

ORIGINAL

DECEMBER 10 2013
SC COM. APPELLATE

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS J. MAYES,

APPELLANT

APPELLATE CASE NO. 2012-213144

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

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

JENNIFER ELLIS ROBERTS
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorney for Appellant

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT (dated October 1 and 2, 2012)	1
MOTION TO SUPPRESS PRESENTED BY MR. FLOYD	8
TESTIMONY	
ERIC KIRKLAND	
Direct examination by Mr. Ross	9
Recross examination by Mr. Floyd	24
MOTION TO SUPPRESS PRESENTED BY MR. FLOYD	28
TESTIMONY	
ERIC KIRKLAND	
Further recross examination by Mr. Floyd	29
CANDY KYZER	
Direct examination by Mr. Ross	32
OPENING STATEMENT BY MR. ROSS	40
OPENING STATEMENT BY MR. FLOYD	48
TESTIMONY	
BILLY RAY LANEY	
Direct examination by Mr. Ross	50
RONNIE HINSON	
Direct examination by Mr. Ross	61
DENNIS TRACY	
Direct examination by Mr. Ross	62
Cross examination by Mr. Floyd	67
PAIGE BARNES	
Direct examination by Mr. Ross	68
JACKSON V. DENNO HEARING	70

TESTIMONY

ERIC KIRKLAND	
Direct examination by Mr. Ross	73
CANDY KYZER	
Direct examination by Mr. Ross	84
Cross examination by Mr. Floyd	99
MARGARET ELIZABETH HARMON	
Direct examination by Mr. Ross	101
Cross examination by Mr. Floyd	107
EMILY HOMER CONRAD	
Direct examination by Mr. Ross	108
Cross examination by Mr. Floyd	124
COLLOQUY REGARDING DRUG KIT	129
MOTION FOR DIRECTED VERDICT	141
RENEWAL OF MOTIONS BY MR. FLOYD	142
CLOSING ARGUMENT BY MR. ROSS	151
CLOSING ARGUMENT BY MR. FLOYD	166
CHARGE ON THE LAW	174
VERDICT	210
MOTION FOR A NEW TRIAL BY MR. FLOYD	212
SENTENCING	232
INDICTMENTS	235
CERTIFICATE OF COUNSEL	239

I N D E X

	PAGE NO.
<u>Monday, October 1, 2012</u>	
Exhibit List	6
Jury qualification	8
Jury voir dire	11
Jury selection	16
Motions	27
Testimony of Witnesses	
Eric Kirkland (In-Camera)	
Direct	30
Cross	50
Redirect	62
Recross	67
Charles E. Walker II (In-Camera)	
Direct	68
Cross	71
Redirect	74
Eric Kirkland (In-Camera)	
Direct	78
Cross	82
Redirect	89
Recross	90
Motions	92

Eric Kirkland (In-Camera)

 Direct. 109

 Cross 114

Motions 119

Candy Kyzer (In-Camera)

 Direct. 124

 Cross 133

Jury sworn. 154

Opening statements

 By the State 162

 By the Defense 169

Testimony of witnesses

 Billy Ray Laney

 Direct. 172

 Cross 194

 Redirect. 198

 Ronnie Hinson

 Direct. 199

 Cross 206

 Redirect. 207

 Recross 207

 Dennis Tracy

 Direct. 208

 Cross 216

 Redirect. 220

Recross	220
Paige Barnes	
Direct.	223
Cross	230
<u>Tuesday, October 2, 2012</u>	
Motions	245
Eric Kirkland	
Direct.	254
Cross	278
Motions	285
Eric Kirkland (continued)	
Redirect.	292
Shirley Cornelius	
Direct.	295
Candy Kyzer	
Direct.	299
Cross	316
Redirect.	327
Recross	329
Margaret Elizabeth Harmon	
Direct.	333
Cross	339
Emily Homer Conrad	
Direct.	346

Cross 361

Motions 369

Emily Homer (continued)

 Redirect. 381

 Recross 384

State rests 387

Motions 387

Defense rests 416

Closing Arguments

 By the State 417

 By the Defense 440

Charge of the Court 440

Verdict of the Jury 479

Sentence of the Court 506

Court Reporter's Certification. 509

E X H I B I T S

PAGE NO.

State's Exhibit Number One, Aerial Photo. 182

State's Exhibit Number Two, Aerial Photo
 Close-up 1821

State's Exhibit Number Three, Floor Plan Layout 182

State's Exhibit Number Four, Photo. 188

State's Exhibit Number Five, Photo. 188

State's Exhibit Number Six, Photo 188

State's Exhibit Number Seven, Photo 188

State's Exhibit Number Eight, Photo 188

State's Exhibit Number Nine, Photo. 188

State's Exhibit Number Ten, Photo 202

State's Exhibit Number Eleven, Photo. 202

State's Exhibit Number Twelve, Photo. 213

State's Exhibit Number Thirteen, Rifle. 270

State's Exhibit Number Fourteen, DMV Address
 History 289

State's Exhibit Number Fifteen, DMV Photo 290

State's Exhibit Number Sixteen, Best Kit. 380

State's Exhibit Number Seventeen, Plastic Bag of
 Plastic Bags. 315

State's Exhibit Number Eighteen, Plastic Bag,
 Scales. 315
 State's Exhibit Number Nineteen, Forensic Report 380

FOR THE COURT:

Court's Exhibit Number One, Search Warrant

Court's Exhibit Number Two, Search Warrant
 Original, Solicitor's Copy

Court's Exhibit Number Three, Handwritten CI
 Statement

Court's Exhibit Number Four, Handwritten CI
 Statement, Original

Court's Exhibit Number Five, Form by Agent
 Kirkland re buy

Court's Exhibit Number Six, Jury Note

Court's Exhibit Number Seven, Indictment Aiken

Court's Exhibit Number Eight, Indictment Lexington

1 MR. FLOYD: Your Honor, at this time we
2 would move to suppress on the grounds that the
3 search warrant was issued based upon misleading and
4 incomplete information that was provided to the
5 issuing judge at the time.

6 I think under the trial of State v. Jones
7 we're entitled to have a hearing on that and even a
8 suppression of the evidence if the Court deems that
9 it was issued based upon incomplete or misleading
10 evidence.

11 THE COURT: All right. Basically, then,
12 the lack of probable cause for the issuance of the
13 warrant?

14 MR. FLOYD: That would be correct, Your
15 Honor.

16 THE COURT: Okay. All right, that being
17 the case, Mr. Ross, you may call your witnesses.

18 MR. ROSS: The State calls Eric Kirkland
19 to the stand.

20 THE COURT: All right, come around,
21 please.

22 (The witness was sworn.)

23 CLERK OF COURT: If you'll have a seat and
24 state your name for the record, please.

25 MR. ROSS: And, Your Honor, I'm going to

1 have a certified, true copy of the search warrant
2 and the affidavit in support of the search warrant
3 marked as a Court exhibit for Your Honor.

4 THE COURT: All right, Court Exhibit
5 Number One would be the affidavit for the search
6 warrant and the search warrant.

7 MR. KIRKLAND: My name is Detective --

8 COURT REPORTER: Hold on, please.

9 THE COURT: Wait just a minute.

10 (Court's Exhibit Number
11 One, Affidavit for Search Warrant and Search
12 Warrant, were marked for identification purposes.)

13 THE COURT: Thank you, sir.

14 All right, Mr. Ross, you may proceed.

15 ERIC KIRKLAND, having first been duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION (IN-CAMERA)

18 Q Agent Kirkland, do you have a copy of the
19 search warrant that you obtained in this case?

20 A I do, sir.

21 Q Is it over here sitting at the bar?

22 A Yes, sir. Can you bring it to me, please?

23 Yes, I do, yes. Thank you.

24 Q Agent Kirkland, how long have you been a
25 narcotics officer?

1 A Approximately eight years, sir.

2 Q And did you obtain a search warrant in
3 this case against Mr. Mayes?

4 A I did.

5 Q And can you tell me about the
6 investigation that led to the issuance of that
7 search warrant?

8 A I can. On or about 12/1 of 2010, I
9 received an anonymous complaint of a possible drug
10 activity at a location, Highway, in the
11 Pelion area of Lexington County, South Carolina.

12 The call actually stated that a black male
13 by the name of -- let me turn to it -- by the name
14 of Dougie and gave a description, stated that a
15 person lived there, that there was constant traffic
16 in and out of the residence, vehicles pull in, stay
17 a few minutes, and then leave.

18 There was also information given that a
19 white female, a child, and another individual,
20 possibly a brother, were all at that residence. On
21 12/20, I was contacted by a confidential and
22 reliable informant that did verify that information
23 to be true.

24 Q He verified that Douglas Mayes lived at
25 the address?

Eric Kirkland - Direct In-Camera

32

1 A I did, sir. I actually verified that
2 through the Department of Motor Vehicles.

3 Q Did he -- you verified that?

4 A Yes, sir, we did.

5 Q Did the confidential informant verify
6 that, as well?

7 A He did. Yes, he did.

8 Q Did he verify the drug activity occurring
9 at that residence?

10 A He did, sir.

11 Q Okay. You said he was reliable?

12 A Yes.

13 Q Had he worked for you in the past?

14 A Many times in the past.

15 Q And did his information and assistance
16 lead to arrests and prosecutions in the past?

17 A It did.

18 Q Okay. What did you do next?

19 A Well, the next thing we did was actually
20 orchestrate what we call a controlled purchase using
21 a confidential informant -- the individual or the
22 target, as we call it, sir.

23 Q Okay. What is a controlled purchase?

24 A A controlled purchase is when a narcotic
25 investigator actually sets up a controlled purchase

1 with a confidential informant. We meet with the
2 informant prior to discussion of how much before the
3 purchase can be made, number one.

4 Number two, the confidential informant is
5 searched before and after the controlled purchase.
6 What we're looking for is drugs, weapons, and money
7 to ensure that they don't go in and make a purchase
8 for themselves.

9 The next thing that is done, they are
10 given documented money, and they're equipped with a
11 recording device so that we can listen and, if we're
12 lucky, visually see the controlled purchase as it
13 happens in real time.

14 Sometimes we're lucky. A phone call is
15 made to the target, and we get to record that
16 conversation. From there, we actually follow or we
17 drive the confidential informant as close to the
18 location as we can.

19 They go in, and we try to, if at all
20 possible, visually watch the confidential informant
21 go into the location. Once the controlled purchase
22 is made, once it's made, we meet back up with the
23 confidential informant.

24 Whatever he or she purchased is actually
25 turned over to us. We immediately do another search

Eric Kirkland - Direct In-Camera

34

1 to make sure that they don't have any drugs, money,
2 or weapons on them. We actually take that illegal
3 substance, put it in what we call a Best kit and
4 seal it.

5 And from there, we actually get a
6 statement, and we actually -- if they're paid, we
7 get them to actually sign a voucher, and we leave.

8 Q Okay. So you receive the drugs that are
9 purchased, and then you search them an additional
10 time, as well?

11 A Correct.

12 Q Okay. And when did this first controlled
13 purchase occur in this case?

14 A The first controlled purchase was January
15 31, 2011.

16 Q And can you tell me the details about
17 that?

18 A Sure. We met with the confidential
19 informant at a predetermined location. In this
20 case, the call had already been made and the deal
21 arranged prior to. So we met with the confidential
22 informant.

23 The same rules applied. We searched
24 before the drug purchase with negative results for
25 money and/or narcotics. He was wired up. Myself

1 and an assisting agent drove him to a location near
2 the target location, being Highway.

3 We parked across the street, and we
4 monitored the confidential informant walk down the
5 dirt road to the location. I want to guesstimate
6 somewhere around a scope of maybe five to ten
7 minutes. I'm probably stretching it a bit.

8 Five or ten minutes for the controlled
9 purchase to take place. The confidential informant
10 leaves, meets back up. He's picked up by us later
11 on down the road.

12 And we retrieved the crack cocaine or the
13 quantity of rock-like substance, researched him with
14 negative results for money and/or narcotics,
15 obtained a statement. In this case, had verified
16 the identity, so we actually had a -- I think I had
17 a photo lineup on hand, if I'm not mistaken.

18 I can't be positive, but I think I had a
19 photo lineup on hand, and I showed it to the
20 confidential informant.

21 Q And who did the confidential informant
22 identify?

23 A He identified Douglas James Mayes.

24 Q Okay. Was there a second controlled
25 purchase in this case?

Eric Kirkland - Direct In-Camera

36

1 A It was, on January 9, 2011.

2 Q Did you document the date of that
3 controlled purchase in your file?

4 A In my file?

5 Q Yes.

6 A Which file?

7 Q On your case file?

8 A Yes, it's right here.

9 Q And would that refresh your memory as to
10 the date of that second controlled purchase?

11 A That's correct.

12 Q Was it January or February 9th?

13 A Oh, I'm sorry, February 9th -- February
14 9th -- February 9, 2011.

15 Q And can you tell me how that controlled
16 purchase occurred?

17 A The very same way. We actually met with
18 the confidential informant. In this case, the
19 telephone call was made in our presence. I had a
20 cell phone number of (803) . And the
21 individual on the other end the confidential
22 informant stated was Douglas James Mayes.

23 We actually asked for and -- someone asked
24 was it okay to come over and conduct a purchase of
25 \$100 of crack cocaine, and yes. We actually

1 equipped him with the devices as stated earlier,
2 searched before actually wiring him up, took him
3 over.

4 In this case, he was driving, so we
5 followed the individual to the location. And as
6 soon as he veered off one way, we actually parked
7 back at the same spot we were at before and
8 monitored the vehicle go in, listened to the
9 controlled purchase.

10 As soon as it was over, we followed him
11 back out to the location, retrieved the rock-like
12 substance, and did another search, negative results,
13 photo lineup shown. And then we actually got a
14 statement, got him to sign the voucher, and parted
15 ways.

16 Q I'm going to show you what's been ID'd as
17 State's Number One. I'm showing Mr. Floyd, as well.
18 Just for situational awareness --

19 A Yes, sir.

20 Q -- you said you parked while the
21 controlled purchase was going on.

22 A Yes, sir.

23 Q Could you point out where on State's
24 Number One you were parked?

25 A Right here, right there.

Eric Kirkland - Direct In-Camera

38

- 1 Q Okay.
- 2 A Yes, sir.
- 3 Q And is this Highway right
- 4 there?
- 5 A It is, sir.
- 6 Q Okay. So you were basically across the
- 7 street, right?
- 8 A Yes, that's correct.
- 9 Q Okay. And you subsequently received the
- 10 drugs back from the confidential informant?
- 11 A That's correct.
- 12 Q Did you place them in a Best kit?
- 13 A I did.
- 14 Q Did you send that to evidence?
- 15 A I did, sir.
- 16 Q Okay. Based on that, did you go to a
- 17 magistrate to obtain a search warrant?
- 18 A I did, sir.
- 19 Q And which magistrate did you go to?
- 20 A I think I went to Judge William Shockley
- 21 -- Judge Will Shockley.
- 22 Q Okay. And when you went to Judge
- 23 Shockley, did he place you under oath?
- 24 A He did.
- 25 Q And did you tell the truth?

1 A Always, yes, sir.

2 Q Did you present an affidavit to Judge
3 Shockley?

4 A I did.

5 Q And by presenting that affidavit, did you
6 intend to swear to the truthfulness of that
7 information?

8 A That's correct.

9 Q And do you have a copy of that --

10 A I do.

11 Q -- affidavit with you?

12 A I do, right here, yes, sir.

13 Q Before we get to the affidavit, let me ask
14 you one question regarding the town which

15 Highway is located in.

16 A That town is actually located in Pelion.

17 Q Okay.

18 A But the typo actually stated Lexington
19 County -- Lexington, South Carolina, excuse me.

20 Q And is that underneath the description of
21 premises to be searched through that typo?

22 A It is, sir.

23 Q And that only came to your attention after
24 you had obtained the judge's signature, right?

25 A That's correct.

Eric Kirkland - Direct In-Camera

40

1 Q Okay. Is there a Highway in
2 the Lexington area?

3 A No, sir. No, sir, there is another
4 anywhere in Lexington County.

5 Q Okay.

6 A Not Highway, no, sir.

7 Q Let's go through the affidavit portion of
8 the search warrant. Paragraph one on page one of
9 the affidavit, can you tell me what's going on here
10 in this paragraph?

11 A You mean the description of premises or
12 persons?

13 Q No, I'm looking at the affidavit portion.
14 It begins, "This affiant, Detective Eric Kirkland."

15 A Okay, yes, sir.

16 Q Is that a summary of your law enforcement
17 experience?

18 A It is.

19 Q And was that true at the time that the
20 search warrant was issued?

21 A It was.

22 Q Turning to the next page of the affidavit,
23 paragraph one, can you go through this paragraph,
24 please?

25 A Yes, sir. Would you like me to read it in

1 its entirety?

2 Q Just tell me your personal basis for this
3 paragraph.

4 A It's actually a general synopsis of how
5 this investigation began. We received an anonymous
6 phone, the information that was given. And I
7 actually just put that in the paragraph not to
8 mislead the judge but to let the judge know how this
9 investigation led or began and the person or persons
10 described in it with description as best as possible
11 given on that date.

12 Q Okay. I'd like to turn your attention to
13 about midway through this paragraph, a sentence that
14 begins "This agent began an investigation."

15 A Uh-huh.

16 Q Can you tell me about what investigation
17 you did to identify who lived at
18 Highway?

19 A I actually went and actually verified that
20 through call cards from the Sheriff's Department.
21 Law enforcement had actually had some interaction
22 there, and the names actually matched up with the
23 address per se.

24 Q Okay.

25 A Then from there, we went and did DL

Eric Kirkland - Direct In-Camera

42

1 pictures and things of that nature.

2 Q When you say DL, you mean driver's
3 license?

4 A Driver's license, I'm sorry -- South
5 Carolina driver's license, DMV, correct.

6 Q And those photographs matched Douglas
7 Mayes?

8 A Yes, sir.

9 Q Okay. And going to paragraph number two,
10 can you tell the judge a little bit about paragraph
11 two?

12 A Yes, sir. This is actually on or about
13 the date that the confidential informant contacted
14 me to let me know that drug activity was taking
15 place, corroborated that the address was
16 corroborated that the individual there was James
17 Douglas Mayes.

18 He even went as far as to say that he had
19 actually physically seen drugs there and the amount
20 of drugs that was seen at that particular time prior
21 to the controlled purchase.

22 Q Was the confidential and reliable
23 informant a different person than the individual --
24 than the anonymous individual that called in --

25 A Yes.

1 Q -- the complaint earlier?

2 A Yes, correct.

3 Q All of these sentences that say "The
4 informant stated that" -- for example, "The
5 informant stated that a controlled purchase could be
6 made with Dougie Mayes" --

7 A Yes.

8 Q -- was that a statement that the informant
9 gave you?

10 A I'm stating exactly what the informant
11 stated to me, yes.

12 Q Okay. And then the rest of the sentences
13 in that paragraph that begin "The informant stated,"
14 again, he's stating that to you?

15 A Correct.

16 Q So you have personal knowledge of that?

17 A That's correct.

18 Q Okay. Turning to the next page, it says,
19 "During the past three days, agents made at least
20 one controlled purchase of illegal narcotics." Is
21 that the same controlled purchase that you testified
22 to earlier?

23 A It is.

24 Q And that's the one that occurred on
25 February 9th?

Eric Kirkland - Direct In-Camera

44

1 A Yes, that's correct.

2 Q You searched him before and after the
3 controlled purchase?

4 A I did.

5 Q And monitored the controlled purchase?

6 A Yes, sir.

7 Q Okay. Now going to the second paragraph.
8 Can you please explain this second sentence, "The
9 target answered, and the informant asked the target,
10 'Can I come by and see you?'" Tell the judge what's
11 going on there?

12 A That is actually during the controlled
13 purchase on February the 9th. The phone call was
14 made in the agent's presence. And once the call was
15 answered by the target on the other end, I actually
16 put in there actually as best what was said, "Can I
17 come by and see you?" And the target said to come
18 on over. So that is actually the phone call that
19 led up to the controlled purchase.

20 Q Okay. And, again, everything in paragraph
21 two is based on your personal knowledge?

22 A Yes, correct. I was present.

23 Q He was shown a photo lineup after the
24 controlled purchase?

25 A That's correct.

1 issued on the correct statute, is it not? It was
2 just the affidavit that was wrong.

3 MR. FLOYD: I'm not sure they had a code
4 section on the warrant.

5 THE COURT: Maybe it doesn't even refer to
6 the statute.

7 MR. FLOYD: Yes, I don't think it refers
8 to the statute.

9 THE COURT: I don't see any reference to
10 the statute at all. But the affidavit still refers
11 to a drug statute. It's just not the correct drug
12 statute, okay. All right, I've heard the testimony
13 in this matter, and I'll try to address them in the
14 order that the defense raised them.

15 First, with regard to the premises to be
16 searched, the error being that it referred to
17 Lexington in Lexington County rather than Pelion in
18 Lexington County, and that this error was carried
19 forward, as the defense pointed out, seven times.

20 In reading the warrant and the affidavit
21 and also the testimony of the officer there, to me
22 there is no substantial possibility of error in the
23 address or place to be searched.

24 The officer described the premises. The
25 same officer executed the search warrant. And I

1 don't think that there is any substantial
2 possibility that the place for which the search
3 warrant was issued is not the place that was
4 actually searched and that there can be no prejudice
5 from that matter. So the motion on that grounds
6 would be denied.

7 With regard to the wording, whether it
8 means at least once or more than once, it really
9 doesn't matter. Once is enough for probable cause
10 for a search warrant. And whether that implies more
11 than one or doesn't imply more than one, it really
12 doesn't matter.

13 One of my most favorite judges in the
14 world is former Chief Judge of the South Carolina
15 Court of Appeals, Alex Sanders, who, in addition to
16 being an outstanding judge was an outstanding wit
17 and has a great sense of humor. And I can't cite
18 the decision, but he made the statement in one of
19 his written opinions that what doesn't make any
20 difference doesn't matter.

21 And that's the way I feel about this. It
22 doesn't make any difference, so it doesn't matter.
23 The same reasoning would apply to the "furthermore."
24 I think that if you took that paragraph out
25 altogether, there is still probable cause in the

1 other parts of the affidavit which would justify the
2 issuance of the search warrant.

3 With regard to the return, I don't think
4 there's any question that the return -- and the way
5 I would find that the evidence in this is -- and
6 it's unfortunate that we got into these two
7 different affidavits -- but I would find that what
8 happened was the officer went to the magistrate,
9 gave the first affidavit, obtained a search warrant
10 based on that, then decided to make another
11 controlled buy, which he didn't without executing
12 the first search warrant, executed the second
13 controlled buy, and then sought another search
14 warrant on February the 11th.

15 And the only amendment that he made, of
16 course, was to change the affidavit to that effect,
17 and then the search warrant was issued on that. It
18 was executed within 10 days of February the 11th,
19 having been executed on February 17, 2011, and a
20 return made that same day.

21 So all of the statutory requirements and
22 all the legal requirements for the execution of the
23 search warrant and the return are timely. With
24 regard to the statement of the CI, I have found very
25 often that statements made in the jail to other

1 inmates are often unreliable, for whatever reason.

2 The first statement made by the CI to the
3 police was not only a statement as to what he did,
4 but it was actually a monitored transaction by law
5 enforcement, who had a video of him going on, had
6 audio of him making the purchases. And his
7 statement denouncing his previous statement has
8 little or no credibility.

9 He did testify here today that that
10 statement was not correct and the reasons why he
11 made it at the time that he made it, that is, the
12 recantation statement. So I don't think the
13 recantation statement has much substance.

14 There has been some issue made about the
15 fact that the magistrates do not have copies of the
16 search warrants or the affidavits or the various
17 documents in this case, which is a little strange.
18 But at the same time, no challenge to the
19 authenticity of the documents that were presented to
20 the Court as Court's Number One and Court's Number
21 Two has been mounted.

22 And so I would find that those documents
23 are authentic and do reflect what actually occurred
24 with regard to the search warrants. Therefore,
25 having made those statements and making those

1 findings, the motion to suppress the search and the
2 evidence seized as a result of the search is denied.

3 Let me give these back to the Court
4 Reporter. These are Court's Number One through
5 Five. All right, the next issue is the Jackson
6 versus Denno. Are we ready to go into that?

7 MR. ROSS: Yes, Your Honor.

8 THE COURT: All right, let me ask the
9 defense to state your motion on the record first,
10 please, Mr. Floyd, with regard to Jackson versus
11 Denno.

12 MR. FLOYD: Your Honor, we move to
13 suppress any alleged statements made by Mr. Mayes on
14 the grounds that if they were made -- first of all,
15 we deny they were made. If they were made, there
16 were made in contravention of his Miranda rights.

17 THE COURT: All right. So you're saying
18 that you're denying that they were made. But if
19 made, they did not comply with the terms of Miranda?

20 MR. FLOYD: That's correct.

21 THE COURT: Okay.

22 All right, Mr. Ross?

23 MR. ROSS: Agent Kirkland to the stand,
24 please.

25 THE COURT: All right, you're still under

Eric Kirkland - Second Further Cross In-Camera 121

1 point is that Miranda warnings were given and that
2 he had the opportunity at that time to indicate that
3 he was promised something.

4 And he had the opportunity to present that
5 without giving up his Fifth Amendment rights. So
6 that kind of summarizes it as far as I'm concerned.
7 He had the opportunity to say that he had been
8 promised something, and he didn't testify to that
9 effect, without giving up his Fifth Amendment
10 rights.

11 I would find that the defendant was in
12 custody at the time of the alleged statement, that
13 the custodial situation was a custodial
14 interrogation which required the State to warn the
15 defendant of his rights under the decision of
16 Miranda versus Arizona, that the State did in fact
17 give him all Miranda warnings and the appropriate
18 warnings that he did not have to make a statement,
19 that any statement that he made could and would be
20 used against him, and the other matters that are
21 contained in Miranda, and that he voluntarily and
22 without threat of anything after the Miranda
23 warnings were given, did freely and voluntarily
24 waive his right to say anything.

25 The statement would be admissible. It

1 would be up to the jury to decide whether or not he
2 actually said that if he later denies that he said
3 it. But I believe that the Miranda warnings were
4 given and were appropriate, and the officer will be
5 allowed to testify as to the statement made.

6 All right, that takes care of those two
7 issues. Now, I believe there was a third issue, Mr.
8 Floyd?

9 MR. FLOYD: That's correct, Your Honor.
10 The third issue has to do with the testimony of the
11 evidence custodian as to whether or not the drugs
12 were actually missing at some point during her
13 custody.

14 THE COURT: All right. So you're
15 challenging the chain of custody of the drugs --
16 motion to suppress based on chain of custody?

17 MR. FLOYD: That's correct, Your Honor.
18 But the issue right now before Your Honor was the
19 issue that I raised with you as to whether or not I
20 would be required to testify because of what's --

21 THE COURT: All right. So you're not
22 questioning the chain of custody as to how the drugs
23 came into the hands of the evidence custodian. What
24 you're questioning or tending is what the evidence
25 custodian would say she or he told you with regard

Eric Kirkland - Second Further Cross In-Camera 123

1 to the drugs?

2 MR. FLOYD: That's correct.

3 THE COURT: Okay. Well, let's limit the
4 hearing to that issue, Mr. Ross.

5 MR. ROSS: Yes, sir.

6 THE COURT: You can call the evidence
7 custodian for that purpose.

8 MR. ROSS: The State calls Candy Kyzer to
9 the stand.

10 And, Your Honor, Ms. Kyzer is the evidence
11 custodian.

12 THE COURT: Okay.

13 MR. ROSS: I see that she's got the rifle
14 or a rifle that was seized in this case. And I
15 believe the rules require us to notify the Court of
16 that, and I think it is already locked.

17 THE COURT: All right, that's not really
18 the issue here, the rifle, at least at this hearing
19 level. The rifle can be given to the deputy to take
20 custody of. The issue here is really a question of
21 statements, not actually what was introduced or when
22 it was introduced, but just to testify. If you need
23 one of the officers to take possession of the weapon
24 and keep custody of it till she steps down from the
25 stand, we can do that, okay.

