

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Lee S. Alford, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ROBERT JENKINS,

APPELLANT

APPELLATE CASE NO. 2013-002577

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2011-GS-22-1292

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	November 18-19, 2013
	)	
Robert Jenkins,	)	
	)	
Defendant.	)	

B E F O R E :

Honorable Lee S. Alford
Georgetown County Courthouse
Georgetown, South Carolina

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

Alicia A. Richardson, Esquire
Attorney for Plaintiff

Wyn Bessent, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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Voir Dire

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1 (On the record November 18, 2011.)

2 THE COURT: All right, Solicitor, ready to call
3 the case, please?

4 MS. RICHARDSON: Yes, Your Honor. This is the State
5 of South Carolina versus Robert Jenkins on the charge of
6 possession of heroin. It's 2011-GS-22-1292.

7 THE COURT: All right, the Defense ready for
8 trial?

9 MS. BESSENT: Yes, Your Honor.

10 THE COURT: Ladies and gentlemen of the jury
11 panel, if you'll give me your attention, please, we are about
12 to go into a trial in the matter of the State of South
13 Carolina versus Robert Jenkins. The State charges Mr. Jenkins
14 with the offense of possession of heroin. To this charge the
15 Defendant has pled not guilty and we're about to go into a
16 trial on that charge. The State is represented in this case
17 by Assistant Solicitor Alicia Richardson, who may be assisted
18 by Assistant Solicitor Erin Bailey at some point, not present
19 in the courtroom at this time.

20 Ms. Richardson, would you please stand so the jury can
21 see who you are in person?

22 MS. RICHARDSON: Yes, Your Honor.

23 THE COURT: Thank you. You may be seated. Is
24 anyone on the jury panel related by blood or marriage, friends
25 with or have any other type social, business or professional

Voir Dire

6

1 relationship with Alicia Richardson or Erin Bailey? If so,
2 please stand.

3 Is anyone on the jury panel - I'm sorry, yes, sir, please
4 give us your name and number, sir.

5 MR. REID: I'm Juror Number 155. My name is
6 Robert Reid.

7 THE COURT: Yes, sir, and how do you know Ms.
8 Richardson?

9 MR. REID: He's a friend of my older brother's
10 who's deceased right now and that starts - I mean, I know him
11 from being around town and all that, but that's, that's about
12 the extent to my knowledge of me knowing him.

13 THE COURT: Are you, are you talking about Ms.
14 Richardson or Mr. Bailey [sic]?

15 MR. REID: That fellow right there.

16 MS. BESSENT: He's talking about the Defendant,
17 Your Honor, Mr. Jenkins.

18 MR. REID: Yeah.

19 THE COURT: Oh, okay, I hadn't gotten that far
20 yet. You're a little ahead of me, sir. You stand back up in
21 just a minute, all right.

22 All right, again, anyone related by blood or marriage,
23 friends with, you have any other type social, business or
24 professional relationship with either Alicia Richardson or
25 Erin Bailey? If so, please stand.

Voir Dire

7

1 (No response.)

2 THE COURT: Is anyone on the jury panel related
3 by blood or marriage, friends with, you have any other type
4 social, business or professional relationship with anyone who
5 works in the 15th Circuit Solicitor's Office? If so, please
6 stand.

7 (No response.)

8 THE COURT: The Defendant in this case, Robert
9 Jenkins, is represented by Wyn Bessent, also may be
10 represented by the Public Defender, Chief Public Defender, Ron
11 Hazzard. Please, Ms. - ask Mr. Jenkins to stand so the jury
12 can see who he is in person, and if you'll stand with him,
13 please, ma'am.

14 (Complies with request.)

15 THE COURT: Thank you. You may be seated.

16 Now, is anyone on the jury panel related by blood or
17 marriage, friends with, have any other type social, business
18 or professional relationship with Robert Jenkins? If so,
19 please stand.

20 Yes, sir, you may stand.

21 Ma'am, are you - you all are on the jury, too, okay? All
22 right, let me take you first, please, sir, and you're Juror
23 Number 165?

24 MR. REID: No, 155.

25 THE COURT: 155, and your name, sir?

Voir Dire

8

1 MR. REID: It's Robert Reid, R-E-I-D.

2 THE COURT: Okay, and how do you know Mr.
3 Jenkins?

4 MR. REID: Well, as I was saying, he went to
5 school with my oldest brother who's deceased right now, and I
6 know him from being around the house or being around friends
7 and stuff like that through my brother.

8 THE COURT: All right, you're close to him?

9 MR. REID: No, not close.

10 THE COURT: Oh, okay.

11 MR. REID: You know, I know him, you know,
12 growing up.

13 THE COURT: All right, well, let me ask you this
14 question, is there anything about that relationship that would
15 prevent you from being able to give both the State and the
16 Defendant a fair and impartial trial in this case?

17 MR. REID: No, sir.

18 THE COURT: All right, thank you. You may be
19 seated, and I'll shift over to my left. Let me go all the way
20 to my left, ma'am. Yes, ma'am, give us your name and number.

21 MS. WRIGHT: Bernadette Wright, 196.

22 THE COURT: And how do you know Mr. Jenkins,
23 ma'am?

24 MS. WRIGHT: I hang with his niece.

25 THE COURT: You're his niece?

Voir Dire

9

1 MS. WRIGHT: No, I hang with his niece.
2 THE COURT: Oh, you, all right, you're friends
3 with his niece?
4 MS. WRIGHT: Yes, he like live around the corner
5 from me.
6 THE COURT: All right, okay, ma'am, is there
7 anything about that relationship that would interfere in any
8 way with your ability to give both sides a fair and impartial
9 trial in this case?
10 MS. WRIGHT: No.
11 THE COURT: Thank you. You may be seated.
12 Yes, ma'am, please give us your name and number.
13 MS. WILLIAMS: Shoni Williams, Number 65.
14 THE COURT: Yes, ma'am.
15 MS. WILLIAMS: We're like friends and/or family.
16 We're close friends with them. His wife is my husband's aunt.
17 THE COURT: Okay, all right, ma'am, is there
18 anything about that relationship that would interfere in any
19 way with your ability to give both sides a fair and impartial
20 trial in this case?
21 MS. WILLIAMS: No.
22 THE COURT: All right, thank you, ma'am.
23 Anyone else?
24 (No response.)
25 THE COURT: Is anyone on the jury panel related

Voir Dire

10

1 by blood or marriage, friends with, you have any other type
2 social, business or professional relationship with either Wyn
3 Bessent, Ron Hazzard or anyone who works in the Georgetown
4 Public Defender's Office? If so, please stand.

5 (No response.)

6 THE COURT: Ladies and gentlemen of the jury panel,
7 I'm going to go through a list of potential witnesses in this
8 case. All of these witnesses may not be called but they may
9 be called and what I'm going to ask you to do is when I call
10 the potential witness's name if you're related by blood or
11 marriage, friends with, have any other type social, business
12 or professional relationship with any of these named potential
13 witnesses when I call their names I would ask that you please
14 stand: Antonio Simmons; Franklin Dennison, spelled D-E-N-N-I-
15 S-O-N; Donald Tempalsky, spelled T-E-M-P-A-L-S-K-Y, who's with
16 the drug unit for Georgetown Police Department; Scott Scogin
17 with the Georgetown Police Department; Nikki Perry Hughes,
18 with the South Carolina Law Enforcement Division; Jill Clark,
19 with the South Carolina Law Enforcement Division; Kyle Walton
20 with the Georgetown Police Department.

21 (No response.)

22 THE COURT: I'm going to ask you this question,
23 ladies and gentlemen. If you need to respond to this question
24 I'll have you come down front and we'll take your responses
25 down front so we can do that with a little more privacy. Does

Voir Dire

11

1 any juror have a family member or a close friend that has a
2 drug problem? If you need to respond to that question please
3 stand, you have a close friend or a family member who has a
4 drug problem, if so, please stand.

5 (No response.)

6 THE COURT: I think that's the first time I ever
7 asked that question I didn't get a response. All right.

8 Has any member of the jury panel had any prior knowledge
9 about this case before coming here to court today? If so,
10 please stand.

11 (No response.)

12 THE COURT: Has any member of the jury panel
13 formed or expressed an opinion as to the guilt or innocence of
14 the Defendant, Robert Jenkins? If so, please stand.

15 (No response.)

16 THE COURT: Is any member of the jury panel
17 conscious of any interest, bias or prejudice for or against
18 the Defendant Robert Jenkins? If so, please stand.

19 (No response.)

20 THE COURT: Can each member of the jury panel
21 give both the State and the Defendant Robert Jenkins a fair
22 and impartial trial in this case? If not, please stand.

23 (No response.)

24 THE COURT: Does any member of the jury panel
25 know of any reason whatsoever why he or she should not serve

Jury Selection

12

1 as a juror in this particular case? If so, please stand.

2 (No response.)

3 THE COURT: Any additional questions requested of
4 the jury panel from the State?

5 MS. RICHARDSON: No, Your Honor.

6 THE COURT: From the Defense?

7 MS. BESSENT: No, Your Honor.

8 THE COURT: Counsel, I believe strikes are five
9 and five? You agree with that?

10 MS. RICHARDSON: Yes, Your Honor.

11 MS. BESSENT: Yes, Your Honor.

12 THE COURT: All right, Madam Clerk, please give
13 us a jury.

14 THE CLERK: When I call your names would you
15 please come and stand approximately right here where I am and
16 face the door as I am. I'll either tell you to return to your
17 seat or I will tell you to take a seat in the jury box; okay?

18 Juror Number 44, Dustin Cox.

19 What says the State?

20 MS. RICHARDSON: Please present the juror.

21 THE CLERK: What says the Defense?

22 MS. BESSENT: Please seat this juror.

23 THE CLERK: Please take a seat in the jury box.

24 Juror Number 200, Marquette Young.

25 What says the State?

Jury Selection

13

1 MS. RICHARDSON: Please present the juror.
2 THE CLERK: What says the Defense?
3 MS. BESSENT: Please seat this juror.
4 THE CLERK: Please take a seat in the jury box.
5 Juror Number 181, Charles Teeples.
6 What says the State?
7 MS. RICHARDSON: Please present the juror.
8 THE CLERK: What says the Defense?
9 MS. BESSENT: Can you give me the juror number
10 again? I apologize.
11 THE CLERK: 181.
12 MS. BESSENT: Thank you.
13 Please excuse this juror.
14 THE CLERK: You may return to your seat.
15 Juror Number 190, Gregory Walker.
16 What says the State?
17 MS. RICHARDSON: Please present the juror.
18 THE CLERK: What says the Defense?
19 MS. BESSENT: Please seat this juror.
20 THE CLERK: Please take a seat in the jury box.
21 Juror Number 31, Yorky Burnas-Arnold.
22 MS. YORKY-BURNAS: Here?
23 THE CLERK: Yeah, come and stand right there,
24 turn around.
25 What says the State?

Jury Selection

14

1 MS. RICHARDSON: Please present the juror.
2 THE CLERK: What says the Defense?
3 MS. BESSENT: Please excuse this juror.
4 THE CLERK: You may return to your seat.
5 Juror Number 41, Taneshia Cobb.
6 What says the State?
7 MS. RICHARDSON: Please excuse this juror.
8 THE CLERK: You may return to your seat.
9 Juror Number 172, Charles Spain.
10 What says the State?
11 MS. RICHARDSON: Please excuse this juror.
12 THE CLERK: You may return to your seat.
13 Juror Number 10, Joe Ann Barnhill.
14 What says the State?
15 MS. RICHARDSON: Please present the juror.
16 THE CLERK: What says the Defense?
17 MS. BESSENT: Please excuse this juror.
18 THE CLERK: You may return to your seat.
19 Juror Number 58, Carol Eaddy.
20 What says the State?
21 MS. RICHARDSON: Please present the juror.
22 THE CLERK: What says the Defense?
23 MS. BESSENT: Please seat this juror.
24 THE CLERK: Please take a seat in the jury box.
25 Juror Number 116, Andrew Matthews.

