

14 MS. COMPTON: Yes. If you would just check and
15 make sure that you don't have any exhibits. Thank you.

16 THE WITNESS: I'll double check.

17 MS. COMPTON: Thank you. I've been known to
18 walk off with them.

19 THE WITNESS: I think that's got it.

20 THE COURT: Thank you.

21 MS. COMPTON: Your Honor, at this time, the
22 State rests.

23 THE COURT: Okay.

24 Do you have anything to take up?

25 MR. COCHRAN: Yes, Your Honor.

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1 THE COURT: Ladies and gentlemen, if I could
2 get you to step back to your jury room for a few minutes,
3 we have some issues of law to consider. Please do not
4 discuss the case yet as you've only heard the State's
5 portion of the case.

6 (WHEREUPON, the jury exited the open court at
7 approximately 3:55 p.m.)

8 THE COURT: Thank you, sir.

9 All right. Yes, sir?

10 MR. COCHRAN: Thank you, Your Honor. I have
11 two separate arguments for a directed verdict in this
12 case. First goes to the intent to distribute crack
13 cocaine. I would ask that Your Honor direct a verdict or
14 at least reduce that charge to possession for the jury to
15 consider. In this case, the officer's testimony was
16 clear that there was no other indicia of intent to
17 distribute such as multiple packaging or razor blades,
18 any other -- scales which is extremely common. Likewise,
19 cash or guns. And Your Honor, he testified as an expert
20 to point seven grams potentially being more than a user
21 would carry. Now, I don't think that arises to some
22 evidence of an indicia to distribute -- of other indicia.
23 If we're just talking about a raw amount of crack, that's
24 up to the statute. That's not up to the officers to
25 make. They can charge him with intent to distribute with

1 less than a gram, but have to have some other indicia.
2 Their other indicia cannot be that it was a certain
3 amount less than a gram. And that's what they have in
4 this case.

5 And then I have another argument in terms of ---

6 THE COURT: Why don't we deal with that one
7 first, and then we'll come back to the other one.

8 Tell me what y'all think about that, keeping in mind
9 that that gives him a pretty good appellate issue if you
10 really want that to go to the jury on possession with
11 intent to distribute.

12 MS. COMPTON: Well, I mean, before we argue
13 that, Your Honor, we will be asking for a lesser-included
14 charge of possession in this case. However, I would
15 argue that certainly while the jury is entitled to a
16 presumption of possession with intent to distribute if
17 it's over a gram, I don't know any case law or anything
18 that would say that we can't argue that the amount that
19 they had was, in fact, possession with intent to
20 distribute.

21 Do I think we have ample testimony from the officers
22 here that, in fact, a typical amount to be found on a
23 user would be simply point two grams or point one grams,
24 a twenty rock, as the officer called it? And I think
25 here, Your Honor, we had testimony that while it did not

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1 meet the level of statutory inference, it certainly is
2 above the level of a regular possession case.

3 THE COURT: So your argument is just because
4 there's a presumption when it's over a gram that there is
5 an intent to distribute doesn't mean that there's a
6 presumption that there's not an intent to distribute when
7 it's a lesser amount?

8 MS. COMPTON: Certainly.

9 THE COURT: Is that essentially the argument?

10 MS. COMPTON: Absolutely, Your Honor. That's
11 something that the Legislature has given to assist us to
12 allow us to have this inference. It was certainly not
13 meant to be sort of a punitive tool that if we were
14 beneath it, we could no longer argue possession with
15 intent to distribute.

16 THE COURT: Okay. It's your motion. You get
17 the last word if you want it.

18 MR. COCHRAN: Yes, Your Honor. I would like to
19 point out a case that they relied on so heavily for the
20 Lyle issue. You know, in *Wilson*, there are point seven
21 grams of crack. And the other indicia of distribution
22 was present there, and that's why they were able to
23 charge him with P.W.I.D. That there were
24 instrumentalities for sale, that there was a large amount
25 of cash, that there was him flushing something that could

1 have been more crack, that he had a witness that he had
2 been selling from that stash earlier that week. Those
3 are indicia of crack. To me, it seems illogical to say
4 we have a presumptive weight, but the officer can say
5 that that presumptive weight is too high, so that serves
6 as the other indicia of distribution.

7 MS. COMPTON: And Your Honor, I'm sorry. I
8 haven't specifically responding to his point about the
9 weight, and I do have other arguments if Your Honor would
10 like to hear them as to the indicia.

11 THE COURT: I'm happy to hear whatever want to

12 ---

13 MS. COMPTON: I apologize to have to make those

14 ---

15 THE COURT: No, no, no, that's okay. I've been
16 listening too, so ...

17 MS. COMPTON: And Your Honor, a few things on
18 that. We did have testimony from Detective Elmore that,
19 in fact, the way, you know, where it was kept on his
20 person, that perhaps a user would keep it in his pocket
21 and someone who is dealing might keep it in a more
22 concealed area and in a less easily accessible area.

23 Your Honor, we also -- you know, just with the
24 marijuana -- for example, with the marijuana, we have one
25 point seven grams of marijuana. That's nowhere near the

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1 statutory presumption of twenty-eight grams. However, it
2 was plenty enough for him to distribute in this case.

3 I'm trying to think about the other things that we
4 talked about with the detective. But you know, the way
5 it was packaged is certainly not -- you know, it was
6 broken into intentional sized rocks, although I don't
7 think the jury will have the benefit of considering that
8 because in testing, it was sort of tampered -- well, not
9 tampered, but altered slightly.

10 THE COURT: Well, they have testimony about how
11 it was cut by the officers.

12 MS. COMPTON: Exactly. And the final point is
13 that he had just watched him sell drugs. And I think
14 that is perhaps the strongest evidence that he had intent
15 to distribute.

16 THE COURT: So you would use *Wilson* as a sword
17 the other way in that where I think the indicia there was
18 not only the indicia, but also the fact that he had
19 another recent sale, so we can infer that he was selling
20 that day?

21 MS. COMPTON: Correct. Absolutely.

22 THE COURT: Okay. I agree that it's not very
23 much. It doesn't come up to a gram. But I don't think
24 we can presume that there was no intent to distribute. I
25 think there is some evidence here. And I have to take

1 the evidence in light most reasonable to the State at the
2 directed verdict stage. They will get the lesser-
3 included with it. But I'm going to have to deny the
4 motion for directed verdict at this point. Not only
5 because of the fact that he was dealing marijuana that
6 same day. But where it was stored, I think, seems to me
7 more indicative of something he might want to sell to
8 somebody else than to use for his own personal use and
9 the way it was cut into essentially what Officer Elmore
10 testified was four twenties.

11 What's your other ground?

12 MR. COCHRAN: My other request would be for you
13 to direct a verdict of not guilty on the proximity
14 charges.. And the basis for that is that there is no
15 evidence that this is a -- that the Moultrie Community
16 Center is something that fits within the proximity
17 statute. There's no evidence that it's a school.
18 There's no evidence that it's a daycare. You know, this
19 is something that the officers testified they saw kids
20 running around in that area. My client has referred to
21 it allegedly as a community center. I don't think the
22 words community center are actually in the proximity
23 statute. I understand that a lot of things fall under
24 that and it doesn't have to be a school, but I would say
25 that there's -- you know, we didn't have testimony from

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1 somebody who works at this community center to say, look,
2 this is what we do. This is a park where kids play.
3 This is where we have these types of services.

4 THE COURT: What about Elmore's testimony that
5 there were parents coming there to pick kids up from the
6 daycare? Would you submit that's not enough?

7 MR. COCHRAN: He said, I think even there might
8 have been a daycare there. I don't think that that would
9 arise to the level of some evidence.

10 MS. COMPTON: Your Honor, the statute
11 specifically enumerates a public park as within the
12 proximity statute.

13 MR. COCHRAN: And I don't know that there was
14 evidence that it was a public park. It was a community
15 center is what they said.

16 THE COURT: Well, didn't he say, come meet me
17 at the park?

18 MR. COCHRAN: No. He said, come meet me at the
19 community center is what Elmore testified to.

20 MS. COMPTON: And Dean's testimony was that it
21 was a park. And in fact, we have introduced State's 1,
22 which shows basketball courts, playing fields.

23 THE COURT: Yeah. Okay. I'm going to deny the
24 motion, respectfully, on that as well. But it's a good
25 argument.

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1 MR. COCHRAN: Thank you, Your Honor.

2 THE COURT: All right. What else? Anything?

3 MR. COCHRAN: Just renew all motions and
4 objections, Your Honor, and ---

5 THE COURT: And just to going back to the chain
6 thing, this case, it's exactly on point, *State v.*
7 *Hatcher*.

8 MR. COCHRAN: Yeah, that's fine.

9 THE COURT: So if nobody's read it, I would
10 suggest that y'all read it.

11 Are you putting up anybody?

12 MR. COCHRAN: We rest.

13 THE COURT: Okay. Do you want me to bring them
14 back so that you can rest and then I will send them home
15 for the day?

16 MR. COCHRAN: Okay.

17 THE COURT: And I've got my jury charges
18 started, but I need to get whatever y'all want me to add.
19 And we'll argue and charge in the morning. Does that
20 sound good or do y'all want to -- I mean, we can do it
21 today if you want. I just hate to give it to them.

22 MR. COCHRAN: I would like to have overnight to
23 work on my closing.

24 THE COURT: Okay. Yeah. Let's do it that way.
25 All right. Would you bring them back?

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1 THE BAILIFF: Yes, ma'am.

2 (WHEREUPON, the jury entered the open court at
3 approximately 4:05 p.m.)

4 THE BAILIFF: All jurors present, Judge.

5 THE COURT: Thank you, sir.

6 Okay. Ladies and gentlemen, the State has rested.
7 I will turn to Mr. Cochran.

8 MR. COCHRAN: The Defense rests, Your Honor.

9 THE COURT: Thank you, sir.

10 Ladies and gentlemen, the Defense has rested. There
11 are several matters of law we need to take up now before
12 we can be prepared to give closing arguments and the
13 charge on the law. But instead of sending you back to
14 your jury room for an hour while we work on that and
15 putting you right at five o'clock to start deliberating,
16 I'm going to have y'all go home for the evening. They've
17 got things they need to work on tonight, helping to get
18 the charge on the law ready. And we'll have to work on
19 that again in the morning. So I'm going to have y'all be
20 back in your jury room, if you will, by ten o'clock. Be
21 back by ten o'clock, and we will be ready to argue and
22 charge.

23 Please don't discuss the case tonight as it has not
24 been given to you for deliberation yet. You still have
25 not heard the closing arguments of the parties or the

1 charge on the law.

2 So y'all have a nice evening. Thank you for your
3 attention, and drive safely.

4 (WHEREUPON, the jury exited the open court at
5 approximately 4:06 p.m)

6 THE COURT: Okay. In the charge, obviously,
7 would be the elements of the four indicted charges. I'm
8 also going to include possession. Anything else y'all
9 can think of y'all want me to put in the standard charge
10 before I email it to y'all tonight?

11 MS. COMPTON: No, Your Honor. I am just
12 curious -- I don't have a particular one I'd like to
13 request one way or another -- as to which charge on
14 reasonable doubt, either the hesitate or -- but if you're
15 going to email it tonight.

16 THE COURT: I'm going to email it tonight, but
17 I've already got that. I can tell you that right now.

18 MS. COMPTON: Just so I can work on my closing
19 argument tonight.

20 THE COURT: Sure. And I'm going to get these
21 to you before I leave here.

22 MS. COMPTON: Okay.

23 THE COURT: Proof beyond a reasonable doubt can
24 be described as proof that leaves you firmly convinced of
25 the Defendant's guilt. There are very, very few things

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1 in the world that we know with absolute certainty. Okay,
2 yeah. Here it is. The State must prove the Defendant
3 guilty beyond a reasonable doubt. That is a doubt which
4 makes an honest, sincere, conscientious person in search
5 of the truth hesitate to act.

6 MS. COMPTON: Thank you.

7 THE COURT: It must be proof of such a
8 convincing character that a reasonable person would not
9 hesitate to rely and act upon it in the most important of
10 his or her own affairs.

11 MR. COCHRAN: I take it you're not charging
12 possession of marijuana?

13 THE COURT: I think it's just distribution of
14 marijuana. I'd be glad to hear from y'all on that if
15 y'all want me to charge it.

16 MS. COMPTON: No, Your Honor, the State would
17 not request it.

18 THE COURT: I wasn't --

19 MR. COCHRAN: Yeah.

20 THE COURT: --- I meant the possession under
21 the PWID ---

22 MR. COCHRAN: Okay.

23 THE COURT: --- of the cocaine base. I think
24 that's where we're ---

25 MR. COCHRAN: Okay. I'm not requesting it.

1 And I think -- is the charge for P.W.I.D. crack cocaine,
2 does that include information on the presumptive weights?
3 Because I know there's some parameters in terms of
4 language about -- like presumptive can't be used, but I
5 can't recall the exact ---

6 THE COURT: There are a couple of different
7 ways that it's handled. Do you want that in, the
8 presumptive weights?

9 MR. COCHRAN: I mean, I think that's become an
10 issue at this point.

11 MS. COMPTON: Your Honor ---

12 THE COURT: I can craft something on that.
13 There's case law that I can take it out of the case and
14 charge it.

15 MR. COCHRAN: There's definitely case law on
16 that.

17 THE COURT: Okay.

18 MR. COCHRAN: About how to ---

19 THE COURT: Sure. Well, I've got no problem
20 with that.

21 MS. COMPTON: I think at this point it would be
22 unfair for the jury to hear it.

23 THE COURT: Okay. I don't know if I have an
24 email -- I think I may have all of your emails. Will
25 y'all just write them on a piece of paper just to make

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1 sure we have them?

2 MR. COCHRAN: Sure.

3 THE COURT: Anything else? And why don't we
4 come -- I'll email you with this tonight, and y'all can
5 send me anything or we can talk about it in the morning.