1 (The witness was sworn.)

2 Let the record reflect for purposes of
3 this hearing and for purposes of all subsequent
4 matters that the actual evidence itself may not be
5 in the hands of the evidence custodian right now but
6 is in the hands of the deputy, security guard for
7 the Court so that there can be no question that it
8 is constructively in the hands of the evidence
9 custodian and no challenge can be made with regard
10 to the fact that the evidence is not in her
11 possession -- any of the evidence is not in her
12 possession -- at the actual time of this hearing,
13 because that's not the issue before the Court.

14 CANDY KYZER, having first been duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION (IN-CAMERA)

17 BY MR. ROSS:

18 Q Ms. Kyzer, you're one of the evidence
19 custodians at the Sheriff's Department, is that
20 correct?

21 A I am.

22 Q And did you receive evidence in this
23 particular case?

24 A I did.

25 Q And can you tell me what you received?

- 1 A I received a Best kit.
- 2 Q And when did you receive that Best kit?
- 3 A When did I receive it?
- 4 Q Yes, ma'am.
- 5 A On February 17, 2011.
- 6 Q Does that Best kit have a number on it?
- 7 A It does.
- 8 Q And what's the number?
- 9 A C020453.
- 10 Q And when you received it, what did you do
- 11 with that Best kit?
- 12 A I signed it in, made sure everything as
- 13 far as paperwork-wise was in order, and made sure
- 14 that the seals were still intact. Everything was in
- 15 order, so I put the bar code labels on it and then
- 16 put it in our temporary drug lab box.
- 17 Q Who has access to that room?
- 18 A Us three custodians and our supervisor.
- 19 Q Okay. And were those drugs ever checked
- 20 out to the chemist in this case?
- 21 A They were.
- 22 Q And when were they checked out?
- 23 A They were checked out -- I signed the Best
- 24 kit out to Emily on February 22, 2011.
- 25 Q And is Emily the chemist?

1 A Yes, she is.

2 Q And did she ever return it back to you?

3 A She did. On March the 29th, she returned
4 it back.

5 Q And what did you do with it when she
6 returned it back?

7 A I put it back in our drug room at that
8 time. We store all of our drugs at that point into
9 separate boxes, mutli-case boxes. So we assign it a
10 box number, and we store it into that.

11 Q Okay. Did anyone subsequently check that
12 same Best kit out after you received it back from
13 the chemist?

14 A They did.

15 Q And who was that?

16 A Eric Kirkland.

17 Q And when did he check it out?

18 A He signed it out on September the 6th at
19 10:46.

20 Q Of what year?

21 A 2011.

22 Q He signed it out at 10:46 in the morning?

23 A Yes.

24 Q And when did he return it?

25 A He returned it September 6, 2011, at

1 kit?

2 A Yes, sir.

3 Q And that's when you got the chemist
4 involved again?

5 A Yes, sir.

6 Q Turned them over to the chemist again?

7 A Yes, sir.

8 MR. FLOYD: Thank you, Your Honor. I have
9 no further questions of the witness.

10 THE COURT: Anything further, Mr. Ross?

11 MR. ROSS: No, Your Honor.

12 THE COURT: All right, thank you, ma'am.
13 You may step down.

14 Mr. Floyd, what part of this witness'
15 testimony do you disagree with as to what she told
16 you or what was done?

17 MR. FLOYD: Your Honor, the part that I
18 disagree with was when I went over there, I asked
19 specifically about the misplaced drugs. I wanted to
20 know when those misplaced drugs were located, how
21 they were located --

22 THE COURT: What made you think there were
23 any misplaced drugs at all?

24 MR. FLOYD: Because that's what I had been
25 informed by the Solicitor when the case wasn't

1 called for trial in October.

2 THE COURT: All right. So what you're
3 saying is that you were informed by the Solicitor
4 that the drugs had been misplaced, and you went over
5 there and specifically asked for the drugs, and they
6 were produced?

7 MR. FLOYD: That's correct, Your Honor.
8 Well, Your Honor, basically, in October 2011, the
9 case was called.

10 THE COURT: Right.

11 MR. FLOYD: We went through pre-trial
12 motions.

13 THE COURT: I understand.

14 MR. FLOYD: At the conclusion of the
15 pre-trial motions, I was informed by the Solicitor's
16 Office of -- I think we broke for lunch, and when we
17 came back, we were supposed to try the case. I was
18 informed that they were not going to call the case
19 because they couldn't locate the drugs.

20 THE COURT: All right.

21 MR. FLOYD: I stayed in touch with the
22 Solicitor, asking, you know, "If you don't have the
23 drugs, why don't you dismiss it?" and this type of
24 thing. Eventually, I was informed that they had
25 found the drugs -

1 that time, and you had been told by the Solicitor
2 they didn't have the drugs, and then she comes up
3 with them, that would have been an entirely
4 different situation.

5 But the fact of the matter is the case was
6 continued. So what the Solicitor said or did not
7 say is really immaterial. You were told that
8 everything was there, you could go look at it. You
9 did go look at it.

10 All right, Mr. Ross, is there anything
11 you'd like to add?

12 MR. ROSS: Your Honor, I would just take
13 the State's interest in trying this case. The case
14 was called for trial this time last year. It was
15 delayed. We've already gone through the pre-trial
16 motions once again.

17 And I think the relevance of any
18 inconsistent statement by Ms. Kyzer or Ms. Dixon,
19 who was the prior Solicitor on the case, when you
20 weigh that against our interest in having a speedy
21 trial, a timely trial, I just don't see how what Mr.
22 Floyd is talking about is even relevant to the
23 ultimate issue of guilt or innocence on the case.
24 Therefore, I would think it would be --

25 THE COURT: I think that's a collateral

1 issue. I really don't think that it has anything to
2 do from a relevance standpoint to the issues that
3 are before the Court, and that is whether or not the
4 chain of custody was kept with the things.

5 The conversation between defense counsel
6 and prosecutors, many statements are made from time
7 to time that later prove to be not exactly accurate
8 for whatever reason. But as soon as the Solicitor's
9 Office discovers the inaccuracy and they make it
10 available, then what difference does it make?

11 Again, I don't see that there's any
12 prejudice from the fact, and I don't think that what
13 was told you by the Solicitor, if in fact that was
14 told to you by the Solicitor, at this point makes
15 any difference at all.

16 And I would not allow you to testify to
17 that fact, Mr. Floyd, because I don't think it makes
18 any difference. And if it doesn't make any
19 difference and you're not allowed to testify to that
20 fact, then I don't think that you should be
21 disqualified from trying this case because I would
22 not allow that testimony anyhow.

23 So I would respectfully deny your motion
24 to withdraw in order to testify as to that issue,
25 because I don't think it's a material issue in this

1 case.

2 MR. FLOYD: And, Your Honor, would that be
3 the same ruling you'd make on the testimony of the
4 conversation with the evidence technician?

5 THE COURT: What are you saying that she
6 told you that's inaccurate?

7 MR. FLOYD: About the drugs being missing.

8 THE COURT: About them being missing? I
9 don't believe she testified to that. I think she
10 testified that they were in the wrong box, but we've
11 got them. She didn't ever testify that they were
12 missing at any point, I don't think.

13 MR. FLOYD: What I would testify is I
14 asked her about the drugs missing and when they were
15 found.

16 THE COURT: And she said, "Here they are.
17 We have them." And I don't think she ever said that
18 they were missing, did she? I don't believe she
19 did.

20 MR. FLOYD: She didn't deny it when I
21 asked her.

22 THE COURT: Sir?

23 MR. FLOYD: She didn't deny when I asked
24 her.

25 THE COURT: Well, the same ruling.

1 remarks on behalf of the State, Mr. Ross?

2 MR. ROSS: No, Your Honor.

3 THE COURT: On behalf of the defense, Mr.
4 Floyd?

5 MR. FLOYD: No, Your Honor.

6 THE COURT: All right, the first order of
7 business, ladies and gentlemen, is for the lawyers
8 to make their opening statements to you. Again, I
9 would tell you that the statements of the attorneys
10 are not evidence in this case.

11 But the lawyers do have the right to make
12 a brief opening statement to you at this time to
13 outline what they think the evidence will show. You
14 will hear first from the Assistant Solicitor on
15 behalf of the State and then from Mr. Floyd on
16 behalf of the defense, after which we will get into
17 the testimony and evidence in this case.

18 Mr. Ross?

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

21 THE COURT: Yes, sir.

22 OPENING STATEMENT

23 BY THE STATE

24 MR. ROSS: If it walks like a duck, it
25 quacks like a duck, ladies and gentlemen, what do

1 you have? You've got yourself a duck. Sometimes
2 things really are that simple. Well, the case
3 you're about to hear against the defendant on trial
4 today, Douglas Mayes, really is that simple.

5 The facts are simple. The law is simple.
6 On February 17, 2011, narcotics officers executed a
7 search warrant at his single-wide trailer down in
8 Pelion. They knocked and announced their presence.
9 Then they went in the front door. That front door
10 is on the far right-hand side of the single-wide.

11 So when they entered, they took a left and
12 went all the way down that single-wide trailer till
13 they got to the master bedroom. And they saw a
14 female in bed with a toddler, and they kept going.
15 They went to the back bathroom that's attached to
16 the master bedroom.

17 They looked in the door. They found
18 Douglas Mayes standing there in that bathroom. And
19 right beside him was a 24-pack of Angel Soft toilet
20 paper. So they gathered everybody up. They put
21 them in the den, and then they began to search that
22 house. And it didn't take them long to find 70
23 grams of crack cocaine and three grams of powder
24 cocaine.

25 They found it in that Angel Soft 24-pack

1 that was sitting right beside Douglas Mayes. But
2 that's not all they found. They also found a rifle
3 in the kitchen. They found a set of digital scales
4 on the kitchen counter. These used to weigh drugs
5 before they're sold on the streets.

6 Finally, in the kitchen cabinet, they
7 found a box with a bunch of small little plastic
8 baggies -- not the kind that you put your lunch in
9 but the kind you put drugs in before you sell them
10 on the streets. So Agent Eric Kirkland, he
11 approaches the defendant. He gives him his Miranda
12 rights, his Miranda warnings.

13 And he asked him about what was found in
14 that back bathroom. And the defendant said,
15 "Everything you found back there is mine" --
16 "Everything you found back there is mine."

17 So all this evidence was packaged up. The
18 drugs were placed in what's called a Best kit. This
19 is a sealed plastic bag, and it's got a unique
20 number on the plastic portion.

21 And that number is designed to make sure
22 what you seize on Monday is what you test over on
23 Friday. They put that number on it so you don't get
24 drugs mixed up from one case to the next. And these
25 drugs were sent to the chemist, and they tested.

1 positive -- 70 grams of crack cocaine, almost three
2 grams of powder cocaine.

3 Now, based on that test result, he's
4 facing the three charges that Judge King read to you
5 today -- trafficking crack cocaine, possession with
6 intent to distribute powder cocaine, and possession
7 of a weapon during the commission of a violent
8 crime.

9 Now, that term "trafficking crack
10 cocaine," "trafficking" is simply a legal term. It
11 refers to the amount of drugs in any particular
12 case. If you have nine grams of crack cocaine in
13 your possession, you are guilty of simple possession
14 of crack cocaine.

15 If you have over 10 grams of crack cocaine
16 in your possession, you're guilty of trafficking
17 crack cocaine. So what the State is going to prove
18 is nothing other than the defendant was in
19 possession of all that crack cocaine that was found.

20 That's all we're going to prove,
21 possession. Now, the powder cocaine charge adds to
22 it. We're going to prove not only did he possess
23 the powder cocaine but that he intended to
24 distribute the powder cocaine.

25 And the evidence you're going to have to

1 come to that conclusion is going to be the scales,
2 you're going to have the plastic bags, and, finally,
3 you're going to have the weight of that powder
4 cocaine.

5 And Judge King is going to explain to you
6 at the end of the trial the significance of the
7 weight of the powder cocaine. He will explain to
8 you that if somebody has over one gram of powder
9 cocaine in their possession, you, the jury, can
10 conclude based on weight alone that he intended to
11 distribute that powder cocaine.

12 Now, the evidence you'll hear is that he
13 had three times that amount -- three times that
14 amount. The final charge is possession of a weapon
15 during the commission of a violent crime. This also
16 is very simple.

17 Trafficking crack cocaine is considered a
18 violent crime under the law. And if you possess a
19 firearm while you commit that crime, that's a crime
20 in and of itself.

21 So he's guilty of possessing that rifle
22 while he was possessing the crack cocaine and then
23 the trafficking crack cocaine charge. Now, the main
24 issue in this case is going to be possession. And,
25 again, Judge King will explain to you the two types

Opening Statement by the State

167

1 of possession that exist under the law.

2 This is going to be very important. You
3 have actual possession when something is in your
4 hands or in your pockets. Then you have
5 constructive possession.

6 That's where drugs are not on your person,
7 but you exercise dominion and control over the
8 drugs, or you exercise dominion and control over the
9 place where the drugs were found.

10 For example, down in my office I've got a
11 ton of law books. Right now, I'm exercising
12 constructive possession over those books. All the
13 stuff at my house, miles away from here, I'm
14 exercising constructive possession over those items.

15 The pen on my desk here, I'm just as
16 guilty of possessing that pen now as I am now. The
17 point of me telling you that on the front end is to
18 let you know that the State does not have to put
19 those drugs in his hands. You do not have to put
20 the drugs in his pockets.

21 The evidence would show he's guilty of
22 constructive possession of all those drugs that were
23 found. This is going to be a short trial, but it's
24 an important trial. These are very serious charges.
25 You're going to hear from the officers that entered

1 the residence.

2 You're going to hear about what he told
3 those officers. You're going to hear from the
4 chemist that tested the drugs. You're going to see
5 the drugs. You'll see photographs of when they were
6 taken, and you'll see them as they are now.

7 And when you see the Best kit now, it's
8 going to be very clear to you that the drugs as they
9 exist now are not in the same physical form as when
10 they were seized. And the chemist is going to
11 explain that after those drugs were tested, they
12 were put in a storage room that does not have air
13 conditioning.

14 And in Lexington, South Carolina, a room
15 without air conditioning can get pretty hot. And
16 crack cocaine can respond in the same way a candy
17 bar will respond to a very hot room in Lexington,
18 South Carolina, without air conditioning. So
19 they're going to be partially liquefied.

20 You're also going to hear from the
21 evidence custodians on this case. And they're going
22 to be very candid with you about what they did in
23 this case, about the handling procedures of the
24 drugs, the scales, and the bags. They'll be very
25 candid that at one time they tried to put their

1 hands on the scales and the bags.

2 The scales and the bags were placed in a
3 second storage room, in boxes. And the evidence
4 will show that there were 10,000 -- almost 10,000
5 other pieces of evidence from other cases stored in
6 that room.

7 At one time, they were asked to find them.
8 They couldn't find them. But they looked for them.
9 They found them in the wrong box. And you're going
10 to see the same digital scales, the same plastic
11 bags that were found in Douglas Mayes' trailer in
12 Pelion.

13 After you hear all this evidence -- and,
14 again, it's going to be a short trial. After you
15 hear all this evidence, you will be firmly convinced
16 that Douglas Mayes is guilty. And that's why at the
17 end of this trial, I'm going to look you in the eye
18 and I'm going to ask you to find him guilty as
19 charged.

20 THE COURT: Mr. Floyd, does the defendant
21 care to make an opening statement?

22 MR. FLOYD: Yes, Your Honor.

23 THE COURT: You may.

24 OPENING STATEMENT

25 BY THE DEFENSE

1 MR. FLOYD: Ladies and gentlemen of the
2 jury, this young man's name is Douglas Mayes. He's
3 the defendant in this case. He's a man about whom
4 you're going to make one of the most important
5 decisions you ever make about anybody -- and you
6 just now met him -- because you're going to decide
7 whether or not based upon the evidence you hear in
8 this room over the next couple of days, whether or
9 not he should be found guilty of what the State has
10 already told you are very serious crimes, which will
11 also create very serious consequences.

12 Now, if you've never served on a criminal
13 jury before, you almost have to set aside human
14 nature, because some of you may have the thought in
15 your mind that because Douglas was arrested -- he
16 was -- handcuffed and carried to jail -- which he
17 was -- because he now sits there before you to be
18 judged -- which he does.

19 Well, you may have the thought in your
20 mind, "Wow, he must be guilty." Well, if you've got
21 that kind of thought, you've got to erase it.
22 You've got to put it out of your mind completely.
23 Because, you see, Doug has the same rights each and
24 every one of us have.

25 One of those most important rights is what

1 we call the presumption of innocence. So you must
2 look at Douglas Mayes, and you must say in your
3 heart and in your mind Douglas Mayes is innocent,
4 and Douglas Mayes remains innocent unless the State
5 proves his guilt beyond a reasonable doubt to each
6 and every one of you.

7 And that's all we ask. When you listen to
8 the evidence that's presented, we ask that you hold
9 the State to their standard of proof beyond a
10 reasonable doubt, because there's going to be some
11 problems with the case.

12 And we think when it's all over with,
13 you'll conclude that the only fair and just verdict
14 is one of not guilty. Thank you very much for your
15 attention. I look forward to speaking with you
16 again in what we call closing statements at the
17 conclusion of the case. Thank you very much.

18 THE COURT: All right, Mr. Ross, you may
19 call your first witness.

20 MR. ROSS: The State calls Sgt. Billy
21 Laney to the stand.

22 THE COURT: All right, Mr. Laney, come up,
23 please.

24 (The witness was sworn.)

25 CLERK OF COURT: If you'll have a seat

1 over here, state your name, and spell your last for
2 the record, please.

3 MR. LANEY: Billy Ray Laney -- L-A-N-E-Y.

4 BILLY RAY LANEY, having first been duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ROSS:

8 Q Sgt. Laney, I saw you walking with a limp
9 up to the stand. Did you recently have surgery?

10 A Yes, sir.

11 Q When did you have that surgery?

12 A Friday morning, the 28th of September.

13 Q On what?

14 A Friday -- this past Friday.

15 Q What was operated on?

16 A My left knee.

17 Q Okay. You were the first man to enter the
18 defendant's residence on February 17, 2011, is that
19 correct?

20 A Yes, sir.

21 Q Before we get to what you did that day,
22 could you please tell me what your law enforcement
23 experience is?

24 A I've been with Lexington County Sheriff's
25 Department since 1994. I've served in the patrol

Billy Laney - Direct

173

1 division, traffic division, went to narcotics. And
2 in July of 2011, I was promoted to patrol sergeant,
3 South Region.

4 Q So at the time the search warrant was
5 executed, you were in the narcotics division?

6 A Yes, sir.

7 Q What type of cases would you investigate?

8 A All narcotics cases, vice cases,
9 prostitution, gun cases.

10 Q How many years were you a narcotics
11 officer?

12 A Six -- right at six.

13 Q Okay. Tell me what role was on February
14 17, 2011.

15 A My role on that day, I was the shield man.
16 The shield man is the first person through the door
17 with a ballistics shield to cover the other agents
18 approaching the house and once we make entry.

19 Q So you were the first one to enter?

20 A Yes, sir.

21 Q What sort of tactical gear were you
22 wearing?

23 A Tactical greens, had a ballistic helmet
24 on, ballistic vest -- big, thick vest, 4A vest with
25 a ballistic shield.

1 Q Okay. And did you knock on the door?

2 A I did not knock.

3 Q Did somebody knock on the door?

4 A Yes, sir.

5 Q And what happened after somebody knocked
6 on the door?

7 A They knock. Sheriff's Department is
8 announced, search warrant, and we enter. And when
9 we enter, I'm screaming "Sheriff's Department,
10 Sheriff's Department, police search warrant."

11 Q Okay. And when you entered, what did you
12 do?

13 A Based on the diagram of the house, as I
14 entered the house I went left to the deep part of
15 the house, which is the most dangerous part. We
16 push deep with the shield to cover the other agents
17 coming in.

18 Q Okay. And did you find anybody?

19 A Not in the den area or the kitchen, no,
20 sir.

21 Q So you went in the den and then the
22 kitchen?

23 A Yes, sir.

24 Q And then where did you go after that?

25 A Once we got to the kitchen, we entered the

Billy Laney - Direct

175

1 bedroom door. To the left, there was a bed. We
2 located a female and a toddler on the bed. Once she
3 was taken care of and secured, I proceeded to the
4 master bedroom -- master bathroom, excuse me --
5 where I encountered a subject who was later
6 identified as Mr. Mayes.

7 Q You said you saw a female and a toddler on
8 the bed. Were they sitting on the bed like this?

9 A They were laying in bed. They were in the
10 bed.

11 Q And then you went to the bathroom?

12 A Yes, sir.

13 Q And you found the defendant?

14 A A male who was later identified as Douglas
15 Mayes, which is the defendant here, yes, sir.

16 Q How did he appear when you first found
17 him?

18 A He was awake, clothed. He was walking
19 from the left side of the bathroom towards me.

20 Q Okay. Was there any steam coming out of
21 the bathroom?

22 A No, sir, not that I remember.

23 Q Did his hair appear to be wet from coming
24 out of the shower?

25 A No, sir.

1 Q Did he have all of his clothes on?

2 A He had clothes on. I can't tell you if it
3 was a T-shirt and shorts or complete clothing.

4 Q But he wasn't walking around without his
5 pants?

6 A No, sir, he was not naked.

7 Q Okay. Were his hands wet from washing his
8 hands?

9 A Not that I recall. I didn't go hands-on
10 with him.

11 Q Okay. Was the faucet in that bathroom
12 turned on?

13 A No, sir.

14 Q Was the commode running?

15 A No, sir.

16 Q Okay. And what did you do with him after
17 you found him?

18 A He was detained, taken out of the
19 bathroom. And once the female and Mr. Mayes were in
20 the den, a more in-depth search of the house was
21 made for other persons. And once it was deemed
22 clear, we started to search.

23 Q What county is Highway in?

24 A It's in Lexington County, South Carolina.

25 Q Okay. And that's where this search

Billy Laney - Direct

177

1 occurred?

2 A Yes, sir.

3 Q So once y'all got everybody rounded up,
4 what did you do?

5 A Again, we searched to make sure it was
6 safe -- the house was safe. And then we proceeded
7 to search our designated areas.

8 Q What was your designated area?

9 A I was searching the master bathroom.

10 Q Is that the same place where you found the
11 defendant?

12 A Yes, sir.

13 Q Okay. What did you find pursuant to that
14 search?

15 A After searching the bathroom, got across
16 the countertop from the sink area over to where the
17 bathroom area is, the toilet area, lifted up the
18 commode, sink, did not find anything, looked down.

19 I decided to look through the toilet paper
20 rolls. I tore the bag apart, and a large piece of
21 off-white rock-like substance in a baggie fell along
22 with a pill bottle.

23 Q During your career as a narcotics officer,
24 have you seen crack cocaine before?

25 A Several times, sir.

Billy Laney - Direct

178

1 Q And what fell out, did that appear to be
2 crack cocaine?

3 A Yes, sir, it appeared to be a half cookie
4 of crack cocaine to me.

5 Q Now, what is a cookie?

6 A They make crack cocaine into round shapes,
7 and it looks like a cookie.

8 Q Okay. And this was a half a cookie?

9 A Yes, sir.

10 Q What else did you find?

11 A There was a pill bottle that fell out
12 also. When that fell out, I notified, said, "Hey, I
13 found something," came back. We started to peel
14 apart the wrapping on the toilet paper.

15 We found two more baggies of crack cocaine
16 laying on top, and we started photographing those.
17 We started pulling the paper out, and we found a
18 small baggie of powdery substance behind some of it
19 inside the rolls beside each other.

20 Q Now, during your experience as a narcotics
21 officer, have you seen powder cocaine before?

22 A Yes, sir.

23 Q Did that powdery substance appear to be
24 powder cocaine?

25 A It did to me. It was packaged as a white

Billy Laney - Direct

179

1 powdery substance.

2 Q Okay. So if I'm tracking correctly, you
3 found a pill bottle. What was inside that pill
4 bottle?

5 A Small white off-white rock-like substance
6 that appeared to be crack cocaine, little pieces.

7 Q Okay. And you found a baggie of powder
8 substance?

9 A Yes, sir, a small plastic bag.

10 Q And then you found three bags of rock
11 substances?

12 A Two small baggies of off-white rock-like
13 substance and one big baggie that had large pieces
14 of it -- large pieces of it.

15 Q Did it appear to be crack cocaine?

16 A Yes, sir.

17 Q Okay. And what did you do with those
18 items?

19 A I called for a photographer who was
20 photographing everything. He came in and
21 photographed it. Once it was photographed, I
22 delivered it to our scribe, who was Agent Tucker.

23 Q Did the photographer handle those items in
24 any way?

25 A No, sir.

- 1 Q Did he ever take custody of them?
- 2 A No, sir.
- 3 Q Okay. Did he add anything that wasn't
- 4 there?
- 5 A No, sir.
- 6 Q Okay. You said you gave all those items
- 7 to whom?
- 8 A Agent Barnes Tucker, the scribe for the
- 9 search warrant.
- 10 Q Okay.
- 11 A She was separating stuff.
- 12 Q Has Agent Barnes recently gotten married?
- 13 A No.
- 14 Q She used to go by Tucker, though, right?
- 15 A Yes.
- 16 Q Now she goes by Agent Barnes?
- 17 A Yes.
- 18 Q Okay. You gave the three baggies of rock
- 19 substance, the pill bottle, and the baggie of powder
- 20 to her?
- 21 A Correct, sir.
- 22 Q And when you gave them to her, were they
- 23 in the same condition as when you found them?
- 24 A Yes, sir, they were.
- 25 Q Did you alter or manipulate them in any

Billy Laney - Direct

187

1 Q And what is this right here? What does
2 that indicate?

3 A That's the bathroom sink area, the
4 countertop.

5 Q Okay. And between commode and sink was
6 what?

7 A Toilet tissue.

8 Q Okay. And, again, this is where the
9 defendant was?

10 A Yes, sir.

11 Q Okay. That giant "x" that you put on
12 there?

13 A Yes, sir.

14 Q If you could, please return to your seat.
15 Sgt. Laney, I'm going to show you what's been marked
16 as State's Number Four through Nine. If you could,
17 please take a look at these photographs.

18 A Yes, sir.

19 Q Have you had a chance to look at them?

20 A Yes, sir.

21 Q Do they accurately reflect the drugs that
22 you seized that day?

23 A Yes, sir, they do.

24 MR. MOSS: Your Honor, at this time I'd
25 move for four through nine be admitted into

1 A That's pieces of off-white rock-like
2 substance that were located within the pill bottle.

3 Q What does that appear to you to be, those
4 off-white rock-like substance?

5 A Crack cocaine.

6 Q Now we've got State's Number Nine. Can
7 you tell me what's in the corner there?

8 A That is a small plastic baggie of powdery
9 white substance believed to be cocaine at the time,
10 powder cocaine.

11 Q Now, all the baggies that are in State's
12 Numbers Four through Nine and the pill bottle, who
13 did you give these to?

14 A They were photographed, and I gave them to
15 Agent Barnes.

16 Q Okay. And when you gave them to Agent
17 Barnes, were they in the same condition as when you
18 found them?

19 A Yes, sir, they were.

20 Q And that's the three bags?

21 A Three bags of crack cocaine, a plastic
22 baggie filled with a white powdery substance, and a
23 pill bottle filled with off-white rock-like
24 substance.

25 Q These items were in your possession from

Ronnie Hinson - Direct

200

1 A Yes, sir.

2 Q Before we get into what you did on this
3 case, can you please tell me what your present job
4 duties are?

5 A I'm a narcotics officer with the State Law
6 Enforcement Division.

7 Q Where do you investigate cases?

8 A All over the state.

9 Q On February 17, 2011, where were you
10 employed?

11 A I was employed with SLED, but I was
12 assigned to the Narcotics Enforcement Team with
13 Lexington County.

14 Q Okay. What types of cases would you
15 investigate?

16 A Any illegal narcotics cases, alcohol
17 cases.

18 Q How many total years in narcotics do you
19 have?

20 A Almost six years.

21 Q Tell me what happened on February 17,
22 2011.

23 A I was assigned to the entry team of the
24 search warrant that we were there serving. I'm not
25 sure exactly where I was in the stack. Stack means

1 THE COURT: All right, Mr. Ross, you may
2 call your next witness.

3 MR. ROSS: The State calls Agent Dennis
4 Tracy to the stand.

5 THE COURT: All right.

6 (The witness was sworn.)