Jury Selection

15

1 What says the State?

2 MS. RICHARDSON: Please present the juror.

3 THE CLERK: What says the Defense?

4 MS. BESSENT: Please seat this juror.

5 THE CLERK: Please take a seat in the jury box.

6 Juror Number 21, Zachary Bradley.

7 What says the State?

8 MS. RICHARDSON: Please present the juror.

9 THE CLERK: What says the Defense?

10 MS. BESSENT: Please present this juror.

11 THE CLERK: Please take a seat in the jury box.

12 Juror Number 176, Robert Struck, Jr.

13 What says the State?

14 MS. RICHARDSON: Please present the juror.

15 THE CLERK: What says the Defense?

16 MS. BESSENT: Please seat this juror.

17 THE CLERK: Please take a seat in the jury box.

18 Juror Number 6, Patricia Angulo.

19 What says the State?

20 MS. RICHARDSON: Please present the juror.

21 THE CLERK: What says the Defense?

22 MS. BESSENT; Please excuse this juror.

23 THE CLERK: You may return to your seat.

24 Juror Number 55, Latoya Dennison.

25 What says the State?

Jury Selection

16

1 MS. RICHARDSON: Please excuse this juror.
2 THE CLERK: You may return to your seat.
3 Juror Number 29, Rob Bunn.
4 What says the State?
5 MS. RICHARDSON: Please present the juror.
6 THE CLERK: What says the Defense?
7 MS. BESSENT: Please seat this juror.
8 THE CLERK: Please take a seat in the jury box.
9 Juror Number 63, Kenneth Ferrari.
10 What says the State?
11 MS. RICHARDSON: Please present the juror.
12 THE CLERK: What says the Defense?
13 MS. BESSENT: Please seat this juror.
14 THE CLERK: Please take a seat in the jury box.
15 Juror Number 139, Donald Nichols.
16 What says the State?
17 MS. RICHARDSON: Please present the juror.
18 THE CLERK: What says the Defense?
19 MS. BESSENT: Please seat this juror.
20 THE CLERK: Please take a seat in the jury box.
21 Juror Number 38, Theresa Civitella.
22 What says the State?
23 MS. RICHARDSON: Please present the juror.
24 THE CLERK: What says the Defense?
25 MS. BESSENT: Please excuse this juror.

Jury Selection

17

1 THE CLERK: You may return to your seat.
2 Juror Number 93, Pamela Israel, Israel Rocchiccioli.
3 MS. ROCCHICCIOLI: Rocchiccioli.
4 THE CLERK: Yeah, okay.
5 What says the State?
6 MS. RICHARDSON: Please present the juror.
7 THE CLERK: What says the Defense?
8 MS. BESSENT: Please seat this juror.
9 THE CLERK: Please take a seat in the jury box.
10 Juror Number 153, Lamond Reed.
11 What says the State?
12 MS. RICHARDSON: Please excuse this juror.
13 THE CLERK: You may return to your seat.
14 Juror Number 185, Laura Tiller.
15 What says the State?
16 MS. RICHARDSON: Please excuse this juror.
17 THE CLERK: You may return to your seat.
18 THE COURT: Counsel, approach just a minute.
19 (Whereupon, a bench conference is held in the presence
20 but out of the hearing of the jury and jury venire.)
21 THE CLERK: Juror Number 110, any challenges from
22 the State? Juror Number 110, I'm sorry. Give you an
23 opportunity to get up here. I'm sorry.
24 Any challenges from the State?
25 MS. RICHARDSON: No challenges.

Jury Selection

18

1 THE COURT: Any from the Defense?

2 MS. BESSENT: No challenges.

3 THE CLERK: Please take a seat in the jury box.

4 THE COURT: Madam Clerk, we'll draw one

5 alternate, please, ma'am. Strikes are two and one for the

6 alternate.

7 THE CLERK: Juror Number 74, Latia Grayson.

8 What says the State?

9 MS. RICHARDSON: Please present the juror.

10 THE CLERK: What says the Defense?

11 MS. BESSENT: Please seat the juror.

12 THE CLERK: Please take a seat in the jury box.

13 THE COURT: Any questions concerning the

14 selection process from the State?

15 MS. RICHARDSON: No, Your Honor.

16 THE COURT: From the Defense?

17 MS. BESSENT: No, Your Honor.

18 THE COURT: Do you anticipate needing any other

19 jurors the rest of today or should we have them call in

20 tonight?

21 MS. RICHARDSON: Call tonight, Your Honor.

22 THE COURT: All right, ladies and gentlemen of

23 the jury panel who were not selected for this particular case,

24 again, I want to thank you for your service thus far. Thank

25 you for your patience. We're going to excuse you at this

Jury Selection

19

1 time, ask you to call in to your voicemail number tonight.
2 Call anytime after six o'clock, anytime after six o'clock and
3 there'll be a message on there either telling you when to
4 report back or call back again as the case may be. Please
5 enjoy your afternoon and call in after six. Thank you.

6 (Remaining jury panel exits courtroom.)

7 THE COURT: Counsel, approach just a minute,
8 please.

9 (Whereupon, a bench conference is held in the presence
10 but out of the hearing of the jury.)

11 THE COURT: Ladies and gentlemen of the jury
12 panel, we have some matters we need - we're going to need to
13 take up in this case and a couple of other matters that we
14 need to take up before we get started with the trial of this
15 case. We wanted to go ahead and get a jury selected so we
16 could free up the jurors that are not going to be needed this
17 afternoon, but we're going to go ahead and adjourn for lunch
18 at this time. It's about almost 20 till one. What I'm going
19 to ask you to do is get some lunch and be back in the jury
20 room ready to go at two o'clock, at two o'clock, give
21 everybody plenty of time to get lunch. I'm going to give you
22 a preliminary instruction when we get back into the courtroom,
23 give you a little instruction about what to expect, the format
24 of the trial, etcetera, but in the meantime please do not
25 discuss this case among yourselves. You don't really know

1 anything about it at this point yet anyway. Please don't
2 discuss this case among yourselves. Please do not discuss it
3 with anyone else you might see on a recess from court,
4 including family members, friends or anyone else you might
5 see. Please do not discuss with them. I'll explain the
6 importance of that when you come back. It's very important
7 you not do that. If anyone should deliberately try to discuss
8 this case with you please do not discuss it with them but make
9 note of that person, let the bailiff know upon your return or
10 the Clerk of Court's Office know. They will let me know and
11 I'll deal appropriately with that person. No one should try
12 to discuss the case with you. If they do I certainly wish to
13 be made aware of it.

14 Thank you. Please enjoy your lunch, be back in the jury
15 room ready to go at two o'clock. Thank you. If you'll go
16 with the bailiff.

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

19 THE COURT: As for those in attendance at the
20 trial I have one rule and that is that nobody gets up, moves
21 around when the jury's going out or coming in. So if the
22 jury's going out or coming in please keep your seat until
23 after they're out or back in. Thank you.

24 Counsel, why don't - you want to go ahead with the
25 motions at this time or you want to take a plea? Whatever you

Motions

21

1 want to do, Solicitor.

2 MS. RICHARDSON: Your Honor, the State doesn't have
3 any motions. So, whatever the Defendant ---

4 THE COURT: Let me hear from the Defense then,
5 please.

6 MS. BESSENT: Yes, Your Honor, we do make a motion
7 to exclude the drugs located based on the chain of evidence.
8 We have concerns about whether the State can even establish
9 that the heroin found belonged to my client. So we request a
10 hearing on that matter. In addition the Prosecutor intends to
11 introduce two separate dash cam videos that the first
12 Defendant that has been tried and convicted he was driving the
13 car. He was convicted for possession with intent to
14 distribute. I would like any reference to that voided from
15 the record ---

16 THE COURT: Okay.

17 MS. BESSENT: --- as prejudicial to my client that
18 he was with a person that is distributing drugs.

19 MS. RICHARDSON: Your Honor, as for the chain of
20 custody I think it may be premature to do that. We would
21 establish that during direct evidence. There is one missing
22 person in the chain. The evidence custodian from the City of
23 Georgetown is terminally ill with cancer. We do have the
24 current custodian present but under State v. Hatcher, Your
25 Honor, we would be able to explain his role and his absence

1 with the other witnesses.

2 THE COURT: Okay.

3 MS. RICHARDSON: Also, as for the reference to the
4 other Defendant, Your Honor, the basis for the traffic stop,
5 the officer observed some sort of transaction or what appeared
6 to be a transaction involving the driver, and then the car
7 began to speed. So that is the basis for the stop and the
8 probable cause for the stop.

9 THE COURT: Well, of course you can get into that
10 but it's no need to get into the driver being convicted of any
11 crime in this case; correct?

12 MS. RICHARDSON: We don't have to do that, Your Honor,
13 as long as they don't try to allege some sort of third party
14 guilt regarding the driver. The only thing is on the video
15 they're both arrested at the same time and drugs are found
16 pretty much simultaneously. So there will be reference that
17 the other person did have drugs.

18 THE COURT: Yeah, well, I - no problem there.
19 She's talking about a conviction of the other person for
20 possession with intent to distribute and you don't plan to get
21 into that?

22 MS. RICHARDSON: I don't plan to get into that unless
23 of course ---

24 THE COURT: They open the door to it.

25 MS. RICHARDSON: --- they open the door.

Motions

23

1 THE COURT: But he can get into - what you plan
2 to do is get in the fact they were stopped and the other
3 Defendant who's not on trial was driving the car, there was a
4 stop, that drugs were found, both, both were charged.

5 MS. RICHARDSON: Both were charged.

6 THE COURT: With the drugs.

7 MS. RICHARDSON: Two separate drugs were found.

8 THE COURT: Okay.

9 MS. RICHARDSON: Crack cocaine.

10 MS. BESSENT: Actually multiple drugs were found on
11 Dennison who has been tried and convicted. Allegedly my
12 client had heroin or threw heroin.

13 THE COURT: Okay, all right, so, what we do is
14 just stay away from a conviction from a Co-Defendant at this
15 point which might prejudice, go to prejudice, unless - that
16 would prejudice Mr. Jenkins unless - of course they open the
17 door to it somehow and you have to put in further evidence to
18 explain that. So you understand if you open the door they can
19 get into it.

20 MS. BESSENT: Yes, Your Honor.

21 THE COURT: Otherwise they would not get into a
22 conviction for Mr. Dennison unless he took the stand, of
23 course, he'd be subject to impeachment with that, but if he
24 doesn't testify in the case I see no reason to get into what
25 he was actually convicted of, but he could - certainly he

1 could be charged with possession of drugs at the scene. That
2 all comes in as part of the State's case.

3 Anything else?

4 MS. BESSENT: The Court's indulgence.

5 Nothing further, Your Honor.

6 THE COURT: Okay, let me say insofar as the chain
7 of custody and that's correct that it would - the decision
8 would have to be made on that after the State's offered it,
9 you move for a directed verdict on that at the time and
10 suppress it at that time, but the chain only has to be
11 substantially complete according to the case law; and so, but
12 the Court has to make that determination after hearing all of
13 the testimony and evidence on the drug chain. Then the Court
14 can make that decision. All right, anything else?

15 MS. RICHARDSON: Not from the State, Your Honor.

16 THE COURT: All right, then when we - when we
17 bring the jury back and we get started I'll give them a
18 preliminary charge and then we'll let - we'll go into opening
19 statements at that point.

20 OFF THE RECORD

21 (On the record. The following takes place outside the
22 presence of the jury.)

23 MS. BESSENT: Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. BESSENT: My client doesn't read or write too

Opening Instructions by Court

25

1 well. So, I'm going to have to ask the Court's indulgence
2 that if he needs to ask me a question or tell me something
3 during testimony that I be allowed to consult with him
4 briefly.

5 THE COURT: Yes, ma'am.

6 MS. BESSENT: Thank you, Your Honor.

7 THE COURT: Yes, ma'am.

8 MS. RICHARDSON: And Your Honor, we have pre-marked
9 five exhibits for identification only.

10 THE COURT: Okay, I'm sorry. We can bring the
11 jury in. Please bring the jury in. I thought they were
12 already doing that.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: We're missing a juror; are we not?

16 (Juror enters courtroom.)

17 THE COURT: Good afternoon, ladies and gentlemen
18 of the jury panel. If you'd give me your attention, please.
19 Let me start off by apologizing for the delay in getting you
20 out. We didn't mean to keep you in there that long but we had
21 some matters come up we had to take care of and so we're now
22 ready to get started with the trial. The first thing I'm
23 going to do is give you what I call a preliminary instruction
24 or to explain the format of the trial and what to expect as we
25 go through the trial. I hope you - make you feel a little

Opening Instructions by Court

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1 more comfortable in these unfamiliar surroundings. I suspect
2 that most of you have not served on a circuit court jury in
3 General Sessions Court before and hopefully this'll make you
4 feel a little more comfortable as you know what's going to
5 happen. The first thing that'll happen after I've completed
6 this instruction to you is that an attorney for the State who
7 is an assistant solicitor will make an opening statement to
8 you and then the attorney for the Defendant will have the same
9 opportunity to address you in opening statement. These
10 openings statements by the attorneys are not evidence but you
11 should pay close attention because they're in essence going to
12 identify to you what they say or perceive the issues in the
13 case are. After they've made their opening statements to you
14 then the State will proceed by presenting the testimony and
15 evidence they want you to consider. The reason the State goes
16 first is that the State has the burden of proof in this case.
17 There is no burden of proof upon the Defendant to prove his
18 innocence. The burden of proof is upon the State of South
19 Carolina to prove the charge against this Defendant by
20 evidence that satisfies you, the jury, beyond a reasonable
21 doubt before you can return a verdict of guilty. If the State
22 fails to meet that burden of proof then your verdict must be
23 not guilty.