6 MR. COCHRAN: Okay.

7 THE COURT: They're coming back at ten. Let's
8 be here at nine thirty and go through the charges.

9 You'll have them to look at tonight, and then that will
10 move it along, I think, pretty quickly. And we can get
11 it to them fairly quickly.

12 MS. COMPTON: Yes, ma'am.

13 MR. COCHRAN: The jury's been instructed to be
14 back at what time?

15 THE COURT: They're coming back at ten. It'll
16 take us a while for us to get the charges set, and I want
17 a preparatory. And then I want y'all to look at the
18 verdict form.

19 MR. COCHRAN: Okay.

20 THE COURT: Okay. All right. Anything else
21 y'all need to take care of before the end of the day?

22 MR. COCHRAN: No, Your Honor.

23 THE COURT: All right. Thank y'all for being
24 so efficient. I appreciate it. I'll have this to you
25 shortly.

1 MS. COMPTON: Thank you, Your Honor.

2 (WHEREUPON, court stood at recess for the day.)

3 April 20, 2012

4 (WHEREUPON, court convened with all parties present
5 and the following proceedings were had commencing at
6 approximately 9:30 a.m.)

7 THE COURT: All right. I know y'all had a
8 chance to review everything. And Tom said that y'all had
9 a couple of revisions. And, I think, Charlie, you had
10 another one that you wanted to add.

11 MR. COCHRAN: Yes, Your Honor.

12 THE COURT: So I'm happy to hear from y'all.

13 MR. COCHRAN: Well, Your Honor, there's a
14 potential charge that a lot of times is used in DUI and
15 failure to stop for a blue light cases that involve
16 patrol car dash cams. And basically, there's a negative
17 inference that can be drawn from the failure to produce a
18 video that did at one time exist. So we would ask for
19 the charge, you know, obviously, a properly worded charge
20 which I don't really have.

21 THE COURT: That's what I was going to ask, if
22 you had some suggested language. I'm used to the
23 spoliation context of the civil cases. I don't think
24 I've given them a negative inference charge in a criminal
25 matter.

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1 MR. COCHRAN: And I don't think that you can
2 infer bad faith. Now, you can infer exonerated evidence.

3 THE COURT: That's my understanding.

4 MR. COCHRAN: And that's what I would request
5 for you to give in this case.

6 THE COURT: Well, I'll hear from the State.

7 MS. COMPTON: Your Honor, the reason that
8 exists in DUI cases is because video is required by
9 statute in those cases. I certainly would oppose that. I
10 think that's just an issue of weight for the jury to
11 consider as the evidence. But, you know, I think that
12 they're perfectly capable of inferring or using that as a
13 piece of evidence with Your Honor's instruction.

14 THE COURT: Well, let me -- in a minute I'll
15 print the verdict form for y'all to look at. And I'll
16 take a look at some law before we bring the jury back and
17 see. I don't think it's mandatory. It's merely an
18 inference that they are permitted to draw. You know,
19 that could also be argued. And certainly I know Defense
20 counsel will argue it. But I will take a look at some
21 law briefly in just a minute, and then I'll rule on it.
22 I don't think that -- well, I know that it doesn't have
23 to be only in cases where video is mandatory. Because in
24 the civil cases in which it's used, there's never a
25 mandatory video. It's simply an inference that you

1 construe whatever was perhaps on the video against the
2 side that lost it. It's basically a non-technical way of
3 how that charge comes across, that they may do that, to
4 give it the weight that they see fit. But I'll look for
5 some language, and then we'll go through that..

6 MR. COCHRAN: Okay.

7 THE COURT: Is there anything else you want
8 added or taken out?

9 MR. COCHRAN: No. I think other than that,
10 we're good.

11 THE COURT: Okay.

12 MR. COCHRAN: I mean, I think the main one for
13 us is just that he didn't testify and you've got that in
14 there.

15 THE COURT: Is that in there? Okay. And I
16 want to talk to him about that in just a minute..

17 Ms. Compton, anything else?

18 MS. COMPTON: No, Your Honor. I appreciate the
19 language that you crafted about the lack of a reverse
20 presumption or inference. And to me that was incredibly
21 important just based on ---

22 THE COURT: That's straight out of the case.
23 So thank you, but I can't take credit for it. And just
24 so y'all know going forward, I really prefer that in
25 charges when somebody can give me some language that a

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1 court has actually used. You can't always find it. But
2 I just think it's safer and better because courts have
3 had trouble giving that presumption charge. I think
4 y'all probably all know about the case where somebody
5 charged it was a rebuttal presumption. Well, it's not.
6 The burden remains on the State at all times.

7 So anything that needs to be changed or added?

8 MS. COMPTON: No, Your Honor.

9 THE COURT: Okay. If y'all will give me a
10 minute, I will take a look at that, the inference charge.

11 Mr. Simmons, I wanted to chat with you about one
12 thing. And I know your lawyer has already told you this
13 -- and I should have told you this yesterday, but we went
14 kind of quickly at the end of the day. And you've got
15 great lawyers and I know that they've talked to you about
16 this, but -- and I think you probably heard me tell the
17 jury at the beginning of the case. The burden's not on
18 y'all, on the Defense at all. This burden of proof
19 remains on the State throughout the trial. So you're not
20 required to put up evidence of any defense, that they
21 have to make their case.

22 And I know you also heard this earlier when we were
23 talking about the context of the plea offer. You have an
24 absolute constitutional right to remain silent. Nobody
25 can make you ever testify against yourself or testify at

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1 all. And what your lawyer was referencing a minute ago
2 is I will charge the jury that they're not allowed to
3 consider the fact that you didn't testify in any way.
4 They're not even allowed to discuss it. So not only can
5 they not use that against you, but they can't even
6 consider that or make that a factor or use it at all. Do
7 you understand that, sir?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. And I understand y'all's
10 trial strategy, and I fully expected that to be what it
11 was. But it is your desire to not testify and put on a
12 case; is that correct?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And you understand your right to
15 remain silent?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. Well, thank you, sir. I
18 appreciate that. I just wanted to go over that with you.
19 And you'll hear it in more detail, and Mr. Cochran's got
20 a copy of the charge right there in front of you if y'all
21 want to go over it. But if y'all don't have any
22 questions, we'll get a draft verdict form for you, and
23 then we'll look for that language and wait on the rest of
24 the jury to get here.

25 Anybody got anything else?

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1 MS. COMPTON: Thank you, Your Honor. No,
2 nothing from the State.

3 THE COURT: Okay. All right. Thank y'all.
4 We'll be at ease for just a few minutes.

5 (WHEREUPON, court stood at ease.)

6 THE COURT: All right. There was some negative
7 inference in this language that I'm happy with, but If I
8 don't find it in the next couple of minutes, if y'all
9 can't craft something, then we'll go ahead and get them
10 in.

11 MR. COCHRAN: We are looking, Your Honor.

12 THE COURT: Thank you.

13 MR. COCHRAN: The jury verdict form, Your
14 Honor?

15 THE COURT: Uh-huh (affirmative).

16 MR. COCHRAN: Spencer just pointed out to me
17 that this says distribution of cocaine base, but it
18 should be possession.

19 MS. COMPTON: On the fourth charge.

20 THE COURT: Oh, okay.

21 MS. COMPTON: It should be possession with
22 intent to distribute.

23 MR. COCHRAN: Yeah, the very last one, Judge.

24 MS. COMPTON: Do we want to somehow address the
25 fact that if they don't find him guilty of PWID cocaine

1 base, there's no proximity?

2 THE COURT: I think I need to explain that to
3 them in explaining the verdict form.

4 MS. COMPTON: Okay.

5 THE COURT: Are y'all comfortable with that, or
6 do you want that earlier in the charge?

7 MS. COMPTON: Either way.

8 (Off record discussion)

9 MR. COCHRAN: I think we have one potential
10 one.

11 THE COURT: Okay.

12 MR. COCHRAN: And this is pretty -- this isn't
13 too strong against the State.

14 THE COURT: What's the case? Do you have it?

15 MR. COCHRAN: Yes, the *State v. Burton*, 302
16 S.C. 494.

17 THE COURT: Okay.

18 MR. COCHRAN: Never mind, Judge. That was the
19 wrong case.

20 THE COURT: Okay.

21 MR. COCHRAN: May I request something similar
22 to what Your Honor charges in civil cases just based on
23 the principle that he should have more rights than a
24 civil party? And I don't know that it would be
25 necessarily fundamentally different.

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1 THE COURT: What the charge essentially says is
2 -- and I think you are entitled to have it based on the
3 law that I'm looking at right now, which is *Stokes v.*
4 *Spartanburg Regional Medical Center*. It says, appellate
5 argues the court erred in failing to instruct the jury on
6 spoliation evidence. Well -- and here the hospital
7 didn't object and obviously the State does object. But
8 they ruled that it was error not to charge it, the
9 negative inference, when certain medical records were not
10 preserved for appeal. The instruction would be -- and
11 we'll work it in in a reasonable place -- when a party
12 fails to preserve material evidence for trial, the jury
13 is permitted but not required to draw a negative
14 inference as to such evidence.

15 MR. COCHRAN: I would be totally satisfied with
16 that.

17 MS. COMPTON: Your Honor, again, I would object
18 on the grounds that medical records are something that
19 are required to be produced in a case, just like in a DUI
20 case.

21 THE COURT: This is a similar case.

22 MS. COMPTON: Okay. Well, it just seems like
23 this is not something any of us are familiar with in a
24 criminal context, and I think it places undue emphasis on
25 -- coming from the bench as opposed to his closing

1 argument, it places undue emphasis on this fact and
2 prejudices the State for something that was of no fault
3 of the officers.

4 THE COURT: Well, that's why he wants it to be
5 part of the charge. He wants undue emphasis placed on
6 it. I appreciate your argument. You are certainly free
7 to argue that, in the words of the great Alexander, what
8 doesn't make a difference doesn't matter because there
9 was an abundant testimony that they did that for officer
10 safety anyway, not necessarily for evidentiary use later.
11 And quite frankly, a lot of times those videos you can't
12 even see what's going on on them anyway. You had plenty
13 of testimony from the officers as to what happened and
14 what they saw. And then actually the bag that went to
15 SLED and what they found, what was analyzed. I don't
16 think it prejudices the State at all. But I do think
17 that he's entitled to the charge. And the case law that
18 I'm finding indicates that it could be error not to give
19 it. So let me just find the proper place to put it in
20 the charge.

21 Y'all should be getting the updated verdict form
22 shortly.

23 Here's a quote directly out of the *Kershaw County*
24 *Board of Education versus U.S. Gypsum Company* and also
25 relying on *Welch v. Gibbons* and cited in that *Stokes* case

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1 which is 368 S.C. 515. Here's what the charge is going
2 to say.

3 Over the State's objection, we will mark this as a
4 Court's Exhibit for you. When it is alleged a party has
5 failed to preserved material evidence for trial, an
6 inference may be draw by the fact-finder that the
7 evidence that was lost or destroyed by that party would
8 have been adverse to that party. That's what this case
9 says. So ---

10 MR. COCHRAN: That sounds fine.

11 THE COURT: All right. That's over your
12 objection.

13 MS. COMPTON: Thank you, Your Honor.

14 THE COURT: All right. We've got the verdict
15 form.

16 All right. We're just going to print the updated
17 jury charge so y'all can go along with it while we go.
18 Y'all want to take a five-minute break while he runs to
19 get it?

20 MR. COCHRAN: Thank you.

21 (WHEREUPON, court stood at recess for a short
22 break.)

23 MS. COMPTON: Your Honor?

24 THE COURT: Yes, ma'am.

25 MS. COMPTON: I'm sorry. I have one additional

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1 request for the jury form.

2 THE COURT: All right. What is that?

3 MS. COMPTON: Having the guilty box on the next
4 page sort of ---

5 THE COURT: Oh, okay. Okay. All right.

6 MS. COMPTON: That's fine.

7 THE COURT: That should not have been like
8 that. Let me fix it.

9 (Off record discussion)

10 THE COURT: He's bringing the revised charge,
11 and then I think we'll be ready whenever y'all are.

12 MS. COMPTON: All right.

13 THE COURT: All right. Bring in the jury. Is
14 everybody set?

15 THE BAILIFF: Are you ready?

16 THE COURT: Yes, sir. Thank you.

17 (WHEREUPON, the jury entered the open court at
18 approximately 10:40 a.m.)

19 THE BAILIFF: All present, Your Honor.

20 THE COURT: Thank you, sir.

21 Thank you, ladies and gentlemen. I hope y'all had a
22 nice evening, and thank you for your patience this
23 morning.

24 Y'all have heard all of the evidence in the case and
25 we're now ready to hear the closing arguments from the

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1 State and the Defense. I'm going to call on Ms. Compton.

2 MS. COMPTON: Thank you, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. COMPTON: May it please the Court.

5 CLOSING ARGUMENT

6 BY MS. COMPTON:

7 Good morning. It must be Ground Hog Day because
8 here I am once again thanking you and saying good
9 morning. I do want to start off by thanking y'all for
10 your attention. I know we've taking you away from your
11 jobs and your families and your everyday life. But
12 without you here doing your jury service, none of us
13 could do our jobs.. And we all appreciate that.

14 Like I said yesterday, we're here because of this
15 man because on June 15th, 2011, he was doing what he was
16 doing to make money that day, selling drugs. But
17 fortunately for the City of North Charleston and the
18 people of South Carolina, the North Charleston Police
19 Department was also doing their job. They were out there
20 running an operation, and they were able to get him off
21 the corner and clean up that park so the kids can go back
22 and keep on playing.

23 Now, this Defendant may not be a big-time drug
24 dealer. I'm not here to argue that he's the next leader
25 of a drug cartel. But regardless, what he did was

1 against the law. It's my job to prosecute people for
2 violating the law. And as jurors, it's your job -- and
3 you have sworn that you will uphold that law. You've
4 sworn to hold the Defendant accountable to the law.