7 CLERK OF COURT: If you'll have a seat and
8 state your name, please, for the record.

9 MR. TRACY: Agent Dennis Tracy -- T-R-A-C-
10 Y.

11 DENNIS TRACY, having first been duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ROSS:

15 Q Agent Tracy, you were on the entry team in
16 this case, weren't you?

17 A Yes, sir.

18 Q Before we get to what you did in this
19 case, can you tell me about your experience in law
20 enforcement?

21 A I've been in law enforcement for 15 years.
22 I've been assigned to narcotics for the past 12
23 years. I'm currently employed with Lexington County
24 Sheriff's Department as a narcotics investigator.

25 Q Okay. And during those 12 years of

Dennis Tracy - Direct

209

1 narcotics experience, what type of cases do you
2 investigate?

3 A Narcotics cases, vice cases, that's
4 basically what we work, anything that has a
5 narcotics nexus to it.

6 Q Okay. Do you have any other formal
7 training in narcotics, specialized training?

8 A At last count, I have about 435 hours of
9 advanced narcotics investigation training.

10 Q Okay. Who did you get that training with?

11 A Different state and federal agencies,
12 different federal and state training facilities.

13 Q Such as?

14 A Such as the Drug Enforcement
15 Administration classes. We take classed down in
16 Meridian, Mississippi, which are put on by the
17 National Guard down there. There's a whole bunch of
18 avenues of training for law enforcement.

19 Q Are you an instructor, as well?

20 A I am an instructor, as well.

21 Q And what do you teach?

22 A I teach a DEA-approved block of
23 instruction in parcel interdiction.

24 Q What is DEA?

25 A Drug Enforcement Administration.

1 Q And what is that?

2 A That's the legal branch of the Department
3 of Justice that enforces drug laws.

4 Q Okay. Tell me what you did on February
5 17, 2011.

6 A On that day, I was assigned as an entry
7 team member. I participated in the entry of the
8 residence. After the research was secured, I was
9 also the assigned photographer for the case.

10 Q Okay. And what did you take pictures of?

11 A Anytime anybody would locate anything of
12 evidentiary value, they would call me. I would take
13 a picture of it before it was turned over to the
14 scribe for logging it into the evidence.

15 Q So all these pictures that we've just
16 through, State's One through Eleven, you took these
17 pictures?

18 A Yes, sir.

19 Q Did you personally seize anything that
20 day?

21 A I did.

22 Q And tell me what that was.

23 A In between taking pictures, I helped
24 searching of the kitchen area. I located a set of
25 digital scales in the kitchen area, which I did

Dennis Tracy - Direct

211

1 seize.

2 Q Now, what are digital scales?

3 A Small electronic scales used primarily in
4 our field for weighing out narcotics for
5 distribution.

6 Q Okay. So is that relevant to what you do
7 as a narcotics officer?

8 A It is.

9 Q And can you elaborate upon that?

10 A Digital scales -- narcotics are sold
11 obviously in increments that people are ordering or
12 whatever facilitates the distribution. So crack
13 cocaine is usually broken into smaller pieces.

14 Those pieces are weighed so that a .2 gram
15 piece of crack cocaine would sell for \$20, or larger
16 amounts would sell for larger quantities of cash.
17 But the digital scales would be an important part of
18 that transaction.

19 Q Were these particular digital scales --
20 did they have any other legitimate use to them?

21 A They're sold for jewelers primarily, but
22 that's about the only other thing I've ever seen
23 these small-weight digital scales used for. They're
24 not used for anything like cooking or anything like
25 that.

- 1 Q When you say jewelers, you mean like --
- 2 A A professional jeweler.
- 3 Q Okay.
- 4 A Like at a jewelry store weighing out dram
5 weight of -- dram weight or gram weight of gold or
6 jewels.
- 7 Q Did y'all find any diamonds in the house?
- 8 A Not that I'm aware of.
- 9 Q Did you find any jewels in the house?
- 10 A Not that I'm aware of.
- 11 Q Did you take a photograph of the digital
12 scales?
- 13 A I did not. It was an oversight on my
14 part.
- 15 Q Okay. Did you find anything else in that
16 trailer?
- 17 A We found some Pyrex dishes by the kitchen.
- 18 Q Okay. I'm going to show you State's
19 Number Twelve. If you would, please take a look at
20 this.
- 21 A Yes, sir.
- 22 Q Does that accurately reflect the Pyrex
23 dishes that you found?
- 24 A It does.
- 25 Q Okay.

Dennis Tracy - Direct

216

1 Barnes, were they in the same condition as when you
2 found them?

3 A Yes, sir.

4 Q Did you alter or manipulate them in any
5 way?

6 A No, sir.

7 Q Did anyone else take possession of them?

8 A No, sir.

9 MR. ROSS: No further questions, Your
10 Honor.

11 THE COURT: Cross-examination, Mr. Floyd?

12 MR. FLOYD: Just a few questions, Your
13 Honor.

14 CROSS-EXAMINATION

15 BY MR. FLOYD:

16 Q So your job is to take photographs of
17 everything that might be relevant in the case or
18 important to the case?

19 A Yes, sir.

20 Q But you didn't take any photographs of the
21 digital scales?

22 A That was an oversight on my part, yes,
23 sir.

24 Q These digital scales, they can be used in
25 the kitchen, can they not?

- 1 A Yes.
- 2 Q And who did you give it to?
- 3 A Agent Kirkland.
- 4 Q Was it in the same condition when you gave
5 it to him as when you first received it from Agent
6 Tracy?
- 7 A Yes.
- 8 Q Did anybody else come into possession of
9 those digital scales?
- 10 A No.
- 11 Q Let me ask you about the numerous plastic
12 bags. Who did you receive those from?
- 13 A Agent Hinson.
- 14 Q And how did you receive them?
- 15 A He actually handed them to me in a
16 cardboard box.
- 17 Q Okay. And did you remove the bags from
18 that box?
- 19 A I did.
- 20 Q And what did you do with those bags?
- 21 A I labeled them. I placed them in another
22 bag, labeled them, who located them, where they were
23 located, and then gave it to Agent Kirkland.
- 24 Q Were they in the same condition when you
25 gave them to Eric Kirkland as when you received them

Paige Barnes - Direct

230

1 A Yes, sir.

2 Q Did anyone else take possession of that
3 item from the point Agent Laney gave them to you to
4 the point you gave them to Agent Kirkland?

5 A No, sir.

6 Q All of these items that we've talked
7 about, were they in the same condition when you
8 received them to the point that you turned them in
9 to Agent Kirkland?

10 A Yes, sir.

11 Q Did you alter or manipulate them in any
12 way?

13 A No, sir.

14 Q Nothing further. If you would, please
15 answer anything Mr. Floyd has for you.

16 THE COURT: Cross-examination, Mr. Floyd?

17 MR. FLOYD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q Agent Barnes, did you make a list of the
21 items in some fashion, or did you just use the
22 return on the warrant?

23 A I wrote them on the return.

24 Q You wrote them on the return?

25 A Yes, sir.

1 Tuesday, October 2, 2012

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 THE COURT: All right, back on the record
6 with regard to the matter of the State versus Mayes.
7 Mr. Mayes is present in the courtroom with his
8 counsel. Let's tend to a couple of housekeeping
9 matters before we get started.

10 I have been given a note by the bailiff
11 that the jury has selected juror number 124 as the
12 foreperson of this jury, and he will be allowed to
13 serve. That's Mr. Steven McConnell. I'll make sure
14 he's in the right seat when they come in.

15 Now, just so that the record accurately
16 reflects the Court's ruling of yesterday, I want to
17 make sure that I have put into the record exactly
18 what my feeling was and what my ruling was with
19 regard to the Jackson versus Denno motion to
20 suppress the statement.

21 It is axiomatic (PH) that a defendant in a
22 criminal case is entitled to an independent
23 evidentiary hearing to determine the voluntariness
24 of a statement made by him or allegedly made by him
25 prior to the submission of such statement to the

1 jury. And, of course, we did have an evidentiary
2 hearing.

3 Where there is conflicting evidence about
4 a statement, the Court must first make a finding as
5 to the validity of the statement. If the statement
6 is found to be valid by the Court, it should be
7 submitted to the jury.

8 In making such a determination, the trial
9 judge should examine the totality of the
10 circumstances, including the background, experience,
11 and conduct of the accused surrounding the utterance
12 to determine whether the State has met its burden of
13 proof so as to warrant the admission of the
14 confession.

15 The test of admissibility of a statement
16 is whether it was knowingly, intelligently, and
17 voluntarily made. A confession may not be extracted
18 by any sort of threats or violence or obtained by
19 any direct or implied promises, however slight, or
20 by the exertion of improper influence.

21 Part of the State's burden during a
22 hearing is to prove by a preponderance of the
23 evidence that the statement was voluntarily made and
24 taken in compliance with the requirements of *Miranda*
25 versus *Arizona*.

1 The State bears the burden of proof, even
2 where the defendant has signed a waiver of rights
3 form. Although custody is a factor to be considered
4 in determining voluntariness, the defendant need not
5 show that he was in custody at the time the
6 statement was made in order to request a Jackson
7 versus Denno hearing on the voluntariness of the
8 statement.

9 The Court has reviewed all of the evidence
10 in the case and did review prior to my ruling, and
11 the Court finds that the statement was knowingly,
12 intelligently, and voluntarily made, that the
13 defendant was in custody at the time the statement
14 was given, and that it was in accordance with the
15 requirements of Miranda versus Arizona and confirms
16 the ruling earlier made that the statement is
17 therefore valid and admissible into evidence.

18 Now let's address the matter with regard
19 to the weapon that was offered into evidence. Did
20 you get me a copy of that statute?

21 MR. ROSS: Yes, Your Honor.

22 THE COURT: The updated statute. All
23 right, Mr. Floyd, I believe your objection was that
24 there was no showing that it was an operable weapon?

25 MR. FLOYD: That's correct, Your Honor.

1 CLERK OF COURT: If you'll have a seat and
2 state your name for the record, please.

3 MR. KIRKLAND: Agent Eric Kirkland -- K-I-
4 R-K-L-A-N-D.

5 ERIC KIRKLAND, having first been duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ROSS:

9 Q Agent Kirkland, you were the lead
10 investigator on this case, is this right?

11 A That's correct, sir.

12 Q Before we get into your investigation and
13 the execution of this search warrant, can you please
14 tell the jury about your years of experience in law
15 enforcement?

16 A Certainly. I started law enforcement and
17 corrections in 1992. I actually started working at
18 Barnwell Detention Center. From there, I went to
19 the Orangeburg Department of Public Safety in '94.
20 From '96 until 2003, I was an Orangeburg County
21 Sheriff's Deputy.

22 I left in 2003 with the rank of
23 lieutenant. I came here to Lexington County in '03.
24 In '04, I actually got promoted to the rank I
25 currently am now.

- 1 Q And what is that rank?
- 2 A Narcotics investigator.
- 3 Q And so you've been in narcotics since '04?
- 4 A Yes, sir, a total of eight years.
- 5 Q What type of cases do you investigate?
- 6 A All narcotic drug investigations, vice,
7 are just some of the stuff that warrants us getting
8 into.
- 9 Q Now, were you involved in the search
10 warrant in this case?
- 11 A I was, sir.
- 12 Q And where was that search warrant
13 executed?
- 14 A Highway.
- 15 Q And what county is that in?
- 16 A Lexington County.
- 17 Q South Carolina?
- 18 A Correct, South Carolina.
- 19 Q And whose residence is
20 Highway?
- 21 A Douglas James Mayes.
- 22 Q Who else lives there?
- 23 A Kaylie Tharp.
- 24 Q And what is the relationship between those
25 two?

Eric Kirkland - Direct

256

1 A They actually share a child in common.

2

3 Q Okay. Tell me what happened on February
4 17, 2011.

5 A We arrived at the residence that morning
6 somewhere between eight and nine. The execution of
7 the search warrant was an entry team, seven-man
8 entry team. They made entry into the residence. I,
9 myself, was on perimeter. I was outside in the
10 yard.

11 They penetrated, made entry into the
12 residence. I, of course, stayed outside doing a
13 360-degree radius to make sure everything outside
14 was okay, along with about three or four other
15 agents. Once they gave the okay to come inside, I
16 ventured inside when I heard the all-clear.

17 Q So why were you on the outside while the
18 agents on the entry team went in?

19 A The case agent is actually something like
20 a supervisor. He acts like a supervisor and makes
21 sure everything goes as planned. Since you're the
22 operational planning guy, you actually don't put
23 yourself in the middle of the raid, because you
24 can't very well supervise and see what's going on if
25 you are right smack dab in the middle. So you have

1 to take yourself out of it.

2 Q Okay. And you heard the all-clear, and
3 then what did you do?

4 A I actually ventured inside and went to the
5 living room area.

6 Q Okay. And what happened next?

7 A In the living room area, I stay stagnated
8 for about maybe three to five minutes. At that
9 point in time, Mr. Mayes came out in handcuffs along
10 with Ms. Tharp and the little child, who was not
11 handcuffed. But all three came out into the living
12 room area.

13 Q Now, this little child, was that the child
14 that they have in common?

15 A That's correct, sir.

16 Q Okay. And what happened at that point?

17 A At that point in time, I actually
18 introduced myself to Mr. Mayes, told him who I was
19 and why we were there. And then I proceeded to give
20 him his Miranda warnings.

21 Q How did you give him his Miranda warnings?

22 A Off a card that I had.

23 Q What type of card is that?

24 A It's right here. It's the one I've had
25 for the last 10 or so years.

Eric Kirkland - Direct

258

1 Q Is that issued to you by the Sheriff's
2 Department?

3 A No, sir, I bought this.

4 Q Okay. Can you read the rights that you
5 read to Mr. Mayes?

6 A Sure. "You have the right to remain
7 silent. Anything you say can and will be used
8 against you in a court of law. You have the right
9 to talk to an attorney and have him or her present
10 with you while you are being questioned.

11 "If you cannot afford to hire an attorney,
12 one will be appointed to represent you before any
13 questioning, if you wish. You can decide at any
14 time to exercise these rights and not answer any
15 questions or make any statements.

16 "Do you understand each of the rights I've
17 just explained to you? Having these rights in mind,
18 do you wish to talk to us now?"

19 Q Okay. Now, when you introduced yourself
20 to Mr. Mayes, did you tell him why y'all were there?

21 A Yes, sir.

22 Q And what did you tell him?

23 A Execution of a search warrant.

24 Q For what reason?

25 A Narcotics.

1 Q Okay. So after you introduced yourself,
2 you read him his rights, what did you do at that
3 point?

4 A Basically, I stayed there about two or
5 three minutes more. And I heard one of the agents
6 from the back side of the living room call out they
7 needed a camera, they had found something.

8 Q Which agent was that?

9 A That was Agent Laney.

10 Q And he testified yesterday?

11 A That's correct, sir.

12 Q And why did he need the camera?

13 A He had found some narcotics.

14 Q Okay. And then what happened?

15 A The camera guy went back to the back, took
16 the photographs, and pretty soon they actually came
17 back out. I can't remember who came out and told me
18 that they had found some drugs, what appeared to be
19 narcotics, in the tissue paper in the bathroom.

20 Q Okay. And what did you do next?

21 A I asked Mr. Mayes did he know anything
22 about what was back there. And his reply was, "It's
23 mine. Everything back there is mine."

24 Q Okay.

25 THE COURT: All right, let me introduce

Eric Kirkland - Direct

.266

1 Q And what did you do with those items?

2 A They were actually placed in what's called
3 a Best kit and later delivered to the Lexington
4 County Sheriff's Department evidence room.

5 Q Okay. And did this Best kit come with a
6 number?

7 A It does.

8 Q And what was the number of this particular
9 Best kit?

10 A It was C020453.

11 Q Did you personally put those drugs in the
12 Best kit?

13 A I did.

14 Q And did you seal the Best kit?

15 A I did.

16 Q And did you personally deliver it to the
17 evidence room at the Sheriff's Department?

18 A I did.

19 Q And how did you do that?

20 A I did that in my vehicle and actually
21 walked in the evidence room and strategically placed
22 it in the locker.

23 Q And when you placed it in that locker, was
24 the evidence -- was the Best kit sealed?

25 A Yes, correct.

1 A Evidence.

2 Q Okay. And when you turned them in to
3 evidence, were they in the same condition as when
4 Agent Barnes gave them to you?

5 A They were.

6 Q Did anyone else take possession of these
7 items in any way?

8 A No, sir.

9 Q Now, when you received them from Agent
10 Barnes, had she labeled on the plastic bags exactly
11 what she was giving to you?

12 A Yes, sir.

13 Q And she did that with these plastic
14 baggies and the digital scales?

15 A Yes, sir.

16 Q Okay. After you took possession or after
17 you delivered the Best kit, and the baggies, and the
18 digital scales to the evidence room, did you
19 subsequently check that evidence out?

20 A I did again.

21 Q And when was that?

22 A I checked that evidence out again on --
23 let me refer to my date -- 9/6/2011.

24 Q And why did you check them out?

25 A I needed to discuss this case with the

Eric Kirkland - Direct

273

1 Solicitor before you.

2 Q Okay. So you were checking them out to go
3 over the case with the Solicitor?

4 A That's correct.

5 Q Okay. So you were checking them out to go
6 over the case with the Solicitor?

7 A That's correct.

8 Q Okay. And at that point, had the drugs
9 already been tested?

10 A That's correct..

11 Q All right. And did you notice anything
12 out of the ordinary with respect to the drugs in the
13 Best kit?

14 A No, sir.

15 Q Did they appear to be in rock form at that
16 point?

17 A They were.

18 Q What did you do with the Best kit after
19 you checked it out to go to talk to the Solicitor?

20 A I returned it.

21 Q And when did you return it?

22 A Probably about two hours later. I think
23 our meeting lasted about two hours or so, and I
24 returned it directly after.

25 Q And when you returned it, where did you

1 return it to?

2 A Back to the evidence room.

3 Q And when you returned it, was it in the
4 same condition as when you checked it out?

5 A It was.

6 Q Did you alter or manipulate those items in
7 any way?

8 A No, sir.

9 Q Did anyone else come into possession of
10 those items outside your presence?

11 A No, sir.

12 Q Did anyone else alter or manipulate those
13 items?

14 A No, sir.

15 Q Tell me about the digital scales and the
16 bags. When you checked them out to go talk to the
17 Solicitor, did you alter or manipulate those in any
18 way?

19 A No, sir.

20 Q Did the Solicitor alter or manipulate
21 those in any way?

22 A No, sir.

23 Q Were they in the same condition when you
24 turned them back in to the evidence room as when you
25 checked them out that day?

Eric Kirkland - Direct

275

1 A Yes, sir, they were.

2 Q Were photographs taken of the drugs seized
3 that day?

4 A Yes, photographs were taken.

5 Q Can you see Exhibit Seven from where
6 you're sitting?

7 A Yes, sir.

8 Q And what is this?

9 A Turn it around.

10 Q If you want to step down, it may be
11 easier.

12 THE COURT: Identify it by exhibit number
13 each time you ask him.

14 Q We're looking at Exhibit Number Seven.
15 Can you tell the jury what's in that photograph?

16 A That appears to be a half cookie of crack
17 cocaine as well as another little small piece of
18 crack cocaine, and a pill bottle with a green top.

19 Q Okay. I'm showing you State's Number
20 Eight.

21 A That is the pill bottle with the contents
22 inside of off-white rock-like substance consistent
23 with crack inside.

24 Q Now, during your years of experience as a
25 narcotics officer, have you seen crack cocaine

1 THE COURT: Any objection, Mr. Floyd?

2 MR. FLOYD: No, Your Honor.

3 THE COURT: All right, you are excused.

4 Thank you for coming.

5 All right, you may call your next witness.

6 MR. ROSS: The State calls Candy Kyzer to
7 the stand.

8 THE COURT: All right, Ms. Kyzer, come
9 around, please.

10 (The witness was sworn.)

11 CLERK OF COURT: If you'll have a seat and
12 state your name, please, spelling your last for the
13 record.

14 MS. KYZER: Candy Kyzer -- K-Y-Z-E-R.

15 CANDY KYZER, having first been duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ROSS:

19 Q Ms. Kyzer, you're an evidence custodian at
20 Lexington County, is that right?

21 A Yes, I am.

22 Q How long have you been working there?

23 A I've been at the Sheriff's Department for
24 17 years.

25 Q And did you receive the evidence in this

Candy Kyzer - Direct

300

1 particular case?

2 A Yes, I did.

3 Q Before we get to what you did in this
4 particular case, can you tell me about the
5 generalized procedures that y'all have with regards
6 to drugs being turned in to evidence?

7 A Whenever a deputy comes in, any kind of
8 items, whether it's drugs or not, it's usually
9 either in a gray box or in a locker that they put it
10 in. And then they have to push a button that locks
11 it from their side. So that means the only -- the
12 evidence custodians can actually get into the locker
13 from the other side.

14 And then when we come in in the morning,
15 we check the lockers and proceed to get the evidence
16 out and check the paperwork, make sure everything is
17 in order, and proceed to sign it in.

18 Q So when an officer turns drugs in to a
19 locker and locks that locker, who else can open it
20 at that point?

21 A The only people that have access to the
22 other side, which is in the office, is the three
23 evidence custodians and our supervisor.

24 Q Okay. Now, once y'all receive the
25 evidence out of that locker, what do you usually do

1 with the drugs in that case?

2 A We go ahead and we make sure everything is
3 in order. In this case, in our Best kit, we make
4 sure that the seals are still intact in the Best
5 kit. Then we go ahead and sign it in, print out
6 bar-code labels, put it in -- and with the Best kit,
7 it's waiting to go to the chemist. We put in what
8 we call our drug lab temp box.

9 Q Okay. Now, if you were to receive other
10 items with that case, say drug paraphernalia, would
11 you store those in the same room as the drugs
12 themselves?

13 A No, we would not.

14 Q Okay. Now, once you store the drugs in a
15 temporary storage room, what happens next?

16 A Whenever the chemist is ready to actually
17 get the Best kit, we end up doing paperwork and
18 calling her over to come pick them up. At that
19 time, I sign it out to the chemist for her to test.

20 Q Okay. And you document that when you sign
21 it out?

22 A Yes, we do.

23 Q And do you receive it back from the
24 chemist after she does her testing?

25 A We do.

Candy Kyzer - Direct

302

1 Q And do you document that?

2 A Yes, we do.

3 Q And do you check the seals, as well?

4 A We do.

5 Q Okay. Did you receive a Best kit in this
6 particular case?

7 A I did.

8 Q And what was the Best kit number?

9 A It's Best kit number C020453.

10 Q And when did you receive that Best kit?

11 A I received it on February 17, 2011.

12 Q Who turned it in?

13 A Eric Kirkland.

14 Q And where did you receive it from?

15 A From a locker.

16 Q And what did you do with it after you
17 received it?

18 A I signed it in, made sure all the seals
19 and everything were intact, and then I stored it in
20 the temporary drug lab box.

21 Q Were the seals intact?

22 A Yes, they were.

23 Q And what happened after you stored it in
24 the temporary drug room?

25 A A couple of days later, we ended up

1 signing out Best kits to the chemist. This one was
2 particularly signed and given to her.

3 Q When was it signed out?

4 A On February 22, 2011.

5 Q And did you personally sign that out?

6 A I did.

7 Q And when you signed it out, was it in the
8 same condition as when you received it on February
9 17, 2011?

10 A It was.

11 Q Had it been altered or manipulated in any
12 way?

13 A No.

14 Q Did anyone else come into possession of it
15 between February 17, 2011, and February 22, 2011?

16 A No, they didn't.

17 Q All right. And who is the chemist that
18 you signed it out to?

19 A It's Emily Homer.

20 Q And did Ms. Homer bring it back to you?

21 A She did.

22 Q And when did she do that?

23 A On March 29, 2011.

24 Q And what did you do with the item at that
25 point?

Candy Kyzer - Direct

304

1 A At that point, since it had been tested,
2 we automatically go ahead and sign it in to a
3 regular drug box that we put miscellaneous drug
4 cases in. So then I signed it in and put it in a
5 particular drug box.

6 Q Okay. Did anyone else sign it out after
7 you placed it in that particular drug box?

8 A Yes, they did.

9 Q And who was that?

10 A Eric Kirkland.

11 Q When did he sign that out?

12 A He signed it out on September 6, 2011.

13 Q What time did he sign it out?

14 A He signed it out at 10:46 in the morning.

15 Q And did he return it back to you?

16 A Yes, he did.

17 Q And when did he return it back to you?

18 A September 6, 2011, at 12:37.

19 Q Why did he check it out?

20 A I believe he had a meeting with the
21 Solicitor for getting ready, preparing for court.

22 Q Okay. Did anyone else check that item
23 out?

24 A It was signed out again.

25 Q And when was that?

1 A On May 15, 2012.

2 Q And who signed it out at that point?

3 A It was signed out to Emily Homer again.

4 Q And can you tell me some of the
5 circumstances surrounding that?

6 A At the time the Solicitor, Colleen Dixon,
7 came over to view the evidence before we went to
8 trial, she at that time noticed that there was
9 liquid inside the Best kit.

10 Q Okay. Where does Ms. Dixon work right
11 now?

12 A She is going to another Solicitor's
13 Office. I believe it's Berkeley County.

14 Q So she moved down to Berkeley?

15 A Yes.

16 Q Okay. So she noticed that there was
17 liquid in the Best kit. What happened at that
18 point?

19 A At that point, I called Emily to come over
20 and for her to look at it and let her and the
21 Solicitor see what they wanted to do.

22 Q So what happened? You signed it out to
23 Ms. Homer?

24 A I did.

25 Q And that was on what date, again?

Candy Kyzer - Direct

308

1 A It's a thicker bag type substance thing --

2 Q Okay.

3 A -- that you can put -- usually, it's for
4 like fire debris and stuff like that.

5 Q Okay. And what appears to be the date on
6 those beside the initials?

7 A August 3, 2012.

8 Q Were there any baggies and digital scales
9 turned in to evidence in this case, as well?

10 A It was.

11 Q And when were those turned in?

12 A They were turned in February 17, 2011.

13 Q And who received them?

14 A I signed them in..

15 Q Okay. And you documented that?

16 A Yes, I did.

17 Q And what did you do with them at that
18 point?

19 A We have -- they're like banker boxes that
20 we put miscellaneous items in for cases that we know
21 are not going to be big cases. Instead of taking up
22 a shelf with a big box with just small items, we put
23 cases in these banker boxes. And at that time,
24 that's where I placed it.

25 Q When you say "big cases," are you

1 referring to the amount of evidence received?

2 A Yes.

3 Q Is this a different storage room than
4 where you place drugs?

5 A It is.

6 Q Okay. Who has access to that storage
7 room?

8 A The evidence custodians and my boss.

9 Q Okay. Did anyone subsequently check out
10 the digital scales and the plastic bags?

11 A Yes, they did.

12 Q And who is that?

13 A It was Eric Kirkland.

14 Q And when did he check those out?

15 A On September 6, 2011, at 10:46.

16 Q Is that the same time as he checked out
17 the Best kit C020453?

18 A It was.

19 Q And when did he return the baggies and the
20 digital scales?

21 A On September 6, 2011, at 12:37.

22 Q And what did you do with them at that
23 point?

24 A Placed them back in the box that they
25 should have been in.

Candy Kyzer - Direct

310

1 Q Okay. Did you bring those baggies and the
2 digital scales to court?

3 A I did.

4 Q May I see them, please? And it appears
5 that the baggies and the digital scales are stapled
6 together?

7 A They were -- they are.

8 Q And I'll remove the staples.

9 I'm going to have this one marked as the
10 next number.

11 THE COURT: Number seventeen, Ms. Thomas?

12 COURT REPORTER: I've marked State's
13 Seventeen, Your Honor.

14 THE COURT: All right.

15 MR. ROSS: And then I'd ask that this one
16 be marked as eighteen.

17 COURT REPORTER: State's Number Eighteen.

18 Q I'm showing Ms. Kyzer State's Number
19 Seventeen. Are those the plastic bags that were
20 turned in that we were talking about?