24 After the assistant solicitor has presented to you the
25 evidence that they want you to consider on behalf of the State

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1 then the same opportunity will be afforded to the Defense.
2 The Defendant may, but is not required to present any
3 testimony or evidence because the State has the burden of
4 proving the Defendant guilty beyond a reasonable doubt. The
5 Defendant does not have to prove he is innocent. He is
6 presumed innocent and that presumption stays with him
7 throughout the trial and may only be removed if the State
8 meets its burden of proving the guilt of the Defendant beyond
9 a reasonable doubt.

10 What is evidence in the case? Evidence is the sworn
11 testimony you'll hear from the witness stand, exhibits
12 admitted into the record for your consideration by me the
13 presiding judge and any stipulation of counsel. Now exhibits
14 may take many forms such as documents, pictures, videotapes,
15 maps, diagrams and so forth. Stipulations are agreements of
16 facts by the attorneys. If the attorneys enter into a
17 stipulation or agreement of fact that will be made known to
18 you and you can consider it along with all the other testimony
19 and evidence, give it such weight as you deem appropriate once
20 you begin your deliberations. Sworn testimony, exhibits and
21 stipulations are the only evidence you may consider in your
22 deliberation of the innocence or guilt of the Defendant. You
23 may not consider anything you heard from any other source
24 about this case in making your decision because that is not
25 evidence. After you've heard all the evidence then the

1 attorneys for the State and the Defendant will once again
2 appear before you and make what we call closing arguments. We
3 call them arguments because the attorneys are allowed at that
4 time to argue their positions, will attempt to persuade you as
5 to their view or position as to the facts. When you've heard
6 final arguments from counsel I will then charge you which
7 simply means to instruct you as to the law that applies to the
8 issues in this case. You will then retire to the jury room to
9 deliberate and reach your verdict. That's how a case is tried
10 in General Sessions Court, whether it be this case or any
11 other case. Some cases take a half a day or a day. Some
12 cases take weeks, but the same format applies in every case.

13 As the trial judge I have three functions to perform
14 during the trial. I am the presiding officer, and therefore,
15 see that the trial is run in an orderly manner. I decide
16 based on rules of civil and criminal procedure whether
17 testimony and exhibits are admissible into evidence for your
18 consideration and at the conclusion of the trial I instruct
19 you as to the law you must apply to the facts in this case in
20 reaching your verdict. You, ladies and gentlemen, are also
21 judges in this case. You are the judges of the facts. In
22 other words, you determine the truth of the facts in this
23 case. Under our constitution I'm not permitted as the judge
24 of the law to have an opinion about the facts. So I do not
25 get into whether I believe a witness or not. That is not my

Opening Instructions by Court

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1 function. I'm not even permitted to express an opinion if I
2 had one as to the facts in this case. So you the jurors
3 determine what is the truth of the facts.

4 Now, I do not permit jurors to take notes during the
5 trial because it is my experience that while writing notes you
6 may miss something very important for you to hear and you may
7 fail to observe a witness when testifying. It is important
8 that you pay careful attention to all testimony and
9 introduction of evidence since you must judge the credibility
10 or believability of the witnesses and the weight to give all
11 evidence introduced in this case in determining the truth of
12 the facts.

13 Now, during the trial the attorneys may object to the
14 admissibility of certain testimony or other evidence. I will
15 either sustain the objection, which means I agree, and the
16 testimony or the evidence may not be made part of the record
17 for your consideration or I will overrule the objection which
18 means as the judge of the law I have determined that it is
19 admissible as part of the record for your consideration. The
20 mere fact that I have admitted it does not mean that you must
21 believe it or disbelieve it. I have simply determined that it
22 is admissible under our rules and it is up to you then to
23 believe it or disbelieve it and to assign such weight to it as
24 you determine to be appropriate. At the conclusion of the
25 trial when we send you to the jury room every exhibit that is

1 admitted into evidence will be sent to the jury room for you
2 to examine further and to consider. I remind you that one of
3 the most important aspects of your duty as a jury lies
4 essentially in the oath that you will - are about to take to
5 well and truly try this case and to determine the truth of the
6 facts in this case. That oath, once again, in a very
7 essential way says that you're the sole judges of the facts in
8 this case.

9 Ladies and gentlemen, whatever your verdict in this case
10 it must be your unanimous verdict. All 12 of you must agree
11 on the verdict which the foreperson will be authorized to
12 write on behalf of the jury. Ladies and gentlemen, you're not
13 to discuss this case at any time during the trial until I tell
14 you and that will not occur until you have received all of the
15 evidence and I have instructed you upon the law. You should
16 not discuss the case among yourselves, should not discuss the
17 case with your family, friends or anyone else you might see on
18 recess from court. You might ask the Court, "Well, what's
19 wrong with our discussing the case as we go along?" Well,
20 what's wrong is, "Somebody finds out I'm on a jury they want
21 to know something about the case I'm on, what's wrong with
22 discussing it with them?" The problem with discussing it
23 among yourselves or with anyone else is once you start
24 discussing it you start forming opinions and you wouldn't be
25 fair to both sides of this case if you didn't wait till you've

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1 heard all the testimony and evidence and I have instructed you
2 upon the law that applies before you start forming opinions in
3 this case. Until all that's done you should keep an open
4 mind, wait till you have all the information you need before
5 you start forming opinions in this case.

6 As I told you earlier if anyone should deliberately try
7 to discuss the case with you do not discuss it with them but
8 leave and report that attempt to me through the clerk or the
9 bailiff, one of the bailiffs and I'll deal appropriately with
10 that person. If there should be any media coverage of this
11 trial, I do not know of any and there may very well not be
12 any, but if there should be any please do not read, listen to
13 or watch any media account of the trial until after the trial
14 is over. You must decide this case based on the evidence
15 presented in the courtroom and the courtroom only.

16 Now, I'm well aware that a lot of people these days get
17 their news information and other information by way of
18 electronic communications. Please do not go on to any kind of
19 computer, I-pad, a cell phone or anything else to try to find
20 out anything about this case. It will be a very - a fairly
21 short trial. I suspect we'll probably finish it up tomorrow.
22 So that'll not be a great inconvenience to you, but please do
23 not do that and I'm well aware that there's information there
24 from different sources. Please do not go on the computer,
25 cell phone, I-pad or anything like that in order to get

1 information. Pretty soon we'll be getting them off a
2 wristwatch, but please do not do that until after the trial is
3 over.

4 Now, if you cannot see or hear something you need to hear
5 or see during the course of the trial please do not hesitate
6 to write - raise your right hand, let me know and I'll make
7 sure that you're able to see or hear so you can properly do
8 your job. I try to anticipate that, but some of you are much
9 further away from where maybe the witness is testifying where
10 the lawyer may be standing than I. So if I fail to anticipate
11 it and you can't hear or see please raise your hand, let me
12 know and I'll make sure you're able to see or hear so you can
13 do your job.

14 If you wish to communicate with the Court other than
15 needing a break or the - and let me say that, if you need a
16 break before the time a break is taken, we'll take a break
17 about every hour and a half, if you need a break before a
18 break is taken please raise your hand, let me know and I'll
19 take a break as quickly after that as I can. Now if you wish
20 to communicate with the Court other than needing a break or
21 the inability to see or hear please write the message down on
22 a tablet that'll be provided for you back in the jury room,
23 give it to the bailiff, the bailiff will bring it to me. I'll
24 either correspond in like manner or I'll bring you back out in
25 the courtroom and respond as case need be. That's how we

Opening Instructions by Court

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1 should communicate. You now or shortly will be sworn as
2 jurors in this case.

3 I'm going to ask you once we take our break, we'll take a
4 break in about a hour and a half, we take a break, I'm going
5 to ask you as your first official act in this case to elect
6 from the first 12 jurors chosen a foreperson to represent - to
7 be spokesperson for the jury. I'll explain the role of the
8 foreperson. The foreperson is asked to serve as spokesperson
9 for the jury back to the Court. So if there's a matter that
10 needs to come to the attention of the Court from the jury we
11 ask that the foreperson write the message down on a tablet
12 provided for you in the jury room, give that to the bailiff.
13 The bailiff will bring it to me and I'll correspond
14 appropriately. We also ask that the foreperson serve as
15 moderator, once we've reached the deliberative stage of the
16 trial, to maintain order in deliberations, make sure everyone
17 is allowed to participate and to be heard in the deliberations
18 and then finally once a unanimous verdict is reached by the
19 jury to record that verdict on a verdict form which will be
20 provided to you and explained to you at the appropriate time
21 at the conclusion of the trial. The primary role of the
22 foreperson is the same as every other juror and that's to
23 listen carefully to the testimony and evidence so you'll be in
24 a position to deliberate and help reach a verdict in this
25 case.

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1 I want to explain the role of the alternate. Ms.
2 Grayson, you're the alternate in this case. Your role is the
3 same as the first 12 jurors chosen and that is to listen
4 carefully to the testimony and evidence and be in a position
5 to deliberate and help reach a verdict in this case because if
6 for any reason we had to excuse one of the first 12 jurors
7 chosen you would automatically fill in for the missing juror.
8 You could not do that if you hadn't listened carefully to the
9 testimony and evidence, were in a position to deliberate, help
10 reach a verdict in this case. We do like to keep the
11 alternate in the same seat throughout the trial and the
12 foreperson in the same seat throughout the trial. All of the
13 other seats are interchanged. It really does not matter where
14 you sit, but we like to keep those two persons in the same
15 seat.

16 Now, I'm going to ask now if the clerk will please swear
17 the jury panel.

18 (Jury sworn by clerk.)

19 THE COURT: Thank you for your kind attention.
20 Now we're ready to actually get started with the trial and
21 we're to that part of the trial where counsel will make their
22 opening statements to you. I ask that you listen attentively
23 now as counsel address you in opening statement.

24 MS. RICHARDSON: May it please the Court?

25 THE COURT: Solicitor?

1 MS. RICHARDSON: Good afternoon. My name is Alicia
2 Richardson. I'm the deputy solicitor here in Georgetown
3 County. First of all I want to thank you for your service.
4 As I'm sure everybody will tell you over and over this is the
5 most important part of our judicial system is to have a fair
6 and impartial jury to hear these type of cases. The type of
7 case that you have today is a drug case, a drug possession
8 case. Mr. Jenkins is charged with possession of a controlled
9 substance and that controlled substance is heroin. This
10 occurred back in 2011, September 24th, 2011, here in the city
11 limits of Georgetown over near Merriman and Emanuel Streets,
12 near that intersection is where it occurred. It started out
13 as a traffic stop. Mr. Jenkins was a passenger in a vehicle
14 being driven by Mr. Dennison. There was also a back seat
15 passenger, Mr. Simmons. Office Tempalsky was working with the
16 City of Georgetown, initiated a traffic stop on the, on the
17 vehicle. What's unusual about this case is you're going to be
18 able to actually see this traffic stop and you're going to be
19 able to see it from two different viewpoints, two different
20 in-car cameras. Well, when - you'll see when you get to watch
21 this video things go bad pretty quickly. There's an incident
22 with the driver who doesn't want to comply and Mr. or Officer
23 Tempalsky has to call for backup and that's from Officer
24 Scogin who arrives and you'll see him pull up on his video and
25 they'll have just a slightly different angle, but basically

1 things kind of go crazy with Mr. Dennison and you'll see that
2 on the video. In the meantime what you'll see and you'll be
3 tempted to watch what's going on with Mr. Dennison because
4 it's kind of hectic, but Mr. Jenkins slips out of the vehicle
5 to allow Mr. Dennison to get out and walks away. You'll see
6 this on the left side of your screen. At that time he throws
7 something. Officer Scogin sees that, goes and gets him. Now,
8 part of that is off camera, even though you have two different
9 views, part of, of that is off camera, but you'll be able to
10 see the motion, takes him, goes back, puts him under arrest,
11 takes him back to pick up the item and then puts him into
12 custody.