5 Now, I told you yesterday the Defendant is charged
6 with four crimes. First, distribution of marijuana;
7 second, distribution of marijuana in proximity to a
8 school, park, or playground; third, possession of cocaine
9 base with intent to distribute it; and finally fourth,
10 that possession of cocaine base with intent to
11 distribute, again, in proximity to a park.

12 I'd like to talk a little bit with y'all about each
13 of these charges. First, we're all here today, it all
14 started because of a distribution. You heard testimony
15 from Sergeant Elmore that the Police Department Speed
16 Team focuses on communities where the citizens have
17 complained. The citizens have called in to ask them to
18 do something. Come out and do something about these drug
19 problems that we're having. And so they did. They went
20 out there and they set up an operation to target as many
21 open-air drug dealers as they could to get them off of
22 the street and to send a message to other dealers; this
23 is not the way to make a living.

24 Now, I'm sure you'll hear plenty from Mr. Cochran
25 about the fact that we don't have a video, we don't have

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1 forensic evidence. Now, ladies and gentlemen, as to that
2 forensic evidence, Sergeant Elmore told you they use DNA
3 and fingerprints when they don't know who the suspect is,
4 they don't know who they're looking for. They didn't
5 need to do that in this case because they saw it and they
6 heard it. They knew who sold those drugs. Why would we
7 spend all of that money and go and test these things when
8 we already know who did it? That's not a question.

9 Now, as to the video, I'm sure they're going to
10 argue that it could have exonerated their client. It
11 also could have been a big shot of his face. Ladies and
12 gentlemen, I don't disagree with the Defense counsel as
13 to that point. It would have been helpful. And no one
14 is more upset than I am that it was lost. But that's
15 reality. That's life. Fortunately for us here today,
16 that video served its purpose. That recording kept
17 Officer Dean safe that day and allowed him to come out of
18 that situation and come in to court today and tell you
19 what he saw. Now, we don't need to rely on CSI
20 technology because we have three officers here, three
21 officers to tell you no doubt about it, this Defendant is
22 the one who sold the marijuana on June 15th, 2011.

23 Now, Officer Janowski moved in right away
24 immediately after the deal based on the description that
25 Officer Dean had given him. Sergeant Elmore told you he

1 watched the whole thing start to finish. Watched the
2 whole thing. Same guy the whole time.

3 Officer Dean did the transaction himself and then
4 went back around to triple check that they had the right
5 person. The same person that tried to run, the same
6 person that had the money in his hand. Caught red-
7 handed.

8 Now, two officers, we have no reason not to believe
9 these officers. Did they grab a different guy in the
10 seconds between the drug deal and the takedown team? No.
11 That's not reasonable, and it's not reasonable doubt. Is
12 this a vast conspiracy by the North Charleston Police
13 Department to frame this man? No. That's not
14 reasonable, and it's not reasonable doubt. The only
15 reasonable conclusion is that the Defendant distributed
16 one point seven grams of cocaine base to Officer Dean on
17 June 15th ---

18 MR. COCHRAN: Objection.

19 THE COURT: Sustained.

20 MR. COCHRAN: Marijuana.

21 MS. COMPTON: I'm sorry.

22 CLOSING ARGUMENT

23 CONTINUED BY MS. COMPTON:

24 Distributed one point seven grams of marijuana to
25 officer Dean on June 15th, 2011.

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1 Now, the second charge -- and I suppose we can just
2 also go ahead and talk about it as the fourth charge --
3 are those proximity charges. I said yesterday the people
4 of South Carolina made a decision. They said, we are not
5 going to tolerate drug dealing on our schools, our parks
6 and our playgrounds. We're not going to do it. And so
7 the Legislature created a separate offense, an offense
8 that says that you may not distribute or possess drugs
9 with the intent to distribute them within a one-half mile
10 range of a park, playground or school.

11 Now, honestly folks, between us here, one-half mile
12 is a big range. And there are some cases where it may
13 not be appropriate to charge proximity, even if he was
14 within a half mile. There's some cases where he's a few
15 blocks away and the man may not have known that school
16 was there. This is not that case. The Defendant said,
17 go on down to the park. I'll meet you there, stranger.
18 I'll come find you there to sell you the drugs. This is
19 exactly the way the people of South Carolina intended
20 this law to hold him accountable.

21 Now, the final charge is possession of cocaine base
22 with the intent to distribute it. As you might imagine
23 from the name, it has two elements, possession and an
24 intent to distribute. The possession is clear, folks.
25 He had it in his groin when they moved in to arrest him

1 for the marijuana.

2 Now, it's a crime to possess even a small amount of
3 drugs in South Carolina, but it's an even greater crime
4 to possess those drugs with the intent to distribute
5 them. And that leads us to the second element.

6 Obviously, none of us but the Defendant knows what was
7 going on in his mind that day. But I submit that we can
8 infer his mind set from the circumstantial evidence, the
9 circumstances of that day.

10 Ladies and gentlemen, the strongest evidence are his
11 actions. He had just sold drugs two seconds ago. You
12 are correct in understanding that those four crack rocks
13 that he had would have been the merchandise for the next
14 four people who pulled up asking to buy cocaine base. It
15 just so happened this officer came and asked to buy
16 marijuana.

17 Now, we also know from Sergeant Elmore, who I
18 imagine has seen more drugs than anyone in this room,
19 that crack is usually sold on the corner in small amounts
20 in what he called twenty-dollar rocks or twenty rocks.
21 The dealers take larger amounts of crack and precisely
22 cut it evenly into point two gram or twenty rocks.
23 They're not -- they're not so -- I will tell you, ladies
24 and gentlemen, in the evidence -- and when you take this
25 back to jury room, you can consider they're not so evenly

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1 broken up now. That's because after the testing they're
2 no longer. But take a look at them. They are precisely
3 -- the ones that are still intact are precisely cut. But
4 you will notice that one of the rocks, possibly even two
5 of the rocks -- it's hard to tell -- have been cut for
6 testing. But when officers found it, it was
7 intentionally divided for sale. They don't need to be --
8 those rocks don't need to be in individual baggies like
9 pure cocaine powder might need to be or marijuana might
10 need to be because it's easy enough to just pick one out
11 and hand it to somebody.

12 Now, finally, we know how it was stored. Use your
13 common sense. If you had a bag of M&Ms and you were
14 going to have -- you were going to eat them, you might
15 keep them in your pocket, take one out, have a snack,
16 save some for later. Now, if you're going to sell those
17 M&Ms and if those M&Ms were illegal, you might keep them
18 a little better hidden, hidden from thieves, hidden from
19 the cops, not so easily accessible by yourself.

20 Now, speaking of M&Ms, I happen to have a real sweet
21 tooth. If I have a bag of M&Ms, I might eat a few or
22 half the bag and save some for later. I think we all
23 know that sadly someone with a drug addiction is not able
24 to do this. They're not able to save some for later.
25 They would consume it as soon as they got it.

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1 Now, you'll also hear an instruction from the Judge
2 regarding an inference, a legal inference, that you could
3 have drawn had there been more than a gram. Now, the
4 State would be able to -- if that had been the case, the
5 State would be able to use that as an inference, as just
6 extra evidence of his intent to distribute. But ladies
7 and gentlemen, I want to be clear. The Defendant can
8 intend to distribute any amount of crack, any -- we have
9 all the indicia of distribution. The weight of that
10 crack does not matter. And the Judge will tell you that.
11 We know his intent here for the fact that he had just
12 sold drugs, from the fact that the other merchandise was
13 divided for sale and stored in his groin. The fact that
14 the Defendant didn't have more crack didn't mean that --
15 he already sold it earlier that day or just that he was a
16 small-time dealer. Either way, he intended to distribute
17 it.

18 I do want to tell you, ladies and gentlemen, if you
19 decide -- if you don't find that he intended to
20 distribute it, he is still guilty of the lesser offense
21 of possession of cocaine base. But I ask you, was he
22 hiding those four rocks in his groin to save them and
23 smoke them later that afternoon? No. That's not
24 reasonable, and it's not reasonable doubt. He possessed
25 them, intending to distribute them to anyone who came

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1 around his corner.

2 Now, folks, that's it. Four charges based on
3 straightforward evidence. Once Mr. Cochran and I both
4 finish our closing arguments, the Judge will instruct you
5 as to the law in this case. She'll tell you that finding
6 a fact beyond a reasonable doubt is a finding that leaves
7 you firmly convinced of the truth.

8 On the other hand, reasonable doubt is a doubt which
9 would cause a reasonable person to hesitate to act. And
10 I want to talk about the word hesitate for a minute. The
11 Defense attorney will tell you that you should hesitate,
12 and the fact that you hesitate means he's not guilty.
13 No, ma'am. No, sir. Just the opposite. Please, take
14 your time. Please, consider all of the evidence. Take
15 this evidence back into the jury room with you. Take it,
16 look at it. Item 1, a picture of the park, basketball
17 courts, the baseball field. Item 2, the money found on
18 the Defendant. And again, I imagine Mr. Cochran will
19 have a lot to say about the bills. But the fact of the
20 matter is these bills were photocopied, and these two
21 bills were recovered at the end of the day.

22 Take a look at the drugs. You've got marijuana,
23 you've got cocaine base. Please, I urge you, take a look
24 at them. But most importantly, most importantly, take
25 the time to consider what the witnesses told you. That

1 is the strongest evidence, the testimony from the
2 witnesses. And I have no doubt at the end of your
3 deliberations you will have no choice but to find the
4 Defendant guilty on all four indictments.

5 THE COURT: Thank you.

6 Mr. Cochran?

7 MR. COCHRAN: Thank you, Your Honor. May it
8 please the Court.

9 CLOSING ARGUMENT

10 BY MR. COCHRAN:

11 Good morning. A trial, especially a drug trial, is
12 supposed to be a lot like show and tell. And you heard a
13 lot of testimony yesterday. You heard a lot of stories
14 from the police officers in this case. They told you
15 about lots of evidence, but they didn't show you hardly
16 any evidence.

17 They showed you two bags of drugs that nobody is
18 disputing are drugs. It's how those drugs came to be in
19 the police's possession.

20 And the police have talked a lot about evidence that
21 they don't have, and they've tried to make excuses about
22 why they can't give it to you. And it ain't about why
23 it's not important for this trial. But that's not their
24 decision to make. It's not the police officer's decision
25 to decide what evidence is important. That's your

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1 decision. It's up to you to say to them, what do I want
2 to see when I'm sitting in judgment of a fellow citizen.
3 And it's not good enough to say, well, I wish we had it,
4 but that's life. That's life. This is Jeffrey's life.
5 This is his life.

6 So what evidence did we talk about that they didn't
7 have? Well, first, photographs. You've got one
8 photograph that the Solicitor just showed you, an aerial
9 photograph that the Solicitor printed off for trial to
10 show you what a park looks like. But I asked Officer
11 Elmore, the first gentleman who testified, did you take
12 photographs? You know, you say there are all of these
13 children running around. This was a playground. This
14 was a crowded area where this man's selling drugs.

15 Did you take any photographs? Well, I told my
16 officers to take photographs and they didn't. Okay. But
17 you wanted photographs? Yeah, but I didn't need the
18 photographs. Well, then why did you ask for them? Well,
19 sometimes I like ice in my soda but, you know, I don't
20 need ice to drink my soda. You know, that's not good
21 enough. This is a criminal trial we're talking about.
22 This is a man's life on the line here in his criminal
23 trial. If you have evidence, you need to give it to a
24 jury.

25 And why are those photographs so important? Because

1 it's not just about dealing drugs. They're not just
2 saying that he dealt drugs. They need to prove to you
3 beyond any reasonable doubt that he sold drugs in
4 proximity of a school or a park. What did they do to
5 prove to you that he did this within proximity of a
6 school or park as it fits within the statute as the Judge
7 is going to instruct you?

8 What did they give you? They didn't give you any
9 photographs. They did not interview one person who
10 worked at this community center. They did not have one
11 person who works at this community center come and
12 testify and tell y'all this is what kind of place this
13 is. This is a park where children play. This is a place
14 where we have -- the community can gather, and this is a
15 place that fits within the statute of the proximity
16 crime. They gave you literally nothing, no evidence,
17 other than telling you about it. They didn't show you
18 anything. That's the proximity charges.

19 What are some other important pieces of evidence
20 that we didn't see? Fingerprints and DNA. We didn't do
21 them in this case. Okay. But I asked him, that's not
22 just something you see on TV. Police take fingerprints,
23 right? Yes. Police take touch DNA from items like paper
24 bags and plastic bags, right? Yes, we do do that. You
25 didn't do that in this case? No, we did not. Well,

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1 that's life. Sorry, Jeffrey. That's life. We don't
2 have any evidence to prove you guilty; we're just going
3 to tell the jury that you're guilty.

4 Did you ask yourself, would it make you -- would it
5 make it easier for you to make your decision if you had
6 fingerprints and touch DNA? On the dollar bill -- on the
7 twenty-dollar bill that they say he threw down where they
8 could have taken fingerprints and touch DNA. On the
9 paper bag that contained the marijuana. And on the
10 plastic bag that contained the crack. Would that make
11 your job easier to say he possessed those things? That's
12 the standard.

13 You heard me ask Deputy Elmore about searching
14 Jeffrey's mother's home where Jeffrey lived. You didn't
15 hear Officer Elmore testify about that on his direct
16 testimony. He didn't tell you that he searched a home in
17 this case. And there's a reason he didn't tell you that.
18 There's a reason I had to get it out of him on cross-
19 examination. Because they talked about all these things
20 that drug dealers have. Remember, that's why they take
21 serial numbers before they give them money because a lot
22 of times drug dealers have lots of cash on them. Okay.
23 But he didn't want to tell you that they searched his
24 home, they searched his mother's home and they didn't
25 find one thing that indicated that he was a drug dealer.