21 A Yes.

22 Q And State's Number Eighteen, are these the
23 digital scales we were talking about?

24 A Yes.

25 Q Now, were you previously asked to bring

Candy Kyzer - Direct

311

1 these items to court --

2 A Yes.

3 Q -- the digital scales and the plastic
4 bags?

5 A Yes, I was.

6 Q And were you able to find them?

7 A No, I was not.

8 Q Can you tell me about that, please?

9 A Back October of 2011, I had been notified
10 that this case was getting ready to go to court and
11 had gotten a phone call stating that I needed to
12 come on over to testify. At that time, I went ahead
13 and pulled all the evidence that we had, pulled the
14 drugs and found them and the gun.

15 And at that time, I went to go outside to
16 pull the plastic baggies and the scale and
17 everything and could not locate it in the box that
18 it was supposed to be in.

19 Q Okay. And what did you do at that point?

20 A I ended up looking around in the other
21 boxes beside it, on top of it, anywhere that I could
22 look, and still could not locate it.

23 Q Were these items ever located?

24 A Yes, they were.

25 Q When were they located, and by whom?

Candy Kyzer - Direct

312

1 A A couple of weeks later, my sergeant,
2 Barbara McMullen, and Deputy Joe Hart had went
3 outside. At that time, I thought it was to
4 rebar-code label packages because we had started a
5 new computer system at that time and returned --

6 MR. FLOYD: I'm going to object to any
7 hearsay, if she's going to testify as to what they
8 said.

9 THE COURT: All right. I don't think this
10 part is being offered for the truth of what was
11 offered. So at this point, it's not hearsay.

12 You can't tell him what anybody told you,
13 but you can tell what you saw or observed, okay? Go
14 ahead.

15 A I was -- they went outside and then was
16 looking for the packages. And it ended up Deputy
17 Joe Hart found it.

18 Q And why was Deputy Joe Hart --

19 MR. FLOYD: Your Honor, I object. The
20 only way she would know that is by hearsay, which
21 you just ruled she couldn't do.

22 THE COURT: All right. Ask her if she has
23 any personal knowledge of him finding it, and if so,
24 how, other than what he told her.

25 Q What is your personal knowledge of how he

1 found that?

2 A He came back in the office and had the
3 bags in his hand.

4 Q Okay. Did you see that?

5 THE COURT: All right, that's admissible.

6 A I did see whenever he came back in the
7 office with them, yes.

8 Q And did he subsequently place those items
9 in the correct box?

10 A Yes.

11 Q How many pieces of items do y'all have
12 stored out there in that storage room?

13 A In that one storage room, we have
14 approximately 9,600 cases or items, and our total is
15 like 35,000.

16 Q Now, these two pieces of evidence which
17 are seventeen and eighteen, these have been -- once
18 Eric Kirkland turned them back in, have they been
19 within the custody of the Lexington County evidence
20 room?

21 A Yes, they have.

22 Q Okay. The whole time?

23 A Yes.

24 Q Okay.

25 MR. ROSS: Your Honor, at this point we

Candy Kyzer - Direct

314

1 would offer seventeen and eighteen into evidence.

2 THE COURT: Mr. Floyd?

3 MR. FLOYD: Your Honor, we object. I
4 don't think the chain has been properly -- a
5 foundation has been properly established.

6 THE COURT: Where is the gap?

7 MR. FLOYD: They admit they lost both of
8 the items at some point in time. They were in the
9 wrong boxes.

10 THE COURT: That's right. Is there any
11 evidence that they were not in the custody of the
12 evidence department the entire time?

13 MR. FLOYD: There's no evidence that they
14 were either, Your Honor. It's just speculation that
15 we don't think it was anywhere else. But both of
16 these items --

17 THE COURT: Well, you've got a different
18 rule as to fungible goods as opposed to non-fungible
19 goods, and these are non-fungible goods where
20 identity is not an issue like the possibility of
21 drugs or things that can be mixed up.

22 But if this witness can testify that these
23 are the same ones that she had originally and
24 they're the same now as they were then, and they
25 were brought back to her from this individual, where

Candy Kyzer - Direct

315

1 is the gap in the custody?

2 MR. FLOYD: The gap is nobody can say
3 where they were when they were missing.

4 THE COURT: All right, I'm going to
5 overrule the objection. The missing is not missing
6 from the evidence room but missing from being able
7 to locate it within the evidence room.

8 There is no evidence that they ever left
9 the evidence department, if there was any evidence
10 whatsoever that they left the evidence department.
11 It was simply the testimony is they could not be
12 found within the Lexington County evidence
13 department, and they were misplaced there and found
14 still within the department.

15 And that's the way I understood the
16 testimony, and I don't think that that is a gap in
17 the chain of custody. The objection is overruled.
18 The evidence will be admitted subject to the
19 objection of the defendant.

20 MR. ROSS: Thank you, Your Honor.

21 Seventeen and eighteen.

22 THE COURT: Seventeen and eighteen.

23 (State's Exhibit Number
24 Seventeen, Plastic Bag of Plastic Bags; and State's
25 Exhibit Number Eighteen, Plastic Bag, Scales, were

Candy Kyzer - Direct

316

1 entered in evidence.)

2 Q Was there a rifle turned in in this case,
3 as well?

4 A Yes, it was.

5 Q And did you document that?

6 A Yes.

7 MR. ROSS: No further questions for this
8 witness, Your Honor.

9 THE COURT: Cross-examination?

10 MR. FLOYD: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q Officer Kyzer, when this case was to be
14 called to trial back in October 2011, you couldn't
15 find some of the evidence, is that correct?

16 A That's correct.

17 Q And what couldn't you find?

18 A The plastic baggies, the digital scales,
19 and the miscellaneous paperwork.

20 Q And what kind of room was that evidence
21 stored in -- or supposed to be stored in?

22 A It's now a climate-controlled room that we
23 store all of our multi-case boxes and computers in.

24 Q Now, I believe you testified that the
25 items had been checked out to Agent Kirkland on

1 stored in in the evidence?

2 A The drug room is a room that is in our
3 office. It is not air-conditioned. It has a fan
4 that pulls the air through the room and circulates
5 it back out.

6 And in our drug room, we have lots of
7 multi-case boxes where we store Best kits like this
8 instead of taking up a space with a big box that has
9 just a little package in it.

10 Q So this Best kit would have been stored in
11 a box with other Best kits?

12 A That's correct.

13 Q Any idea how many other Best kits would
14 have been in that box?

15 A Approximately 30 to 40 Best kits.

16 Q Okay. And in that room, the climate
17 control in that room is by way of a fan, is that
18 correct?

19 A That's correct.

20 Q That's in the same building as the
21 Sheriff's Department?

22 A It's actually located outside of the
23 Sheriff's Department in our evidence office.

24 Q Is it connected to the evidence office?

25 A Yes, it is.

1 MR. ROSS: The State calls Beth Harmon to
2 the stand.

3 THE COURT: All right, come around,
4 please.

5 (The witness was sworn.)

6 CLERK OF COURT: If you'll have a seat and
7 state your name, please, for the record.

8 MS. HARMON: Margaret Elizabeth Harmon --
9 H-A-R-M-O-N.

10 MARGARET ELIZABETH HARMON, having first
11 been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ROSS:

14 Q Ms. Harmon, you're an evidence custodian
15 at the Sheriff's Department, right?

16 A I am.

17 Q And you work with Ms. Kyzer, is that
18 right?

19 A I do.

20 Q And did you handle the Best kit in this
21 case?

22 A Yes, I did.

23 Q And just to make sure we're talking about
24 the same thing, let me show you State's Number
25 Sixteen.

1 A Yes.

2 Q Is that the Best kit you handled?

3 A It is.

4 Q Now, I see you looking at the top of that
5 Best kit. And does it have the Best kit number
6 documented on this white bar code here?

7 A It does. I was looking at the control
8 number, though.

9 Q Okay. What is the Best kit number right
10 here?

11 A The Best kit number is Best kit number
12 C020453.

13 Q Can you tell me how you came to handle
14 this Best kit?

15 A This Best kit was returned back from Emily
16 Homer on July 31, 2012, at 10:11 in the morning, and
17 I received it then. I placed it in a bag. However,
18 I did misfile it. Our drug room temp box is in a
19 drug lab or, I'm sorry, a drug room.

20 That drug room has several different
21 multi-case boxes, approximately a hundred or more.
22 Each one of those boxes can contain 30 to 60
23 different cases, and I accidentally misfiled it.
24 They're all filed by numerical order.

25 Q And is this a different room than where

Beth Harmon - Direct

335

1 drug paraphernalia such as scales and bags would be
2 stored?

3 A It is.

4 Q Okay. So you filed it in the drug room.
5 Did you ever come into contact after that?

6 A Yes, I did. That Friday, on August --
7 yes, August the 3rd, I was placing other items into
8 Best kit boxes -- multi-case boxes in the drug room.
9 And while I was placing those items, I noticed that
10 this one was misfiled.

11 Q Okay. And what did you do with it at that
12 point?

13 A I took it out and went to file it in its
14 correct location.

15 Q And what happened?

16 A It leaked on me.

17 Q Okay. How did it leak on you?

18 A The Best kit itself inside the K-pack bag
19 that I placed it in is in another plastic bag. That
20 bag is then placed into an envelope. The seal on
21 that when it was examined by myself, my supervisor,
22 and the narcotics lieutenant, it was noted that it
23 had a crease in the seal. That crease allowed the
24 liquid to seep out.

25 Q And the seal that you're talking about, is

Beth Harmon - Direct

336

1 that the seal that the original narcotics officer
2 places on it or the chemist?

3 A The chemist.

4 Q So you said there was a little bit of a
5 crease?

6 A Yes.

7 Q Can you describe that?

8 A As you know, when you're sealing any type
9 of plastic, when you're heat-sealing it, if there's
10 any type of crease in it, that heat seal is made
11 over that crease, which will allow a slight air
12 pocket to form.

13 Q So there was an air pocket?

14 A Yes.

15 Q Okay. And that's from where the liquid
16 seeped onto you?

17 A Yes.

18 Q Okay. And what did you with it at that
19 point?

20 A Once it seeped on me, I called my
21 supervisor. She was in our warehouse. I called
22 her. She then called the lieutenant of the
23 narcotics division. Both of them came over,
24 examined the package, examined me, and we heat-
25 sealed it in a K-pack bag. And I was sent to get a

Beth Harmon - Direct

337

1 new uniform --

2 Q Okay.

3 A -- because I couldn't wear that one
4 anymore.

5 Q Now, what is a K-pack bag?

6 A A K-pack bag is just a bag similar -- K-
7 pack is the brand, I believe. It's just a plastic
8 bag that allows us to seal stuff.

9 Q So this is another type of heat-sealed
10 bag?

11 A It is.

12 Q And we're looking at State's Sixteen, this
13 outer plastic bag containing contents. The outer
14 plastic bag is the K-pack bag you're referring to?

15 A That's correct.

16 Q And did you initial the heat seal?

17 A I did. I initialed my seal in red.

18 Q Okay. Are these your initials right here?

19 A They are.

20 Q And is the date that you initialed them?

21 A It is.

22 Q And why did you do that?

23 A We initial all of our seals so that we
24 know who sealed it and so that we can identify if
25 that seal has been broken.

1 Q Okay. Has the seal been broken?

2 A It has not.

3 Q Is State's Number Sixteen in the same
4 condition now as when you sealed it?

5 A It is.

6 Q And how do you know that?

7 A Because the seal is still intact, my
8 initials are still there.

9 Q Okay. Now, inside State's Number Sixteen,
10 what is this manila envelope here?

11 A That's just a packaging envelope that we
12 place the items in when we store them.

13 Q Okay. Now, is there another plastic bag
14 inside of it?

15 A There is.

16 Q I'm going to ask you about the drug
17 storage room. Is it air-conditioned?

18 A It is not. It has a vent fan in that
19 pulls air from the outside, circulates it in that
20 small room, and it goes out of an exhaust fan.

21 Q Have you had other cases within the past
22 several months where it's been discovered that crack
23 cocaine has melted?

24 A I know of one personally.

25 Q And that's personally in addition to this

Beth Harmon - Direct

339

1 case?

2 A That is correct.

3 Q And was it stored in that same storage
4 room?

5 A It was in the same storage room. It was
6 not in the same box.

7 Q Okay. So different -- it depends on the
8 case. Sometimes it may melt, sometimes it may not?

9 A Yes.

10 Q This wasn't the only time or the only case
11 of crack cocaine melting out there in that storage
12 room?

13 A No, sir.

14 MR. ROSS: Nothing further for this
15 witness, Your Honor.

16 THE COURT: Cross-examination, Mr. Floyd?

17 MR. FLOYD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q Officer Harmon, how many different bags,
21 Best kits, of drugs do you have in the drug room?

22 A There are thousands in there.

23 Q Thousands?

24 A Yes, sir.

25 Q And you say you know of one other time

1 MS. HOMER: Emily Homer Conrad -- H-O-M-E-
2 R C-O-N-R-A-D.

3 EMILY HOMER CONRAD, having first been duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ROSS:

7 Q Ms. Homer, you're the chemist at the
8 Sheriff's Department, is that right?

9 A Yes.

10 Q Can you tell me about your qualifications
11 to hold this job?

12 A I have a bachelor's in chemistry from
13 University of South Carolina and a master's in
14 organic chemistry from USC.

15 Q Do you have any training at any law
16 enforcement agencies?

17 A Yes, I trained at SLED and with the DEA to
18 do forensic drug analysis.

19 Q What is forensic drug analysis?

20 A Drug analysis for the purposes of criminal
21 court.

22 Q Okay. How long have you been the chemist
23 with the Sheriff's Department?

24 A This coming November will be seven years.

25 Q Okay. And how many cases have you tested

Emily Homer - Direct

347

1 in those seven years, approximately?

2 A Over 2,000 cases.

3 Q Okay. Have you ever been qualified as an
4 expert in State Circuit Court before?

5 A I have.

6 Q How many times?

7 A In state court, 18 times, once federal.

8 Q Okay.

9 Your Honor, at this point we would offer
10 Ms. Homer as an expert in drug analysis.

11 THE COURT: All right, Mr. Floyd, any voir
12 dire with regard to qualifications?

13 MR. FLOYD: No voir dire, Your Honor.

14 THE COURT: All right, any objection to
15 qualification of the witness as an expert?

16 MR. FLOYD: No, Your Honor.

17 THE COURT: All right, the Court will
18 qualify Ms. Homer as an expert in the field of
19 chemistry and drug analysis.

20 And, ladies and gentlemen of the jury, let
21 me tell you what that means. Ordinarily, a witness
22 who is not testifying as an expert is limited in
23 their testimony to opinions or inferences that are
24 rationally based on the perception of a witness,
25 that is, one of the five senses, and are helpful to

Emily Homer - Direct

348

1 a clear understanding of the witness' testimony and
2 do not require special knowledge, skill, experience,
3 or training.

4 However, if scientific, technical, or
5 other specialized knowledge will assist the trier of
6 fact -- and that's you in this case -- to understand
7 the evidence or to determine a fact in issue, then a
8 witness qualified as an expert by knowledge, skill,
9 experience, training, or education may testify in
10 the form of an opinion.

11 So basically the difference between an
12 expert witness and a non-expert witness is that an
13 expert witness is allowed to give opinion in their
14 qualified field, whereas a non-expert witness would
15 not be allowed to give an opinion. And I have
16 qualified this witness as an expert in the field of
17 chemistry and drug analysis.

18 All right, you may proceed.

19 Q Ms. Homer, did you test the drugs in this
20 particular case?

21 A I did.

22 Q Before we get to the testing that you ran,
23 can you tell me about the general handling
24 procedures that you have in place over at the
25 Sheriff's Department as far as handling drugs from

Emily Homer - Direct

349

1 the evidence custodian to the point you test them,
2 to the point you turn them back in?

3 A Well, I let the evidence room know when
4 I'm ready to accept cases. I have a safe within the
5 lab that I store evidence that I'm working on.

6 Then when it's time for me to pick, I
7 actually take the cases by hand from the evidence
8 custodian's and carry it back to the lab. The
9 evidence never leaves the lab at that point till I
10 finish analyzing it. It stays -- either I'm working
11 on it at the bench, or I keep it in a safe when I'm
12 not working on it.

13 Q Who has access to that safe?

14 A Only I do.

15 Q Okay. Did you receive the Best kit in
16 this case?

17 A I did.

18 Q And did you open that Best kit up?

19 A It's C020453, right?

20 Q Yes. Is that the one you opened up in
21 this case?

22 A Yes.

23 Q What tests did you run on it when you
24 opened the bag?

25 A I did two separate confirmatory tests on

1 the evidence and presumption screening.

2 Q Okay. And what were the results of those
3 tests?

4 A Item 1.1 was 64.06 grams of cocaine base
5 crack; 1.2 was 1.89 grams of cocaine base crack;
6 Item 1.3 was cocaine, 2.96 grams; 1.4 was 4.29 grams
7 of cocaine base crack. Keep going?

8 Q Yes, please.

9 A Item 1.5 was .14 grams of cocaine base
10 crack, and that's it.

11 Q Okay. From the point you received the
12 Best kit to the point you did these tests, were
13 these drugs within your care, custody, and control
14 the whole time?

15 A Yes.

16 Q Did anyone else come into possession of
17 them?

18 A No.

19 Q Did you alter or manipulate these drugs in
20 any way?

21 A Only in taking samples that I needed to
22 test.

23 Q Only for the tests themselves?

24 A Uh-huh.

25 Q And what physical form were these drugs

Emily Homer - Direct

351

1 in? Were they liquid, solid, or gas?

2 A Some of them were in rock substance,
3 solid, they were all solid. There's powder
4 substance, it was a solid, and another rock,
5 substance that was solid.

6 Q So did you notice any liquid at that time?

7 A No, I did not.

8 Q Okay. Did you reduce your tests to a
9 report?

10 A Yes.

11 Q Is it your regular business practice to
12 write a report when you test drugs?

13 A Yes, it is.

14 Q And do you keep a copy of this report in
15 your records?

16 A Yes.

17 Q Did you bring a copy to court today?

18 A Yes.

19 Q May I see it, please?

20 I'm going to ask that this be marked as
21 the next number.

22 COURT REPORTER: State's Number Nineteen,
23 Your Honor.

24 Q I'm showing you State's Number Nineteen.
25 Is this the report that you completed in this

Emily Homer - Direct

352

1 particular case?

2 A Yes, it is.

3 Q And you are the custodian of that record,
4 is that right?

5 A Yes.

6 MR. ROSS: Your Honor, at this time I'd
7 ask for State's Number Nineteen to be introduced
8 into evidence.

9 THE COURT: Mr. Floyd?

10 MR. FLOYD: Your Honor, we object to the
11 introduction at this point until we get through the
12 testimony --

13 THE COURT: I'm sorry, I can't hear you.

14 MR. FLOYD: Your Honor, we object to the
15 introduction of the report at this stage. It's our
16 position that that should be considered once the
17 Court rules on whether or not the substances
18 themselves can be placed into evidence.

19 THE COURT: All right, I'll withhold
20 ruling at this time.

21 Q What did you do with the Best kit after
22 you ran --

23 THE COURT: You can, of course, excuse the
24 witness and recall her if that becomes necessary
25 after I get to that stage.

Emily Homer - Direct

353

1 MR. ROSS: Yes, sir.

2 THE COURT: Okay.

3 Q What did you do with the drugs after you
4 tested them?

5 A After I test them, the drugs go back into
6 my safe until a report is handed out to the officers
7 and Solicitors. And then I have to coordinate a
8 time with the evidence room where they can accept
9 the evidence back from me.

10 Q And did you coordinate a time to do that?

11 A Uh-huh.

12 Q And did you return the Best kit to the
13 evidence room at that point?

14 A I did.

15 Q Prior to returning that best kit, what do
16 you do to the Best kit as far as sealing it to give
17 it back to them?

18 A I take the original Best kit, and I fold
19 it so that you can see the seal through -- I put the
20 original Best kit and my drugs and separate them,
21 and I put them into what's called a K-pack bag. And
22 then I seal that, and then it gets sent back over to
23 the evidence room.

24 Q And did you do that in this case?

25 A Yes.

1 Q From the point that you first received the
2 Best kit from the evidence custodian prior to
3 testing it to the point that you returned the sealed
4 -- resealed Best kit in a K-pack, was it within your
5 care, custody, and control the whole time?

6 A Yes.

7 Q Did anyone else come into possession of
8 these items?

9 A No.

10 Q Other than the testing that you ran to
11 figure out whether or not the substances were
12 positive, did you alter or manipulate those drugs in
13 any way?

14 A No.

15 Q Okay. Did you subsequently -- after you
16 turned that Best kit in to evidence, did you
17 subsequently come into possession of it again?

18 A I did. I didn't mark down the date. I
19 think the evidence room has that on record. Colleen
20 Dixon called me over to the evidence room to look at
21 the evidence.

22 Q And who is that?

23 A That was -- she at the time was the
24 Assistant Solicitor handling the case.

25 Q Okay. And is that unusual for you to

Emily Homer - Direct

355

1 discuss a case with a Solicitor prior to trial?

2 A No.

3 Q Okay. What did you do when you got there?

4 A I looked at the K-pack bag, the evidence
5 that was inside the K-pack bag that I turned in.

6 Q And how did it appear?

7 A It looked like there was liquid inside of
8 it.

9 Q Okay. Is that --

10 A Some of it was slurry, like part of it was
11 still solid, but other parts of it were liquid.

12 Q Okay. Is that how it appeared when you
13 ran your tests?

14 A No.

15 Q Okay. Have you had other cases where
16 drugs have melted out in the storage room?

17 A I have.

18 Q So did you take possession of the Best kit
19 at that point?

20 A I did.

21 Q And what did you do with it?

22 A I took it back to the lab and placed it
23 into my safe.

24 Q All right. And you're the only person
25 that has access to that safe?

1 A I am.

2 Q Did you ever return it to the evidence
3 room?

4 A I did. Colleen had asked me to take the
5 evidence from the evidence room and keep it in the
6 safe until which time she would contact me and tell
7 me what to do with it at that point.

8 Q Okay.

9 A So I didn't hear anything. And as a
10 general practice, I don't store evidence in the
11 safe.

12 Q Okay. And you subsequently gave it back
13 to the evidence room?

14 A I did.

15 Q And when you gave it back to the evidence
16 room, was it in the same condition as when you first
17 -- when you received it?

18 A It was in the same condition as when I
19 received it the second time.

20 Q Okay. Did anyone else come into
21 possession of that item?

22 A No.

23 MR. ROSS: Your Honor, at this point I'd
24 move for State's Sixteen into evidence, the Best
25 kit.

Emily Homer - Direct

357

1 THE COURT: Mr. Floyd?

2 MR. FLOYD: Your Honor, we still have the
3 same objection.

4 THE COURT: All right, I'll withhold it at
5 this time. We'll rule on it in a few minutes, and
6 I'll hear your full objection on it. Do you want to
7 ask the witness about some things in the Best kit?
8 All right, it's been offered, and I'm assuming let's
9 at least narrow down the objection.

10 What is your objection to number sixteen,
11 Mr. Floyd, just legal objection without an argument
12 on the record?

13 MR. FLOYD: Your Honor, the alleged drugs
14 are obviously not in the same form as they were at
15 the time they came into the custody of the Lexington
16 County Sheriff's Office.

17 THE COURT: All right.

18 MR. FLOYD: They have been altered in some
19 fashion.

20 THE COURT: All right.

21 MR. FLOYD: That would be tampering,
22 whatever the reason would be.

23 THE COURT: I'm saying that I don't need
24 an argument. But you're saying it's not admissible
25 because they're not in the same form. Any other

1 objections?

2 MR. FLOYD: Not at this point, Your Honor.

3 THE COURT: Well, at what point will there
4 be any other objections? He's offering them into
5 evidence, and I want to know what your objections
6 are -- your legal objections are.

7 MR. FLOYD: Well, my legal objections are
8 the drugs are not in the same form they were in at
9 the time they came into the custody of the Lexington
10 County Sheriff's Department.

11 THE COURT: All right.

12 MR. FLOYD: They have been altered.

13 THE COURT: I understand that objection.
14 Any other objections?

15 MR. FLOYD: No other objections.

16 THE COURT: All right. Okay, we'll take
17 that up in a little bit.

18 Mr. Ross?

19 Q So you went and you looked at the Best kit
20 with the evidence custodian and the other Solicitor
21 on the case, and you saw that it was partially
22 liquefied, is that correct?

23 A Yes. There was liquid in the bag.

24 Q Okay. What is your expert opinion as to
25 how that occurred?

Emily Homer - Direct

359

1 A Well, again, you know, this is --

2 MR. FLOYD: Your Honor, I'm going to
3 object. She's an expert. She's been qualified as
4 an expert on analyzing drugs.

5 THE COURT: No, sir, she's been qualified
6 as an expert as a chemist, as well.

7 A Well, drugs are an organic substances. A
8 characteristic of organic substances is that they
9 don't withstand heat very well. And depending on
10 how impure that substance is will actually lower
11 what are called the physical property of a fixed
12 point at which it will melt.

13 There's states of matter. We have gas,
14 liquid, and solid. So unfortunately I wasn't always
15 in possession. It was stored in another location
16 which was not climate-controlled, or, as my
17 understanding, at some point in time it also, you
18 know, went through other people and left the
19 evidence room to come to the Solicitor's Office and
20 go back to the evidence room. Any time that --
21 there's certain points of temperatures at which a
22 substance can melt. And the less pure a substance
23 is, the lower that temperature will be required for
24 it to melt.

25 Q Let me interrupt you. What do you mean by

1 the less pure the substance is? What are you
2 referring to?

3 A The more adulterants that are added to it,
4 the more -- it's a principle of the solute
5 principle. You know, when you're -- the more of a
6 solute participles are added to a pure substance,
7 the lower the melting point, the lower the point at
8 which, the temperature at which it will melt or the
9 temperature which something could boil.

10 Just like when you're making pasta, you
11 want your water to boil quickly so you add little
12 bit of salt to your water. That lowers the boiling
13 point temperature to water so you can get the water
14 to boil faster.

15 Q So what type of adulterants could be added
16 to cocaine or crack cocaine that would lower that
17 melting point?

18 A Examples of adulterants are lidocaine,
19 benzocaine. Those are frequently used because it's
20 still in cocaine -- it's still in the cain family,
21 but it's not really a cocaine -- and other things
22 such as baking soda.

23 Q Would the percentage of adulterants --
24 would you say that that would lower -- the higher
25 the percentage of adulterants, the lower the melting

Emily Homer - Direct.

361

1 point would be?

2 A Yes, yes.

3 Q So if you have two substances in the same
4 room and they both have a different amount of
5 adulterants, whether or not one melts or the other
6 would depend on the amount of adulterants?

7 A Yes..

8 Q And the amount of adulterants you have in
9 crack cocaine, that's not visible upon plain sight,
10 right?

11 A Right. No, you can't, and more I wouldn't
12 have a job.

13 Q Now, you saw the Best kit, and you saw the
14 fact that it's partially slushy or liquefied. Does
15 that affect your report and your conclusion in any
16 way?

17 A No.

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

20 THE COURT: Cross-examination?

21 MR. FLOYD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q Ms. Homer --

25 A Yes, sir.

1 unit of weight.

2 Q Can you tell them in a way that they could
3 put a handle on it?

4 A A gram is about 15.42 grains. I mean, a
5 gram is less than kilogram. A kilogram is a
6 thousand grams.

7 Q All right, let's --

8 A It's about .0353 ounces.

9 Q All right, it's how much ounces? How did
10 you refer to that?

11 A One gram is .0353 ounces.

12 Q So a gram is less than three one-
13 hundredths of an ounce, would that be right?

14 A Yes, one gram is .03, so about three-
15 hundredths of an ounce, uh-huh.

16 Q We're talking a very small quantity. A
17 gram is a very small quantity, isn't it?

18 A I don't really think of things in terms of
19 small.

20 Q I've got you.

21 A A gram is a gram.

22 Q And the amount that you test is what part
23 of a gram?

24 A Well, I take -- it depends on how many
25 tests. Some of these have three and four tests, so

Emily Homer - Cross

364

1 it's about, you know, about .03 grams, but, you
2 know. And then some of them have several color
3 tests at about a tenth of a gram each color test.