13 You will hear from the evidence custodian at Georgetown.
14 We have to explain to you sort of what happens to the drugs
15 and prove to you that these are actually drugs. So you're
16 going to hear some testimony about evidence, procedures. It's
17 going to seem kind of boring but it is necessary about how
18 evidence is stored and kept at the City of Georgetown and at
19 the police department and at the South Carolina Law
20 Enforcement Division. You'll hear from an evidence custodian
21 at SLED who received the drugs and you'll also hear from the
22 chemist who analyzed the drugs to determine that they were
23 actually heroin.

24 Like I said, some of that gets a little tedious, but the
25 purpose of that is just to show you exactly where the drugs

Opening Statement by Defense

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1 went step by step until they were analyzed. So I just ask
2 that you listen to all the evidence and watch any evidence
3 that's presented and in the end I'm confident that you'll find
4 Mr. Jenkins guilty of possession of heroin.

5 MS. BESSENT: May it please the Court?

6 THE COURT: Counsel?

7 MS. BESSENT: Good afternoon, ladies and gentlemen.
8 The deputy solicitor is correct, this is about a drug
9 possession case. Back in September of 2011 my client was a
10 passenger in Mr. Dennison's car. Deputy Commander Tempalsky
11 pulled Mr. Dennison over and proceeded to deploy his Taser,
12 not once, not twice, but three times. During that process
13 Dennison climbed over into the passenger seat which forced my
14 client out of the car. Dennison has him by seven years
15 younger, about 30 pounds heavier and five inches taller than
16 my client. My client gets out of the car amidst all this
17 Tasing going on and carefully just walks away. He's not under
18 arrest. He's getting out of the way of a Taser. My client
19 has a heart condition. He has high blood pressure. He has a
20 blood clot. He doesn't need to be near that. He just walks
21 away.

22 As soon as Sergeant Scogin arrives on scene and is also
23 deploying his Taser on Mr. Dennison he looks over to his left,
24 sees my client and says, "Get back over here." My client
25 complies. There were drugs found on the ground and Mr.

1 Tempalsky and Sergeant Scogin both say my client threw it. If
2 it happened it happened off screen. You don't actually see
3 anything. Pay close attention to that video. My client's
4 hands, Mr. Jenkins' hands visible the entire time, the
5 absolute entire time. They're not closed. He doesn't have
6 closed fists. They're open like this, like, "Whoa, I'm
7 getting out of the way," as any person would do when a Taser
8 is going off and that's where the State's case ends. At that
9 point it's up to you to determine did you actually see my
10 client throw anything? Was he acting suspicious at all? The
11 State has to prove that he threw heroin beyond a reasonable
12 doubt. That's a high standard. Please keep in mind what
13 these two officers were concerned with primarily at the time
14 they allegedly saw my client throw something out of his hand
15 because then Scogin walked across the street and picked
16 something up, which did turn out to be heroin. Now, whether
17 my client ever had it in his hand and threw it the video
18 doesn't show it. Sergeant Scogin does walk across the street,
19 out of the sight of the camera, he picks something up, he
20 comes back. This is kind of like a suspense novel. All along
21 they're weaving a story and they want you to say whodunit is
22 my client, but in the end you're going to see a twist and I'm
23 confident that you all are going to conclude as I did after
24 watching this video, both videos there was nothing in my
25 client's hand to throw, That being the case, the heroin that

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1 was located could not have been his. Again, please pay close
2 attention. I know this may seem tedious but for my client,
3 Mr. Jenkins, this is a pretty important case. Thank you.

4 THE COURT: Please call your first witness,
5 Solicitor.

6 MS. RICHARDSON: The State calls Officer Tempalsky.

7 Whereupon, Donald Tempalsky was called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: Thank you. Please be seated. Spell
10 your name for the record, please.

11 MR. TEMPALSKY: Yes, ma'am. It's Donald Tempalsky,
12 T-E-M-P-A-L-S-K-Y.

13 DIRECT EXAMINATION

14 BY MS. RICHARDSON:

15 Q Would you please tell us where you're employed and your
16 rank?

17 A I'm presently the deputy commander in charge of the 15th
18 Judicial Circuit Drug Enforcement Unit in charge of the
19 Georgetown office.

20 Q And were you formerly employed with the City of
21 Georgetown?

22 A Yes, ma'am.

23 Q And can you just give us the benefit of your career in
24 law enforcement?

25 A Certainly, I started out graduated from the police

1 academy in Jersey in 1984, worked in a medium sized police
2 department in New Jersey from '84 on through 2008. I rose to
3 the rank of detective lieutenant in charge of the narcotics
4 bureau. I served deployments as narcotics investigator, gang
5 unit investigator, anti-crime unit, held the ranks of
6 investigator, detective, corporal, sergeant and on up. I came
7 to South Carolina, attended the South Carolina Criminal
8 Justice Academy, certified as a Class I law enforcement
9 officer here in South Carolina. I worked with the Georgetown
10 County Sheriff's Department for a period of time before going
11 to the Georgetown City Police Department, attained the rank of
12 corporal there and later was given a job as deputy commander
13 in charge of the drug enforcement unit here in Georgetown
14 County.

15 Q On September 24th, 2011, were you working with the City of
16 Georgetown?

17 A I was.

18 Q And what were you doing that day?

19 A I was on routine uniform patrol. I was not like this. I
20 was clean shaven at the time, but I was in a uniform in a
21 marked police car.

22 Q And did you come in contact with a vehicle being driven
23 by Franklin Dennison?

24 A I did.

25 Q And could you explain to us how you came in contact with

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1 that vehicle?

2 A Yes, ma'am. While I was on routine patrol I noticed a
3 vehicle stopped in the middle of the road on the 2400 block of
4 Prince Street in the City of Georgetown. There are apartments
5 at that location that I know have a history of drug
6 involvement or the area has a history of drug involvement. I
7 saw a vehicle stopped in the center of the roadway. I
8 observed an individual come out of the driveway from the
9 apartments, go over to the driver's side of the vehicle. I
10 saw a brief encounter between that individual and the driver
11 and that individual left. The vehicle then pulled away and I
12 subsequently performed a motor vehicle stop on a - the vehicle
13 in question.

14 Q And why did you stop the vehicle?

15 A Well, several reasons, but I did notice that - what I
16 believed had occurred through my training and experience was a
17 drug transaction that occurred between that individual that
18 walked over to the vehicle, it was a Dodge Charger. I also
19 noticed that the vehicle was exceeding the posted speed limit
20 on Merriman Road at a later time and I also noticed that the
21 rear seat passenger didn't have a seatbelt on.

22 Q And where did you stop the vehicle?

23 A I initially put my lights on on Merriman Road and I
24 believe the vehicle finally came to a stop on Emanuel Street
25 if I could just check my report, yes, that's correct, on

1 Emanuel Street off of Merriman.

2 Q And what happened once you stopped the vehicle?

3 A I approached the, the driver who Mr. Dennison and I
4 immediately made some observations that he wasn't complying
5 with my instructions, he was extremely nervous. He had an
6 object in his hand, which later turned out to be a pill bottle
7 that I noticed in his hand. He kept moving his hands about
8 the vehicle, putting, putting his hands out of sight. As a
9 matter of a fact I even mentioned to him, "What's that in your
10 hand?" He denied having anything in his hand and I told him I
11 saw something in his hand. He still denied it. The encounter
12 declined from there. He didn't follow my instructions. He
13 refused to show his hands. He refused to provide any
14 identification.

15 Q And why was that concerning that he wouldn't show his
16 hands?

17 A Well, been a police officer 30 years in February, been
18 trained in narcotics, worked in narcotic units a long time and
19 it's very common for weapons to be involved in the narcotics
20 trade and I was extremely concerned that he might be trying to
21 retrieve a weapon and I also felt secondarily he might be
22 trying to destroy evidence.

23 Q So once he wouldn't comply what action did you take at
24 that point?

25 A Well, I actually had at one point managed to get the keys

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1 out of the ignition, shut the ignition off. I called for
2 backup knowing that the situation was deteriorating, knowing
3 that he wasn't telling me the truth, knowing that he wasn't
4 complying with my orders, seeing that I was outnumbered three
5 to one, I at one point deployed my Taser, pulled my Taser out,
6 pointed it in his direction, tried to gain some compliance
7 just by the presence of the Taser and tried to - again
8 requested a backup, you know, from a small microphone on the
9 center of my chest and activated that and requested another
10 unit to come.

11 Q And did another unit come?

12 A Sergeant Scogin responded as a backup.

13 Q And did the - did the driver ever comply with you?

14 A He did not. He actually as the encounter went on he
15 opened the, the driver side door, struck me with the door, at
16 which time I deployed my Taser and for a five seconds cycle
17 the Taser runs in order to get compliance.

18 Q And did he exit the vehicle?

19 A Not at that time, gave, continued to give him
20 instructions to - I needed to see his hands. I tried to gain
21 compliance and rather than do that he actually reached out of
22 the vehicle and attempted to take the Taser away and resulted
23 in a second cycle of the Taser.

24 Q And did you identify who the passengers were in the
25 vehicle?

1 A Mr. - the person at the defense table was the front seat
2 passenger and I believe it was Antoine Simmons was in the
3 rear, passenger side rear.

4 Q Okay, and did Mr. Dennison ever comply with you?

5 A He did not.

6 Q And how did this encounter end?

7 A As Sergeant Scogin was arriving the passenger door, the
8 front passenger door opened. Mr. Jenkins got out of the
9 vehicle and Mr. Dennison rolled out the passenger side and
10 broke the leads, the wires that attached the Taser. The
11 Taser, the machine that is a Taser runs off of wires and the
12 wires connect the Taser to the target or the individual. The
13 wires broke, and once the wires break the Taser is no longer
14 activated and no longer has any effect on the person, and Mr.
15 Dennison rolled out of the vehicle, rolled and broke the Taser
16 wires, which is a very common tactic to defeat the Taser.

17 Q You didn't have any contact or any interaction at that
18 point with the passenger, Mr. Jenkins, is that right?

19 A No, ma'am.

20 Q And all of this was captured on your in-car video?

21 A Yes, it was.

22 Q And you provided a copy of that to the State ---

23 A I did.

24 Q --- to the Solicitor's Office? Let me show you what has
25 been pre-marked as State's Exhibit Number One, and do you

Donald Tempalsky - Cross by Defense

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1 recognize that?

2 A It appears to be the DVD from this incident.

3 Q And you've previously reviewed that?

4 A I have.

5 Q And is that a fair and accurate representation of the
6 video that was taken that day?

7 A It is.

8 MS. RICHARDSON: Your Honor, at this time I'd ask to
9 move State's Exhibit Number One into evidence and to publish
10 it to the jury.

11 MS. BESSENT: No objection, Your Honor.

12 THE COURT: Be without objection, you may publish
13 it, Solicitor.

14 (State's Exhibit Number One [DVD] admitted into evidence
15 and appropriately marked.)

16 MS. RICHARDSON: And Your Honor, we have a duplicate
17 copy all ready.

18 (State's Exhibit Number One played in open court.)

19 MS. RICHARDSON: I have no further questions. Answer
20 any questions that Ms. Bessent may have for you.

21 A Yes, ma'am.

22 CROSS EXAMINATION

23 BY MS. BESSENT:

24 Q Good afternoon, Deputy Commander.

25 A Good afternoon, ma'am.

1 Q Looks like you've lost some weight. When Deputy
2 Solicitor was asking you questions you said that you had
3 called for backup; correct?

4 A Yes, ma'am.

5 Q How many times did you call for backup, once or twice?

6 A I called once and I believe then I asked for them to step
7 it up requesting that the backup be - proceed a little
8 quicker.

9 Q So you definitely wanted backup there as quick as
10 possible?

11 A Yes, ma'am.

12 Q And then you testified that you thought that Dennison may
13 have had a weapon.

14 A Well, that was a fear of mine, that's correct.

15 Q And is that why you deployed your Taser multiple times?

16 A Well, the Taser was deployed the first time when he
17 struck me with the door. It was deployed the second time when
18 he attempted to take the Taser from me.

19 Q And the third time was that Sergeant Scogin or did you
20 deploy your Taser for a third time as well?

21 A I'm not really sure. I could check my report but I
22 believe the second time was, was at - well, I'll take a look
23 at my report. When he - when the door opened and he started
24 moving out of the vehicle is when I deployed it the third time
25 to try to prevent his escape but that didn't work.

Donald Tempalsky - Cross by Defense

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1 Q Okay, but again, during this time you did not know if he
2 was armed or unarmed.