1 They did not find one scale to weigh the drugs even
2 though he testified that drug dealers weigh their drugs
3 before they sell them. They split them up into
4 individual rocks. He testified a lot about that. That's
5 how drug dealers behave. There was not one razor blade
6 in this house that had drug residue on it. There wasn't
7 one surface where it was clear that they were cutting up
8 crack cocaine.

9 They did not find large amounts of cash. They
10 didn't find any cash. They didn't find any cash on him,
11 this guy who was apparently walking down the street all
12 day selling drugs.

13 They didn't find any guns. They didn't find one
14 thing in that house that indicated that he was a drug
15 dealer. This house that was half a block from the park
16 where he supposedly sold drugs, this house where he
17 lived.

18 He also said something that caught my attention
19 about the house. I asked him, you know, a lot of times
20 when a drug dealer has lots of drugs, they'll separate it
21 into separate bags so that they can sell small amounts to
22 users, right? Yeah. And so you'll find a lot of plastic
23 bags a lot of times, right? Yeah. Well, did you find
24 any additional baggies there? Well, there were baggies
25 all over the yard and in the house. Okay. Did you take

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1 pictures of them? No. Did you collect them? No. And
2 these might have drug residue on them? Yeah. I'm not
3 the trash service. Okay. So you leave bags that have
4 drug residue in them just laying around? Yeah.

5 You get answers like that from police when they're
6 trying to fit a square peg into a round hole. That
7 doesn't make any sense. If he found baggies with drug
8 residue on it, he would have collected them and presented
9 them to you to indicate that Jeffrey is a drug dealer.

10 You even heard him talk so much about razor blades,
11 about how these razor blades are always used to cut them
12 up and how you can tell from the rocks that are cut up
13 specifically because they're shaved off on one side. Not
14 one razor blade in this house or on him?

15 I started off when I was talking to him talking
16 about money, I mean, currency. Money that he could have
17 gotten fingerprints from, money that he said when he
18 started to testify, the way you can tell that somebody
19 just sold drugs to an undercover is that they've got the
20 money on them that we pre-marked where we took the serial
21 number down. And if they've got that money on them,
22 we've got them.

23 And here are two twenty-dollar bills. And he had
24 those twenty-dollar bills on him. Well, how much money
25 did have on him? Oh, I'm sorry, it was only twenty

1 dollars. Okay. Well, which of those two twenty dollar
2 bills was it? I don't know. Well, if you took down the
3 serial number that was going to be used before you gave
4 him the money, you should have that information. He said
5 that was the key. That's the identifier for a drug
6 dealer is that they're going to have money with that
7 serial number on them when we arrest them. Which twenty
8 dollar bill was it? I don't know. I have no idea.

9 And the other reason, of course, why money was so
10 important, why it's so important to take down the serial
11 numbers, is because drug dealers usually have a lot of
12 cash on them because they've been walking around all day
13 dealing drugs, getting twenty dollars worth of crack sold
14 and taking twenties like crazy. And not one twenty-
15 dollar bill was found on him. Not one piece of money was
16 found on him or in his house.

17 What was something else that they didn't find at his
18 house was any drugs. They asked to buy twenty dollars of
19 marijuana from him, they say. And he happened to have
20 exactly twenty dollars worth of marijuana on him, no more
21 and no less. And of course, all of this was on video,
22 but sorry you can't see it.

23 Then there's the crack. A person with M&Ms who's
24 eating M&Ms would probably keep them in their pocket.
25 Where would a person who's selling M&Ms keep their M&Ms?

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1 I've bought M&Ms before. And the cashier never took them
2 out of their crotch to sell them to me. Okay? I'm not
3 buying those M&Ms. And I'm not buying that excuse for
4 why they don't have any other evidence of distribution.

5 Do drug users waive their drugs around? Do they
6 keep them out in the open? Do they just pull them out of
7 their pocket while they're walking down the street and
8 smoke them, or do they hide them because they're illegal?

9 I asked the deputy, Deputy Elmore, who was in charge
10 of this investigation, was there any indication that

11 Jeffrey had been using crack that day? No. No

12 indication that he'd been using crack that day. Okay.

13 Well, what about this report? Oh, yeah. One of the

14 arresting officers noted that he had been using drugs

15 that day. He had been using crack that day.

16 And you just heard the Solicitor say drug users, the

17 sad thing about them is they're so addicted -- she just

18 said this. They are so addicted that they don't save any

19 for later. You heard the officer testify that drug users

20 will sell. Which is it? They want to have their cake,

21 and they want to eat it too. Either he's a drug user or

22 he's a drug dealer, or we have no idea if the drugs were

23 on him because they didn't test it for DNA, they didn't

24 test it for fingerprints and they didn't videotape the

25 arrest where they took these drugs from him.

1 And what is the last piece of evidence that we don't
2 have? I'm just going to apologize because I talked about
3 this video all day yesterday. Now I'm talking about it
4 again. But the reason why I can't stop talking about the
5 fact that they don't have this video is because it's so
6 egregious. What happened to this video that supposedly
7 was dead to rights (phonic) evidence that Jeffrey sold
8 them drugs? One officer told you it malfunctioned that
9 day. Deputy Elmore testified to you under oath it
10 malfunctioned that day. What did Deputy Dean testify to?
11 That -- this happened June. The next February their
12 computer crashed, their whole computer system crashed and
13 they lost a lot of evidence. Which is it? Nobody has
14 any idea what happened to the video.

15 Was there ever a video? Would you seeing that video
16 affect in any way his safety way back in 2011? It's for
17 officer safety. Who cares what it's for? You have the
18 video and you can't show it to the jury. You watching
19 that video would not affect his safety in any way. So
20 how is that a valid excuse? You should accept no excuses
21 for the fact that they don't have the most important,
22 most convincing form of evidence.

23 They need to show you evidence, and they couldn't
24 show you any evidence. All they could do was tell you
25 about it. And that's not good enough.

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1 There is absolutely no -- even if you believe that
2 Jeffrey had crack on him that day, there's absolutely no
3 evidence that he was selling crack. They didn't surveil
4 him during the day. There was no surveillance prior to
5 their contact with him to show him, you know, videotape
6 him, out on the street selling drugs to people, taking
7 something out of his crotch, selling it. Oh, well, he
8 was selling marijuana, so he was probably selling the
9 crack, too. Okay. Well, where was the marijuana they
10 say he had? He had to walk down the block behind a house
11 to get marijuana. He didn't pull it out of his crotch.
12 So why isn't the crack in that same stash? Why are there
13 two different stashes?

14 None of it makes sense. None of it adds up. And
15 it's because they're trying to fit a square peg into a
16 round hole. And the standard, no matter what the
17 Solicitor says, is hesitation. And the Judge is going to
18 tell you that. A doubt, a reasonable doubt is a doubt
19 that would cause you to hesitate to act. You have to
20 consider it. Consider all this evidence. Consider the
21 fact that you don't have any of this evidence. Did you
22 hesitate? Did you say, man, I wish I had those
23 fingerprints, wish I had that DNA. That would make this
24 pretty easy. That lawyer wouldn't have anything to say
25 then. I wish I had that video that showed him selling

1 drugs. That lawyer wouldn't have anything to say then.
2 I wish that they had marked down that serial number and
3 had a video of us taking that exact same twenty-dollar
4 bill moments later. I wish I had that. That's
5 hesitation. That's reasonable doubt. That's the
6 standard that we use in this country.

7 And it's not good enough for them to say, well,
8 that's life. Because that's not the right Jeffrey's
9 afforded. He's afforded a trial where they have to
10 produce evidence against him, not just words. And I
11 would ask you to find him not guilty on that basis.
12 Thank you.

13 THE COURT: Thank you.

14 CHARGE

15 BY THE COURT:

16 Thank you, ladies and gentlemen. I appreciate your
17 kind attention while the attorneys gave their closing
18 arguments. You've now heard the testimony, evidence and
19 the arguments of the State and the Defense. I'll now
20 explain the law that applies to this case.

21 Under the Constitution and the laws of South
22 Carolina, you are the finders of fact in this case. I do
23 not have the right to pass upon the facts or even to
24 express any opinion that I may have about them. This is
25 a matter solely for you, the jury, to determine.

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1 As jurors, then it is your duty to weigh the
2 evidence, the effect, the value and the truth of the
3 evidence that's been presented to you during the trial.
4 As the trial judge, it's my responsibility to preside
5 over the trial of the case and to rule upon or pass upon
6 the admissibility of the evidence offered during this
7 trial. You are to consider only the testimony which has
8 been presented from this witness stand together with any
9 exhibits which have been made a part of the record.

10 I have the additional duty to charge you on the law
11 applicable to the case. And as the presiding judge, I'm
12 the sole judge of the law of this case. It is your duty
13 as jurors to accept and apply the law as I now state it
14 to you and then reach your verdict.

15 Finally, I charge you in this regard that you should
16 not be concerned with what you think the law ought to be,
17 but what I charge you the law is.

18 You are also the judges, the sole judges, of the
19 credibility and believability of the witnesses who have
20 testified and the evidence in this case. In passing upon
21 credibility, you may take into consideration many things
22 such as the demeanor or manner of the witness testifying,
23 whether the witness had a reason to be biased or
24 prejudiced and whether a witness' testimony was
25 contradicted on the one hand or supported and

1 corroborated on the other hand.

2 You may believe a small portion of a witness'
3 testimony and disregard the larger or vice versa. You
4 may believe one witness against many or many against one.
5 All of these things you will consider bearing in mind
6 that you must give the Defendant the benefit of any
7 reasonable doubt. It becomes your duty as jurors to
8 analyze and evaluate the evidence and determine that
9 evidence which convinces you of its truth.

10 The rules of evidence ordinarily do not permit
11 witnesses to testify as to opinions or conclusions. An
12 exception to this rule exists for witnesses we call
13 expert witnesses. A witness who by education and
14 experience has become expert in some art, science,
15 profession or calling may state an opinion as to relevant
16 and material matters in the areas in which the witness
17 has been qualified as an expert. And such a witness may
18 also state the reasons for any such opinions.

19 You should consider any expert opinion received in
20 evidence like any other evidence. Give it the weight you
21 think it deserves. If you decide that the opinion of an
22 expert witness is not based on sufficient education and
23 experience or if you conclude that the reasons given in
24 support of the opinion are not sound or that the opinion
25 is outweighed by other evidence, you may disregard the

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1 opinion entirely.

2 An expert witness' testimony is to be given no
3 greater weight in the matter than any other witness
4 simply because the witness is an expert. Further, you
5 are not required to accept an expert's opinion even
6 though it is not contradicted.

7 There are two types of evidence which are generally
8 presented during a trial, direct evidence and
9 circumstantial evidence. Direct evidence is the
10 testimony of a person who claims to have actual knowledge
11 of a fact, such as an eye witness. It is evidence which
12 immediately establishes the main fact to be proved.
13 Circumstantial evidence is proof of a chain of facts and
14 circumstances indicating the existence of a fact. It is
15 evidence which immediately establishes collateral facts
16 from which the main fact may be inferred. Circumstantial
17 evidence is based on inference and not on personal
18 knowledge or observation.

19 When it is alleged that a party has failed to
20 preserve material evidence for trial, an inference may be
21 drawn by the fact-finder that the evidence that was lost
22 or destroyed by that party would have been adverse to
23 that party.

24 The fact that the Defendant was arrested, charged
25 and indicted is not evidence in the case and cannot be

1 considered by you as evidence of guilt in this case, nor
2 does it create any presumption or inference of guilt.
3 The indictments are simply the formal written instruments
4 which contain the charges made against the Defendant. An
5 indictment is the formal document by which a case is
6 brought into this court for consideration.

7 The indictments in this case charge one count of
8 distribution of marijuana, one count of distribution of
9 marijuana within the proximity of a school, one count of
10 possession with intent to distribute cocaine base and one
11 count of possession with intent to distribute cocaine
12 base within the proximity of a school.

13 The Defendant has pled not guilty to the charges in
14 these indictments, and that plea puts the burden on the
15 State to prove that the Defendant is guilty. A person
16 charged with committing a criminal offense in South
17 Carolina is never required to prove himself innocent.

18 Each indictment charges a separate and distinct
19 offense. You must decide each indictment separately on
20 the evidence and the law applicable to it, uninfluenced
21 by your decision as to any other indictment. The
22 Defendant may be convicted or acquitted on some or all of
23 the offenses charged. You will be asked to write a
24 separate verdict of guilty, guilty of the lesser-included
25 offense or not guilty as to each indictment as may be

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1 applicable.

2 I charge you that it is an important rule of our law
3 that the defendant in a criminal trial, no matter what
4 the seriousness of the charge may be, will always be
5 presumed to be not guilty of the crime for which the
6 indictments were issued unless guilt has been proven by
7 evidence satisfying you of that guilt beyond a reasonable
8 doubt.

9 The presumption of innocence does not end when you
10 begin your deliberations, but it accompanies the
11 Defendant throughout the trial until you reach a verdict
12 of guilt based on evidence satisfying you of that guilt
13 beyond a reasonable doubt. The presumption of innocence
14 is like a robe of righteousness placed about the
15 shoulders of the Defendant which remains with him until
16 it has been stripped from the Defendant by evidence
17 satisfying you of the Defendant's guilt beyond a
18 reasonable doubt.

19 The presumption of innocence is not mere legal
20 theory. It is not just a legal phrase. It is a
21 substantial right to which every defendant is entitled
22 unless you, the jury, are satisfied from the evidence of
23 the Defendant's guilt beyond a reasonable doubt.

24 The State must prove the Defendant guilty beyond a
25 reasonable doubt. So what is a reasonable doubt in the

1 law? A reasonable doubt is a doubt which makes an
2 honest, sincere, conscientious juror in search of the
3 truth hesitate to act. Proof beyond a reasonable doubt
4 must therefore be proof of such a convincing character
5 that a reasonable person would not hesitate to rely and
6 act upon it in the most important of his or her own
7 affairs.