4 Q So you're testing a very small sample of
5 what you're testing?

6 A I take a random sample of the actual
7 material.

8 Q I understand. But overall it's a very
9 small portion of the substance?

10 A It's an adequate portion, according to
11 SLED and DEA.

12 Q But is it a small portion?

13 A No, I don't classify things as small.

14 Q You don't classify it as small. Is it a
15 very small ratio to the whole?

16 A I don't classify things as small. I mean,
17 it's a part of the whole. As long as the entire
18 whole substance is the same type of mixture, I take
19 a tenth of a gram per test. You know, sometimes it
20 can be I can use .5 grams, a total of a half a gram,
21 depending on how many tests that I run.

22 Q Okay. For example, you said that one of
23 the samples -- and I believe you said 64 grams or
24 something to that effect?

25 A 64.06.

1 Q And you would have taken how much of that
2 to test?

3 A I actually used close to a gram.

4 Q You used close to a gram --

5 A Uh-huh.

6 Q -- so one sixty-fourth of it?

7 A Uh-huh.

8 Q Okay. Would that be about the same ratio
9 as to the other samples?

10 A The other samples, I did -- let's see -- I
11 used three-tenths of a gram and 1.2 again. I used a
12 tenth of a gram, 1.4.

13 Q How about the 4.29?

14 A There is no 4.29.

15 Q Do you have one that's in the fours?

16 THE COURT: I can't hear you, Mr. Floyd.

17 MR. FLOYD: I'm sorry.

18 Q Did you have one that was four something?
19 Did I write that down wrong when you said it?

20 A Well, 4.29 grams and 1.4, and there I used
21 close to a tenth of a gram.

22 Q Okay. Now, when you came back in contact
23 with the substances on May 15th, did you do any
24 testing then?

25 A Colleen asked me to pull it to take the

Emily Homer - Cross

366

1 evidence at that time.

2 Q Did you do testing then?

3 A No, huh-uh.

4 Q Okay. And so you don't know what type of
5 adulterants were in the substance, do you?

6 A I never test for what type of adulterants.

7 Q Okay, I understand. But you're testified
8 that adulterants could contribute to the melting
9 temperature?

10 A Yes, they do.

11 Q But you didn't test this substance to see
12 what adulterants or what percentage of adulterants
13 there were?

14 A No. The State of South Carolina does not
15 test for percentage of adulterants because we're
16 quantitative, not qualitative analysts.

17 Q The more adulterants that there would be,
18 the less the purity of the substance, is that
19 correct?

20 A Yes.

21 Q Well, have you ever brought it to the
22 attention of the Sheriff's Department that they
23 should air-condition or climate-control the evidence
24 room?

25 MR. ROSS: Objection to relevance, Your

1 Honor.

2 THE COURT: All right, I don't see the
3 relevance, but I'll allow him to ask it. I don't
4 think there's any harm.

5 And the question was, have you ever
6 brought it to anybody's attention that there should
7 be climate control in the evidence room.

8 A Yes, I have.

9 Q And was that before this incident?

10 A Yes -- well, I'm a little confused. It
11 was before the last court hearing where we had
12 another evidence that had melted. But it was after
13 this evidence.

14 Q So it's happened twice, to your knowledge?

15 A Yes, it has happened twice.

16 Q Now, if the drugs at some point in time
17 had been placed in a different environment that was
18 even less climate-controlled than the fan, could
19 that have contributed to them melting?

20 A Well, I mean, if you place it in an
21 environment that has gotten warmer than that area,
22 yes.

23 Q Exhibit Sixteen, is it in the same form
24 now as it was when you first examined it back in
25 2011?

Emily Homer - Cross

369

1 THE COURT: Yes, sir.

2 All right, ladies and gentlemen, there is
3 again another legal matter that I need to take up
4 with the lawyers. First of all, I'm going to ask
5 this witness to step down.

6 You are not excused yet, though, Ms.
7 Homer, but if you would step down. Give the exhibit
8 back to the Court Reporter and step down.

9 And then, ladies and gentlemen, as soon as
10 Ms. Homer gets down, I'm going to excuse you for
11 just a few minutes while we take up this question of
12 evidence, this legal question that we need to take
13 up at this time. And I'm going to do that, and I
14 have to do it on the record and outside of your
15 presence.

16 Please do not discuss the case among
17 yourselves. Go to your jury room, relax, and I'll
18 send for you just as quickly as I can get this issue
19 resolved.

20 (The jury left the
21 courtroom at 12:27 p.m.)

22 THE COURT: All right, I believe, Mr.
23 Ross, your position at this time is that you are
24 offering Exhibit Number Sixteen, which is the Best
25 kit containing the alleged drugs, into evidence and

1 offering number nineteen, which is the chemist's
2 report, into evidence, isn't that correct?

3 MR. ROSS: Yes, Your Honor.

4 THE COURT: Okay.

5 All right, let's address those matters,
6 Mr. Floyd, and I'll hear from you in just a minute.
7 But first of all, let's go to Exhibit Number
8 Nineteen, which is the report. Let me hear from you
9 with regard to what your objection is about that.

10 MR. FLOYD: Your Honor, it's our position
11 that the report cannot come in unless the drugs
12 themselves come in.

13 THE COURT: What's the basis for that?

14 MR. FLOYD: Because the drugs themselves
15 are the best evidence. They are the substances --

16 THE COURT: But isn't her testimony and
17 isn't her test on those drugs made before there was
18 any change in the chemical composition of the drugs?
19 In other words, they were checked out to her when
20 they were still in cookie form or rock form, and her
21 test was based on that.

22 So what difference does it make whether
23 the Best kit comes in at this point at all if her
24 test was made and there's no question in the
25 testimony that her analysis was made on the basis

Emily Homer - Cross

371

1 that they were in the correct form at the time that
2 she made the test?

3 MR. FLOYD: Your Honor, it is our position
4 that the drugs themselves must come into evidence in
5 order to make the case. And if the drugs themselves
6 can't come into evidence, then the test of them
7 would be irrelevant.

8 THE COURT: Are you telling me that if
9 there had been a fire in the Sheriff's Department
10 and the evidence had been destroyed that her test
11 results couldn't come in?

12 MR. FLOYD: I would argue that, Judge.

13 THE COURT: Okay.

14 Mr. Ross, let me hear from you on that.

15 MR. ROSS: Your Honor, I think that the
16 only thing we have to show is what was seized was
17 properly handled from the point of seizure to the
18 point they were tested and the results of that test.

19 He said the drugs are the best evidence in
20 this case, but we've heard that the drugs have since
21 melted. The best evidence is the drugs as they were
22 before when they were seized and when they were
23 tested shortly thereafter. So I think the best
24 evidence actually is the report itself.

25 THE COURT: All right. I would look at

1 another further analysis on this, Mr. Floyd, is that
2 without objection, even without the report, the
3 witness testified as to what she found without
4 objection. So that evidence is really already
5 before the jury as to what she found when she ran
6 her test.

7 The written report simply supplements or
8 corroborates her earlier testimony. So it's my view
9 that the report is admissible for two reasons.
10 Number one, she's already testified as to the
11 results of her test and given her verbal testimony
12 as to the results of her test without objection.

13 There has been no objection made to the
14 chain of custody before she testified as to the
15 results of the test, and that she took possession
16 and tested the drugs before they were misplaced and
17 also before there was any change in the chemical
18 analysis.

19 So the ruling would be that Exhibit Number
20 Nineteen is admissible into evidence, being the
21 chemist's report and will be so admitted. All
22 right, now let me hear from you with regard to
23 Exhibit Number Sixteen, which is the Best kit, Mr.
24 Floyd.

25 MR. FLOYD: Thank you, Your Honor. We

Emily Homer - Cross

373

1 object to the introduction of Exhibit Sixteen, the
2 Best kit, for the obvious reason that it is in a
3 different form than it was at the time it came into
4 the custody of the Lexington County Sheriff's
5 Department. It was in a solid form.

6 According to the testimony, it is now in a
7 liquid or a slurry form, which by their own
8 testimony is a different form, a different nature
9 than it was at the time it was seized. And
10 accordingly we would move that it not be allowed
11 into evidence because there has been a change in its
12 condition.

13 THE COURT: Well, let me just ask you a
14 couple of hypotheticals, and this is one I think
15 about that comes off-hand, and I'm going to ask you
16 another one. Suppose that, for whatever reason,
17 salt or sugar was obtained as evidence in a case,
18 taken to the evidence room, and because of moisture,
19 that salt or sugar which was in granular form became
20 solid because of moisture. Does that make it
21 inadmissible?

22 MR. FLOYD: Well, I think granular form is
23 also solid, Your Honor.

24 THE COURT: Sir?

25 MR. FLOYD: Granular form is also solid,

1 Your Honor, so there wouldn't be a change in the
2 physical nature of it.

3 THE COURT: All right, suppose it was
4 heated to the point where it became liquid. Does
5 that make it inadmissible?

6 MR. FLOYD: That would be a change, and I
7 think it would be inadmissible. You know, they're
8 custodians of the evidence. They have to -- you
9 know, they have to protect it, they have to take
10 care of it.

11 THE COURT: Well, agreed if they tampered
12 with it. But what if it was a spontaneous chemical
13 reaction? Isn't that what we have here, a
14 spontaneous chemical reaction without anybody's
15 fault?

16 MR. FLOYD: Well, that's the question.
17 Whose control was it? Who had the responsibility of
18 protecting it and maintaining its physical
19 condition? That would be the Sheriff's Department.

20 Now, there's a speculation on their part
21 that it had to be melted by heat, but that's pure
22 speculation. They didn't do any testing on it to
23 see what was the reason for the change in nature of
24 the substance. They just speculated.

25 THE COURT: Well, I think the witness has

Emily Homer - Cross

375

1 testified basically it was a change in environment.

2 Mr. Ross?

3 MR. ROSS: Your Honor, I think it should
4 come in. I think we have the right to tell the jury
5 what happened in the case. And this is a matter
6 really of evidence preservation, and I think the
7 precedent that's helpful in determining this is
8 State versus Cheeseborough and a recent case, State
9 versus Bland.

10 And both of these cases involve handling
11 of the evidence and the defense objections to the
12 handling of the evidence. Really the rule in place
13 here is that the defense has to show that the
14 evidence was -- in the Cheeseborough case, it was a
15 weapon that was destroyed pending trial.

16 It was a murder weapon destroyed pending
17 trial. And the Court -- the Supreme Court -- says
18 you have to show that the State acted in bad faith
19 or that the evidence possessed an exculpatory value
20 apparent before the evidence was destroyed.

21 Your Honor, in this case, (a) the evidence
22 hasn't been destroyed. It's still there. It's
23 changed in form. So I really don't see a legal
24 precedent for allowing what Mr. Floyd is arguing.

25 I think we've explained how it got from

1 point A to point B and everything in between. And
2 the jury is going to want to take a look at it and
3 see for themselves, and I think they've got a right
4 to do so.

5 THE COURT: Okay.

6 All right, Mr. Floyd, do you want to be
7 heard from any further?

8 MR. FLOYD: Your Honor, there's no way
9 around the fact that it's in a different form. I
10 mean, that's --

11 THE COURT: But is there anything in the
12 law that you can point to me that makes it
13 inadmissible because it's in a different form?

14 MR. FLOYD: Your Honor, I think --

15 THE COURT: Through no tampering with the
16 evidence. And I won't say "fault," but no tampering
17 with the evidence by anyone with the State. I think
18 you've got an entirely different situation if you
19 could show there was some tampering of the evidence.

20 MR. FLOYD: Well, everybody in the chain
21 -- the case law is clear. Everybody in the chain
22 has to say the drugs, the substance, whatever type
23 of evidence they're attempting to introduce, is the
24 same.

25 "The substance is the same as when I got

Emily Homer - Cross

377

1 it. When I got it back, it was the same. It had
2 not been tampered with in any way." That's the law
3 on the whole chain. Nobody can say it here,
4 although what they can say is it was the same up
5 until May 15th or sometime discovered on May 15th.

6 THE COURT: But haven't they explained,
7 uncontradictedly explained, the reason for the
8 change and not being in bad faith or fault on the
9 part of the State?

10 MR. FLOYD: No, Your Honor. They've
11 speculated that it could have melted because of
12 adulterants. That's a speculation.

13 THE COURT: Well, that's the opinion of
14 the expert, and her testimony is unchallenged on
15 that point.

16 MR. FLOYD: Well, I think it was
17 challenged. I asked if she tested it for any
18 adulterants, and she didn't. So it's pure
19 speculation on her part.

20 THE COURT: Okay, all right. Well, first
21 of all, I would note for the record that the
22 objection of the defense in this case to the
23 introduction of Exhibit Number Sixteen, which is the
24 Best kit containing the drugs, is not on the basis
25 of the chain of custody.

1 There has been no objection made to the
2 chain of custody of this particular exhibit. And so
3 the issue is that they are not in the same form, and
4 that's the reason or the basis for the objection.

5 To me, it's very clear that the drugs that
6 were left in the evidence room were accounted for at
7 all times, and they left the custody of the evidence
8 custodian only when they were properly signed out.

9 It's also very clear that while they were
10 in the custody of the evidence custodian, they were
11 internally misplaced but never left the custody and
12 control of the evidence custodian except those
13 instances where they were properly signed out. And
14 therefore that's why I make my ruling.

15 And then, of course, there was no
16 objection made with regard to the chain of custody.
17 But that's the way that I see that. But the
18 objection is now that they're not in the same form,
19 and therefore Exhibit Sixteen is not admissible.

20 The evidence is that there was a
21 spontaneous chemical change, not that there was any
22 wrongdoing on the part of anybody in tampering with
23 the evidence to effect that change, not that they
24 were tampered with.

25 As I say, I can equate this to sugar or

Emily Homer - Cross

379

1 salt or any substance that temper or moisture or
2 anything intangible makes a change in its physical
3 composition the longer you have it or that it might
4 have just as a result of time.

5 It's also been explained by the chemist
6 that the reason for this would be that some of them
7 would do this way and some of them would not. Some
8 of them would melt -- cookies or crack would melt,
9 and others would not because of the amount of
10 adulterants, which they have no way of measuring the
11 amount of adulterants, and that different amounts of
12 adulterants could cause a physical change in the
13 substance in some of them and not in others.

14 So that's we had here, was a chemical
15 change that was not caused by any person or object
16 but simply a change in the environment. In my view,
17 along with the evidence in this case as to the way
18 that the drugs were handled, the way that the change
19 came about, not as a result of any misfeasance or
20 malfeasance on the part of the evidence personnel
21 but simply as a result of a change in environment
22 that was really uncontrollable that there is no
23 question that the evidence is appropriate and this
24 is the same evidence simply in a different form that
25 came about as a result of time or environment and

1 without fault of the State. Exhibit Sixteen is
2 admitted subject to the objection of the defendant.

3 All right, now, having said that, Mr.
4 Ross, do you want to recall the witnesses?

5 MR. ROSS: Just to do some redirect with
6 Ms. Homer. That's the only witness I intend to
7 call.

8 THE COURT: Okay, all right.
9 Bring the jury back in, then, please.

10 Ms. Homer, you can come back around.

11 (The jury returned to the
12 courtroom at 12:43 p.m. after which the following
13 proceedings were had:)

14 THE COURT: All right, thank you, ladies
15 and gentlemen. We are ready to proceed with
16 redirect examination by the State.

17 MR. ROSS: Thank you, Your Honor. Your
18 Honor, at this time I'd move for the --

19 THE COURT: Exhibits Fifteen and Sixteen
20 have been admitted into evidence.

21 MR. ROSS: Sixteen and nineteen, Your
22 Honor.

23 THE COURT: You're right, sixteen and
24 nineteen.

25 (State's Exhibit Number

1 please come back to your jury room at 2:30. We
2 should have all of those matters taken care of by
3 that time.

4 When you're reassembling in the jury room,
5 do not discuss the case among yourselves. It's
6 still premature for you to begin any discussion of
7 this matter. Also while you're away from the
8 courthouse, do not talk with anyone else about the
9 case and do not allow anyone to discuss it with you.

10 Simply forget about the case for the next
11 hour and a half or so and come back at 2:30. And
12 we'll be ready to go forward this afternoon. With
13 those admonitions and instructions, I'll excuse you
14 now and allow you to get your lunch. Thank you.
15 You may go with the bailiff.

16 (The jury left the
17 courtroom at 12:53 p.m. for lunch recess.)

18 THE COURT: All right, Mr. Floyd, I'll be
19 glad to hear from you by way of motions.

20 MR. FLOYD: Thank you, Your Honor. Your
21 Honor, at this time we would move for a directed
22 verdict of acquittal. It's our position the
23 evidence, even taken in a light most favorable to
24 the State, fails to establish the proof of the guilt
25 of this defendant, Mr. Douglas Mayes, beyond a

1 reasonable doubt.

2 Your Honor, at this time we would also
3 renew all the motions we made during the
4 presentation of the State's case and our objection
5 to evidence coming into play. It's our position,
6 one, that the charge of possession of a weapon
7 during the commission of a violent crime --

8 THE COURT: Mr. Ross, move this thing.
9 It's right in front of Mr. Floyd here. I like to
10 look at people when they're talking.

11 All right, go ahead.

12 MR. FLOYD: As to the charge of possession
13 of a firearm in connection with a violent crime, it
14 is our position that the State must prove that the
15 weapon was capable of being fired or capable of
16 expelling a projectile I think would be the wording
17 in the statute.

18 And they have failed to do so. So we'd
19 move that that charge be dismissed. And, of course,
20 we would also renew our objection --

21 THE COURT: Doesn't the statute just say
22 "is designed to"? It doesn't require it to be
23 capable of. The statute just says a firearm means
24 any rifle, which this is, it says, which will or is
25 designed to. And is there any question that this

1 exhibit -- I don't remember the number -- is
2 designed to expel a projectile?

3 MR. FLOYD: Well, it depends on what they
4 mean by design. We would say at this current time,
5 no, it's not designed to do it, because there is
6 something in there -- there's something happened to
7 that weapon that has changed the design that makes
8 it inoperable.

9 THE COURT: Okay. I don't think that
10 changes the design. That may change the
11 composition, but it doesn't change the design. I
12 understand.

13 All right, let me hear from you, Mr. Ross,
14 first with regard to the drugs.

15 MR. ROSS: Your Honor, with regard to the
16 drugs, we've established that the drugs were found
17 in his house, undisputed that it was his house,
18 right beside him in a box of toilet paper. And when
19 questioned about it, he admitted that they were his.
20 So I think we have established the burden of proof
21 that's required under the directed verdict standard.
22 And I'll be happy to --

23 THE COURT: Mr. Floyd, let me ask a couple
24 of questions. Is it your position for your directed
25 verdict motion that there's no evidence of

1 possession or no evidence that they were drugs?

2 MR. FLOYD: Your Honor, it's our position
3 that the State's proof falls on the question of,
4 first, possession, whether or not it's actually the
5 drugs of this defendant, Mr. Douglas Mayes. All
6 they have is the fact they say that's his address.
7 That's all they have.

8 THE COURT: Okay. Well, how about his
9 statement?

10 MR. FLOYD: And his statement, which we
11 contest is questionable, the manner in which it was
12 provided.

13 THE COURT: But that's a fact question,
14 isn't it, for the jury to determine?

15 MR. FLOYD: Yes, that's for the jury.
16 That's for the jury. I agree with you there, Your
17 Honor.

18 THE COURT: So there is evidence in the
19 record, then, and which under a Rule 19 motion for
20 directed verdict is what I have to look at, because
21 the rule provides that the Court shall direct a
22 verdict of the defendant's failure of any offense
23 charged in the indictment after the evidence on
24 either side is closed if there is a failure of
25 competent evidence tending to prove the charge in

1 the indictment.

2 In ruling on this motion, the trial judge
3 shall consider only the existence or non-existence
4 of the evidence and not its weight. I have long
5 contended that the use of the term "competent
6 evidence" in the record, as used in the rule, is
7 unfortunate, because it implies a weighing of the
8 evidence, which the second sentence there goes on to
9 show that's exactly what the trial judge should not
10 do.

11 He considers only the existence or non-
12 existence of the evidence. Several years ago, I
13 headed a task force for revision of the criminal
14 rules. We have submitted our proposed revisions to
15 the Supreme Court, and they are pending before the
16 Supreme Court.

17 And one of the things that we did change
18 was in the use of the word "competent," because it
19 does lead to an argument that we hear many times
20 about the sufficiency of the evidence and not its
21 existence. But it's clear that the rule only
22 requires that I evaluate the existence or non-
23 existence of the evidence.

24 And in this case, there is evidence in the
25 record of the possession by virtue of where it was

1 found, that it was his residence, that he made a
2 statement. Some of it is circumstantial. Some of
3 it is direct.

4 But I would deny the motion on the basis
5 of the failure to prove the possession of the
6 substance at this point, because there is evidence
7 in the record regarding that. Now I'll hear from
8 you with regard to the substance itself.

9 MR. FLOYD: Your Honor, in that regard,
10 there are two motions that I make. First of all, we
11 renew our objection to the Court's introduction into
12 evidence of the plastic bags and the scales. I
13 think the evidence clearly established there was a
14 break in the chain of custody of those two items
15 since they went missing for a certain amount of
16 time.

17 THE COURT: Well, let's assume that they
18 were missing for a certain amount of time,
19 completely missing. And I disagree with you that
20 that's what the evidence says. The evidence says
21 they were misplaced. There's no evidence that they
22 were missing.

23 There's no evidence that they ever left
24 the evidence room. But let's assume that they did.
25 With non-fungible goods, with that make any

1 difference?

2 In other words, let's say that my house is
3 broken into, and they steal my gun. And I go to the
4 pawnshop, and I find that gun, three months later.
5 Three months later I find it.

6 And I come into court, and I say, "That's
7 my gun," but I can't say where it's been in those
8 last three months. It's non-fungible. I can
9 identify that as being the item that was taken from
10 my house.

11 And this witness in this case said, "These
12 scales were the ones that we took possession of.
13 These scales are the same one today." When they're
14 non-fungible, what difference does it make where
15 they've been in the meantime?

16 MR. FLOYD: Well, Your Honor, the only way
17 they can say that is by looking at the container
18 they're in and saying "Yes, that's got to be the
19 same."

20 THE COURT: That's one way.

21 MR. FLOYD: There's no way -- the items
22 themselves are not serial-numbered, so they're
23 non-identifiable on their own.

24 THE COURT: Are you saying there's not a
25 different rule with regard to fungible and

1 non-fungible goods?

2 MR. FLOYD: No, no, I think there's a
3 different rule.

4 THE COURT: Okay.

5 MR. FLOYD: But I think for many fungible
6 goods or non-fungible goods, you have ways to
7 identify them. But whether like in your
8 illustration, you know, it's your gun, you know it,
9 so you can identify it, or there's something that's
10 a serial number or something that you have a picture
11 of or whatever.

12 THE COURT: But the witnesses in this case
13 testified "These are the same scales that I took
14 from the house," or "These are the same baggies that
15 I took." They were unchallenged on that. All
16 right, let me hear from you on --

17 MR. FLOYD: And the last point, Your
18 Honor, as to --

19 THE COURT: That's regarding the plastic
20 bags and the scales. What about the drugs
21 themselves?

22 MR. FLOYD: Your Honor, of course, we
23 object to the drugs themselves because -- and it's
24 clear they're in a different form now. They have
25 changed from when they were seized.

1 THE COURT: But that's only with regard to
2 the admission of Exhibit Sixteen.

3 MR. FLOYD: That's correct.

4 THE COURT: What about the fact that the
5 chemist testified, regardless of the admissibility
6 of Exhibit Sixteen, that she testified that when
7 they were in the rock form, it was crack cocaine,
8 and it was cocaine, and there was "x" number of
9 grams of each substance? I don't see how that
10 affects the directed verdict motion.

11 MR. FLOYD: Well, it's our position, Your
12 Honor, that they still have to introduce the drugs
13 themselves. They have to get them into evidence, or
14 the case fails. It doesn't matter what the chemist
15 said earlier, Your Honor. They still have to get
16 the drugs in.

17 THE COURT: So you're saying again -- I'm
18 playing the devil's advocate here. So you're saying
19 that the drugs were turned in to the evidence
20 custodian, who documents them all the way up to a
21 certain point.

22 They're signed out to the chemist. The
23 chemist tests them, brings them back to the evidence
24 custodian. And Lexington County has a disastrous
25 fire, and the drugs are destroyed. The case has to

1 be thrown out? Are they not admissible? The
2 results are not admissible because they are no
3 longer available?

4 MR. FLOYD: Oh, I agree. I think they
5 have to be available for trial, Your Honor, because
6 the defense has a right to test them if they so
7 choose.

8 THE COURT: Okay, all right. The Court
9 finds that, again, on the motion for directed
10 verdict, the test is the existence or non-existence
11 of the evidence, not its weight or its
12 believability. That is a matter for the jury to
13 determine.

14 I think there is evidence in the record
15 for both the drugs themselves as well as the
16 paraphernalia, which is the scales and the baggies,
17 and I would respectfully deny the motion for a
18 directed verdict. Now, counsel, let's talk about a
19 couple more things.

20 Mr. Floyd, immediately after lunch --
21 we're going to break for lunch at this time, but I'm
22 going to come back before the jury comes back. I'm
23 going to need a decision from your client regarding
24 whether or not he does or not does not wish to
25 testify in this matter. And I will go through that

417

1 room and apply that law to the facts as you may find
2 those facts to be and arrive at a verdict in this
3 case.

4 You will hear first from the Solicitor,
5 Mr. Ross, on behalf of the State and then from Mr.
6 Floyd on behalf of the defendant.

7 Mr. Ross?

8 CLOSING ARGUMENT

9 FOR THE STATE

10 MR. ROSS: Thank you, Your Honor, may it
11 please the Court?

12 THE COURT: Yes, sir.

13 MR. ROSS: I go down the street to the BP
14 station, and I go to the candy aisle, pick up a
15 candy bar, put it in my pocket, and I walk out the
16 door without paying for it. I have just stolen that
17 candy bar.

18 And if I go to my car, put that candy bar
19 down on the front seat, drive home, park the car in
20 the driveway, and get out and leave the candy bar
21 sitting there, what do you think is going to happen
22 to that candy bar?

23 A sunny day like today, a sunny day like
24 you get in the summertime in Lexington County, South
25 Carolina, that candy bar is going to melt. When

1 that candy bar melts, does that mean I am no longer
2 guilty of stealing that candy bar?

3 Does that give me a get-out-of-jail-free
4 card for stealing a candy bar if it melts in my car?
5 Mr. Floyd wants to sell y'all that. He wants to
6 sell y'all a get-out-of-jail-free card. What do
7 y'all think about that?

8 I told you when this case started that the
9 facts are simple, the law is simple. The law that
10 he is accused of violating is trafficking crack
11 cocaine. And I'm a little bit old-fashioned, but I
12 want to figure out, if somebody has violated the
13 law, I'd like to take a look at it.

14 So this is the actual statute that he's
15 accused of violating, and Judge King is going to
16 explain this to you as well. But you'll recall all
17 we're going to prove is that the defendant, Douglas
18 Mayes, was in actual or constructive possession of
19 10 grams or more -- in this case, 28 grams or more
20 -- of cocaine base, crack cocaine -- possession.

21 That's all trafficking crack cocaine is,
22 is possession. And the judge is also going to
23 explain constructive possession. I talked about
24 this in my opening statement as well. You don't
25 have to have drugs on you to be guilty of

1 possession.

2 If you exercise dominion and control over
3 those drugs or dominion and control over the area
4 where the drugs are found, you're guilty of
5 possession of those drugs, which makes sense,
6 because we all have stuff -- we can't carry
7 everything we own on our person.