3 A That's correct.

4 Q But you did feel that he was a threat to your personal
5 safety?

6 A Yes.

7 Q Was he your primary focus during this stop?

8 A I would say he was my primary focus, that's correct.

9 Q Did you know how many cars were driving up and down the
10 road while you were involved with Mr. Dennison with these -
11 with the Tasing and him trying to escape?

12 A No.

13 Q You weren't cognizant of what was going on to the left?

14 A My primary - I can't say that I wasn't cognizant. I
15 think that if something had - if I had perceived something
16 outside of my primary objective to be a threat I may have
17 noticed it but that would be conjecture. I think the - Mr.
18 Dennison and the other two individuals in the car were my
19 primary area of concern.

20 Q Did Mr. Jenkins pose any threat to you?

21 A Did he pose a threat to me?

22 Q Yes, sir.

23 A I would say that he was in that car, it was the potential
24 of a threat, sure.

25 Q But was he acting aggressive towards you?

1 A No, ma'am; no, ma'am.

2 Q When he exited the vehicle did you think that he was
3 running or did you actually see the fact that he was just
4 walking?

5 A I thought he was opening the door to let Mr. Dennison
6 escape is what I believed at the time.

7 Q But Mr. Dennison was trying to climb over my client. He
8 was trying to get away from you the best way possible which
9 would be the passenger door?

10 A Well, I'm not sure I understand. What was the question?

11 Q Was Dennison's best escape route coming out through the
12 driver's door toward you or going through the passenger door
13 away from you?

14 A I don't know. I don't know what his best escape route
15 was for - you'd probably have to ask him.

16 Q And at that point my client exited the vehicle.

17 A When the door opened he exited the vehicle, that's
18 correct.

19 Q But your attention still wasn't diverted to him. You
20 were still focused on Mr. Dennison and him attempting to flee?

21 A I noticed Mr. Jenkins.

22 Q Yes, sir.

23 A I had observed Mr. Jenkins. My primary focus was on Mr.
24 Dennison.

25 Q In your incident report you did state that my client was

Donald Tempalsky - Cross by Defense

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1 ignoring commands to stay, come back. Have you - do you
2 recall seeing the Deputy Scogin's video, Sergeant Scogin's
3 video?

4 A I might have seen it a while back. I haven't seen it
5 recently.

6 Q So at this point you can't tell me whether you recall the
7 fact that Sergeant Scogin says essentially; "Hey, get back
8 here," and Mr. Dennison walks back to the front of the car?

9 A I, I couldn't say if that, if he said it once or more
10 than once.

11 Q In addition your incident report says that you saw my
12 client remove an object from his mouth and throw it.

13 A Yes, ma'am.

14 Q Can you tell me how you could have noticed something so
15 minor when you were in fear for your life and your safety and
16 attempting to keep Mr. Dennison on the ground and subdued?

17 A Well, I'm a trained police officer. That's what I do for
18 a living, and I notice a lot of things, things that maybe
19 people in other professions might not notice. I also notice
20 movements that I've learned are consistent with criminal
21 activity, and on more than one occasion I've seen someone
22 sweep their mouth and throw an object away and it often comes
23 at the time they're - either before they flee or when they're
24 given a direction by the police, and I believe at the time
25 when I saw him sweep his mouth I was by Mr. Dennison's back

1 trying to get him handcuffed and looking around, which is
2 normal practice for an officer to make sure that you're safe
3 and I would have ---

4 Q Do you even when you've got three cops backing you up?

5 A Well, that only - at that time it was just myself and
6 Sergeant Scogin, but there were three people and every one of
7 them, until I determined that they were unarmed, every one of
8 them was a threat and until I knew that they were all secured
9 and unarmed I'm going to do my best to at least see what each
10 of those is doing.

11 Q So you were attempting to discern whether my client was a
12 threat to you and at this point you saw some sort of hand
13 gesture across his mouth; is that correct? You were paying
14 attention to him because you also thought he could possibly be
15 a threat?

16 A I was observing the entire scene, the entire area. He
17 was one of my primary concerns. He was one of the people in
18 that car. I didn't know yet what we were going to find in the
19 car. I didn't know yet what he might have on his person. I
20 know he was not one that we wanted to leave the scene till we
21 conducted our investigation. So, yes, he was one of my areas
22 of concern.

23 Q .And he did not leave the scene?

24 A Depends what you consider the scene. I would say walking
25 away from the car like he did was not what I would consider

Donald Tempalsky - Cross by Defense

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1 staying.

2 Q Was he under arrest at the time he walked away from the
3 car?

4 A No.

5 Q Were Tasers being deployed at the time he walked away
6 from the car?

7 A Yes.

8 Q And you think a reasonable person should stick around
9 just in case they might get popped by a Taser?

10 A I think most people would have stayed right where they
11 were and put their hands on the car and stayed there and not
12 walked away, yes, I believe that.

13 Q But to the best of your knowledge there was something in
14 his mouth?

15 A That's correct.

16 Q Correct?

17 A That is correct.

18 Q That is what you're asserting?

19 A I believe he took it out of his mouth, yes.

20 Q Do you think there would have been saliva if he had taken
21 it out of his mouth?

22 A I would assume.

23 Q Did you request DNA?

24 A I never handled the evidence.

25 Q Nothing further.

1 MS. RICHARDSON: Nothing further from this witness,
2 Your Honor. I'd ask that he be excused.

3 THE COURT: Thank you, sir, for coming. You may
4 be excused at this time.

5 A You're welcome.

6 MS. RICHARDSON: The State calls Sergeant Scogin.

7 Whereupon, Danny Scott Scogin was called to the stand,
8 duly sworn by the clerk and testified as follows:

9 THE CLERK: Thank you. Please be seated and
10 spell your name for the record.

11 MR. SCOGIN: My name is Danny Scott Scogin, S-C-O-
12 G-I-N.

13 DIRECT EXAMINATION

14 BY MS. RICHARDSON:

15 Q And where are you employed?

16 A I work for the Georgetown City Police Department. I've
17 worked there for approximately 19 years.

18 Q And have you worked there your entire law enforcement
19 career?

20 A No, in '05 I worked for the Georgetown County Sheriff's
21 Office for a brief period and then returned to the City Police
22 Department.

23 Q And what is your rank there?

24 A I am a patrol sergeant. I supervise four patrol
25 officers, three to four patrol officers depending on staffing.

Danny Scott Scogin - Direct by State

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1 During a 12 hour shift we work six to six, seven out of 14
2 days.

3 Q And were you working on September 24th, 2011?

4 A Yes, ma'am, I was.

5 Q And did you come in contact with the Defendant, Robert
6 Jenkins?

7 A Yes, ma'am, I did.

8 Q And can you explain to us how you became involved?

9 A Yes, ma'am. During the time of the incident Corporal -
10 Deputy Commander Tempalsky, who was my corporal at the time,
11 Corporal Tempalsky made a traffic stop near Merriman and
12 Emanuel. Immediately after the traffic stop was called out,
13 he called for another unit, and not long after that he
14 requested that unit that was coming to his aid to step it up,
15 at which time he needed, you need an officer to get there
16 quickly. So I arrived down Merriman Road, took a right on
17 Emanuel and saw the traffic stop as you all saw it on, on the
18 video. When I arrived the driver, a Mr. Dennison, was
19 exiting, excuse me, Mr. Jenkins was coming out of the door all
20 at the same time. Jenkins comes out, Dennison comes out,
21 that's, that's when I get there and you'll - I believe you'll
22 see that on the video, but as soon as I pull up that's what
23 I'm seeing. I'm hearing my corporal command this subject to
24 stop, stop resisting, don't flee, at which time I give chase
25 to the subject that's fleeing from Mr. - Corporal Tempalsky,

1 also order him to stop. I deploy my Taser device as he is
2 fleeing down the sidewalk and at which time Mr. Dennison hits
3 the ground and Corporal Tempalsky is able to, to go gain
4 custody of him. As I'm running you can - I'm also observing
5 Mr. Jenkins that comes out of the vehicle. As, as Corporal
6 Tempalsky says there is several vehicle, several people inside
7 the vehicle, trying to keep my eyes on everything that's
8 taking place and being as safe as possible for everyone. I'm
9 also scanning the area for other possible things that could be
10 happening. As we go I look to my left. Mr. Jenkins is
11 walking to the rear of the vehicle flailing his hands up and
12 down. I'm trying to decide whether this is a possible overt
13 act, he could be throwing something. I'm trying to figure out
14 what he's doing in a quick amount of time. He's going up.
15 He's walking away from our, from our traffic stop location.
16 I'm yelling at him to stay right there. Mr. Jenkins continues
17 to run or to walk away. He turns and comes back. I yell at
18 him to stay right there and I'm pointing at the front of the
19 patrol car or the vehicle that we were in front of, that he
20 was walking back to, at which time he goes to his mouth and
21 throws an object back like that. That's right when I Tased
22 Mr. Dennison running. All this happens in seconds, you know.
23 I know it takes a lot longer for me to tell the story than it
24 actually happens, but all this happens in a few seconds. He
25 goes to his mouth, sweeps it back and his hands go back to

Danny Scott Scogin - Direct by State

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1 flailing again at which time Mr. Dennison hits the concrete
2 ground. Corporal Tempalsky is able to take custody of him. I
3 see him moving to him. He's no longer running. Corporal
4 Tempalsky is able to go that way. I go to take custody of Mr.
5 Jenkins who I just saw an object come out of his hand, go to
6 the ground behind him. I take Mr. Jenkins into custody as
7 quick as possible, also taking observation of Corporal
8 Tempalsky making sure he's able to get Mr. Dennison, the
9 driver into custody without any further conflict. When I see
10 that he is okay I take the guy that I saw to the object that
11 he threw to the ground. I see it hit the ground. I take him.
12 We walk straight to it. I bend over, pick it up and we come
13 straight back. I take him with me because there's nobody else
14 to hold on to him. I'm holding him by the handcuffs and the
15 object ended up being a plastic bag which had two bags of -
16 two small bags of heroin inside of it which was taken from
17 inside of his mouth and thrown to the ground. I picked up the
18 bag. As I said there's no one there yet. It's just us two.
19 We have two people in custody. I retrieve the item with my
20 hand and place it into my pocket which is BDU shorts and at
21 which time now I have both hands free. I couldn't leave it on
22 the ground. There was traffic coming up. There was people
23 stopped on the side of the road over there. I could see them.
24 Like Corporal Tempalsky said you just, you just try and take
25 in as much as possible and watch everybody's hands because all

1 the weapons that people have are going to come with their
2 hands. So you're just trying to keep it, you're just trying
3 to watch hands and make sure everybody at the end of the day
4 is safe.

5 Q And once you retrieved the package you said you put it in
6 your pocket?

7 A Yes, ma'am.

8 Q And then what did you do with it?

9 A After, after the incident, after we took Mr. Dennison and
10 Mr. Jenkins into custody, allowed Mr. Simmons, identified the
11 rear passenger. There was another passenger in the back seat.
12 We pull him out and detain him briefly. After the end of the
13 incident Mr. Simmons is released and I take - I tow the
14 vehicle from the scene, take the evidence that I collected,
15 which happened to be the - which happened to be the two bags
16 of heroin, take it to our police department and we place it
17 into an evidence locker which is secured. I fill out an
18 evidence disposition or evidence custodial voucher, place it
19 in the locker with it and we lock it up. It's like a bus
20 locker. You lock it and drop the key back in it so we have no
21 more access to it and our evidence custodian will take it from
22 there.

23 Q And who was your evidence custodian at the time?

24 A At the time it was a Larry Ward.

25 Q Okay, and who is it now?

Danny Scott Scogin - Direct by State

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1 A Now it is Sergeant Kyle Walton.

2 Q Okay, and is Mr. Ward still employed with Georgetown?

3 A I don't believe so, ma'am. He's had medical issues.

4 He's been out - he's battling cancer and I'm not sure that he
5 is - I don't believe he's employed with us at this time. I'm
6 unsure. I don't want to - I don't, I don't know.

7 Q But he, he's not working there during the day when you're
8 there now.

9 A No, ma'am. I, I - no, ma'am.

10 Q Okay, and this incident was captured on your car video?

11 A Yes, ma'am, and that was also placed into evidence along
12 with the, with the two bags of, of heroin.

13 Q And I'm going to show you what's already been entered as
14 State's Exhibit Number One and do you recognize that?

15 A Yes, sir - yes, ma'am. Excuse me, I'm sorry.

16 Q Okay, and what is that?

17 A That is a videotape that contains the traffic stops.

18 Q Okay, and you've had a chance to review that?

19 A Yes, ma'am, I have.

20 Q Okay, and that's an accurate representation of the video
21 that was taken off your camera?

22 A Yes, ma'am.

23 MS. RICHARDSON: Your Honor, permission to publish
24 this to the jury.

25 THE COURT: Has it been admitted yet?

1 MS. RICHARDSON: It has been admitted.

2 MS. BESSENT: No objection, Your Honor.

3 THE COURT: All right, be without objection. You
4 may publish.

5 (Whereupon, State's Exhibit Number One played in open
6 court.)