8 Proof beyond a reasonable doubt can also be
9 described as proof that leaves you firmly convinced of
10 the Defendant's guilt. Now, there are very few things in
11 this world that we know with absolute certainty. And in
12 criminal cases, the law does not required proof that
13 overcomes every possible doubt. If, based on your
14 consideration of the evidence, you are firmly convinced
15 that the Defendant is guilty of the crime charged, you
16 must find him guilty. If, on the other hand, you think
17 that there is a real possibility that he is not guilty,
18 you must give him the benefit of the doubt and find him
19 not guilty or guilty of a lesser-included offense, if
20 applicable.

21 I instruct you and emphasize that the fact that the
22 Defendant did not testify is not a factor to be
23 considered by you in any way in your deliberation and in
24 your consideration on the question of the guilt or
25 innocence of this Defendant. It must not be considered

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1 by you in any manner whatsoever. A defendant has the
2 constitutional right to remain silent. And the assertion
3 of this right must not be considered by you in your
4 deliberations.

5 I repeat, under your oath you are to draw no
6 conclusion whatsoever from the fact that the Defendant in
7 this case did not testify. The fact that the Defendant
8 did not testify should not even be discussed in the jury
9 room. The burden of proof, as I have stated to you, is
10 on the State. The Defendant is not required to prove his
11 innocence. The burden of proof remains on the State to
12 prove guilt beyond a reasonable doubt.

13 The Defendant is charged with distribution of
14 marijuana. The State must first prove beyond a
15 reasonable doubt that the Defendant distributed
16 marijuana. To distribute means to actually -- to deliver
17 or to actually, constructively or attempt to transfer a
18 drug other than by legally administering or dispensing
19 it. To deliver means to actually, constructively or
20 attempt to transfer a drug. A transfer can involve an
21 exchange for money, a barter or a gift. There does not
22 have to be anything given in exchange for the drugs for a
23 transfer to constitute distribution.

24 The Defendant is charged with distribution of
25 marijuana within the proximity of a school or a park.

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1 The State must prove beyond a reasonable doubt that the
2 Defendant distributed, sold, purchased, manufactured or
3 unlawfully possessed with intent to distribute marijuana
4 while in, on or within one-half mile of the grounds of a
5 public or private elementary, middle or secondary school,
6 a public playground or park, a public vocational or trade
7 school or a technical education center or a public or
8 private college or university.

9 The Defendant is charged with possession with intent
10 to distribute cocaine base. The State must prove beyond
11 a reasonable doubt that the Defendant possessed cocaine
12 base, also known as crack cocaine, with the intent to
13 distribute it. To prove the possession, the State must
14 prove beyond a reasonable doubt that the Defendant had
15 both the power and the intent to control the disposition
16 or use of the cocaine base. Possession may be either
17 actual or constructive.

18 Intent may be shown by the acts and conduct of the
19 Defendant and other circumstances from which you may
20 naturally and reasonably infer intent.

21 In determining whether the Defendant had the intent
22 to distribute crack cocaine, you may consider the
23 circumstances surrounding the Defendant's alleged
24 possession. You may consider the amount of the substance
25 alleged to have been possessed, the manner in which it

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1 was allegedly possessed, the place where it was allegedly
2 possessed and other factors which you consider to be
3 important. You must find that the Defendant did not
4 intend to have the cocaine solely for his own use.

5 Possession of more than one gram of crack cocaine
6 creates an inference that the Defendant possessed the
7 crack cocaine with the intent to distribute it. This
8 inference does not relieve the State of its burden of
9 proving beyond a reasonable doubt that the Defendant had
10 the intent to distribute it. It is simply an evidentiary
11 fact to be taken into consideration by you, along with
12 the other evidence in the case and to be given the weight
13 that you decide it should have. However, a conviction of
14 possession with intent to distribute does not hinge upon
15 the amount involved.

16 Furthermore, the statute does not mandate a reverse
17 inference or presumption for amounts less than one gram.
18 Possession of any amount of a controlled substance
19 coupled with sufficient indicia of intent to distribute
20 will support a conviction of possession with intent to
21 distribute.

22 If you find that the State has failed to prove
23 beyond a reasonable doubt that the Defendant is guilty of
24 possession with intent to distribute crack cocaine, you
25 may consider whether the State has proved beyond a

1 reasonable doubt that the Defendant is guilty of simple
2 possession of crack cocaine.

3 Simple possession does not require an intent to
4 distribute. To prove simple possession, the State must
5 prove beyond a reasonable doubt that the Defendant
6 knowingly or intentionally possessed crack cocaine.

7 Knowingly means with knowledge, consciously, not
8 accidentally. Intentionally means willfully, intending
9 the result which actually occurs. Not accidentally or
10 involuntarily. Intent may be shown by acts and conduct
11 of the Defendant and other circumstances from which you
12 may naturally and reasonably infer intent.

13 The Defendant is charged with intent to -- with
14 possession with intent to distribute cocaine base within
15 the proximity of a school or a park. The State must
16 prove beyond a reasonable doubt that the Defendant
17 unlawfully possessed with intent to distribute cocaine
18 while in, on or within one-half mile of the grounds of a
19 public or private elementary, middle or secondary school,
20 a public playground or park, a public vocational or trade
21 school or technical education center or a public or
22 private college or university.

23 Ladies and gentlemen, in conclusion, you've been
24 selected by both the State and the Defendant to be fair
25 and impartial jurors. It is your duty then in your

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1 deliberations to determine the truth in this case, giving
2 the Defendant the benefit of every reasonable doubt on
3 each and every issue. And from the facts which you
4 determine to be true, you take and apply the law which I
5 have just given to you and thus arrive at a verdict which
6 speaks the truth of this case.

7 You must consider these instructions as a whole and
8 not follow some and ignore others.

9 You have heard the evidence and now you have heard
10 the law. Whatever your verdict, your foreperson will
11 indicate it by completing the verdict form. Your
12 foreperson will then sign and date the verdict form.

13 Remember that although the foreperson is the only
14 juror who writes the verdict, it is not his or hers
15 alone. The verdict must be a unanimous verdict. Your
16 foreperson is not authorized to write the verdict until
17 all of you have agreed as to what the verdict should be.

18 Ladies and gentlemen, I'm going to send you to your
19 jury room in just a minute, but do not discuss the case
20 until you have received the verdict form -- which I'm
21 going to through with you in just a moment -- and the
22 exhibits. We've got to gather those and make sure that
23 we have everything ready for y'all before we send it back
24 and before you can start to deliberate. Once you receive
25 the verdict form and the exhibits from the bailiff, that

1 will be your signal to begin deliberations.

2 Once you begin your deliberations, you will
3 deliberate until you have reached a verdict, at which
4 time you will knock on the door, advise the bailiff, and
5 we will bring you out to receive your verdict.

6 I'm not sure what time lunch is supposed to be here.

7 Mike, what time?

8 THE CLERK: Twelve-thirty.

9 THE COURT: Twelve-thirty? Okay. That's
10 perfect. Sometimes it comes at twelve-thirty; sometimes
11 it's a little before or after.

12 What we're going to do shortly is send you to your
13 verdict [sic] room where y'all can select your
14 foreperson, if you have not already done so, and then he
15 or she will need to sit in this chair right here on the
16 front. And the bailiff will show y'all.

17 The verdict form has four questions. And I think
18 it's fairly self-explanatory, but I just want to go
19 through it briefly. It's got the case caption for this
20 particular case. And it says, we, the jury, by unanimous
21 consent, find the Defendant, Jeffrey Leroy Simmons,
22 number one, as to the charge of distribution of marijuana
23 -- once you reach your verdict, you'll have your
24 foreperson check not guilty or guilty.

25 As to the charge of distribution of marijuana within

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1 the proximity of a school or park, again, after you've
2 reached a verdict, he or she will check not guilty or
3 guilty.

4 As to the charge of possession with intent to
5 distribute cocaine base, there are three choices. The
6 first is not guilty. The second is guilty of the lesser
7 included offense of possession of cocaine base. And the
8 third is guilty. At the end of question three, if you
9 find the Defendant not guilty or guilty of the lesser-
10 included offense of possession of cocaine base, please
11 stop deliberating because you will not need to reach
12 question four. And that explains this here. You'll have
13 your foreperson sign and date the verdict form and then
14 y'all will knock on the door and alert the bailiff that
15 you have reached the verdict.

16 If you find the Defendant guilty of possession with
17 intent to distribute cocaine base, you need to then
18 consider question four which addresses the charge of
19 possession with intent to distribute cocaine base within
20 the proximity of a school or a park.

21 So depending on how you answer question three, you
22 may or may not need to get to question four. But once
23 you've completed your verdict form, he or she, the
24 foreperson, will sign and date it and let the bailiff
25 know and we'll bring you out to receive your verdict.

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1 So I'm going to ask y'all to retire to your jury
2 room.

3 And I'm going get you, if you would, to hold the
4 alternate for me for just a minute.

5 I need to see if there are any matters of law to
6 take up with the parties, and then I'll bring the
7 alternate back in and we'll get the exhibits and verdict
8 form ready for you.

9 Thank you, ladies and gentlemen.

10 (WHEREUPON, the jury exited the open court at
11 approximately 11:33 a.m.)

12 THE COURT: Any objections from either the
13 State or the Defense other than the negative inference
14 exhibit [sic]?

15 MS. COMPTON: Nothing from the State, Your
16 Honor.

17 THE COURT: Okay.

18 MR. COCHRAN: No, Your Honor.

19 THE COURT: Okay. Thank you. All right.
20 Well, then if you'll bring us the alternate, we'll go
21 ahead and let the alternate go.

22 (WHEREUPON, the alternate juror was excused.)

23 THE COURT: All right. Y'all want to look at
24 the exhibits and make sure we're not missing anything and
25 just get it all together.

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1 (Off record discussion)

2 THE COURT: Have we got everything? Are you
3 ready for it to go back?

4 MR. COCHRAN: Ready. Thank you, Judge.

5 (WHEREUPON, the exhibits and verdict form were
6 delivered to the jury to begin their deliberations
7 at approximately 11:34 a.m.)

8 THE COURT: All right. Y'all did a great job.
9 Everybody did a good job.

10 MR. COCHRAN: Thank you, Judge.

11 (WHEREUPON, Court's Exhibit Number 1 was marked for
12 identification only after which court stood at
13 recess awaiting the verdicts of the jury.)

14 THE COURT: Okay. I've got a question from the
15 jury that says, did the community center meet the
16 criteria to be considered a school or a park? And
17 obviously, I can't comment on the facts in any way. I
18 still think it's a matter of law for the Court to
19 address, but I think the best thing to do would be to
20 bring them back and read that portion of the charge that
21 describes what it is. I mean, it specifically says
22 playground or park.

23 MS. COMPTON: And Your Honor, can you explain
24 to them that there are no legal criteria for what
25 constitutes a playground or a park, that it's a factual

1 determination?

2 THE COURT: I will tell them it's a factual
3 determination for them. I'm not going to say there are
4 no legal criteria for it. I'm just not comfortable with
5 that.

6 MS. COMPTON: Okay.

7 THE COURT: What I will do is read to them that
8 the proximity statute addresses -- makes it unlawful to
9 distribute, sell, purchase or unlawfully possess with
10 intent to distribute while within one-half mile of the
11 grounds of a public or private elementary, middle or
12 secondary school, a public playground or park, a public
13 vocational trade school or technical education center or
14 a public or private college or university. And then I
15 will tell them that as the judge of the law, I cannot
16 comment on the facts, that the jury is the fact-finder
17 and limited to the evidence that was presented from the
18 witness stand and the documents that they have in
19 evidence. I think that's the best way to address it.
20 Anything further on that?

21 MR. COCHRAN: I mean, I guess, beyond that, I
22 mean, just like a clear, just say to them, you know, that
23 their question is for them to decide.

24 THE COURT: I agree.

25 MR. COCHRAN: Yeah. So ...

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1 THE COURT: Okay.

2 MR. WETMORE: Judge, one thought I had, do you
3 think we need to read through all the stuff about the
4 schools?

5 THE COURT: What about it?

6 MR. WETMORE: Do you think we need to read
7 through all that stuff or just talk about just the public
8 park or playground?

9 THE COURT: I mean, I don't -- you don't have
10 to skip that part and just say within one-half mile of
11 the grounds of a public or private elementary, middle or
12 second school, a public playground or park.

13 MR. COCHRAN: I would ask that the entire
14 charge be read.

15 THE COURT: Okay. He's entitled to have the
16 whole thing read. But then I will let them know that
17 that is their finding to make based on the testimony.

18 You know, juries always amaze me with their
19 questions.

20 So, all right, let's bring them in. Thank you.

21 (WHEREUPON, the jury entered the open court at
22 approximately 12:35 p.m.)

23 THE BAILIFF: All jurors are seated, Your
24 Honor.

25 THE COURT: Thank you, sir.

1 Ladies and gentlemen, I appreciate y'all's hard
2 work. I understand that lunch is on the way or should be
3 here shortly. And I appreciate the question that y'all
4 gave us that asks, does the community center meet the
5 criteria to be considered a school or a park? And the
6 answer to your question is I am not allowed to answer
7 your question because I'm the judge of the law and you
8 are the fact-finder. And as the fact-finder and the
9 jury, that is for you to determine based on the evidence
10 that you heard here in the courtroom from the witnesses
11 and that you may have with your consideration now in the
12 form of the evidence that was admitted. I will read you
13 that section from the statute again from the charge.

14 RECHARGE

15 BY THE COURT:

16 The State must prove beyond a reasonable doubt that
17 the Defendant distributed, sold, purchased, manufactured
18 or unlawfully possessed with intent to distribute -- and
19 then depending on which question you're on, it would be
20 the issue of marijuana if you're in the early parts of
21 that inquiry -- while in, on or within one-half mile of
22 the grounds of a public or private elementary, middle or
23 secondary school, a public playground or park, a public
24 vocational or trade or technical education center or a
25 public or private college or university.