8 That doesn't mean you're not in possession
9 of those items. So consider the evidence in this
10 case. Is he guilty of possession of those drugs?
11 Well, number one, it is his house. That is
12 unquestioned. It is his house.

13 Without a doubt, this is the man right
14 over there that lives at Highway in
15 Pelion. How often do you have drugs in your house
16 and you not know about it? Is that common
17 experience?

18 "Oops, some drugs in my house." Not only
19 in his house, right there in his bathroom -- right
20 here. Right here, look where they're found -- right
21 beside where he does his business in the morning.
22 That's where the drugs were found, right beside this
23 little baby's potty where the drugs are found.

24 He's going to say they're not his, in the
25 most intimate area of our home? That's where

1 they're found. They're not his? How about where
2 was he when the police officers rushed in?

3 You remember Sgt. Laney came in. He was
4 the first guy to enter. He limped up. He had
5 surgery last week, and he came to court to testify.
6 He entered this room right here, this door, knocked
7 and announced, said "Police," and then he went in.

8 He came all the way down here. This is
9 where he finds Douglas Mayes. This is where he
10 finds the drugs. He's right there caught red-
11 handed. There's no space in between here. There's
12 no way to get out of that. He is caught red-handed
13 right beside where the drugs are found.

14 Sgt. Laney testified as to how long it
15 took him to get back in there. He knocked, and he
16 went in. He didn't wait for somebody to come answer
17 the door. And there's a reason why they do that,
18 because you can flush them down that commode.

19 If you wait on somebody to answer the
20 door, they're going to flush them down the commode.
21 Douglas Mayes didn't have time to do that. They
22 were up in there. They were back in that bedroom in
23 no time. He didn't have time to flush them down the
24 commode.

25 Take a look at this pill bottle. He had

1 three bags of crack, one bag of powder, and he's got
2 this pill bottle. He doesn't have the time to open
3 this pill bottle up, shake out the drugs, before the
4 police came back there.

5 It's easy to figure out what happened in
6 this case. He heard "Sheriff's Department, search
7 warrant," "Sheriff's Department, search warrant."
8 He grabbed his stuff, and he stashed it. Well, why
9 else would he not flush those down the commode?

10 That's \$7,000. All these little rocks,
11 all these little rocks in here, that's as good as
12 gold on the street, \$100 a gram. Now, I didn't
13 major in math. I was never good in math. But \$100
14 a gram at 70 grams, \$7,000.

15 So that's why he didn't flush them. And
16 you can also take the value of the drugs in
17 consideration to figure out whose drugs they were,
18 who was in possession of them. If someone else were
19 in possession of these drugs, if this is some sort
20 of conspiracy or somebody else put them there, is
21 that really a good practice for a drug dealer?

22 I don't know much about business. I'd
23 probably starve if I had to get a real job. But do
24 you think that is a smart business practice to stash
25 \$7,000 of your product in somebody else's bathroom?

1 Do you think that's what's going on here, that
2 there's some other guy that stashed those drugs in
3 that bathroom without him knowing about it?

4 They snuck into his single-wide, went into
5 his bathroom, and stashed them there? How else do
6 you know that he was in possession of these drugs?
7 Well, there's the elephant in the room. He
8 confessed to them. And it makes you think, "Well,
9 duh. Of course he was in possession of them."

10 Well, duh, they asked him about these
11 drugs, and he knows he's caught red-handed, and he
12 can't talk his way out of it. So he says, "Yes,
13 everything back there was mine."

14 Now, they're going to try and say there's
15 some confusion in that statement, that you really
16 can't tell what he was talking about when he says,
17 "Everything back there is mine." But when narcotics
18 officers enter your house with a search warrant for
19 drugs, and they said they found drugs, do you think
20 they're talking about the mouthwash in his bathroom?

21 You think they're talking about the soap?
22 You think those narcotics officers were there to
23 talk about building codes? Of course not. They
24 were there for one reason. You know it, and he
25 knows it. They were there for drugs, and he flat-

1 out confessed to it.

2 The second charge is PWID, possession with
3 intent to distribute, cocaine. That's for the
4 powder cocaine. So in addition to the possession
5 element that we're going to prove and we have
6 proven, you've got intent to distribute.

7 How can you figure this one out? You can
8 just look at the drug paraphernalia that was found
9 in the home. Look at all these little suckers.
10 What do you think these things are for? There are a
11 lot of them in here.

12 What do you think these are for in his
13 kitchen cabinet? And he didn't know about what was
14 found in the bathroom? You think -- there was a
15 toddler there. You think this was for the toddler's
16 lunch? Can you fit a little small sandwich in here?
17 Can you fit lunch in here?

18 What can you fit in here? What can you
19 fit in here? Something about that size. That's not
20 the only drug paraphernalia that was found in that
21 house. Right here, right on the kitchen counter,
22 this little sucker, these little digital scales
23 here.

24 Those were found on the kitchen counter in
25 his house, right in plain view, right for everybody

1 to see. They didn't really have to look for them.
2 You walk in the door, they're right there like it's
3 a can of mustard. If you walk in my house, you're
4 probably going to find some mayonnaise that's
5 spoiled sitting out on the kitchen counter.

6 If you walk into Douglas Mayes' house, you
7 find digital scales. Now, Mr. Floyd cross-examined
8 the narcotics officers that seized these items on
9 what could this thing be used for. They talked
10 about maybe putting some beef on here, maybe a small
11 hamburger to weigh it.

12 My mama, bless her heart, she's on Weight
13 Watchers, and she does those little Weight Watchers
14 points. And she's always got some sort of scale.
15 She will weigh out a dadgum rice cake. You think he
16 was weighing out his Weight Watchers points? You
17 think he was trimming up for bathing suit season?

18 You think he was weighing something like
19 this? You think he used this to weigh his product
20 out before he packaged them in this for his
21 customers? How else can you figure out intent to
22 distribute? That's pretty damning.

23 But the weight of the actual powder, like
24 I said, is going to come into play. And listen to
25 Judge King when he tells you, when he instructs you

Closing Argument for the State

425

1 on the law, about the weight of the substance is an
2 element to determining whether or not he intended to
3 distribute the powder cocaine.

4 He's going to be very clear if you have in
5 your possession over a gram of powder cocaine, you,
6 the jury, based on just the weight alone, without
7 even taking this into consideration, or this into
8 consideration, or all this other stuff, based on the
9 weight of that powder alone, you can conclude he
10 intended to distribute it.

11 Well, here he had three grams, three times
12 that one-gram inference weight, three times that
13 threshold, three times, not just barely over. He
14 crushed it. He crushed that ceiling, three times
15 the ceiling.

16 Also consider the crack cocaine there,
17 \$7,000 worth of crack cocaine. Do you think that's
18 all for him? Even without even looking at all that
19 evidence over there, \$7,000 worth, is that all his?
20 He was going to sell that.

21 Was he going to cook that powder cocaine
22 to sell it, to put into those bags, put it out on
23 the streets? The last charge is the easiest one of
24 all, the weapons charge. He's guilty of trafficking
25 crack cocaine, and he was in possession of this

1 weapon.

2 Trafficking crack cocaine is considered a
3 violent offense under the law. He had this weapon
4 in his possession, sitting out in his kitchen, while
5 he's committing that offense. Now, Mr. Floyd talked
6 about -- asked the officers on cross-examination
7 whether or not this is operational.

8 And, again, listen to what the actual law
9 is on this point. And Judge King will tell you
10 about this. The standard is, is this a weapon that
11 is designed to fire? Mr. Floyd wants to take this
12 sucker out and do a little target practicing in the
13 middle of the trial, but we don't really do that in
14 the middle of a trial, because it's designed,
15 capable to be fired.

16 I'm not a weapons expert, don't claim to
17 be. I don't think you need to be. Just take a look
18 at it. So what does one do when confronted with a
19 mountain of evidence like we have in this case?
20 What is the card you can play?

21 You've only got one option out. You've
22 got to attack the police. You've got to put the
23 police on trial. That's really what they did in
24 this case. That's his only way out. He thinks
25 that's his get-out-of-jail-free card.

1 How did they attack the police? Well,
2 they talked about that melted crack cocaine. They
3 think that that's a get-out-of-jail-free card. But
4 do you really need to be an expert to know what that
5 is? Did you need to bring in the chemist to explain
6 this?

7 I think one look at it and you can figure
8 out what this substance is. And the chemist was
9 clear. She did her report not long after these
10 drugs were seized. They were in rock form. They
11 hadn't melted -- an absolute ton of cocaine in that
12 house.

13 And we asked her, "Well, how can it go
14 from rock to liquidized in essence?" It's the same
15 way that candy bar goes from Hershey's milk
16 chocolate candy bar to liquid chocolate right there
17 in your hands. You add a little heat, a little
18 temperature, something's going to melt.

19 That doesn't mean it's no longer crack
20 cocaine or it wasn't cocaine in the first place. It
21 just means that it physically changed forms. We
22 flat asked her how that happened, and it's because
23 of the adulterants, the adulterants that are placed
24 in the crack cocaine, what you cut it with.

25 Different people cut it with different

1 stuff. So if you have different levels of
2 adulterants in your crack cocaine, and you put in
3 the same storage area, some can melt, and others
4 won't. That's just the laws of physics. It's the
5 laws of chemistry.

6 Different adulterants in crack cocaine
7 seized from Pelion, South Carolina, versus crack
8 cocaine seized from somewhere else, pure versus
9 impure, one's going to melt, and one's not going to
10 melt. So that's why you have some cases melt out
11 there in that storage room and most of them don't.

12 And, again, the bottom line, when that
13 chemist got up on the stand, did it alter this in
14 any way? Did it alter her final report? No.
15 Should it alter your decision? No.

16 How else did they attack the police?
17 Well, they jumped on the evidence custodians. They
18 attacked -- little Candy Kyzer came up and testified
19 on the stand. They lit into her. Really? They
20 handle 10,000 pieces of evidence in that storage
21 room.

22 They put these two items in that storage
23 room, these two needles in a haystack. And one time
24 they were called to court, to come bring these to
25 court and couldn't put hands on them. They went out

1 there and looked in another box, there they were.
2 Does that mean these were never in that box? Does
3 it mean that these somehow grow legs and walk out
4 the door?

5 What it means is we're all human. Those
6 evidence custodians are human. It's amazing that
7 something like this doesn't happen more often when
8 you've got 10,000 needles sitting out there in that
9 haystack. So all this talk about what the police
10 did wrong, let's talk about what the police did
11 right.

12 They took some initiative in this case.
13 They busted a drug den, and they seized \$7,000 of
14 crack cocaine, took it off the streets. That's what
15 they did right, and they should be commended for
16 that. They shouldn't be attacked.

17 They caught this man red-handed, and they
18 gave him a chance to explain himself. And he
19 explained himself, "Everything back there is mine."
20 They gave him the opportunity. He knew he was
21 caught. He still knows he's caught.

22 Finally, ladies and gentlemen, I want to
23 talk to you about the presumption of innocence and
24 reasonable doubt. Judge King and Mr. Floyd have
25 already gotten in that a little bit, but I'll talk

1 to you a little bit about it as well.

2 The presumption of innocence, that really
3 is nothing new. That's been the law in this country
4 for as long as we've been a country. That's the
5 American way. The State wouldn't have it any other
6 way. And it's simple.

7 It means everybody that walks through
8 those courthouse doors -- everybody -- when you walk
9 in to start a case, you're presumed innocent. At
10 the start of the trial, you are presumed innocent.
11 Everybody gets their day in court.

12 Mr. Mayes has had his day in court. He's
13 had a few days in court. And the evidence is in.
14 And that presumption of innocence is gone. He can't
15 get around all this evidence. He can't get around
16 that.

17 The trial is over. That presumption of
18 innocence has left the building. You're also going
19 to hear about reasonable doubt from the judge. And
20 reasonable doubt, that's not really -- those aren't
21 magical words, reasonable doubt.

22 Judge King is going to explain to you
23 reasonable doubt simply means, are you firmly
24 convinced that Douglas Mayes is guilty? Are you
25 firmly convinced that Douglas Mayes is guilty?

Closing Argument for the State

431

1 That's it.

2 It's not guilt beyond all doubt. It's not
3 guilt beyond every doubt, because nothing in this
4 world is beyond all doubt. Nothing in this world is
5 beyond all doubt. It's are you firmly convinced.
6 After all this evidence, are you firmly convinced
7 that he's guilty?

8 So if I were to tell you that somebody --
9 that the narcotics officers found \$7,000 of crack
10 cocaine in somebody's bathroom, would you start to
11 get firmly convinced that he's guilty? If I were to
12 tell you that there was open drug paraphernalia
13 throughout that house, are you starting to get
14 firmly convinced yet?

15 If I were to tell you he was found right
16 beside where the drugs were, are you firmly
17 convinced that he's guilty? If I were to tell you
18 that he admitted to this officer that he was guilty,
19 are you starting to get firmly convinced yet?

20 Now, before I sit down and give the floor
21 to Mr. Floyd, I do want to thank you for coming in
22 to serve on this jury panel. Yesterday when we came
23 in, there was a lot of people here for jury duty.
24 And I know all of y'all had something you could have
25 been doing.

1 You could have been out with your family,
2 could have been with your friends, could have been
3 working to put some food on the table. You took
4 time out of your schedule that you didn't have to.

5 You should be commended for that, because
6 nothing the police ever do could ever come to
7 fruition without 12 honest citizens standing in
8 judgment of somebody else. And that ain't an easy
9 thing to do. It is never easy to sit in judgment of
10 somebody else.

11 But it's necessary. It is necessary to do
12 so. It is necessary to hold people accountable for
13 their actions. So there's only one thing left to
14 do. Let's hold Douglas Mayes accountable for his
15 actions. Hold him accountable for what he is, a
16 drug trafficker. Find him guilty as charged.

17 THE COURT: Mr. Floyd?

18 CLOSING ARGUMENT

19 FOR THE DEFENSE

20 MR. FLOYD: Thank you, Your Honor.

21 Mr. Foreman and ladies and gentlemen of
22 the jury, before I get into my closing argument, I'd
23 like to thank each of you for the attention you have
24 given to this matter. It's the most important day
25 in the life of Douglas Mayes. The decision that you

Closing Argument for the Defense

433

1 make about him, well, it's going to affect him for a
2 long time. So we appreciate the attention that you
3 have given to us.

4 Now, I'm going to repeat something that's
5 been said to you, and it's not that I think you
6 forgot it. It's just that it's the most important
7 thing for you to hear. And that is what we call the
8 presumption of innocence, because, you see, Douglas
9 Mayes come into court with the same rights each of
10 us have.

11 One of those most important rights is what
12 we call the presumption of innocence. So you must
13 look at Douglas Mayes, and you must say in your
14 heart and in your mind, "Douglas Mayes is innocent."
15 And he remains innocent unless the State proves his
16 guilt to each one of your satisfaction beyond a
17 reasonable doubt.

18 And what do we mean by that? Now, when we
19 lawyers quit talking to you -- I'm going to be the
20 last one to talk to you -- Judge King will read to
21 you the law. He'll explain to you the law. And if
22 I say something to you about the law -- I'm about to
23 say something about it -- you listen to what he
24 says, and you make sure you go by the way he tells
25 you the law is, because he's the judge of the law.

1 Ladies and gentlemen, one way to define
2 proof beyond a reasonable doubt is reasonable doubt
3 is that doubt which would cause a reasonable person
4 to hesitate to act -- that doubt which would cause a
5 reasonable person to hesitate to act.

6 So if you could somehow take all the
7 evidence you've heard in this case and put it in the
8 shape of this piece of paper, because of one piece
9 of that evidence or the lack of one piece of that
10 evidence, you would hesitate before you would vote
11 to find him guilty, well, your objection as a juror
12 is to return a verdict of not guilty, even if
13 there's other evidence in the case that makes you
14 suspicious of the guilt.

15 Because when you vote guilty or not
16 guilty, you're not voting on whether or not you
17 think he did it. What you're voting on is whether
18 the State has proven his guilt beyond a reasonable
19 doubt. Now, why should you have some doubt in this
20 case?

21 Let's talk about the evidence a moment.
22 The State says you should convict him because he
23 lived there, because he said everything in the
24 bathroom was his [inaudible]. Let's talk about that
25 a minute. Let's analyze that just a moment.

Closing Argument for the Defense

435

1 First, the judge will tell you about a
2 statement, when someone gives a statement. And you
3 must first, when you consider that statement,
4 consider whether or not you think it was given
5 freely and voluntarily or whether or not there may
6 have been some coercive factor involved in that
7 statement before you give it any weight.

8 What were the circumstances of the
9 statement? What do we know? Douglas Mayes was
10 sitting in the living room handcuffed. Kaylie
11 Tharp, the mother of his child, was sitting in the
12 room handcuffed with a small baby next to her.
13 Ladies and gentlemen, what do you think was said?

14 What do you think was said? Does it sound
15 reasonable what was said was, "If you don't admit
16 it, if you don't take responsibility, y'all are both
17 going to jail"? Otherwise, they both wouldn't have
18 been handcuffed. You know that's probably what
19 happened, because what happened next?

20 He gave them what they wanted. Oh, the
21 handcuffs come off of Kaylie Tharp. The baby stays
22 there. It's not a situation where both go to jail,
23 what's going to happen to the baby? Is he going to
24 get DSS involved with it? Or does he go ahead and
25 claim responsibility so that that won't happen?

1 So can you use the basis of that to
2 convict somebody on, or does it make you hesitate a
3 little bit? Now, what else is there? His driver's
4 license has his address. Let me ask you this. Does
5 anybody else live there? Is there anybody else
6 other than Kaylie Tharp? Does Kaylie Tharp live
7 there?

8 Or is there anybody else in addition to
9 Kaylie Tharp that lives there? Have you heard any
10 evidence on that point? Did anybody prove to you
11 that there's nobody else that lives there? Have you
12 heard anything on that? Not a thing, have you?

13 Now, then they say, "Wow, he's got to be
14 guilty because he's in the bathroom, and that's
15 where the drugs are." Ladies and gentlemen, let me
16 tell you something. The way we see that the way I
17 think is logical is that more goes to prove he's not
18 guilty. That's more proof that he's not guilty.
19 You know why?

20 What you've here, you add it all up, you
21 have all those drugs. You've got maybe 70 grams of
22 product. You know what that is? Less than three
23 ounces, 28 grams in an ounce. Less than three
24 ounces of product. Now, you're not allowed to see
25 it, you see, because something has happened here,

1 and, you know, it's now liquid. So you can't really
2 see the exact size.

3 That's not our fault. But you can't the
4 exact size of what you're dealing with, less than
5 three ounces. Now, what does that mean? That means
6 if it was Douglas Mayes' drugs, if Douglas Mayes
7 knew that those drugs were in the bathroom, don't
8 you think he would have flushed them down the toilet
9 when he heard them bust down his door, saying
10 "Police, police, police"?

11 One flush, three ounces of product,
12 because they didn't find any other drugs anywhere,
13 did they? Doesn't it make you hesitate, because
14 isn't that a more logical explanation? One flush,
15 if he'd have known they were there, that's all he
16 had to do, was reach in there and throw them in the
17 toilet and flush them.

18 The police are out there, breaking in the
19 door, yelling "Police, police," running through the
20 house. In fact, when they confronted Mr. Mayes, he
21 wasn't doing anything suspicious, was he? He didn't
22 seem nervous, did he? Have you heard anybody say
23 anything about that?

24 He didn't seem like he was trying to hide
25 anything. Are they seeing a normal person? Have

1 you heard anything unusual about his appearance,
2 about his manner, about his demeanor? No, there
3 wasn't any, was there? Doesn't that stay more in
4 line with the fact he didn't know what was in there?

5 And even if he said, "Whatever is in there
6 is mine," he didn't know. There's been no evidence
7 that anybody ever confronted him before he went into
8 the living room and said, "Hey, look what's here.
9 Look what's here." He had no idea what they were
10 talking about.

11 And now I'm going to shut up and sit down.
12 I see you suppressing those sighs of relief. It's
13 been a long two days. I've been up here talking a
14 long time, too. See, there's a reason for that,
15 because once I sit down, I don't get to say anything
16 before you on behalf of Douglas Mayes.

17 The system we have doesn't allow us to
18 communicate with each other. I'm not allowed to ask
19 you what part of this evidence do you need me to
20 discuss. You're not allowed to ask me, "Well,
21 Wayne, what about this piece of evidence? What
22 about this piece of evidence? What do you have to
23 say about that?"

24 There's no dialogue like that permitted in
25 our rules. So we lawyers end up standing up here

Closing Argument for the Defense

439

1 trying to talk about every possible thing we can, in
2 hopes that we don't overlook something that may be
3 of importance to you. All we can ask is when you
4 get back in that room, if something comes up, think
5 how we could have responded to it.

6 When you go to make that question of
7 guilty or not guilty, remember what you've heard in
8 here. Does the evidence prove the guilt beyond a
9 reasonable doubt? And when you go to consider that
10 point, you think about that. You think about what
11 makes more sense.

12 Did he know the drugs were there, or he
13 didn't know the drugs were there? Because, see,
14 that's part of the question. It's not enough -- his
15 mere presence and at the scene where the scene where
16 the drugs were found is not enough for guilt. If
17 you listen to the judge, he'll tell you that.

18 His mere presence there is not enough.
19 They must prove he had knowledge of it and the
20 intent to control it. So the question on whether he
21 had knowledge of it goes to what happened when the
22 police came in that house, because if he had
23 knowledge of it, if he knew it was there, it
24 wouldn't have been there by the time the police got
25 back there.

Charge of the Court

441

1 as jurors, it is your exclusive duty to determine
2 and decide all issues of fact in this case and for
3 that purpose to determine the effect, the value, the
4 weight, and the truth of the evidence.

5 Both the State and the defendant have the
6 right to expect that you will conscientiously
7 consider and evaluate the evidence and apply the law
8 of the case thereto, to the end that both the State
9 of South Carolina and the defendant will receive and
10 obtain a fair and impartial trial.

11 Now, when I use the word "defendant" in
12 these instructions, I refer, of course, to Mr.
13 Douglas James Mayes. The State of South Carolina by
14 the three bills of indictment in this case charge
15 the defendant with three different offenses.
16 Indictment Number 1303 charges the defendant with
17 possession with intent to distribute powder cocaine
18 on February 17, 2011.

19 Indictment Number 2011-GS-32-1304 charges
20 the defendant with trafficking in crack cocaine, and
21 Indictment Number 1305 charges the defendant with
22 possession of a weapon during the commission of a
23 violent crime. To these charges and to these
24 indictments, the defendant has entered a plea of not
25 guilty.

1 This plea of not guilty by the defendant
2 places the burden of proof on the State to prove by
3 evidence the guilt of the defendant beyond a
4 reasonable doubt before you can find the defendant
5 guilty. The defendant, Mr. Mayes, is presumed in
6 the law innocent of the charges contained in these
7 indictments.

8 It is a cardinal and fundamental rule of
9 the law of evidence that a defendant, irrespective
10 of the enormity of the charges against him, will
11 always be presumed innocent of the crime for which
12 he is indicted unless and until the guilt of the
13 defendant has been proven by evidence which
14 satisfies you, the jury of his guilt beyond a
15 reasonable doubt.

16 The presumption of innocence is not a mere
17 legal theory. It is not just a legal phrase. The
18 presumption of innocence is a substantial right to
19 which every accused is entitled. Our Supreme Court
20 has declared that the presumption of innocence is
21 like a robe of righteousness placed about the
22 shoulders of this defendant, and it remains with him
23 and assigns to him that class, the innocent, until
24 that presumptive robe of righteousness has been
25 stripped from his person by evidence satisfying you,

1 the jury, of the guilt of the defendant beyond a
2 reasonable doubt.

3 The presumption of innocence accompanies
4 the defendant from the time of his arraignment and
5 appearance in this Court and continues with the
6 defendant after you retire to the jury room to
7 deliberate your verdict. The presumption of
8 innocence continues in existence to the benefit of
9 the defendant until you, the jury, reach the
10 conclusion that the State has proven the guilt of
11 the defendant beyond a reasonable doubt.

12 Now, the State is not required to prove
13 the guilt of the defendant beyond all doubt or
14 beyond every doubt but beyond a reasonable doubt.
15 What is a reasonable doubt? It is not an imaginary
16 or fanciful doubt or a weak doubt. It is a
17 substantial doubt.

18 It is a doubt for which you can give or
19 assign a reason based on the testimony and the
20 evidence in this case. A reasonable doubt is not
21 any sort of a doubt. You and I know from everyday
22 life experiences that you may have a sort of a doubt
23 about any matter that arises, no matter how trivial
24 it may be or how serious it may be.

25 A reasonable doubt is a doubt which makes

1 an honest, sincere, conscientious juror in search of
2 the truth hesitate to act. Proof beyond a
3 reasonable doubt is proof which leaves you firmly
4 convinced of the defendant's guilt.

5 If you have a doubt for which you can give
6 or assign a reason as to the guilt of the defendant,
7 then he is entitled to a verdict of not guilty.
8 Reasonable doubt may arise from evidence which is in
9 the case or from the lack of evidence in the case.

10 You, the jury, must make the determination
11 of whether or not reasonable doubt exists as to the
12 guilt of this defendant. The very fact, however,
13 that the jury engages in a full and free discussion
14 of the issue of guilt or non-guilt in a case with a
15 normal conversational ebb and flow on these issues
16 do not automatically mean that reasonable doubt
17 exists in this case or in any other case.

18 I charge you that the defendant is
19 entitled to every reasonable doubt arising in the
20 whole case or arising in any defenses asserted by
21 the defense. If upon any issue of fact essential to
22 conviction and a verdict of guilty you have a
23 reasonable doubt as to how that issue should be
24 resolved, it would be your duty to resolve that
25 doubt in favor of the defendant.

Charge of the Court

445

1 A defendant, ladies and gentlemen, is not
2 required to prove his innocence, but the State is
3 required by law to prove every essential element of
4 the offense charged against the defendant by
5 evidence which satisfies you, the jury, of his guilt
6 beyond a reasonable doubt before you can convict the
7 defendant and find him guilty.

8 If then upon the whole case you have a
9 reasonable doubt as to the guilt or innocence of the
10 defendant, he is entitled to that reasonable doubt
11 and would be entitled to an acquittal and a verdict
12 of not guilty. But on the other hand, if upon the
13 whole case you find the State has proven by evidence
14 which satisfies you, the jury, of the guilt of the
15 defendant beyond a reasonable doubt, then in such
16 circumstances it would equally be your duty to
17 convict the defendant and find him guilty.

18 Now, if you find the defendant guilty but
19 you have a reasonable doubt as to whether the
20 defendant be guilty of the greater crime charged or
21 the lesser crime charged, then you would resolve
22 that reasonable doubt in favor of the defendant and
23 write a verdict of guilty only as to the lesser
24 charge.

25 But, of course, you could not write a

1 verdict of guilty to any charge unless you find that
2 all elements of the charge have been proven by the
3 State beyond a reasonable doubt. Now, as I said at
4 the first of this case, I instruct you that the
5 indictments in this case which I hold in my hand are
6 not evidence.

7 They are simply the formal written
8 instruments which contain the charges against the
9 defendant, and they serve as the formal document by
10 which this case is brought to trial. During this
11 trial, each of us, you and I, have certain duties to
12 perform. As the trial judge, it is my
13 responsibility to preside over the trial of this
14 case, and I also have the duty to rule upon or pass
15 upon the admissibility of evidence offered during
16 the progress of this trial.

17 You are to consider only the competent
18 evidence before you, and you are to disregard and
19 disabuse from your mind any testimony ordered
20 stricken from the record of this case during the
21 progress of the trial, if there be any. And you are
22 to consider only the testimony which has been
23 presented from the witness stand, together with any
24 exhibits admitted into the record of this case and
25 any stipulations of counsel made in the record, if

Charge of the Court

447

1 there be any.

2 I have the additional duty to charge you
3 the applicable law in this case. As the presiding
4 judge, I am the sole judge of the law in this case.
5 And it is your duty to accept and apply the law as I
6 now state it to you. If you have a preconceived
7 idea as to what the law is or what the law ought to
8 be, and it does not agree with what I tell you the
9 law is, you are obligated under your oath to abandon
10 this preconception on your part because you are
11 sworn to accept the law precisely as I give it to
12 you.