7 BY MS. RICHARDSON:

8 Q And you were able to observe that while we were playing
9 it?

10 A Yes, ma'am.

11 Q And once you had him on the car you said, "Drop it. Drop
12 it." What, what was that about?

13 A He, he might have had a bag or something in his hand as
14 well that, that he had also in his hand and I was just - it's
15 - when their hands are closed like this and you're trying to
16 handcuff them sometimes they don't know what to do with their
17 hands or whatever they have in their hand, whether it's a
18 lighter or cigarettes. They just don't know what to do.
19 You're trying to handcuff them and you just tell them to drop
20 whatever's in their hand so they can open them up and you can
21 get them together and put handcuffs on them.

22 Q But did you recover any controlled substance from his
23 hands at that time?

24 A No, ma'am.

25 Q Everything was recovered from where?

Danny Scott Scogin - Direct by State

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1 A From the, from the ground where he threw it, we - where I
2 collected it from the side of the road.

3 Q And you had no more interaction with Mr. Dennison?

4 A No, ma'am.

5 Q And do you know if items were recovered from his hands?

6 A I did not collect any, no, ma'am.

7 Q Okay, and let me show you what has been marked, pre-
8 marked for identification as State's Exhibit Number Two and do
9 you recognize this?

10 A Yes, ma'am, that is our, our evidence property custody
11 report form.

12 Q And is that the form for this case?

13 A Yes, ma'am, it's the two packets of heroin that I
14 submitted to, the description of the two packs of heroin that
15 I submitted to our evidence locker when I turned it in along
16 with our videocassette.

17 Q And this is a fair and accurate representation of the
18 form that you submitted ---

19 A Yes, ma'am.

20 Q --- to the evidence room?

21 MS. RICHARDSON: Your Honor, at this time we'd move
22 State's Exhibit Two into evidence.

23 MS. BESSENT: No objection, Your Honor.

24 THE COURT: Be without objection.

25 (State's Exhibit Number Two [Evidence Property Custody

1 Report Form] admitted into evidence and appropriately marked.)

2 BY MS. RICHARDSON:

3 Q And once you took the evidence to the evidence room did
4 you have any more contact with it or touch it?

5 A No, ma'am, once we place it into the locker and, and drop
6 the key we no longer have any, any access to it whatsoever.

7 Q And let me also show you what's been marked as State's
8 Exhibit Number Five for identification and do you recognize
9 this?

10 A Yes, ma'am.

11 Q Okay, what is that?

12 A This is the, the bag that I placed the two packs of
13 heroin which are in here, that I, that I dropped into the
14 evidence locker with, with my initials on it.

15 Q And where are you initials?

16 A The DSS that is circled.

17 Q In the smaller inner bag?

18 A Yes, that's how I placed it into the evidence.

19 Q And have you altered, tampered with it in any way?

20 A No, ma'am.

21 Q And did you tamper with it or the contents prior to
22 putting it into evidence?

23 A No, ma'am.

24 MS. BESSENT: Deputy Solicitor, may I?

25 (Complies with request.)

Danny Scott Scogin - Cross by Defense

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1 MS. BESSENT: Thank you.

2 Q And which of these items would actually be what you
3 recovered from Mr. Jenkins?

4 A What was recovered, there is a plastic bag that contained
5 - these bags weren't like this. These bags were folded up in
6 a bindle, which is a heroin packet, it's a wax bag that folds
7 up and it's - you can see where the creases are when you look
8 at it, how it folds up, it, it's a tri-fold bag and they are
9 folded up, both of them together and they have this rubber
10 band around them and they - those two bags are inside this
11 cellophane bag. I grabbed that and I added this bag which I
12 placed the evidence in to put it in evidence locker. It holds
13 a description, the date, time, case number, who I got it from
14 and my initials saying that this is from me and I put it in
15 here contained like this.

16 Q I have no further questions. Answer any questions Ms.
17 Bessent may have for you.

18 A Yes, ma'am.

19 MS. BESSENT: The Court's indulgence, Your Honor.

20 THE COURT: Yes, ma'am.

21 CROSS EXAMINATION

22 BY MS. BESSENT:

23 Q Sergeant Scogin, you say that you saw him, you've
24 testified here that you saw my client take something out of
25 his mouth and throw it; correct?

1 A Yes, ma'am.

2 Q Can you tell me why your incident report didn't state
3 that?

4 A I wrote a supplemental report and in my supplement it
5 says I responded to assist Corporal Tempalsky.

6 Q Correct.

7 A And during that I observed Mr. Jenkins walk across the
8 road from the vehicle, several commands not to stop - to do so
9 and throw a plastic bag to the ground. Mr. Jenkins then
10 walked to the front of the vehicle where I took him into
11 custody. I escorted Mr. Jenkins to the package and retrieved
12 it from the ground. The plastic bag contained two wax-like
13 packets which was held together with a rubber band. The
14 packets were marked, final destination - I inspected the - I
15 inspected the packets and they appeared to contain an off-
16 white powder substance believed to be heroin. Mr. Jenkins was
17 placed under arrest.

18 Q Yes, sir, but that's not what I asked you. You have
19 testified here today that you saw him take it out of his
20 mouth.

21 A Right.

22 Q Your incident report makes no indication that it was
23 taken out of his mouth. Can you tell me why your two
24 statements are inconsistent?

25 A Well, I believe they're consistent. I saw him throw it

1 to the ground and I go to it. It's where you start writing
2 from I believe. I write in there that I throw it, I see him
3 throw it to the ground and I go get it.

4 Q But you don't find it significant, you didn't find it
5 significant at the time that you saw him take it from his
6 mouth, yet you find it significant today to tell the jury you
7 saw him take it from his mouth?

8 A Do I find it significant?

9 Q You found it significant enough to mention it now but not
10 in your original police reports in September of 2011.

11 A Right, like I said, I, I could have put on there that he,
12 that he threw it to the ground and I went and picked it up.
13 I'm - if I left that, you know, I didn't put on what, what he
14 was wearing or anything like that. I, I ---

15 Q That has nothing to do with the evidence submitted to
16 SLED; does it though?

17 A I understand, right.

18 Q If it came from his mouth would it - would you suspect
19 DNA to have been on it?

20 A Probably would if I wasn't able - if I didn't have to
21 pick it up. I'd probably be able to put it in to be tested
22 but it being in a roadway I had to pick it up. There were
23 people walking. There were vehicles coming up and down. I
24 couldn't just leave it there to go get gloves or to have
25 somebody pick it up uncontaminated. I had to physically pick

1 it up because we had several people we were dealing with and
2 put my DNA on it and place it into my cotton pants which would
3 have also removed DNA from it.

4 Q Is that the best way to collect evidence, sir?

5 A At that incident in this traffic stop absolutely.

6 Q Were there bystanders on the far side of the road
7 opposite of where the car was stopped?

8 A Opposite to - if, if we're facing the way the cars are
9 facing on the left?

10 Q Yes, sir, on the left outside the view of the cameras?

11 A On the, on the left there are people in vehicles, yes,
12 ma'am.

13 Q Riding up and down the street, vehicles stopped to watch
14 the brouhaha going on?

15 A That's right.

16 Q Got looky-loos wanting to know what's going on? Is there
17 any way to determine how long this packet was on the ground?

18 A Absolutely.

19 Q How long was it?

20 A We can look at the video. You see him go to this mouth,
21 throw it to the ground and we can time from the fact, from the
22 time where he throws it to the ground and I go pick it up.

23 I'm not ---

24 Q On that video I saw you look at him twice.

25 A That's right.

Danny Scott Scogin - Cross by Defense

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1 Q For approximately it's got to be a second or less.

2 A Quick, the whole incident probably took less than 20
3 seconds.

4 Q True, but what I'm concentrating on is when you're Tasing
5 somebody ---

6 A That's right.

7 Q --- you look to the left, you look back to Dennison and
8 you look back to the left and say, "Stop, come back here," or
9 words to that effect, at which point my client does, in fact,
10 come back.

11 A Right.

12 Q To the hood of the car?

13 A Right.

14 Q Which time when you were looking at him, the first or the
15 second time for that split second did you see him swipe
16 something from his mouth and throw it to the ground?

17 A Which time, it was probably the second time. I'm not
18 sure which time that I saw him. I know that I watched him
19 remove the package from his mouth, have it in his hand and the
20 package go behind him from his hand to the ground, and ---

21 Q Was he - can you tell me where he was located when that
22 occurred, please?

23 A Yes, ma'am, it's, it's on video as well, he's probably
24 almost immediate in the middle of the street, almost, almost
25 in the middle of the street walking back to the front of the,

1 the vehicle. He - it's very easy to see. He goes from
2 throwing his hands way away from his mouth. He's, he's just
3 flailing his hands running around doing this and then ---

4 Q I'm sorry. He was running around or was he walking?

5 A No, he was walking. It was - and when we were looking at
6 it we're trying to figure out what's going on, all right.

7 Q I understand that as police officers you all are ---

8 A When ---

9 Q --- trained to ---

10 A That's correct.

11 Q --- try to do a 3-60.

12 A I wish I could. I wish I could.

13 Q That's your ultimate goal is to know every single threat
14 surrounding you 360 degrees.

15 A Absolutely. I wish I could.

16 Q Can you tell me what Mr. Simmons was doing in the car
17 during all of this?

18 A Absolutely not.

19 Q Mr. Simmons wasn't a threat?

20 A He was.

21 Q He could have had a sawed-off shotgun. He could have had
22 an automatic rifle?

23 A Yes, ma'am.

24 Q He was a threat?

25 A You're telling me that?

1 Q I'm asking.
2 A Absolutely.
3 Q But nobody was paying attention to him?
4 A I did not.
5 Q Why?
6 A I guess you pick your battles. I have two outside of the
7 vehicle that I have to know that I know there's four hands
8 right there that could be holding a weapon.
9 Q And you're not ---
10 A And then, and I've got two eyes ---
11 Q And you're ---
12 A --- and I'm trying to figure out what, what's my biggest
13 threat. So I guess in the scale of one to three he was number
14 three and I didn't have an extra eye for him.
15 Q Even though you couldn't see his hands at all?
16 A I couldn't see him period.
17 Q That's not a bigger threat, that's not a bigger threat
18 than somebody's hands you can see up in the air?
19 A Yes, ma'am, but like I said you can see him walking
20 around with his hands out beside his body, out here several
21 times going up and down and you see his hands go to his mouth
22 and throw it, not flailing like he's been doing, it's an
23 aggressive, direct manner behind him. I see that. I take him
24 into custody and I walk him straight to the package. We
25 didn't walk around the car. We didn't walk to the front. We

1 didn't walk where he was standing. We didn't walk back here.

2 Q You walked him off-camera. I agree with that.

3 A I walked him straight to the package, picked it up and
4 walked him back.

5 Q And that within a split second you saw him throw and you
6 saw exactly where it landed within a split second?

7 A Yes, ma'am.

8 Q I'd like to have your eyes. That's amazing.

9 A Eye surgery, Dr. Ply.

10 THE COURT: Counsel, confine your comments to
11 questions, please.

12 MS. BESSENT: Yes, Your Honor.

13 BY MS. BESSENT:

14 Q So, you're saying that Mr. Jenkins was walking back
15 toward the car ---

16 A That's correct.

17 Q --- when he discarded the heroin, allegedly.

18 A Yes, ma'am.

19 Q And you say that you see it plainly on the video?

20 A You see him go to his mouth, yes, ma'am. His hands go
21 from side to side, up and down to straight to here in a
22 throwing motion straight back and they don't - it's not this.
23 It's not, "Oh, my God, what's happening to me?" It's this to
24 this. It's only one motion in the whole video that does that
25 and I saw it.

Danny Scott Scogin - Cross by Defense

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1 Q Yes, sir, and again the reason why you didn't request DNA
2 is because of the collection process; correct?

3 A Yeah, I had to pick it up with my hands and I had to put
4 it in my - if - my cotton pants and if we request DNA it's got
5 to be a sterile environment which would - a sterile collection
6 process.

7 Q When you pulled up to the scene what did you witness
8 originally?

9 A Like I said as my - as the video shows it's exactly that.
10 I see the door come open, Mr. Jenkins, then Mr. Dennison come
11 out. That's originally what I saw and could hear Officer
12 Tempalsky giving Mr. Dennison instructions.