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1 So again, I'm not allowed to answer the question for
2 you, but you reach your factual finding based on what you
3 heard here from the witnesses. Okay? Thank you.

4 (WHEREUPON, the jury exited the open court at
5 approximately 12:40 p.m.)

6 THE COURT: Thank you, sir. Could we mark this
7 as a Court's exhibit? Any objection from the State or
8 the Defense?

9 MS. COMPTON: None from the State, Your Honor.

10 MR. COCHRAN: No, Your Honor.

11 THE COURT: Thank you.

12 (WHEREUPON, Court's Exhibit Number 2 was marked for
13 identification only.)

14 THE COURT: There was specific testimony that
15 they could consider, so I'm not sure what the hangup is.
16 But they're thinking hard. At least they're taking their
17 job seriously, which I appreciate.

18 I will let y'all -- you know, I think I would
19 probably hang around. If they're at that point, they're
20 figuring some things out. So -- okay. Thank y'all.

21 (WHEREUPON, court stood at recess awaiting the
22 verdicts of the jury.)

23 THE COURT: Okay. It is my understanding that
24 the jury has reached a verdict. We're going to bring
25 them in and receive it. And I'll be happy to hear from

1 y'all if we need to do anything else after that. Okay?

2 Thank you.

3 All right. Yes, sir, bring them in.

4 (WHEREUPON, the jury entered the open court at
5 approximately 1:13 p.m.)

6 THE BAILIFF: All seated, Your Honor.

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

8 It's my understanding that the jury has reached a
9 verdict; is that correct?

10 THE FOREPERSON: We have, Your Honor.

11 THE COURT: Okay. I will get the verdict form
12 and we will be ready to proceed.

13 (WHEREUPON, the verdict form was handed up to the
14 Court.)

15 THE COURT: Thank you. Okay.

16 THE CLERK: The verdict form in the matter of
17 the State of South Carolina versus Jeffrey Leroy Simmons,
18 Defendant, we, the jury, by unanimous consent find the
19 Defendant, Jeffrey Leroy Simmons, as to the charge of
20 distribution of marijuana, guilty; as to the charge of
21 distribution of marijuana within the proximity of a
22 school or a park, guilty; as to the charge of possession
23 with intent to distribute cocaine base, guilty of the
24 lesser-included offense of possession of cocaine base.
25 Signed by the foreperson of the jury on April 20th, 2012.

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1 Ladies and gentlemen of the jury, if this is your
2 verdict, verdicts, please raise your right hand.

3 (WHEREUPON, all jurors' right hands were raised.)

4 THE CLERK: Thank you. Please let the record
5 reflect that all twelve jurors raised their right hand.

6 THE COURT: Thank you.

7 Anything from the Defense?

8 MR. COCHRAN: Just request to poll the jury,
9 Your Honor.

10 THE COURT: Okay. Let's poll the jury.

11 THE CLERK: Ladies and gentlemen of the jury,
12 what we're going to do now is called polling the jury.
13 When I call your juror number, if will you please raise
14 your hand. I will then acknowledge you, and you can put
15 your hand down. I will then ask you two questions.
16 Please reply to these questions verbally.

17 Juror number 19. Were those your verdicts?

18 THE JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes.

21 THE CLERK: Thank you. Be seated.

22 Juror number 49. Were those your verdicts?

23 THE JUROR: Yes.

24 THE CLERK: Are they still your verdicts?

25 THE JUROR: Yes.

1 THE CLERK: Thank you.

2 Juror number 58. Were those your verdicts?

3 THE JUROR: Yes, sir.

4 THE CLERK: Are they still your verdicts?

5 THE JUROR: Yes, sir.

6 THE CLERK: Thank you.

7 Juror number 62. Were those your verdicts?

8 THE JUROR: Yes, sir.

9 THE CLERK: Are they still your verdicts?

10 THE JUROR: Yes, sir.

11 THE CLERK: Thank you.

12 Juror number 87. Were those your verdicts?

13 THE JUROR: Yes.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes.

16 THE CLERK: Thank you. Juror number 89. Were
17 those your verdicts?

18 THE JUROR: Yes, sir.

19 THE COURT: Are they still your verdicts?

20 THE JUROR: Yes, sir.

21 THE CLERK: Thank you.

22 Juror number 157. Were those your verdicts?

23 THE JUROR: Yes.

24 THE CLERK: Are they still your verdicts?

25 THE JUROR: Yes.

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1 THE CLERK: Thank you.

2 Juror 158. Were those your verdicts?

3 THE JUROR: Yes.

4 THE CLERK: Are they still your verdicts?

5 THE JUROR: Yes, sir.

6 THE CLERK: Thank you.

7 Juror 175. Were those your verdicts?

8 THE JUROR: Yes.

9 THE CLERK: Are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: Thank you.

12 Juror 177. Were those your verdicts?

13 THE JUROR: Yes.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes.

16 THE CLERK: Thank you.

17 Juror number 193. Were those your verdicts?

18 THE JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes.

21 THE CLERK: Thank you.

22 Juror number 281. Were those your verdicts?

23 THE JUROR: Yes, sir.

24 THE CLERK: Are they still your verdicts?

25 THE JUROR: Yes.

1 THE CLERK: Thank you. Is there any juror
2 whose number I did not call? Please stand at this time.

3 (No response)

4 THE CLERK: Your Honor, the jury's been polled,
5 and the verdicts stand.

6 THE COURT: Thank you, sir.

7 Anything further?

8 MR. COCHRAN: No, Your Honor.

9 THE COURT: Anything from the State before I
10 hear from y'all on sentencing?

11 MS. COMPTON: No, Your Honor.

12 THE COURT: Okay. Okay. I'll be happy to hear
13 from you.

14 MS. COMPTON: Thank you, Your Honor. I would
15 just seek at this time to admit his criminal record on
16 the record.

17 THE COURT: Uh-huh (affirmative response).

18 MR. COCHRAN: I'm sorry. I didn't realize we
19 were at that point, Your Honor. I would just renew all
20 motions and objections from before.

21 THE COURT: Certainly. And I will respectfully
22 deny anything that remains to be denied, but I think your
23 record's protected.

24 MR. COCHRAN: Yes, Your Honor. Thank you.

25 THE COURT: Thank you. No problem at all.

State v. Jeffrey Leroy Simmons 2011-GS-10-6495, 6496, 6498, 6500
Verdicts and Sentencing

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1 All right.

2 MS. COMPTON: Thank you, Your Honor. We have a
3 1976 gambling, 1982 shoplifting, 1984 gambling, 1985
4 distribution of marijuana, 1985 possession of marijuana,
5 1986 distribution of marijuana, 1995 possession of crack,
6 1996 conspiracy to violate drug laws, 1997 possession of
7 crack, 1998 distribution of crack for which he received a
8 sentence of seven years, and 2008 distribution of
9 cocaine.

10 THE COURT: Hold on one second. I'm going to
11 get you to slow down.

12 MS. COMPTON: I'm sorry.

13 THE COURT: That's okay.

14 MS. COMPTON: Okay. I'll start with that 1998
15 distribution of cocaine base for which he received a
16 sentence of seven years. In 2008 a conviction for
17 distribution of cocaine for which he received a sentence
18 of five years, Your Honor.

19 THE COURT: Okay.

20 MS. COMPTON: And Your Honor, regarding
21 sentencing, the State -- our position is that you heard
22 the jury's finding as to the facts and as to his record.
23 Thank you.

24 THE COURT: Yes, ma'am.

25 MR. COCHRAN: Your Honor, would you like for us

1 to come forward for ---

2 THE COURT: You can do it from right there.

3 That's fine.

4 MR. COCHRAN: Well, Judge, you know, I don't
5 think that Mr. Simmons should be punished for going to
6 trial, obviously, which I know you wouldn't do. And that
7 there were deficiencies in the State's case that I think
8 were behind his decision to go to trial in this case.

9 It's my understanding that the possession or distribution
10 of marijuana third offense carries five to twenty years.

11 I would request that Your Honor at least take time
12 to consider the sentence in this case, give me some more
13 time for mitigation and hold it in abeyance. In the
14 alternative, I would just ask you to sentence him to five
15 years, Your Honor. This was a very small amount of
16 marijuana that was sold, and that this was -- there was
17 no additional marijuana found at all in his house which
18 was searched. It wasn't found in the place where he went
19 and got it from which they say they saw. And obviously,
20 this -- during my mitigation -- I'm doing this because
21 he's been found guilty, but we do, as his lawyers,
22 presume him innocent for appeal purposes, Your Honor. So
23 I don't want anything -- what I'm saying to be taken as
24 an admission of my client's guilt at this point. But ...

25 THE COURT: I don't think it would be.

State v. Jeffrey Leroy Simmons 2011-GS-10-6495, 6496, 6498, 6500
Verdicts and Sentencing

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1 MR. COCHRAN: Right.

2 THE COURT: I'm happy -- is there any -- I have
3 a motion to hold the sentencing in abeyance until he can
4 submit further mitigation. What's the State's position
5 on that?

6 MS. COMPTON: Your Honor, I mean, I think it's
7 very clear that sentencing immediately after a plea or a
8 verdict is certainly appropriate in this case, and I
9 don't think there's anything very complicated about the
10 mitigation, at least nothing that has come to my
11 attention that would cause any kind of further delay.

12 THE COURT: Well, what are you wanting to
13 gather?

14 MR. COCHRAN: Well, Your Honor, I mean, it's
15 typically not -- typically, it's a little bit more, that
16 I've been in, there's sentencing after the trial but not
17 in the presence of the jury. So I don't know. I just
18 feel kind of awkward with that. But ---

19 THE COURT: I've been -- done it both ways.

20 MR. COCHRAN: Yeah. It doesn't really bother
21 me. But the other thing is I think his record indicates,
22 you know, that he's had a problem with addiction. And
23 the gentleman who was admitted as an expert in this
24 trial, you know, talked a lot about addicts dealing and
25 that they do do things to make money. Obviously, with

1 that record, it's going to be kind of hard to get
2 legitimate employment, Your Honor. So if he is addicted
3 to crack, I would ask Your Honor to take that into
4 consideration for his actions.

5 Additionally, there was a co-defendant in this case
6 who received the exact same charge of distribution of
7 marijuana. Your Honor, I don't think that if Mr. Simmons
8 is guilty, I don't think he's a big-time drug dealer. I
9 don't think that the facts in this case reflect that.

10 He has a bad record. No question about it. But the
11 State did offer in this case to let him plead guilty to a
12 distribution first offense, which is zero to five and a
13 possession of crack first offense which is zero to three.
14 So he was facing a lot less time under their offer.

15 And I think there's a reason why they made that
16 offer. You know, he had the opportunity for probation
17 under that plea offer. And yes, he did reject it. And
18 maybe in hindsight, that might have been a foolish
19 decision. But when they're making accusations against
20 you and they're telling you things like they don't have
21 the video that they used to have, I mean, that can affect
22 a person's decision-making when they're in a very
23 difficult plea bargaining situation, Your Honor.

24 So we would respectfully request the minimum
25 sentence in this case of five years.

State v. Jeffrey Leroy Simmons 2011-GS-10-6495, 6496, 6498, 6500
Verdicts and Sentencing

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1 THE COURT: Okay. Anything further from the
2 State?

3 MS. COMPTON: Your Honor, simply that we don't
4 think the minimum would be appropriate in this case.

5 THE COURT: And I've given you the sentencing
6 sheets.

7 MS. COMPTON: Yes, ma'am. I have signed them
8 and given them to the Clerk.

9 MR. COCHRAN: And has Your Honor received --
10 just to make it a Court exhibit. Your Honor, the
11 certified copies made a Court exhibit. I don't know if
12 they have that or not. The certified convictions.

13 THE COURT: I'll allow them to admit a copy. I
14 do not have a certified copy.

15 MR. COCHRAN: Okay.

16 MS. COMPTON: Your Honor, I have certified
17 copies here, and I would enter those as Court exhibits.

18 THE COURT: Certainly.

19 MR. COCHRAN: And Your Honor, the other thing
20 that I would like to point out is that one of those
21 distributions is over ten years old. And he's -- you
22 know, he's gotten prison time before. And a lot of times
23 judges say, you know, you should have learned your lesson
24 when you went to prison the first time, but -- and in a
25 way, you know, doing long prison sentences makes life

1 afterwards pretty difficult a lot of times. And you know
2 ...

3 THE COURT: Well, a lot of judges say, well,
4 you went for seven years before, and that hasn't seemed
5 to have changed the behavior at all.

6 MR. COCHRAN: Exactly.

7 THE COURT: There have been multiple probation
8 violations and a parole revocation. You know, I've
9 studied the record to look at gaps of when there hasn't
10 been drug use or drug really dealing. And the gaps I'm
11 finding are when he's gone.

12 MR. COCHRAN: Uh-huh (affirmative).

13 THE COURT: And that is what I'm having some
14 trouble with. I mean, I think y'all know I struggled at
15 the beginning -- and he certainly has a constitutional
16 right to a jury trial. No question about it. And we put
17 all that on the record. But they -- the State had made
18 an extremely generous plea offer. And that was a concern
19 to the Court.

20 MR. COCHRAN: Yes, Your Honor.

21 THE COURT: But we're here now, and the jury
22 has reached its verdict. So his sentence on the charge
23 of distribution of marijuana -- and my understanding is
24 that it's a third offense -- is ten years. The sentence
25 on distribution of marijuana within the proximity of a

State v. Jeffrey Leroy Simmons 2011-GS-10-6495, 6496, 6498, 6500
Verdicts and Sentencing

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1 school or park is eight years. The sentence on the
2 lesser-included offense of possession of cocaine base is
3 eight years. This will all run concurrent, and credit
4 will be given for time served. And that will be the
5 order of the Court..