13 In every case tried in this Court before a
14 jury, the jury becomes the sole and exclusive judge
15 of the facts of the case. You, the jury, are the
16 judge of the facts in this case. The Court is the
17 judge of the law. The constitution of this state
18 has declared that the trial judge shall not
19 intimate, state, comment upon, or make any statement
20 to a trial jury about the facts in the case.

21 Since you are the sole judge of the facts,
22 you are not to infer from anything that I have said
23 during the progress of this trial in ruling upon the
24 admissibility of evidence of otherwise, or anything
25 that I say to you now during the course of these

1 instructions to you, that I have any opinion about
2 the facts of this case. I do not.

3 The law does not permit me to have an
4 opinion about the facts of the case. That is a
5 matter solely for you to determine. You, the jury,
6 must determine the facts, as I have stated that to
7 you, and you, the jury, must give and determine what
8 effect, what value, what weight, and what truth
9 should be attributed to the evidence presented
10 during the course of this trial.

11 Necessarily then, you must assess the
12 credibility of the witnesses who have testified in
13 this case. Credibility is simply a legalistic term
14 which means believability. It becomes your duty to
15 analyze and evaluate the evidence and to determine
16 that evidence which convinces you of its truth.

17 I charge you that in determining the
18 question of credibility or believability of the
19 witnesses, you may believe one witness as against
20 several witnesses, or you may believe a part of the
21 testimony of a witness and reject the remaining part
22 of the testimony of the same witness.

23 You may believe the testimony of a witness
24 in its entirety or reject the testimony of a witness
25 in its entirety. You may consider whether any

1 witness has exhibited any interest, any bias, or any
2 prejudice in the case. And you may consider the
3 demeanor a witness, that is, the appearance of a
4 witness from the witness stand.

5 And you may consider the opportunity for
6 knowledge concerning those things about which the
7 witness testified. These considerations you do not
8 exercise arbitrarily but if in your good judgment
9 there is sound reason in the record for so doing,
10 because your objective, ladies and gentlemen, is to
11 find the truth, whether it comes from one or more
12 witnesses.

13 And in doing so, in exercising your mental
14 processes and in determining what you consider to be
15 true, the law simply requires that you exercise your
16 good judgment, your common sense, your sense of
17 logic and reason, and your experiences in life.

18 You then apply these attributes of ability
19 to the evidence and determine what you consider to
20 be the truthful evidence. And to these true state
21 of facts, you take and apply the law as I now state
22 it to you and thus arrive at a true verdict in this
23 case.

24 Now, as I said, there are three
25 indictments in this case, and the defendant is

1 charged in one indictment with trafficking in crack,
2 in another indictment with possession with intent to
3 distribute powder cocaine, and the other with
4 possession of a weapon during the violent crime. I
5 now want to define these offenses for you.

6 First, trafficking in crack cocaine.
7 Section 44-53-375(c) of the South Carolina Law reads
8 as follows: "A person who knowingly sells,
9 manufactures, delivers, purchases, or brings into
10 this state or who provides financial assistance or
11 otherwise aids, abets, attempts, or conspires to
12 sell, manufacture, deliver, purchase, or bring into
13 this state or who is knowingly or in actual or
14 constructive possession or who knowingly attempts to
15 become in actual or constructive possession of 10
16 grams or more of cocaine base is guilty of a crime
17 known as trafficking in cocaine base."

18 There are three elements to the offense of
19 trafficking in crack cocaine that the State must
20 prove beyond a reasonable doubt. First, that the
21 substance involved was in fact crack cocaine.
22 Second, that the defendant had possession of that
23 crack cocaine, either actual possession or
24 constructive possession. And, third, that there
25 were in fact 10 grams or more of crack cocaine

Charge of the Court

451

1 involved.

2 Section 44-53-210(b)(4) of the code
3 provides that cocaine in any form is a controlled
4 substance under the law of South Carolina. Section
5 44-53-110 states -- and I quote -- "Cocaine base
6 means an alkaloidal cocaine or free base form of
7 cocaine which is the end product of chemical
8 alteration whereby the cocaine in salt form is
9 converted to a form suitable for smoking. Cocaine
10 base is commonly referred to as rock or crack
11 cocaine."

12 The substance must be crack cocaine. The
13 defendant must have actual or constructive
14 possession of the crack cocaine, and the amount
15 involved must be 10 grams or more of crack cocaine.
16 The State must prove that the substance involved is
17 in fact crack cocaine.

18 The State must further prove the defendant
19 had actual or constructive possession of the crack
20 cocaine. What does possession of crack cocaine mean
21 under the law? The law says cocaine in any form is
22 a controlled substance. Possession means more than
23 simply having a controlled substance in one's
24 possession.

25 There must be knowing possession. The

1 State must prove possession of crack cocaine by the
2 defendant and the further fact that the defendant
3 knew he had the crack cocaine in his possession.
4 The State must demonstrate beyond a reasonable doubt
5 that the defendant was in possession of crack
6 cocaine, that he knew he had it in his possession,
7 and that he knew the item was a controlled substance
8 under the law of this state.

9 The State is not required to show the
10 purpose for which the defendant may have had
11 possession of the crack cocaine. This is not a part
12 of the State's required degree of proof. The State
13 must show beyond a reasonable doubt that there was
14 possession of the crack cocaine and that the
15 defendant knew he had crack cocaine in his
16 possession.

17 Now, there are two kinds of possession
18 recognized in the law, actual possession and
19 constructive possession. Actual possession occurs
20 when the controlled substance is found to be in the
21 actual physical control of the person charged with
22 the possession.

23 Constructive possession is when a person
24 has dominion or control or the right to exercise
25 dominion and control over either the object or the

1 premises upon which the object is located.

2 Possession may be inferred from the circumstances,
3 and it may be imputed to anyone who has the power
4 and intent to control and use the object.

5 In other words, possession of an object or
6 premises gives rise to an inference that the person
7 charged has both the power and intent to control the
8 use and disposition of the object. Actual knowledge
9 of the presence of the controlled substance is
10 strong evidence of intent to control the disposition
11 or use.

12 Mere presence of a person in an area where
13 an object is found is not enough in and of itself to
14 give rise to the necessary inference. Proof of
15 possession requires more than proof of mere presence
16 in the place where the controlled substance is
17 found.

18 The State must prove the defendant had
19 both, one, the power, that is, either actual or
20 constructive control; and, two, the intent to
21 control its disposition or use. Now, actual control
22 occurs when the controlled substance is found to be
23 in the actual physical custody of the person
24 charged.

25 Constructive control occurs when the

1 person charged with possession has dominion and
2 control over either the controlled substance or the
3 premises upon which the controlled substance is
4 found. Constructive control means the defendant's
5 knowledge and possession may be inferred if the
6 controlled substance was found on premises under the
7 defendant's control.

8 This is a permissive inference. The jury
9 is free to accept or reject this permissive
10 inference of knowledge and possession depending upon
11 your view of the evidence. Constructive control may
12 be established by circumstantial evidence as well as
13 by direct evidence.

14 And constructive control may be jointly
15 shared by two or more individuals. Where the actual
16 knowledge of the presence of a controlled substance
17 is such strong evidence of intent to control its
18 disposition or use, that knowledge may be equated
19 with or substituted for the initial element.

20 So in summary, before you can find the
21 defendant guilty of trafficking in crack cocaine,
22 the State must prove the following elements beyond a
23 reasonable. First, the substance was in fact crack
24 cocaine, a controlled substance under the law of
25 this state.

Charge of the Court

455

1 Secondly, the defendant had possession of
2 the controlled substance. That would be possession
3 either or constructive possession of the controlled
4 substance. And, third, the amount of controlled
5 substance was 10 grams or more of crack cocaine.

6 Now, the next indictment that you must
7 consider is the indictment for possession of cocaine
8 with intent to distribute. Section 44-53-370(a)(1)
9 of the South Carolina Code of Laws provides that
10 "Except as authorized by this article, it shall be
11 unlawful for any person to possess with intent to
12 distribute a controlled substance."

13 There are three elements of that offense
14 of possession of cocaine with intent to distribute
15 that the State must prove beyond a reasonable doubt.
16 First, that the substance was in fact cocaine.
17 Second, that the defendant had possession of that
18 cocaine, either actual possession or constructive
19 possession. And, third, that the defendant
20 possessed the cocaine with intent to distribute.

21 Of course, the State has first got to
22 prove the fact that the substance was cocaine. And,
23 second, the State must prove beyond a reasonable
24 doubt that the defendant had actual or constructive
25 possession of the cocaine. And, again, I'm not

1 going to go through the entire colloquy as to what
2 actual and constructive possession is.

3 I charged you that in connection with the
4 trafficking charge. But the two kinds of possession
5 recognized in the law are actual possession and
6 constructive possession. And possession may be
7 inferred from the circumstances and may be imputed
8 to anyone who has the power and intent to control
9 the disposition and use of the object.

10 In other words, possession of an object or
11 premises gives rise to an inference that the person
12 charged has both the power and intent to control the
13 use and disposition of the object. Actual presence
14 of the controlled substance is strong evidence of
15 intent to control the disposition.

16 And, again, I would tell you, as I did in
17 connection with the trafficking charge, that mere
18 presence by the defendant where the controlled
19 substance is found is insufficient in and of itself
20 to give rise to possession of the controlled
21 substance. Possession requires more than mere
22 presence.

23 Now, the State must prove the defendant
24 possessed the cocaine with intent to distribute.
25 Under this charge, the State is not required to

1 prove a distribution or sale. The State is only
2 required to show an intent to distribute. What is
3 intent within the law?

4 Criminal intent is a state of mind which
5 operates jointly with an act of omission in the
6 commission of a crime, and criminal intent is a
7 mental state of conscious wrongdoing. So I will
8 tell you that, in summary, before you can find a
9 defendant guilty of possession of cocaine with
10 intent to distribute, the State must prove the
11 following elements beyond a reasonable doubt.

12 First, that the substance was cocaine, a
13 controlled substance. Second, that the defendant,
14 had actual or constructive possession of the
15 cocaine. And, third, that the defendant possessed
16 the cocaine with intent to distribute.

17 However, I would further charge you that
18 there's a provision in the law with regard to
19 possession with intent to distribute, and that is
20 Section 44-53-370(d)(4), which creates a permissive
21 inference that possession of more than one gram of
22 cocaine constitutes possession of cocaine with
23 intent to distribute.

24 Thus, this code section provides that
25 possession of more than one gram of cocaine gives

1 rise to a permissive inference that the defendant
2 possessed the cocaine with intent to distribute.
3 The inference is a violation of the law by
4 possession of more than one gram of cocaine and may
5 be drawn from proof of the quantity of the drugs.

6 The resulting implication only permits
7 rather than requires the jury to infer a violation
8 of the law. This is another piece of evidence for
9 you to consider and evaluate. The permissive
10 inference does not relieve the State from actually
11 proving beyond a reasonable doubt the element of
12 intent to distribute cocaine.

13 Now, on the theory that the greater
14 offense includes a lesser offense, another option
15 that you will have on that charge will be the
16 offense of simple possession of cocaine. And,
17 again, South Carolina law provides that it is
18 unlawful to possess a controlled substance or what
19 is known as cocaine. And if you conclude that he
20 did not possess the cocaine with intent to
21 distribute the cocaine, then your verdict would be
22 one of simple possession of cocaine.

23 Now, the final charge in this case is the
24 charge of possession of a weapon during the
25 commission of a violent crime. Let's go back to the

1 simple possession for just a minute. The code
2 section does provide that it is unlawful for any
3 person knowingly or intentionally to possess a
4 controlled substance unless the substance was
5 obtained directly from or pursuant to a valid
6 prescription of a practitioner while acting in the
7 course of the practice.

8 And, of course, there the State would have
9 to prove two elements, that is, that the controlled
10 substance was in fact cocaine and that the defendant
11 had actual or constructive possession of the
12 cocaine. Now, let's talk for just about the charge
13 of possession of a weapon during the commission of a
14 violent crime.

15 Our law provides that if a person is in
16 possession of a firearm or visibly displays what
17 appears to be a firearm during the commission of a
18 violent crime and is convicted of committing or
19 attempting to commit a violent crime, then he is
20 guilty of the crime of possession of a firearm
21 during the commission of a violent crime.

22 Firearm is defined as any machine gun,
23 automatic rifle, revolver, pistol, or any weapon
24 that will or is designed to or may readily be
25 converted to expel a projectile. Section 16-1 of

1 the Code of
2 Laws of South Carolina provides that the crime of
3 trafficking in crack cocaine is a violent crime.

4 For you to find the defendant guilty of
5 the separate offense of possession of a firearm
6 during the commission of a violent crime, you must
7 first find the defendant guilty of committing the
8 violent crime, which in this case is trafficking in
9 crack cocaine.

10 If you find the defendant guilty of
11 trafficking in cocaine, you must then determine
12 whether the State has proven beyond a reasonable
13 doubt that the defendant was in possession of a
14 firearm or visibly displayed what appeared to be a
15 firearm during the commission of a violent crime.

16 Now, those are the charges for which the
17 defendant has been charged in this case. But there
18 are two or three other principles of law that I want
19 to state to you. First of all, that there are
20 generally two types of evidence that are presented
21 during a trial, direct evidence and circumstantial
22 evidence.

23 Direct evidence is testimony of a person
24 who asserts or claims to have actual knowledge of a
25 fact, such as an eyewitness. Circumstantial

Charge of the Court

461

1 evidence is proof of a chain of facts and
2 circumstances indicating the existence of a fact.
3 The law makes absolutely no distinction between the
4 weight or value to be given to either direct or
5 circumstantial evidence, nor is a greater degree of
6 certainty required of circumstantial evidence than
7 of direct evidence.

8 You should weigh all the evidence in this
9 case. And after weighing all of the evidence, if
10 you are not convinced of the guilt of the defendant
11 beyond a reasonable doubt, you would find the
12 defendant not guilty. Also, the Court has admitted
13 into evidence in this case the testimony of an
14 expert witness.

15 Although lay witnesses are limited to
16 testifying about facts within their knowledge and
17 are not allowed to give opinions, certain witnesses
18 who by their training, education, or experience are
19 considered experts in a particular field may give
20 their opinions in that field based on the facts of a
21 matter and their conclusions.

22 These opinions constitute evidence to be
23 considered by you in connection with all of the
24 evidence and testimony in this case. You may
25 consider the expert's opinion just as you do all

1 other evidence in this case. It is for you, the
2 jury, to give it such weight as you in your
3 experience and discretion may determine.

4 You must weigh such evidence and accept or
5 reject it in the same manner that you treat all
6 other evidence in this case. Now, I want to state
7 to you now and I want to emphasize to you now this
8 principle of law with regard to the defendant not
9 testifying.

10 The defendant in this case has not
11 testified. This is his constitutional right. It is
12 not a circumstance you can take into consideration
13 or even allow to enter into your discussions in the
14 jury room. Under the Constitution of South Carolina
15 and the United States, it is the defendant's
16 constitutional right not to testify.

17 The burden of proof is on the State of
18 South Carolina to establish the guilt by competent
19 evidence beyond a reasonable doubt. The fact that
20 the defendant did not take the witness stand and
21 testify in his own behalf does not create any
22 inference against him. And you, the jury, must not
23 permit this fact to weigh in the slightest degree
24 against the defendant, nor should that fact enter
25 into your discussions or deliberations in the jury

1 room.

2 Now, ladies and gentlemen, I have about
3 finished my instructions to you. But I would tell
4 you that you are not partisans or advocates for the
5 State of South Carolina or for this defendant. It
6 has been said that when you serve on the jury, you
7 have no friends to reward and no enemies to punish.

8 Obviously, such a perverted system of
9 justice would be intolerable. You have been
10 selected by both the State and this defendant as
11 fair and impartial jurors. It is your duty, then,
12 by your joint deliberations to determine the truth
13 in this case, giving to the defendant the benefit of
14 each and every reasonable doubt on each and every
15 issue. And then to the facts that you determine to
16 be true, you then take and apply the law which has
17 been given you by this Court and thus arrive at a
18 verdict which does speak the truth.

19 The word "verdict," ladies and gentlemen,
20 has a Latin derivative. It comes from the Latin
21 verb "veredicto," meaning to speak the truth or
22 truth saying. And when you have accomplished these
23 responsibilities, you will have satisfied your oath
24 as jurors, and you will have discharged your duty to
25 this Court.

1 Now I want to instruct you on the forms of
2 verdict in this case. And, of course, there will be
3 a separate verdict for each of the three charges.
4 If the State has failed to prove the guilt of the
5 defendant beyond a reasonable doubt, your verdict
6 would be two words, not guilty.

7 If the State has proven the guilt of the
8 defendant beyond a reasonable doubt, your verdict
9 would be one word, guilty. The verdict that you
10 render in this case must be the verdict of each and
11 every juror. It must be your unanimous verdict.
12 All 12 jurors must agree on the verdict which you
13 authorize the foreperson to write.

14 Now, Mr. Foreman, I have prepared verdict
15 forms on two sheets of paper that will go with you
16 to the jury room. The sequence in which I have
17 stated the possible verdicts on this case is not
18 suggestive of any verdict on your part. You should
19 not infer from the sequence or the order in which I
20 have put the possible verdicts on this verdict form
21 that I have any opinion as to what your verdict
22 should be. I do not.

23 The law does not allow me to have an
24 opinion. But, obviously, when setting something up
25 on a piece of paper, I had to put something first

Charge of the Court

465

1 and put something second. But the verdict in this
2 case is to be determined by you, the jury, and not
3 by this Court.

4 Now, on the two drug charges, they are
5 contained in one verdict form. And across the top,
6 we simply have the State of South Carolina, the
7 County of Lexington, in the Court of General
8 Sessions, the State of South Carolina versus Douglas
9 James Mayes, the defendant, and the two indictment
10 numbers, 1303 and 1304.

11 Verdict on 1303, "We the jury by unanimous
12 agreement find the defendant, Douglas James Mayes,
13 on the charge contained in Indictment Number
14 2011-GS-32-1303 guilty of possession with intent to
15 distribute cocaine or guilty of simple possession of
16 cocaine or not guilty." So there are three possible
17 verdicts on that particular one -- guilty of PWID
18 cocaine, guilty of possession of cocaine, or not
19 guilty.

20 Now, on Indictment Number 2011-GS-32-1304,
21 which is the one that deals with the crack cocaine,
22 trafficking in crack cocaine in that indictment, "We
23 find the defendant guilty or not guilty." And then
24 you would find one of the three on the first charge
25 and one of the two on the second charge and then

1 sign your name and date it.

2 Now, the other form that you would only
3 consider this charge if you find the defendant
4 guilty of trafficking in crack cocaine. In fact,
5 the instructions say across the top, "If you find
6 the defendant guilty of trafficking in crack cocaine
7 pursuant to Indictment Number 1304, you may consider
8 the charge of possession of a weapon during the
9 commission of a violent crime. If you find the
10 defendant not guilty of trafficking in crack
11 cocaine, do not consider this charge and notify the
12 bailiff that you have concluded your deliberations."

13 But if you find that he is guilty of
14 trafficking, you consider this. And on the charge
15 of possession of a weapon during the commission of a
16 violent crime, "We, the jury, by unanimous
17 agreement, find the defendant guilty or not guilty."
18 Again, sign your name and date it.

19 And when you have reached a verdict, if
20 you will knock on the door, we will return you to
21 the courtroom as quickly as possible. The bailiff
22 will be outside your jury room door to provide
23 security during the course of your deliberations.

24 In just a few minutes, I'm going to send
25 you to the jury room. I will have the bailiffs

Charge of the Court

467

1 bring you the evidence in this case. I will also
2 have them bring you the verdict forms. But I'm
3 going to ask that you go to your jury room now, with
4 the exception of the alternate. I'm going to ask
5 that she stay with me.

6 But if you'll go to your jury room, but do
7 not begin your deliberations just yet. If it's not
8 necessary for me to bring you back into the
9 courtroom for additional instructions, then the
10 bailiff will bring you the verdict forms and the
11 evidence and tell you to begin your deliberations.
12 But do not begin your deliberations until he tells
13 you to do so.

14 So with the exception of the alternate, if
15 the 12 members of the principal jury will go with
16 the bailiff to the jury room. But do not begin your
17 deliberations just yet. Thank you.

18 (The jury left the
19 courtroom at 4:06 p.m. to deliberate their
20 verdicts.)

21 THE COURT: Are there any additions or
22 exceptions on behalf of the State, Mr. Ross?

23 MR. ROSS: No, sir.

24 THE COURT: On behalf of the defense, Mr.
25 Floyd?

1 MR. FLOYD: Your Honor, the only exception
2 that I take to the charge is we object to the use of
3 the word "inference," that if there's an inference
4 created by the mere fact that he possessed the
5 premises or owned the premises. We think that's a
6 burden-shifting kind of charge.

7 THE COURT: Well, it used to be when it
8 was presumption that the Supreme Court has changed
9 that basically to make it an inference, a permissive
10 inference. And I told the jury, of course, that
11 they could disregard it as a permissive inference,
12 and I think that is the law. But your exception is
13 noted.

14 MR. FLOYD: Thank you, Your Honor.

15 THE COURT: All right, counsel, come up
16 and check the exhibits to make sure that -- I don't
17 think there was anything that was excluded. I think
18 it's one through nineteen?

19 COURT REPORTER: Yes, sir.

20 THE COURT: One through nineteen, and that
21 should be all the exhibits.

22 MR. ROSS: And, Judge, you're not sending
23 the indictments back?

24 THE COURT: I do not send the indictments
25 back. I send the verdict forms and the exhibits.

1 And if you will assemble the exhibits and take them
2 back to the jury and tell them to begin their
3 deliberations. All right, give those to the bailiff
4 and the verdict forms and tell the jury to begin
5 their deliberations.

6 MR. ROSS: And, Your Honor, thirteen is
7 good to go back with them?

8 THE COURT: Yes, sir. It's safe. It's
9 been marked as safe, and it can go back as well.

10 Madam Alternate, the law does not permit
11 me to have more than 12 jurors. I can only have the
12 12 jurors. We draw an alternate in the event that
13 somebody becomes ill or is unable to conclude their
14 service and so that we would not have a mistrial.

15 But, fortunately, everyone has remained
16 healthy and is prepared to make the decision in this
17 case. So you've heard all the evidence, but you're
18 not going to participate in the decision.

19 So I'm going to excuse you from any
20 further service on this case. I will tell you that
21 once you've been discharged as a juror, it is not
22 illegal for you to talk with anyone about your
23 service on this case.

24 It is not illegal for anyone to talk to
25 you about your service on this case. It is a

1 practice of which I strongly disapprove and I
2 strongly discourage, but it's not illegal. You have
3 a right to talk with anyone or not talk with anyone.

4 But if anyone should want to talk to you
5 and you don't want to talk about it and they
6 continue to harass you or bother you, you let the
7 court personnel know, and we'll deal with them.

8 I would ask that you not discuss it with
9 anyone until after this jury has returned a verdict,
10 which will be sometime later on this evening. So I
11 would ask that you not talk with anyone about it
12 until at least tomorrow. But other than that, it
13 would be your call as to whether you wish to do so.

14 Now, the rest of your fellow jurors have
15 been asked to report back in the courtroom tomorrow
16 morning at 9:30. And I'm going to excuse you now
17 and ask you to come back to the courtroom tomorrow
18 morning at 9:30. But you are free to go on this
19 case.

20 MS. CANNON: I come back in the morning?

21 THE COURT: Yes, ma'am, come to the
22 courtroom.

23 MS. CANNON: Okay.

24 THE COURT: Not to your jury room, to the
25 courtroom. Before you go, hold on just a minute.

1 Let me ask the Solicitor something.

2 Come up, please.

3 MR. ROSS: Yes, sir.

4 THE COURT: And, Ms. Counts, come up just
5 a moment.

6 I'm going to cut you loose for the rest of
7 the week. You don't need to come back.

8 MS. CANNON: Okay.

9 THE COURT: You're done. Next week
10 sometime you will receive a small check from the
11 Clerk's Office. It won't compensate you for the
12 time that you've been up here this week. It will be
13 a small token of appreciation on behalf of the
14 county for your services this week.

15 We've got enough jurors that are coming
16 back tomorrow to try the next case, so I'm going to
17 excuse you from any further service this week.
18 Thanks for your service.

19 MS. CANNON: Okay.

20 THE COURT: Okay, thank you.

21 All right, we'll be at ease till we hear
22 from the jury.

23 (Court in recess.)

24 THE COURT: Back on the record in the
25 matter of the State versus Mayes. Mr. Mayes is

1 present and in court. We have a note from the jury
2 which I'm going to give to the Court Reporter and
3 have her mark it as the next Court's exhibit.

4 I have shared this note with the attorneys
5 involved. And the note is, "What does the law state
6 about the possession of a firearm pursuant to
7 trafficking crack cocaine," and signed by the
8 foreman.

9 I propose, counsel, to reinstruct the jury
10 on that one charge only of possession of a weapon
11 during the commission of a violent crime. I think
12 that's what the law says about it, and I think
13 that's what would be the appropriate charge.

14 Is that agreeable with the State?

15 MR. ROSS: Yes, sir.

16 THE COURT: With the defense?

17 MR. FLOYD: Yes, Your Honor. Does that
18 charge include they have to find him guilty of the
19 crack in order to find him guilty of it?

20 THE COURT: Yes, sir, it does.

21 MR. FLOYD: Thank you.

22 THE COURT: All right, bring the jury in.

23 (Court's Exhibit Number
24 Six, Jury Note, was marked for identification.)

25 COURT REPORTER: It's Court Exhibit Number

1 Six, Your Honor.

2 THE COURT: Okay, thank you.

3 The verdict form also contained that same
4 statement in the way of instructions.

5 (Jury in at 5:27 p.m. for recharge.)

6 THE COURT: All right, ladies and
7 gentlemen, I have your note, and the note being
8 "What does the law state about the possession of a
9 firearm pursuant to trafficking crack cocaine?" And
10 in that connection, I will try to give you the law
11 on possession of a firearm during the commission of
12 a violent crime.

13 As I have previously said, the defendant
14 is charged with possession of a firearm during the
15 commission of a violent crime, and the South
16 Carolina Code of Law provides as follows.

17 If a person is in possession of a firearm
18 or visibly displays what appears to be a firearm
19 during the commission of a violent crime and is
20 convicted of committing the violent crime, then he
21 is guilty of this crime of possession of a firearm
22 during the commission of a violent crime.

23 Firearm is defined as any machine gun,
24 automatic rifle, revolver, pistol, or any weapon
25 which will or is designed to or may readily be

1 converted to expel a projectile. Section 16-1-60,
2 which is a different code section, provides that the
3 offense of trafficking in crack cocaine is a violent
4 crime.

5 For you to find the defendant guilty of
6 the separate offense of possession of a firearm
7 during the commission of a violent crime, you must
8 first find the defendant guilty of either committing
9 a violent crime or attempting to commit a violent
10 crime, in this case trafficking in crack cocaine.

11 If you find the defendant guilty of
12 trafficking in crack cocaine, you must then
13 determine whether the State has proven beyond a
14 reasonable doubt that the defendant was in
15 possession of a firearm or visibly displayed what
16 appeared to be a firearm during the commission of
17 the violent crime.

18 Possession means more than simply having
19 an object in one's possession. Conviction of
20 possession requires proof of possession, either
21 actual or constructive, coupled with knowledge of
22 the firearm's presence.

23 Possession can be shown by either actual
24 possession or constructive possession. As I have
25 said before, actual possession occurs when the

1 firearm is in the actual physical custody of the
2 person charged with possession.

3 Proof of constructive possession, along
4 with knowledge of the presence of the firearm, is
5 sufficient to support a conviction for possession of
6 a firearm. To prove constructive possession, the
7 State must show the defendant had dominion or
8 control or the right to exercise dominion or control
9 over the firearm.

10 Constructive possession may be established
11 through direct or circumstantial evidence, and
12 possession may be shared. Possession requires more
13 than mere presence. Possession may be inferred from
14 the circumstances and may be imputed to anyone who
15 has the power and intent to control the disposition
16 and use of the firearm.