13 Q Commanding him to stop?

14 A Correct, as I did as well as I exited my vehicle.

15 Q So your primary focus would have been on Mr. Dennison?

16 A You see me just like Officer Tempalsky or Corporal
17 Tempalsky said at the time. At that time when he's fleeing
18 I'm looking at his hands seeing if he's a threat. I Tase him.
19 He hits the ground. That's probably less than a second. When
20 you ---

21 Q When you Tase somebody is your adrenaline up?

22 A Absolutely.

23 Q How often do you Tase somebody in a year?

24 A I don't know. I may have - I don't know ---

25 Q Once a month?

1 A Once a year.

2 Q Once a year?

3 A Once a year, maybe.

4 Q So it's an unusual situation?

5 A I try and talk people out of it. I've been - I've
6 actually sat there and, and had my Taser activated, not
7 deployed, but turned on saying, "Please, sir, don't make me
8 Tase you. This is - hurts very bad." I've actually said that
9 many times.

10 Q Because it can be dangerous if a person is being Tased?

11 A Not as dangerous as it hurts. It hurts more than it,
12 than it's dangerous I should say if that makes sense.

13 Q So, again, he was the main threat. Dennison was the main
14 threat and that's where your focus was and your adrenaline was
15 up?

16 A For that - until he hit the ground and then it's, "Let me
17 make sure everybody's safe."

18 Q Then you start checking around?

19 A That's right, but it wasn't just him. You see me run. I
20 look. I mean, you have to move your head. You can't be
21 tunnel-vision. I look, I see him, I say stop, stay right
22 there, Tase him and then you see me look again because when I
23 look I see him going to his mouth. When I look again I see
24 the package coming down.

25 Q So you only had to command him to stop and come back

Danny Scott Scogin - Cross by Defense

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1 once; correct?

2 A I don't think so. I think it was more than once. I
3 really do. We could, we could look. I'm not sure, but I, I -
4 it's at least once, maybe twice, maybe three times. I'm not
5 sure.

6 Q At no point did you see him run?

7 A I did not - I did not charge him for failing to follow my
8 instructions. I did not do that.

9 Q Thank you, Sergeant.

10 A Yes, ma'am.

11 Q Nothing further.

12 THE COURT: Counsel, I think we'll probably take
13 a short break at this time.

14 Ladies and gentlemen of the jury panel, we'll take a
15 short recess at this time. You, you, you may refresh
16 yourselves during the break. Officer, you can stand down,
17 sir, or were you going to ask some additional questions?

18 MS. RICHARDSON: I wasn't. I was going to ask that he
19 be excused, Your Honor.

20 THE COURT: Oh, okay. Thank you for your - you
21 may stand down at this time, sir.

22 A Thank you, sir.

23 THE COURT: Thank you. We'll take a short break
24 at this time. I would ask that you from the first 12 jurors
25 chosen if you will elect a foreperson when you go back on this

1 break. If that person will then write their name and juror
2 number down on a tablet provided for you, give it to the
3 bailiff so the bailiff will bring it to me once you've elected
4 a foreperson. We'll take about 10, 10 minutes or so. Thank
5 you.

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: Counsel, approach just a minute.

9 (Whereupon, a bench conference is held.)

10 THE COURT: We'll take a short recess.

11 OFF THE RECORD

12 (On the record. The following takes place outside the
13 presence of the jury.)

14 THE COURT: All right, counsel, for your
15 information the jury has selected Juror Number 110, Mary Lewis
16 as the foreperson and she will be the foreperson.

17 MS. RICHARDSON: Thank you.

18 MS. BESSENT: Thank you, Your Honor.

19 THE COURT: Yes, ma'am. All right, please bring
20 the jury in, sir.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: All right, ladies and gentlemen of
24 the jury panel, I had your note out indicating you had elected
25 Juror Number 110, Mary Lewis, as your foreperson, and ma'am,

Kyle Walton - Direct by State

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1 that's you; correct?

2 MS. LEWIS: Yes, sir.

3 THE COURT: All right, if you'll please keep that
4 same seat throughout the trial and the alternate will please
5 keep her seat. All right, we're ready to resume with the
6 trial. Counsel, ready to proceed.

7 MS. RICHARDSON: The State calls Kyle Walton.

8 Whereupon, Kyle Walton was called to the stand, duly
9 sworn by the clerk and testified as follows:

10 THE CLERK: Thank you. Please be seated and
11 state your name for the record and spell it, please.

12 MR. WALTON: My name is Kyle Walton, the last name
13 is W-A-L-T-O-N.

14 DIRECT EXAMINATION

15 BY MS. RICHARDSON:

16 Q Mr. Walton, where are you employed?

17 A I'm employed with the Georgetown Police Department.

18 Q And what do you do there?

19 A I'm currently the evidence custodian, training officer,
20 community services sergeant.

21 Q And could you just give us a brief summary of your career
22 in law enforcement?

23 A I have been employed with the Georgetown Police
24 Department for 21 years. That's my only - the only agency I
25 ever worked at. I've been a patrol officer, patrol corporal,

1 patrol sergeant, and as of August of 2012 I took over my
2 current responsibilities.

3 Q As evidence custodian?

4 A Yes, ma'am.

5 Q And who did you take over for?

6 A I took the position over from Inspector Larry Ward.

7 Q And, and why was that?

8 A Inspector Ward has had three bouts with cancer and all
9 the medical treatment, he's extended leaves of absence from
10 work and he's - he was trying to work through that.

11 Q And what do you do as evidence custodian?

12 A My primary responsibility is to receive the evidence from
13 the officers. I take that evidence. I document it in my
14 ledger book. I then assign that evidence to a shelf or a
15 place in the evidence vault, and if there's evidence that
16 needs to be sent to our state lab then I take that evidence
17 and I what we call pre-log it with State Law Enforcement
18 Division. I put the evidence in the appropriate package
19 depending on what type of evidence is for transport to SLED
20 and then periodically, roughly two or three times a month I
21 transport that evidence to SLED where I turn it over to their
22 evidence intake personnel.

23 Q And when you receive evidence from officers how is it
24 usually packaged such as drugs, what - how would drugs usually
25 be packaged?

Kyle Walton - Direct by State

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1 A Drugs, drugs typically they, they can come in paper bags,
2 Ziploc bags, sandwich bags. Some of these - some, some of the
3 officers have special evidence bags they put it in but it's
4 typically in a Ziploc bag and the officer takes that bag with
5 a sharpie or a permanent pen and writes certain information on
6 the - not the evidence but on the Ziploc bag or the sandwich
7 bag as case number, suspect, charge and officer's name or
8 initials.

9 Q And where is the evidence kept in Georgetown until it's
10 taken to SLED?

11 A The evidence is placed - we have an evidence vault which
12 is a secure area. There's only two people have access to it.
13 I'm the primary evidence custodian and we have a secondary
14 evidence custodian. Those are the only two people that can go
15 in that room. We have a bank of lockers on the wall which
16 face into the room and outside each locker has its own key.
17 We probably have - I think there's 14 lockers. Each locker
18 has their own key, and on the opposite side of the locker
19 which is inside the evidence vault is a set of doors with
20 steel bolts that slide up and down, and what I do is evidence
21 comes in all times, 24-7, so if I'm there I'll receive the
22 evidence from the officer, but if not they'll place it in a
23 locker where it's secure. They'll drop the key through the
24 little hole in there and then when I come to work I'll go into
25 that inside the vault and I'll open up the inside door inside

1 the vault, remove the evidence from the locker.

2 Q And how - what sort of documents do you use to track the
3 evidence?

4 A Well, we have a Georgetown Police Department evidence
5 voucher, custody voucher which we use which the officers fill
6 out. There's also a physical chain of custody form which is
7 required for evidence that is taken, drug evidence that is
8 taken to SLED, and I additionally I fill out the pre-log form
9 which is on, which is on the computer and I also fill out a -
10 the request for the - what, what they need to do with the
11 drugs.

12 Q And who keeps those forms?

13 A I keep those forms.

14 Q And do you keep those in the normal course of business?

15 A I - every, everything that comes in and comes out I keep
16 track of that through a ledger as far as - ledger directs me
17 to where I put the evidence in the room but also we have
18 separate note, separate, separate books where we keep all
19 documentation as far as what happens.

20 Q And just to be clear you were not the evidence custodian
21 in September of 2011?

22 A No, I wasn't.

23 Q But you do have custody of the records from ---

24 A Yes, I do.

25 Q --- 2011. Let me show you what has been marked as

Kyle Walton - Direct by State

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1 State's Exhibit Five for identification. Do you recognize
2 this?

3 A Yes, this is the evidence that I removed from the
4 evidence vault to bring to trial today.

5 Q Okay, you actually brought this here today?

6 A Yes, I did.

7 Q Okay, and can you describe to us the packaging and the
8 significance of the packaging that you have in your hand?

9 A Well, the outside - well, I'll start from the beginning.
10 The drug evidence comes in, like I said, in a Ziploc bag, and
11 then I take that or the evidence custodian takes that and
12 places it in a SLED best bag. It's a specific bag and forms
13 that SLED provides us that we place that in there and each bag
14 has a numeric, it has a alphabet and numeric on it, number on
15 it and all the documentation corresponds to that. Now, we
16 place that in there and seal it and it has tamper proof - it's
17 a tamper proof product where if somebody tries to open it up
18 or pull it or stretch it it's going to show on the bag and
19 then we can determine whether it's been tampered with and then
20 I take that, transport that. It stays in my custody and
21 control. I transport that to SLED, physically carry it into
22 SLED, hand it over to the evidence intake person. They sign a
23 document. I sign a document and then they take that and then
24 they do with it what their procedures and policy tells them to
25 do with it. Then after that what we do periodically when I go

1 up there to drop off evidence they also have evidence that's
2 been tested for whatever it may be and then I sign for that as
3 well on another sheet and I get an evidence sheet from them
4 saying I signed for it and I bring it down, and whenever they
5 sign that evidence to me it's also in a tamper proof bag.

6 It's sealed like this and I bring it back to Georgetown. I
7 take that evidence. I put it on the shelf. I don't remove it
8 from the packaging. It stays exactly like I got it from SLED.

9 Q And these policies and procedures that you've just
10 explained were they in place before you became evidence
11 custodian?

12 A As far as I know, yes, they were.

13 Q Okay, and when you were in - before you took over this
14 job you came into contact with the evidence room previously?

15 A Just from the outside. Like I say it's controlled and
16 anything - there's only certain people that are allowed to go
17 in there and it's the primary, the secondary and then the
18 chief of police if he decides he needs to do an audit or
19 something like that.

20 Q Okay, now, have you tampered or altered ---

21 A No, ma'am, I, I ---

22 Q --- with that in any way?

23 A This is exactly how I pulled it off the shelf.

24 Q And have you reviewed the records from this item of
25 evidence?

Kyle Walton - Direct by State

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1 A Yes, I have.

2 Q Okay, and let me hand you what's already been admitted
3 into evidence as State's Exhibit Number Two and is this part
4 of your records as well?

5 A Yes, ma'am, this is the copy of the Georgetown Police
6 Department evidence voucher.

7 Q Okay, and can you just for the jury's benefit explain who
8 at Georgetown Police Department touched these drugs?

9 A The, the evidence was received by D. Scott Scogin and
10 then D. Scott Scogin took the evidence and released it to
11 Larry Ward and Larry Ward shows on his documentation that it
12 was received into evidence.

13 Q Okay, and then from your records can you tell where -
14 what Larry Ward did with the records or with the drugs?

15 A Yes, the evidence was pre-logged with SLED and then on
16 the, on the 14th of November, 2011, the evidence was
17 transported to SLED and at SLED it was assigned SLED lab
18 number L11-11721.

19 Q And besides this were other items taken into evidence in
20 this case?

21 A The, the other thing that was - on this voucher here the
22 other thing that was turned in was a VHS videotape of the
23 incident.

24 Q But under this incident report number were there other
25 items taken in?

1 A There - secondary Defendant there was, there were other
2 items that were submitted under his name by at the time
3 Corporal Tempalsky.

4 Q Okay, so the other items were related to the other
5 Defendant, not this Defendant?

6 A That is correct.

7 Q I have no further questions. Answer any questions that
8 Ms. Bessent would have for you.

9 CROSS EXAMINATION

10 BY MS. BESSENT:

11 Q In that evidence bag you said there's a plastic bag, a
12 smaller plastic bag?

13 A Well, the ---

14 MS. BESSENT: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes, ma'am, certainly.

17 A The, the outside bag is a sealed bag that comes from
18 SLED.

19 Q Uh-huh.

20 A Inside that is a best bag along with two Ziploc bags and
21 a third bag which is over here and then there's also a piece
22 of cellophane. I can't really exactly tell what, it looks
23 like cellophane or some type of plastic inside that as well.