6 MR. COCHRAN: Thank you, Your Honor.

7 THE COURT: Yes, sir, thank you.

8 MS. COMPTON: And I actually have these to hand
9 up to the court reporter, the certified convictions.

10 THE COURT: Let's get that marked. Okay.

11 (WHEREUPON, Court's Exhibit Number 3 was marked for
12 identification only.)

13 THE COURT: Ladies and gentlemen, thank you so
14 much for your time and your kind attention. My
15 understanding is lunch did arrive just as you reached
16 your verdict, so please feel free to stay and eat your
17 lunch or take it with you. But I do want to say I
18 appreciate your service to Charleston County. Have a
19 nice weekend. Thank you.

20 (WHEREUPON, the jury exited the open courtroom.)

21 THE COURT: Y'all did a great job, everyone.

22 MR. COCHRAN: Thank you, Judge.

23 (WHEREUPON, court stood at recess in this case.)

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Ninth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Charleston County, South
9 Carolina, on the 19th and 20th days of April 2012.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 July 12, 2012

15

16

Renee H. Tollison

17

Circuit Court Reporter

CTN20110603836

DOCKET NO. 2011GS1006495

WITNESSES

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2011021996

COURT OF GENERAL SESSIONS

October Term 2011

ARREST WARRANT NUMBER

M611944

DATE OF ARREST

June 16, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

OCT 04 2011

Date:

VERDICT

Guilty

Foreperson of Petit Jury

4/20/12

Date:

INDICT

THE STATE

vs.

JEFFREY LEROY SIMMONS

DOB: 1957-07-28

B/M

Indictment for

Distribution Of Marijuana

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

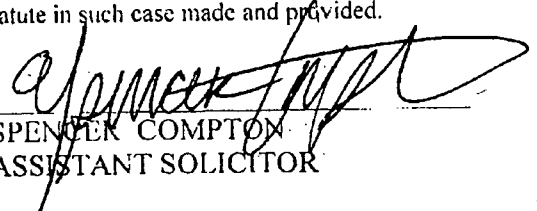
INDICTMENT

At a Court of General Sessions, convened on October 3, 2011 the Grand Jurors of Charleston County present upon their oath:

Distribution Of Marijuana

That in Charleston County, South Carolina, on or about June 15, 2011, the Defendant, JEFFREY LEROY SIMMONS, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: Marijuana; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


SPENCER COMPTON
ASSISTANT SOLICITOR

CTN20110603836

DOCKET NO. 2011GS1006496

WITNESSES

The State of South Carolina

North Charleston Police Department

County of Charleston

AGENCY CASE NUMBER

COURT OF GENERAL SESSIONS

2011021996

October Term 2011

ARREST WARRANT NUMBER

M611945

DATE OF ARREST

June 16, 2011

ACTION OF GRAND JURY

THE STATE

vs.

JEFFREY LEROY SIMMONS

DOB: 1957-07-28

B/M

TRUE BILL

Foreperson of Grand Jury

OCT 04 2011

Indictment for

Distribution Of Marijuana Within
Proximity Of A School

VERDICT

Guilty

Foreperson of Petit Jury

Date: 9/20/12

INDICT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

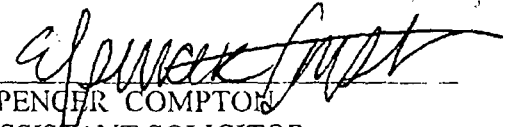
INDICTMENT

At a Court of General Sessions, convened on October 3, 2011 the Grand Jurors of Charleston County present upon their oath:

Distribution Of Marijuana Within Proximity Of A School

That in Charleston County, South Carolina, on or about June 15, 2011, the Defendant, JEFFREY-LEROY SIMMONS, knowingly and unlawfully did distribute, sell, purchase, manufacture, or possess with intent to distribute Marijuana, a controlled substance, within a one-half mile radius of the grounds of Persephone Moultrie Community Center located at 2001 Robertson Avenue, North Charleston, South Carolina; all in violation of Section 44-53-445 of the South Carolina Code of Laws (1976) as amended:

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


SPENCER COMPTON
ASSISTANT SOLICITOR

CTN20110603836

DOCKET NO. 2011GS1006498

WITNESSES

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

COURT OF GENERAL SESSIONS

2011021996

October Term 2011

ARREST WARRANT NUMBER

M611946

DATE OF ARREST

June 16, 2011

ACTION OF GRAND JURY

THE STATE

vs.

JEFFREY LEROY SIMMONS

DOB: 1957-07-28

B/M

TRUE BILLForeperson of Grand Jury OCT 04 2011
Date:

VERDICT

Guilty of the lesser included
offense of Possession of CocaineForeperson of Petit Jury 4/20/12
Date:

INDICT

Indictment for

Possession With Intent To Distribute
Cocaine Base

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

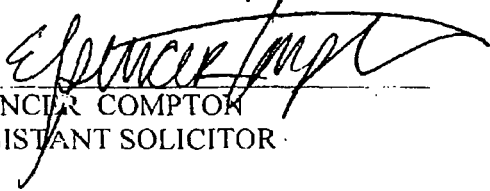
INDICTMENT

At a Court of General Sessions, convened on October 3, 2011 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent To Distribute Cocaine Base

That in Charleston County, South Carolina, on or about June 15, 2011, the Defendant, JEFFREY LEROY SIMMONS, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to distribute, dispense, or deliver Cocaine Base, all in violation of Section 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


SPENCER COMPTON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF CHARLESTON) INDICTMENTS: 2011-GS-10-6495
) 2011-GS-10-6496
) 2011-GS-10-6498

STATE OF SOUTH CAROLINA) 2011-GS-10-6500
)

vs.)

Verdict Form

JEFFREY LEROY SIMMONS,)

Defendant.)

We, the jury, by unanimous consent, find the Defendant, Jeffrey Leroy Simmons:

1. As to the charge of Distribution of Marijuana:

_____ Not Guilty

X Guilty

2. As to the charge of Distribution of Marijuana within the Proximity of a School or Park:

_____ Not Guilty

X Guilty

3. As to the charge of Possession with Intent to Distribute Cocaine Base:

_____ Not Guilty

X Guilty of the Lesser Included Offense of Possession of Cocaine Base

_____ Guilty

With respect to Question 3, if you find the Defendant "Not Guilty" or "Guilty of the Lesser Included Offense of Possession of Cocaine Base," please stop deliberating, have the foreperson sign and date the Verdict Form, and alert the Bailiff that you have reached a verdict. If you find the Defendant "Guilty" please proceed to Question 4.

4. As to the charge of Possession with Intent to Distribute Cocaine Base within the Proximity of a School or Park:

_____ Not Guilty

_____ Guilty

Charleston, South Carolina
April 20, 2012

David Crutehatch 58
Foreperson

COUNTY OF Charleston
 STATE VS.
Jeffrey Leroy Simmons

AKA: _____
 Race: BLACK Sex: M Age: 54
 DOB: 07-28-1957 SS#: 250-13-4308
 Address: 5831 Long Leaf Dr
 City, State, Zip: Charleston, SC 29418

DL#: _____ SID#: SC00114227

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: PWID/Dist. of Marijuana or other Sch. I, II, III drug, 3rd Offense

INDICTMENT/CASE#: 2011GS1006495

A/W#: M611944

Date of Offense: 6/15/2011

S.C. Code §: 44-53-0370(b)(2)

CDR Code #: 0186

SENTENCE SHEET

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 90228
 Compton, Spencer SC Bar# _____ Defendant

[Signature] Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court-Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>8.40</u>
TOTAL		\$ <u>288.40</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (03/2011)

Presiding Judge

Judge Code: _____

Sentence Date: April 20, 2012

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
STATE VS.
Jeffrey Leroy Simmons
AKA:
Race: BLACK Sex: M Age: 54
DOB: 07-28-1957 SS#: 250-13-4308
Address: 5831 Long Leaf Dr
City, State, Zip: Charleston, SC 29418
DL #: SC00114227

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1006496 Ms Prox
A/W#: M611945
Date of Offense: 6/15/2011
S.C. Code §: 44-53-0445(A)
CDR Code #: 0107

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Distribute, sell, manuf. or pwid, of cont. sub., near school

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0445(A) of the S.C. Code of Laws, bearing CDR Code # 0107
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) | §17-25-45

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 90228
Compton, Spencer SC Bar# Defendant Attorney for Defendant SC Bar#

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

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$8.40
TOTAL	\$288.40

 days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund.
Other:

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

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: Shir Viree Henke
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2143
Sentence Date: April 20, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Jeffrey Leroy Simmons

AKA:
 Race: BLACK Sex: M Age: 54
 DOB: 07-28-1957 SS#: 250-13-4308
 Address: 5831 Long Leaf Dr
 City, State, Zip: Charleston, SC 29418
 DL #: SC00114227

INDICTMENT/CASE#: 2011GS1006498
 A/W#: M611946
 Date of Offense: 6/15/2011
 S.C. Code §: 44-53-0370(b)(1)
 CDR Code #: 0183

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Possession of Cocaine Base/Meth, 3rd offense

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code # 3016

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature]
 Compton, Spencer

[Signature]
 SC Bar# Defendant

Attorney for Defendant SC Bar#

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 47.9 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150 \$ <u>150.00</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
Proviso 90.5 (SCCA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ <u>8.40</u>
TOTAL	\$ <u>288.40</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

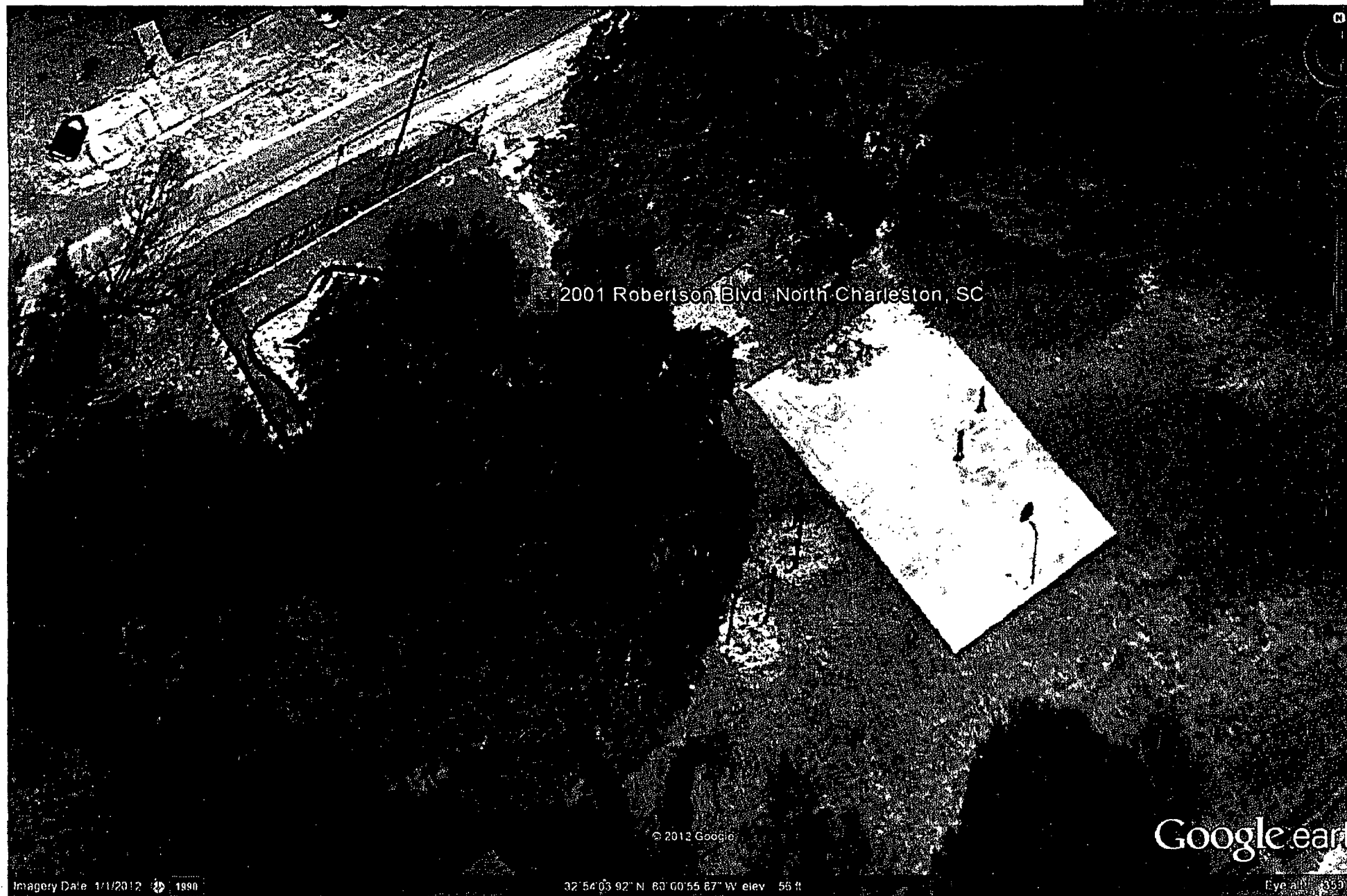
SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
April 20, 2012



2001 Robertson Blvd North Charleston, SC

© 2012 Google

Google earth

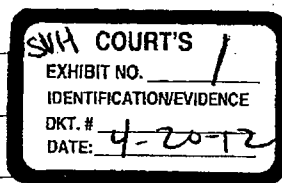
Imagery Date 1/1/2012 1990

32° 54' 03.92" N 80° 00' 55.87" W elev 55 ft

Eye alt 359 ft

Does
~~Is~~ the community center
meet the criteria to be
considered a school or park?