17 That's what the law says about the
18 possession of a weapon during the commission of a
19 violent crime. And I hope that that is helpful to
20 you, and I will ask you to return to your jury room
21 and deliberate further. Thank you very much.

22 (Jury out at 5:32 p.m. to deliberate.)

23 THE COURT: Any objection to the
24 additional instructions on behalf of the State, Mr.
25 Ross?

1 have reached a verdict, is that correct?

2 MR. McCONNELL: Yes, sir.

3 THE COURT: Would you hand it up to the
4 bailiff, please?

5 All right, from the standpoint of the
6 form, the verdict appears to be correct.

7 Madam Clerk, you may now publish the
8 verdicts.

9 Mr. Floyd, if you and your client would
10 stand, please.

11 MR. FLOYD: Yes, Your Honor.

12 (Counsel and the Defendant
13 complied.)

14 VERDICTS OF THE JURY

15 CLERK OF COURT: The State of South
16 Carolina versus Douglas James Mayes, "We, the jury,
17 by unanimous agreement, find the defendant, Douglas
18 James Mayes, on the charge contained in Indictment
19 2011-GS-32-1303, guilty of simple possession of
20 cocaine."

21 As to the charge of trafficking crack
22 cocaine on Indictment 2011-GS-32-1304, "We, the
23 jury, find the defendant guilty." On the charge of
24 possession of a weapon during the commission of a
25 violent crime, "We, the jury, by unanimous

1 agreement, find the defendant, Douglas James Mayes,
2 not guilty." It is so signed.

3 Ladies and gentlemen, if these were your
4 verdicts, please indicate by raising your right
5 hand.

6 THE COURT: Thank you. You may be seated.
7 Anything before the jury is excused, Mr.
8 Floyd?

9 MR. FLOYD: Your Honor, we request
10 polling.

11 THE COURT: All right, if you would poll
12 the jury, please, ma'am.

13 POLLING OF THE JURY

14 CLERK OF COURT: When I call your name,
15 I'll ask you if these were your verdicts, and are
16 they still your verdicts. If you would, just
17 indicate by responding yes and raising your hand.

18 THE COURT: If you would, stand so that we
19 know which juror is responding.

20 Okay.

21 CLERK OF COURT: Juror number 25, Benjamin
22 Brooks, were these your verdicts, and are they still
23 your verdicts?

24 MR. BROOKS: Yes, ma'am.

25 CLERK OF COURT: Thank you.

1 like to, but you don't have to. Thank you. You are
2 excused.

3 Mr. Foreman, you stay with us. You need
4 to sign the indictments, if you would, please, for
5 just a moment.

6 (The jury was dismissed
7 from the trial of this case and left the courtroom
8 at at 6:04 p.m.)

9 THE COURT: All right, Mr. Floyd, motions
10 of behalf of the defendant?

11 MR. FLOYD: At this time, Your Honor, we
12 would move for a new trial in connection with that
13 motion. We will renew all the motions we made
14 during both pre-trial and the trial of the case, to
15 include our objection to the -- our motion to
16 suppress the drugs pursuant to the defects of the
17 search warrant process, our motion to suppress the
18 drugs pursuant to the change in the form of the
19 drugs during the time they were in the custody of
20 the Lexington County Sheriff's Department, the
21 denial of our motion for a directed verdict at the
22 conclusion of the State's case, the initial motion
23 for a continuance -- not a continuance but to allow
24 me to withdraw from the case to testify because of
25 the various questions concerning the chain of the

1 drugs, the denial of that motion, our objection to
2 the --

3 THE COURT: Let me stop you right there
4 just a minute. Okay, that's right. What you're
5 saying is it was a defect in the chain of the drugs
6 because they were lost, but the State's position was
7 that it was not the drugs that were ever misplaced.
8 It was the paraphernalia, so to speak.

9 MR. FLOYD: That's correct, Your Honor.

10 THE COURT: Okay.

11 MR. FLOYD: Your Honor, my objection, of
12 course, to Your Honor's charge saying that there was
13 an inference from control of the premises that could
14 be held against the defendant, Your Honor's refusal
15 to charge the lesser included of possession of crack
16 to the trafficking charge, and also Your Honor's
17 decision to allow the State to impeach the defendant
18 to preclude three prior drug offenses if he had
19 chosen to testify. For all these reasons, we move
20 for a new trial.

21 THE COURT: All right. One question I
22 have, do you have any authority for the inference
23 issue that you're raising?

24 MR. FLOYD: Your Honor, I can't give you a
25 case off the top of my head. There are -- I think

1 there's been a movement over the last decade or so.
2 Years ago, we used to have the presumption.

3 THE COURT: Right.

4 MR. FLOYD: And they moved away from the
5 presumption --

6 THE COURT: Right.

7 MR. FLOYD: -- to the inference. And I
8 think there's been a movement away from the
9 inference. A lot of the proposed charges any more
10 -- for example, in your charge books -- don't carry
11 the inference in them any more. I think there's
12 some authority that's kind of a comment on the
13 evidence.

14 THE COURT: Do you know of a South
15 Carolina case that says that an inference is not
16 permissible?

17 MR. FLOYD: I don't know one that says it
18 definitely is not, no, sir.

19 THE COURT: Okay.

20 All right, Mr. Ross?

21 MR. FLOYD: And, Your Honor, also --

22 THE COURT: I'm sorry.

23 MR. FLOYD: -- in connection with all of
24 this, in connection with the sentencing also, we
25 would ask Your Honor to vacate the bench warrant

1 that was issued, because that's going to hold him up
2 in SCDC.

3 THE COURT: Oh, yes, sure, we'll take care
4 of that.

5 All right, any comment on the motions,
6 response on behalf of the State, Mr. Solicitor?

7 MR. ROSS: Your Honor, regarding the
8 inference --

9 THE COURT: Yes, sir, any of them.

10 MR. ROSS: -- the only thing I would say
11 is I believe the case law is pretty clear that the
12 language the Appellate Courts use is that a jury can
13 infer based on weight alone that they intended to
14 distribute.

15 And I think that's kind of the line of
16 cases that Mr. Floyd is referring to. So we've got
17 the Appellate Court saying the jury can infer
18 something. That's the same thing as an inference.

19 THE COURT: Well, I think that it has been
20 an inference always at least, I'm sure.

21 MR. FLOYD: Of course, that's a statute.

22 THE COURT: I'm sure that that's the law
23 up until 2007 or later, because that's what my good
24 friend Judge Ralph King Anderson has in his charge
25 book and has had in his charge book.

1 I'm just wondering if there have been any
2 cases that either of you are aware of in the last
3 two or three years, i.e. the South Carolina Supreme
4 Court or the South Carolina Court of Appeals, which
5 says that's no longer the law. And I don't know of
6 any cases.

7 MR. ROSS: I'm not aware of any case, Your
8 Honor.

9 THE COURT: All right, I appreciate the
10 motions, and I understand the grounds for all the
11 motions. The Court is of the view that the initial
12 ruling by the Court of all of those issues was the
13 correct ruling.

14 I feel that I gave them a lot of thought
15 with regard to the search warrant, the drugs,
16 everything that was involved. And I do feel that
17 the rulings of the Court were correct.

18 I also feel that the charges of the Court
19 were correct as well. I believe the matter was a
20 jury issue. It's evident from the verdict that the
21 jury gave careful thought to the charges that were
22 involved, because it was not a rubber stamp.

23 They did not find him guilty of all three
24 charges that the State had charged him with. In
25 fact, they found him guilty of the lesser include

1 offense of possession of powder cocaine and did not
2 find him guilty of the possession of a weapon during
3 the commission of a violent crime.

4 So it is clear that the jury gave very
5 careful consideration to the instructions given by
6 the Court as well as the evidence in the case and
7 the fact that it was a jury issue. And so the Court
8 would respectfully deny all motions for a new trial
9 or a motion in arrest of judgment.

10 All right, now let's talk about the
11 sentencing and the maximum sentences for just a
12 moment, Mr. Solicitor. I understand these are not
13 first offenses and that you take the position that
14 there's some enhancements?

15 MR. ROSS: Yes, Your Honor. These are
16 both third offenses. And I will read his prior
17 record because that's obviously the most relevant
18 thing to sentencing.

19 THE COURT: All right, let me ask Mr.
20 Floyd to start with. Maybe we don't need to go into
21 that before we go into the record. But let me ask
22 you, Mr. Floyd, do you take issue with the fact that
23 both the possession of cocaine as found by the jury
24 and the trafficking in crack as found by the jury
25 are enhanced third offenses?

1 MR. FLOYD: Your Honor, I agree that the
2 record that I have been furnished says that.

3 THE COURT: You do what, now?

4 MR. FLOYD: The record, the criminal
5 record, that I have been furnished says that. I
6 have not seen certified copies of the convictions.
7 The record certainly shows it.

8 THE COURT: All right, well, take a look
9 at them. I need to know if you've got any issue as
10 to whether sentencing is -- I know you don't agree
11 with the sentence -- but at this phase, whether the
12 sentence is or is not appropriate as third offenses
13 on both of those charges.

14 MR. FLOYD: Yes, sir.

15 MR. ROSS: And, Judge, I'll read these
16 indictments on these prior offenses. I've got 2008-
17 GS-2-1610, this is out of Aiken County, trafficking
18 in crack cocaine. He was convicted of that in April
19 of 2009.

20 According to his sentencing sheet, he was
21 represented by Tommy Thomas. I'm showing this to
22 Mr. Floyd. His second previous drug conviction is
23 2007-GS-32-2210. That was here in Lexington County.
24 That was possession with intent to distribute crack
25 cocaine.

1 He was represented by an attorney. I
2 cannot read the attorney's name on this sheet, but
3 it's S.C. Bar Number 73595. I'm showing this to Mr.
4 Floyd. I've also got a certified conviction for
5 manufacturing marijuana, but my reading of the
6 statute is marijuana can no longer be used to
7 enhance a non-marijuana charge..

8 THE COURT: I agree.

9 MR. ROSS: I would like to introduce these
10 prior certified convictions, indictments, and
11 sentencing sheets to the Court as a Court's exhibit.

12 THE COURT: All right, allow Mr. Floyd to
13 look at them.

14 MR. FLOYD: I've looked at them, Your
15 Honor.

16 THE COURT: All right, they would be prior
17 convictions for the crack cocaine. Those are the
18 ones you want to introduce? The ones you want to
19 use for enhancements are which two?

20 MR. ROSS: They are trafficking crack
21 cocaine and PWID crack cocaine, two separate dates
22 from two separate counties.

23 THE COURT: All right. The trafficking is
24 Indictment Number --

25 MR. ROSS: 2008-GS-2-1610.

1 THE COURT: Okay. And that's what county?

2 MR. ROSS: That's Aiken County. It's GS-
3 2-1610, county number two.

4 THE COURT: Oh, two, Aiken County. You're
5 right, okay. And that's the trafficking?

6 MR. ROSS: Trafficking out of Aiken.

7 THE COURT: Okay.

8 MR. ROSS: Then the other one is out of
9 Lexington, 2007-GS-32-2210, PWID crack cocaine.
10 That was a conviction from May 2009.

11 THE COURT: All right. I'm not asking you
12 to tell me any more, Mr. Floyd, except that the
13 question I would ask you is, do you would agree that
14 those are properly before the Court as enhancement
15 of the present charges?

16 MR. FLOYD: Yes, Your Honor.

17 THE COURT: Okay, all right. That being
18 the case, then, referring to it as far as your
19 sentencing sheet is concerned, Mr. Ross, you're
20 going to I assume use the trafficking CDR code of
21 3039?

22 MR. ROSS: On mine, I've got 0349,
23 trafficking crack cocaine.

24 THE COURT: Well, that's 28 to 100.

25 MR. ROSS: Yes, Your Honor.

1 THE COURT: 3039 is 10 to 28 grams. And
2 that's all right, because as I read the code
3 section, 3039 is 25 to 30 years and \$50,000 as is
4 0349 is also 25 to 30 and \$50,000. The punishment
5 is the same either way, whether it's 10 or 28.

6 Do you agree with that, Mr. Floyd?

7 MR. FLOYD: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. FLOYD: And I think we all agree that
10 the jury did not reach a verdict as to the amount --

11 THE COURT: Right.

12 MR. FLOYD: -- just that it was
13 trafficking.

14 THE COURT: Yes. And we've discussed this
15 in chambers that all it needed to show was 10 or
16 more than 10. It may make some difference down the
17 line somewhere, but it would be my view that since
18 your indictment, if I recall -- I think I gave the
19 indictment back to the Clerk -- says plus 10, 10
20 plus and not 28 plus.

21 MR. ROSS: I think it was 28 plus, Your
22 Honor.

23 CLERK OF COURT: Twenty-eight to 100.

24 THE COURT: It does say 28 to 100?

25 CLERK OF COURT: Right.

1 THE COURT: Okay, all right. So you show
2 0349, all right, minimum of 25, maximum of 30 and
3 \$50,000.

4 You agree with that, Mr. Floyd?

5 MR. FLOYD: Are we going under the 28 to
6 100 or the 10 to 28?

7 THE COURT: It doesn't matter, does it?

8 MR. FLOYD: Well, I don't know if it --

9 THE COURT: From a punishment standpoint.

10 MR. FLOYD: I don't know whether it
11 matters in the Department of Corrections or not.
12 But I think since the jury did not find a particular
13 weight, we would have to go under the 10 to 28.

14 THE COURT: Do you have any objection to
15 using a CDR code of 3039 rather than 0349, 3039
16 being 10 to 28 as opposed to 0349 being 28 to 100?

17 MR. ROSS: Do I, sir?

18 THE COURT: Yes, sir.

19 MR. ROSS: You say you're going under 0147
20 or --

21 THE COURT: I'm using the crack
22 trafficking now.

23 MR. ROSS: And that would be -- the 10 to
24 28 is 0452 CDR code?

25 THE COURT: No, the trafficking that I

1 have for 3039, third offense, 10 to 28 grams, is 25
2 to 30 years and \$50,000.

3 MR. ROSS: Your Honor, it doesn't matter
4 to me.

5 THE COURT: Okay, that's what I'm saying.

6 MR. ROSS: He's getting the same
7 punishment regardless.

8 THE COURT: Same punishment. So you don't
9 have any objection to using the CDR of 3039?

10 MR. ROSS: Negative, sir. I can hand you
11 up the sentencing sheets I've done and --

12 THE COURT: I can change the CDR code if
13 you don't have any objection.

14 MR. ROSS: However you see fit, sir.

15 THE COURT: And rather than 0349, you
16 would request that it be use CDR code 3039, Mr.
17 Floyd?

18 MR. FLOYD: Yes, the lesser.

19 THE COURT: And the State has no
20 objection?

21 MR. ROSS: No objection, Your Honor.

22 THE COURT: All right, the CDR code for
23 the offense that was actually found will show as
24 3039, the punishment being the same thing.

25 MR. ROSS: Your Honor, I'm looking at my

1 drug sheet, and it's got CDR code 3039 as PWID crack
2 third. So that's why --

3 THE COURT: Okay. I'm looking at
4 trafficking.

5 MR. ROSS: Yes, I know. I'm looking at
6 the -- my CDR codes say trafficking crack, 10 to 28
7 grams, third offense, is 0452, and this is just a
8 handout that has been floating around in the
9 Solicitor's Office.

10 THE COURT: I'm looking at CDR codes for
11 common drug offenses, 3039, crack cocaine, 10 to 28,
12 third, is 25 to 30 years, and the same thing is for
13 28 to 100 grams. You don't show it as being the
14 same thing?

15 MR. ROSS: No, I'm showing 3039 as PWID
16 crack, third offense.

17 THE COURT: What are showing, 3039?

18 MR. ROSS: 3039 is PWID crack, third
19 offense, according to my sheet.

20 CLERK OF COURT: Judge, that's what the
21 Court Administration website has also.

22 THE COURT: Okay. Then my little sheet is
23 not correct, doesn't look like. What do you have as
24 the punishment for trafficking crack, 10 to 28, Mr.
25 Ross?

1 MR. ROSS: That's 25 to 30 under the
2 statute and what I'm showing.

3 THE COURT: Okay. And so is 28 to 100.
4 So the punishment is the same.

5 MR. ROSS: Yes, the punishment is going to
6 be the same.

7 THE COURT: So it's just a question of
8 what is the correct CDR code for 10 to 28.

9 MR. ROSS: Roger that, sir. I'm showing
10 0452.

11 THE COURT: All right, Madam Clerk, have
12 you got the CDR codes?

13 CLERK OF COURT: Yes, sir. It's 0452 for
14 trafficking 10 to 28 grams, third offense.

15 THE COURT: All right, so 0452, then,
16 would be the same punishment but showing 10 to 20.

17 Is that what you're saying, Mr. Ross?

18 MR. ROSS: Yes, sir.

19 THE COURT: Are you agreeable to going
20 with the 0452, then?

21 MR. ROSS: I am, sir.

22 THE COURT: Okay. All right, that takes
23 care of it.

24 Do you agree with that, Mr. Floyd? The
25 same thing, we're talking about 10 to 28 rather than

1 28 plus.

2 MR. FLOYD: That's correct, Your Honor.

3 THE COURT: All right, third offense, and
4 that will be CDR code 0452. Have you introduced the
5 two previous offenses? Has the Court Reporter
6 marked those?

7 MR. ROSS: They've been marked, and I will
8 hand --

9 THE COURT: Hand them to me.

10 (Court's Exhibit Number
11 Seven, Aiken Indictment; and Court's Exhibit Number
12 Eight, Lexington Indictment, were marked for
13 identification.)

14 COURT REPORTER: Court's Number Seven is
15 the Aiken indictment, and number eight is the
16 Lexington indictment.

17 THE COURT: All right, thank you.

18 MR. ROSS: Let's go ahead and staple
19 those, because there's an indictment and a
20 sentencing sheet.

21 THE COURT: And then the simple
22 possession, third offense, of powder cocaine carries
23 zero to 10 and up to zero to \$12,500 under CDR code
24 3013.

25 You agree with that, Mr. Floyd?

1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: All right, okay. So the
3 balance before the Court, then, would be the
4 imposition of sentence with the understanding,
5 unless there's some disagreement, that Indictment
6 Number 2011-GS-32-1304 carries a mandatory minimum
7 of 25 to 30 years and a fine of \$50,000; and the
8 indictment for simple possession of cocaine, third
9 offense, carries zero to 10 years and/or a fine of
10 zero to \$12,500.

11 You agree with that, Mr. Floyd?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: And you agree that the minimum
14 sentence that I can impose is 25 years?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: All right.

17 MR. FLOYD: I disagree with the statute,
18 but I understand what it says.

19 THE COURT: Well, I agree with you, I
20 don't agree with the statute. But that's what the
21 legislature in their wisdom have decided is the
22 appropriate punishment and something that I have no
23 control over.

24 All right, Mr. Ross, I know you've
25 introduced the two enhancement matters. They are in

1 the record and before the Court. Is there anything
2 else on behalf of the State?

3 MR. ROSS: Your Honor, I would like to
4 read his full rap sheet into the record. He's got a
5 '99 DUI second; 2006 failure to comply with a police
6 directive, DUS, reckless driving, habitual traffic
7 offender; 2009 PWID, possession with intent to
8 distribute crack cocaine which is the sentencing
9 sheet I provided to you, sir. He got three years
10 for that.

11 In 2008, he's got another failure to
12 comply with a police directive; 2009, he's got a
13 failure to stop for a blue light. He's got the
14 trafficking crack cocaine conviction from down in
15 Aiken, and he's got a manufacturing marijuana as
16 well, Your Honor. And I believe that was -- I can
17 tell you which county that was in right now. That
18 was Aiken County too, Your Honor, 2008-GS-2-1608,
19 manufacturing marijuana.

20 THE COURT: All right, anything else on
21 behalf of the State?

22 MR. ROSS: Your Honor, the mandatory
23 minimum is 25 years. We think that's appropriate,
24 the appropriate sentencing range 25 to 30, simply
25 because he's a repeat offender. He's been given

1 every opportunity, and he continues to go back and
2 to deal drugs.

3 And he appears to be a repeat drug dealer.
4 He had a large amount in his possession this time,
5 \$7,000, as the record reflects. That's what he
6 does. He's a drug dealer. He's a repeat offender,
7 and he should be punished according to the law, Your
8 Honor.

9 THE COURT: Okay.

10 All right, Mr. Floyd, would you have
11 client come around?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: All right, Mr. Floyd, I'll be
14 glad to hear from you.

15 MR. FLOYD: Thank you. Your Honor, Doug
16 is 25 years of age. He does have a GED. He has a
17 4-year-old son that he had been supporting. He does
18 have an electrical license, so he has done
19 legitimate work also. He has been in jail now for
20 430 days in connection with these incidents. Your
21 Honor, I guess I --

22 THE COURT: Four hundred and how many?

23 MR. ROSS: Four hundred and thirty.

24 THE COURT: Thirty, okay.

25 MR. FLOYD: Your Honor, I guess I can't

1 argue with the statute except that to me it's a
2 harsh statute. It does provide for a minimum of 25
3 years.

4 We, of course, ask you to suspend it, but
5 I know the statute says you can't. So we certainly
6 ask for the minimum, and we would ask for a
7 concurrent sentence on the cocaine.

8 THE COURT: All right, Mr. Floyd, there's
9 something I was going to ask you, but it slipped my
10 mind. It's too late in the day. Maybe I will think
11 of it.

12 MR. FLOYD: Of course, this is, you know,
13 85 percent time.

14 THE COURT: Yes, that's what. Have you
15 advised him?

16 MR. FLOYD: He understands that it's non-
17 parolable. It's 85 percent.

18 THE COURT: Okay.

19 MR. FLOYD: So he's looking at 22 years or
20 something in that range before he can get out.

21 THE COURT: All right, I'll be glad to
22 hear from Mr. Mayes, but I will tell you, and you
23 can talk with him, Mr. Floyd, that if he does not
24 want to say anything, he does not have to, keeping
25 in mind that this matter will likely be appealed,

1 and anything that he could say might affect his
2 appeal.

3 But I will be glad to hear from him if
4 there's anything. But you may want to talk to him
5 before that. I'm not going to hold it against him
6 if he has nothing to say.

7 MR. FLOYD: Your Honor, he chooses not to
8 speak at this time.

9 THE COURT: Okay, thank you.

10 MR. ROSS: Your Honor, if I may add one
11 thing to the record. He's got pending distribution
12 cases, and he's also got a pending intimidation of a
13 witness, Your Honor. That was on the CI who
14 testified earlier.

15 I think some of his family members also
16 have charges regarding intimidating that witness.
17 If Your Honor sees fit, I would ask that you somehow
18 craft a no-contact order with that CI.

19 THE COURT: Okay, I can put that on there.
20 He's going to have a hard time contacting him where
21 he's going to be.

22 MR. FLOYD: I don't know how he would do
23 that where he's going to be, Judge.

24 THE COURT: I can't order somebody that's
25 not a party to this proceeding.

1 MR. ROSS: Yes, Your Honor.

2 THE COURT: Today is the second, is it
3 not?

4 CLERK OF COURT: Correct.

5 MR. FLOYD: Yes, it is.

6 THE COURT: Okay.

7 All right, as I'm sure you have explained
8 to Mr. Mayes in this case, Mr. Floyd, this is
9 something that the Court has very limited discretion
10 in, that it's a mandatory minimum of 25 years when
11 it's a third or subsequent offense.

12 The record is clear that this is a third
13 or subsequent offense, and the punishment is
14 enhanced. And my hands are tied as far as what I
15 can do as far as a minimum sentence is concerned.
16 You know that.

17 SENTENCE OF THE COURT

18 Therefore, on the Indictment Number 2011-
19 GS-32-1304, the sentence of the Court is that the
20 defendant is committed to the State Department of
21 Corrections for a determinate term of 25 years,
22 given credit for the time that he has served, 432
23 years. The bench warrant will be lifted. No
24 contact with the confidential informant.

25 On Indictment Number 2011-GS-32-1303, the

507

1 sentence of the Court is the defendant is committed
2 to the State Department of Corrections for a term of
3 10 years, concurrent with the trafficking in
4 Indictment 1304, again given credit, bench warrant
5 lifted, and no contact with the confidential
6 informant.

7 Good luck to you, sir. I, like Mr. Floyd,
8 may not agree with the law, but that's the law that
9 is written that I have to follow.

10 MR. FLOYD: Your Honor, one other matter.
11 Since he was found not guilty of the weapon, do we
12 also need to lift the bench warrant as to that
13 charge also, because it was one of the charges he
14 got lifted up?

15 THE COURT: I will put it on the record
16 that the bench warrant is lifted on that charge. I
17 don't know what the effect is going to be on the
18 other pending charges that you've got. Was the
19 bench warrant issued on those for not appearing?
20 Was there a bench warrant?

21 MR. FLOYD: No, just on these three
22 charges, Judge.

23 THE COURT: Just on these three, all
24 right. Well, the bench warrant will be lifted on
25 the charges that are before the Court now. And then

1 it will be up to the State to decide what they want
2 to do with the pending charges.

3 MR. ROSS: Yes, sir.

4 THE COURT: Okay.

5 MR. FLOYD: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. ROSS: Thank you, Judge.

8 -- End of Transcript --

WITNESSES

Lexington County Sheriffs Department

Eric V. Kirkland

Law Enforcement Case #: 11008476

CED

ARREST WARRANT NUMBER

J830870

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 8/8/11

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS3201304

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE

vs.

Douglas James Mayes

CDR #: 0349

Indictment for

**TRAFFICKING IN CRACK COCAINE - 28
GRAMS OR MORE BUT LESS THAN 100
GRAMS - 3RD OR SUBSEQUENT
OFFENSE**

§ 44-53-0375(C)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)	INDICTMENT FOR
)	TRAFFICKING IN CRACK COCAINE - 28
COUNTY OF LEXINGTON)	GRAMS OR MORE BUT LESS THAN 100
)	GRAMS -

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That Douglas James Mayes did in Lexington County, South Carolina on or about February 17, 2011, knowingly and intentionally, willfully and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of Crack Cocaine, a controlled substance by definition under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of twenty eight (28) grams or more but less than one hundred (100) grams, in violation of § 44-53-375 (C), Code of Laws of South Carolina, 1976, as amended, se.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

AUG 09 2011

WITNESSES

Lexington County Sheriffs Department

Eric V. Kirkland

Law Enforcement Case #: 11008476

CED

ARREST WARRANT NUMBER

J830871

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: 8/8/11

VERDICT

Guilty of Simple Possession of Cocaine

[Signature] 2 Oct 2012
Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS3201303

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE

vs.

Douglas James Mayes

CDR #: 0185

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE 3RD OR
SUBSEQUENT OFFENSE

§ 44-53-0370(b)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)	INDICTMENT FOR
)	
COUNTY OF LEXINGTON)	POSSESSION WITH INTENT TO DISTRIBUTE
)	COCAINE

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That **Douglas James Mayes** did in Lexington County, South Carolina, on or about February 17, 2011 knowingly and intentionally, willfully and unlawfully sell, distribute, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, possess with intent to distribute or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of a control substance, to wit: Cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-370(b)(1), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

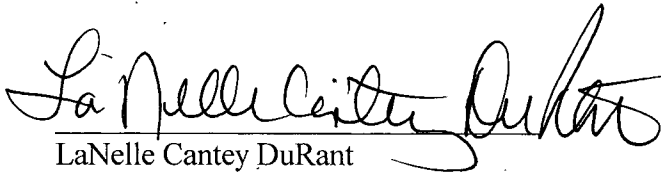

 ASSISTANT SOLICITOR

11 AUG 2011 10:56:00 AM

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."

October 10th, 2013



LaNelle Cantey DuRant
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
IN THE COURT OF APPEALS

Appeal from Lexington County
Howard P. King, Circuit Court Judge

ORIGINAL

RECEIVED

OCT 10 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DOUGLAS J. MAYES,

APPELLANT

APPELLATE CASE NO. 2012-213144

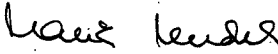
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of October, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 10th day of October, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.