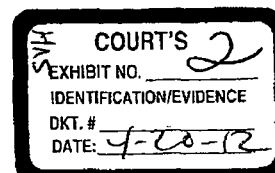
David Crubler
58



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
	)	INDICTMENTS: 2011-GS-10-6495
	)	2011-GS-10-6496
STATE OF SOUTH CAROLINA	)	2011-GS-10-6498
	)	2011-GS-10-6500
vs.	)	
JEFFREY LEROY SIMMONS,	)	CHARGE
Defendant.	)	

LADIES AND GENTLEMEN OF THE JURY, YOU HAVE HEARD THE TESTIMONY, EVIDENCE AND ARGUMENTS OF THE STATE AND THE DEFENDANT. I WILL NOW EXPLAIN ~~TO YOU~~ THE LAW THAT APPLIES TO THIS CASE. UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE FINDERS OF FACT IN THIS CASE. I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR EVEN TO EXPRESS ANY OPINION I MIGHT HAVE AS TO THEM. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, THEN, IT IS YOUR DUTY TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, TOGETHER WITH ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD.



I HAVE THE ADDITIONAL DUTY TO CHARGE YOU ON THE LAW APPLICABLE TO THIS CASE, AND AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU, AND THEN REACH YOUR VERDICT. FINALLY, I CHARGE YOU IN THIS REGARD THAT YOU SHOULD NOT BE CONCERNED WITH WHAT YOU THINK THE LAW OUGHT TO BE, BUT WHAT I CHARGE YOU THE LAW IS.

YOU ARE ALSO THE JUDGES, THE SOLE JUDGES, OF THE CREDIBILITY, THAT IS THE BELIEVABILITY, OF THE WITNESSES WHO HAVE TESTIFIED AND THE EVIDENCE IN THIS CASE. IN PASSING UPON THE CREDIBILITY, YOU MAY TAKE INTO CONSIDERATION MANY THINGS, SUCH AS:

- (1) THE Demeanor, OR MANNER OF TESTIFYING;
- (2) WHETHER THE WITNESS HAD REASON TO BE BIASED OR PREJUDICED;
- (3) WHETHER A WITNESS' TESTIMONY WAS CONTRADICTED, ON THE ONE HAND, OR SUPPORTED AND CORROBORATED, ON THE OTHER HAND.

YOU MAY BELIEVE A SMALL PORTION OF A WITNESS' TESTIMONY AND DISREGARD THE LARGER - OR VICE VERSA. YOU MAY BELIEVE ONE WITNESS AGAINST MANY, OR MANY AGAINST ONE. ALL OF THESE THINGS YOU WILL CONSIDER, BEARING IN MIND THAT YOU SHOULD GIVE THE DEFENDANT THE BENEFIT OF ANY REASONABLE DOUBT. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS

FOR WITNESSES WE CALL "EXPERT WITNESSES". A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTERS IN THE AREAS IN WHICH THE WITNESS HAS BEEN QUALIFIED AS AN EXPERT, AND SUCH A WITNESS MAY ALSO STATE THE REASONS FOR ANY SUCH OPINIONS.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS'S TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS NOT CONTRADICTED.

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND

CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

WHEN IT IS ALLEGED THAT A PARTY HAS FAILED TO PRESERVE MATERIAL EVIDENCE FOR TRIAL, AN INFERENCE MAY BE DRAWN BY THE FACTFINDER THAT THE EVIDENCE THAT WAS LOST OR DESTROYED BY THAT PARTY WOULD HAVE BEEN ADVERSE TO THAT PARTY.

THE FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THE INDICTMENTS ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGES MADE AGAINST THE DEFENDANT. AN INDICTMENT IS THE FORMAL DOCUMENT BY WHICH A CASE IS BROUGHT INTO THIS COURT.

THE INDICTMENTS IN THIS CASE CHARGE ONE COUNT OF DISTRIBUTION OF MARIJUNANA, ONE COUNT OF DISTRIBUTION OF MARIJUNANA WITHIN THE PROXIMITY OF A SCHOOL, ONE COUNT OF POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE, AND ONE COUNT OF POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE WITHIN THE PROXIMITY OF A SCHOOL.

THE DEFENDANT HAS PLED NOT GUILTY TO THE CHARGES IN THESE INDICTMENTS, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THAT THE DEFENDANT IS GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO IT, UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON SOME OR ALL OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF "GUILTY," "GUILTY OF THE LESSER INCLUDED OFFENSE," OR "NOT GUILTY" AS TO EACH INDICTMENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE NOT GUILTY OF THE CRIMES FOR WHICH THE INDICTMENTS WERE ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE STATE MUST PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SO, WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST, SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH IN THE CASE HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT MUST THEREFORE BE PROOF OF SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON WOULD NOT HESITATE TO RELY AND ACT UPON IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS.

PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE DESCRIBED AS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. NOW, THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND HIM GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY OR GUILTY OF A LESSER INCLUDED OFFENSE, IF APPLICABLE.

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS

RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

THE DEFENDANT IS CHARGED WITH DISTRIBUTION OF MARIJUANA. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DISTRIBUTED MARIJUANA.

"TO DISTRIBUTE" MEANS TO DELIVER OR TO ACTUALLY, CONSTRUCTIVELY, OR ATTEMPT TO TRANSFER A DRUG, OTHER THAN BY LEGALLY ADMINISTERING OR DISPENSING IT. "TO DELIVER" MEANS TO ACTUALLY, CONSTRUCTIVELY, OR ATTEMPT TO TRANSFER A DRUG.

A TRANSFER CAN INVOLVE AN EXCHANGE FOR MONEY, A BARTER, OR A GIFT. THERE DOES NOT HAVE TO BE ANYTHING GIVEN IN EXCHANGE FOR THE DRUGS FOR A TRANSFER TO CONSTITUTE DISTRIBUTION.

THE DEFENDANT IS CHARGED WITH DISTRIBUTION OF MARIJUANA WITHIN THE PROXIMITY OF A SCHOOL OR PARK. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DISTRIBUTED, SOLD, PURCHASED, MANUFACTURED, OR UNLAWFULLY POSSESSED WITH INTENT TO DISTRIBUTE MARIJUANA WHILE IN, ON, OR WITHIN ONE-HALF MILE OF THE

GROUNDS OF A PUBLIC OR PRIVATE ELEMENTARY, MIDDLE, OR SECONDARY
 SCHOOL; A PUBLIC PLAYGROUND OR PARK; A PUBLIC VOCATIONAL OR TRADE
 SCHOOL OR TECHNICAL EDUCATION CENTER; OR A PUBLIC OR PRIVATE
 COLLEGE OR UNIVERSITY.

THE DEFENDANT IS CHARGED WITH POSSESSION WITH INTENT TO
 DISTRIBUTE COCAINE BASE. THE STATE MUST PROVE BEYOND A REASONABLE
 DOUBT THAT THE DEFENDANT POSSESSED COCAINE BASE, ALSO KNOWN AS
 CRACK COCAINE, WITH THE INTENT TO DISTRIBUTE IT.

TO PROVE POSSESSION, THE STATE MUST PROVE BEYOND A REASONABLE
 DOUBT THAT THE DEFENDANT HAD BOTH THE POWER AND THE INTENT TO
 CONTROL THE DISPOSITION OR USE OF THE COCAINE BASE. POSSESSION MAY
 BE EITHER ACTUAL OR CONSTRUCTIVE.

INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT
 AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND
 REASONABLY INFER INTENT.

IN DETERMINING WHETHER THE DEFENDANT HAD THE INTENT TO
 DISTRIBUTE CRACK COCAINE, YOU MAY CONSIDER THE CIRCUMSTANCES
 SURROUNDING THE DEFENDANT'S ALLEGED POSSESSION. YOU MAY CONSIDER
 THE AMOUNT OF THE SUBSTANCE ALLEGED TO HAVE BEEN POSSESSED, THE
 MANNER IN WHICH IT WAS ALLEGEDLY POSSESSED, THE PLACE WHERE IT WAS
 ALLEGEDLY POSSESSED, AND OTHER FACTORS WHICH YOU CONSIDER TO BE

IMPORTANT. YOU MUST FIND THAT THE DEFENDANT DID NOT INTEND TO HAVE THE COCAINE SOLELY FOR HIS OWN USE.

POSSESSION OF MORE THAN 1 GRAM OF CRACK COCAINE CREATES AN INFERENCE THAT THE DEFENDANT POSSESSED THE CRACK COCAINE WITH INTENT TO DISTRIBUTE IT. THIS INFERENCE DOES NOT RELIEVE THE STATE OF PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD THE INTENT TO DISTRIBUTE. IT IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, ALONG WITH THE OTHER EVIDENCE IN THE CASE, AND TO BE GIVEN THE WEIGHT YOU DECIDE IT SHOULD HAVE. HOWEVER, A CONVICTION OF POSSESSION WITH INTENT TO DISTRIBUTE DOES NOT HINGE UPON THE AMOUNT INVOLVED. FURTHERMORE, THE STATUTE DOES NOT MANDATE A REVERSE INFERENCE OR PRESUMPTION FOR AMOUNTS LESS THAN ONE GRAM. POSSESSION OF ANY AMOUNT OF CONTROLLED SUBSTANCE COUPLED WITH SUFFICIENT INDICIA OF INTENT TO DISTRIBUTE IT WILL SUPPORT A CONVICTION FOR POSSESSION WITH INTENT TO DISTRIBUTE.

IF YOU FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF SIMPLE POSSESSION OF CRACK COCAINE.

SIMPLE POSSESSION DOES NOT REQUIRE AN INTENT TO DISTRIBUTE. TO PROVE SIMPLE POSSESSION, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KNOWINGLY OR INTENTIONALLY POSSESSED

CRACK COCAINE. KNOWINGLY MEANS WITH KNOWLEDGE, CONSCIOUSLY, NOT ACCIDENTALLY. INTENTIONALLY MEANS WILLFULLY; INTENDING THE RESULT WHICH ACTUALLY OCCURS; NOT ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.

THE DEFENDANT IS CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE WITHIN THE PROXIMITY OF A SCHOOL OR PARK.

THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE *defendant*

SPM ~~DEFENDANT DISTRIBUTED, SOLD, PURCHASED, MANUFACTURED, OR~~

UNLAWFULLY POSSESSED WITH INTENT TO DISTRIBUTE COCAINE WHILE IN, ON, OR WITHIN ONE-HALF MILE OF THE GROUNDS OF A PUBLIC OR PRIVATE ELEMENTARY, MIDDLE, OR SECONDARY SCHOOL; A PUBLIC PLAYGROUND OR PARK; A PUBLIC VOCATIONAL OR TRADE SCHOOL OR TECHNICAL EDUCATION CENTER; OR A PUBLIC OR PRIVATE COLLEGE OR UNIVERSITY.

CONCLUSION

YOU HAVE BEEN SELECTED BY BOTH THE STATE AND THE DEFENDANT TO BE FAIR AND IMPARTIAL JURORS. IT IS YOUR DUTY THEN IN YOUR DELIBERATIONS TO DETERMINE THE TRUTH IN THIS CASE, GIVING THE DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT ON EACH AND EVERY ISSUE. AND FROM THE FACTS WHICH YOU DETERMINE TO BE TRUE, YOU TAKE AND APPLY THE LAW WHICH I HAVE JUST GIVEN YOU AND THUS ARRIVE AT A VERDICT WHICH SPEAKS THE TRUTH OF THIS CASE. YOU MUST CONSIDER THE

INSTRUCTIONS AS A WHOLE AND NOT FOLLOW SOME AND IGNORE OTHERS.

YOU HAVE HEARD THE EVIDENCE, AND NOW YOU HAVE HEARD THE LAW. WHATEVER YOUR VERDICT YOUR FOREPERSON WILL INDICATE IT BY COMPLETING THE VERDICT FORM. YOUR FOREPERSON WILL THEN SIGN AND DATE THE VERDICT FORM.

REMEMBER THAT ALTHOUGH THE FOREPERSON IS THE ONLY JUROR WHO WRITES THE VERDICT, IT IS NOT HIS ALONE. THE VERDICT MUST BE A UNANIMOUS VERDICT. YOUR FOREPERSON IS NOT AUTHORIZED TO WRITE THE VERDICT UNTIL ALL OF YOU HAVE AGREED AS TO WHAT THE VERDICT SHOULD BE.

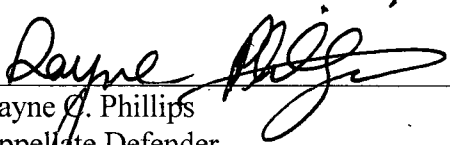
NOW LADIES AND GENTLEMEN, I AM GOING TO SEND YOU TO YOUR JURY ROOM, BUT DO NOT BEGIN TO DISCUSS THE CASE UNTIL YOU HAVE RECEIVED A COPY OF THIS JURY CHARGE, THE VERDICT FORM, AND THE EXHIBITS. ONCE YOU RECEIVE THEM, THAT WILL BE YOUR SIGNAL TO BEGIN YOUR DELIBERATIONS.

ONCE YOU BEGIN YOUR DELIBERATIONS, YOU WILL DELIBERATE UNTIL YOU HAVE REACHED A VERDICT, AT WHICH TIME YOU WILL KNOCK ON THE DOOR, ADVISE THE BAILIFF, AND WE WILL BRING YOU OUT TO RECEIVE YOUR VERDICT.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

This 21st day of March, 2013


Dayne C. Phillips
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

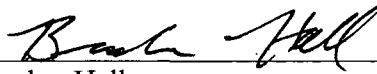
JEFFREY LEROY SIMMONS,

APPELLANT

Appellate Case No.2012-212560

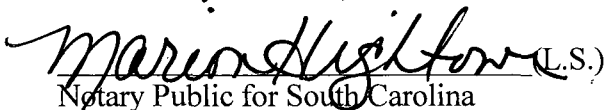
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Mr. Jeffrey Leroy Simmons, #250532 at Walden Correctional Institution, 4340 Broad River Road, Columbia, SC 29210, this 21st day of March, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 21st day of March, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022

RECEIVED
MAR 21 2013
SC COURT OF APPEALS