24 Q Okay, so these two bags that says add, bag add, that's
25 something that ---

Kyle Walton - Cross by Defense

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1 A That's ---

2 Q --- Sergeant Scogin would have put it into?

3 A No, I believe the one he put it into is over here. This
4 is something that they did at SLED.

5 Q Okay, what kind of bags are those, the tiny little bags
6 that have the drug residue in them?

7 A Are you talking about the white waxy looking bags?

8 Q Yes.

9 A White, they're white, little white in color wax, they
10 look like wax bags. Looks typical of what heroin is packaged
11 in from my experience.

12 Q Okay, do you know if they're waterproof?

13 A I don't know if these are.

14 Q Okay, you testified that you were not the evidence
15 custodian at the time this evidence was received.

16 A Correct.

17 Q Do you know who the assistant evidence custodian was?

18 A No, I don't.

19 Q So all you can really testify to is the fact that you
20 take it off the shelf and brought it here?

21 A They, they were where the ledger stated they were and the
22 paperwork was where it was supposed to be and I removed the
23 evidence from the shelf, brought the paperwork with me and
24 turned the evidence over to this court.

25 Q But you cannot testify that that best bag is in the exact

1 same shape as when it came back from SLED?

2 A No, I can't.

3 Q You have no personal knowledge.

4 A No, I don't.

5 Q All right, thank you. No further questions.

6 MS. RICHARDSON: Your Honor, no further questions for
7 this witness and we'd ask that he be excused and released from
8 his subpoena.

9 THE COURT: All right, thank you, sir. You may
10 stand down, sir.

11 A You're welcome.

12 MS. RICHARDSON: The State calls Nikki Hughes.

13 Whereupon, Nikki Perry Hughes was called to the stand,
14 duly sworn by the clerk and testified as follows:

15 THE CLERK: Thank you. Please be seated and
16 spell your name for the record.

17 MS. HUGHES: Nikki Perry Hughes, H-U-G-H-E-S.

18 DIRECT EXAMINATION

19 BY MS. RICHARDSON:

20 Q Ms. Hughes, where are you employed?

21 A I'm employed with the South Carolina Law Enforcement
22 Division commonly known as SLED.

23 Q And how long have you been there?

24 A I've worked with SLED for approximately seven and a half
25 years.

Nikki Perry Hughes - Direct by State

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1 Q And what do you do at SLED?

2 A At SLED I work in the forensic laboratory. I work in the
3 evidence control department as a forensic technician. We log
4 in, we transfer and package evidence brought to the lab for
5 forensic analysis.

6 Q And could you briefly explain to us the procedures that
7 you use to do that?

8 A Sure. Agencies across the State of South Carolina,
9 sheriff's office, police departments, coroners, state agencies
10 will bring in evidence to the laboratory to be tested. They
11 will provide me and my department with a SLED forensic
12 services request form and that form basically states the case
13 information on the case as well as the items of evidence to be
14 submitted for the lab and the analysis that they're
15 requesting. The evidence comes into me sealed. I will then
16 take that information, put it into our computer system. Our
17 computer system will then generate a unique lab number for
18 that case and an item number for each item. In certain
19 instances we may package the evidence. We will have the
20 officer initial and date seals and then we will place that
21 evidence in our secure evidence room and that is where it will
22 remain until an analyst or a technician comes down to our
23 department to pick it up to analyze the evidence.

24 Q And when you say a secure evidence room could you explain
25 to us what makes it secure?

1 A Sure, there are five ladies in our department. We all
2 have - it is secured by a key card as well as key and also an
3 alarm. We also have a separate area within the secure
4 evidence room for weapons and drug storage and it is a locked
5 area within the secure evidence room.

6 Q And how do you track this evidence and its movements
7 throughout SLED?

8 A We track the evidence with a bar code. Each piece of
9 evidence is given an item number and a bar code. It will be
10 tracked on an internal chain of custody form. So we use those
11 bar codes to track that piece of evidence from the time it
12 enters SLED till the time it leaves. So every person that
13 handles the evidence as well as each shelf that it's placed on
14 will be documented on the internal chain of custody.

15 Q I'm going to show you what's been marked as State's
16 Exhibit Number Three for identification purposes. Do you
17 recognize that?

18 A I do. This is the South Carolina Law Enforcement
19 Division electronic chain of custody.

20 Q And can you tell what case that it's for?

21 A It is, it is for SLED lab number L11-11721.

22 Q Okay, and do you know which lab number, what case that is
23 for?

24 A That is for the case that I am here to testify for today.

25 Q And is that a fair and accurate representation of the

Nikki Perry Hughes - Direct by State

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1 records, the internal record that's kept at SLED?

2 A Yes, ma'am.

3 Q And that's kept in the normal course of business?

4 A Yes, ma'am.

5 MS. RICHARDSON: Your Honor, at this time I'd move to
6 admit this into evidence.

7 MS. BESSENT: No objection, Your Honor.

8 THE COURT: Be without objection.

9 (State's Exhibit Number Three [SLED Chain of Custody
10 Form] admitted into evidence and appropriately marked.)

11 BY MS. RICHARDSON:

12 Q And from that report can you tell when this, when this
13 item was received at SLED?

14 A Sure, it was received on October 14th of 2011. I received
15 it from Larry Ward of the Georgetown Police Department.

16 Q And did you alter it or tamper it in any - with it in any
17 way?

18 A No, ma'am.

19 Q And when you receive it do you inspect it or check it
20 before you actually take it into SLED?

21 A I do. This particular piece of evidence would be brought
22 in in a best kit which is sealed when it's brought to me. If
23 it was not sealed I would not have accepted the evidence.

24 Q Let me show you now what's been marked as State's Exhibit
25 Number Five for identification purposes and do you recognize

1 that?

2 A I do. I recognize this piece of evidence by the yellow
3 bar code that's affixed. That is labeled L11-11721, item
4 number one.

5 Q And can you show the jury what the best bag would be in
6 that package?

7 A This particular case, this is the best bag and each best
8 bag has its own unique control number, this B number and it's
9 a tamper evident bag so that you could tell if it came in and
10 it had been tampered with in any way or that it wasn't sealed
11 when it came in by this green strip right here.

12 Q I have no further questions. Please answer any questions
13 Ms. Bessent may have for you.

14 CROSS EXAMINATION

15 BY MS. BESSENT:

16 Q Ms. Hughes, you said you're the forensic tech at SLED?

17 A Yes, ma'am.

18 Q And that entails taking in evidence brought in by police
19 departments?

20 A That is correct.

21 Q Do you test the evidence yourself?

22 A No, ma'am.

23 Q No further questions.

24 MS. RICHARDSON: No further questions. I'd ask that
25 this witness be excused and released from her subpoena.

Jill Clark - Direct by State

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1 THE COURT: Thank you for coming, ma'am. You may
2 be excused from court at this time.

3 A Thank you.

4 THE COURT: The State calls Jill Clark.

5 Whereupon, Jill Clark was called to the stand, duly sworn
6 by the clerk and testified as follows:

7 THE CLERK: Thank you. Please be seated and
8 spell your name for the record.

9 MS. CLARK: It's Jill, J-I-L-L, Clark, C-L-A-R-K.

10 DIRECT EXAMINATION

11 BY MS. RICHARDSON:

12 Q Ms. Clark, where are you employed?

13 A I'm employed by the South Carolina Law Enforcement
14 Division known as SLED and I work in the drug analysis
15 department.

16 Q And how long have you been with SLED?

17 A Since December of 1999.

18 Q And could you give us the benefit of your education and
19 experience?

20 A Sure. I have a Bachelor's Degree in chemistry and then
21 I've also attended the training at SLED's drug analysis
22 department. I've been through the South Carolina Criminal
23 Justice Academy. I've also taken some graduate course work in
24 chemistry and I've had training at the DEA, the Drug
25 Enforcement Administration.

1 Q And have you testified as an expert in courts in this
2 state?

3 A I have.

4 Q And about how many times?

5 A I've testified 48 times now.

6 MS. RICHARDSON: Your Honor, at this time I'd offer
7 Ms. Clark as an expert in the, in the area of forensic drug
8 analysis.

9 MS. BESSENT: No objection, Your Honor.

10 THE COURT: Without objection she's so qualified.
11 You may proceed.

12 BY MS. RICHARDSON:

13 Q Ms. Clark, let me show you what has been marked as
14 State's Exhibit Number Five for identification. Do you
15 recognize this?

16 A Yes, this is a best kit with drug evidence that I tested.

17 Q Okay, and how, how can you recognize it?

18 A I can recognize it because our - it has our SLED lab
19 number on it and then it also has a best kit number which is a
20 unique number for each best kit and it has my initials on it.

21 Q And how do you receive this evidence for testing?

22 A I receive it through our evidence log-in department
23 directly from them.

24 Q And what do you do once you receive it?

25 A Once I receive it I check it, make sure that it's sealed

Jill Clark - Direct by State

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1 properly, that it hasn't been tampered with and then it would
2 be stored in our drug analysis vault until I was ready to work
3 the case.

4 Q And is there any indication that this had been tampered
5 with prior to you receiving it?

6 A No, 'cause what I do is I check it, you know, I check to
7 make sure the best kit matches the paperwork submitted and
8 then I put the date that I check it, my initials and then I
9 put okay. That way I know that I checked it and everything
10 was fine.

11 Q And then what do you do to actually test it?

12 A To test it I would take the drugs out. In this case
13 there were two glassine bags with powder substance in them
14 submitted and I would test each bag, weigh it and then, you
15 know, run it on our instrumentation and get my results.

16 Q When you say glassine bags can you show us what you're
17 talking about?

18 A We call them glassine bags. They're kind of like little
19 wax bags right there and that's what the powder was in and
20 there's two of them.

21 Q Okay, and did you add any packaging to that?

22 A Yes, I did. After I finished testing it I put the
23 powder, because it's a fine powder, not a lot of it, back into
24 a Ziploc bag which I marked that I added with the glassine bag
25 and the powder residue that was left.

1 Q And in your analysis did you determine what the substance
2 was?

3 A Yes, I did.

4 Q And what was it?

5 A It was heroin which is a C-1 controlled substance found
6 with a combined weight of less than 0.1 grams.

7 Q And did you prepare a report regarding that?

8 A I did.

9 Q Let me show you what has been marked as State's Exhibit
10 Number Four and do you recognize that?

11 A Yes, that's the report I prepared for this case.

12 Q And is that a fair and accurate representation of the
13 report that you made?

14 A Yes, it is.

15 Q Okay.

16 MS. RICHARDSON: Your Honor, at this time I'd move to
17 have State's Exhibit Number Four into evidence.

18 MS. BESSENT: No objection, Your Honor.

19 THE COURT: Be without objection.

20 (State's Exhibit Number Four [SLED Drug Report] admitted
21 into evidence and appropriately marked.)

22 BY MS. RICHARDSON:

23 Q And how can you be sure that that drug report is for the
24 drugs that are in that bag?

25 A Because the lab number matches the lab number on the

1 report and also the six digit best kit number is also on
2 there. It's got my signature and it also matches the
3 paperwork I brought with me and the worksheet sheet where I
4 actually opened it to work it matches what's on the report.

5 Q And does it also identify which Defendant it's for?

6 A Yes, the Defendant listed in the paperwork we received
7 was Robert Jenkins.

8 MS. RICHARDSON: Your Honor, at this time I'd also
9 move to enter Exhibit Number Five into evidence.

10 MS. BESSENT: No objection, Your Honor.

11 THE COURT: Be without objection.

12 (State's Exhibit Number Five [SLED Best Bag] admitted
13 into evidence and appropriately marked.)

14 MS. RICHARDSON: I have no further questions for this
15 witness, Your Honor. Please answer any questions that Ms.
16 Bessent may have for you.

17 CROSS EXAMINATION

18 BY MS. BESSENT:

19 Q Ms. Clark, just real quickly, do you do continuing
20 education courses?

21 A We have training courses that we go to or in-house kind
22 of training within our department.

23 Q Is it on a frequent basis, yearly, semi?

24 A Well, I would say yes, on a yearly basis we have
25 departmental meetings and anything new that's going on in the

1 drug field we'll go over it.

2 Q Okay, can you explain to the jury how much less than .1
3 grams is, please?

4 A One gram is the best way to describe it is if you go out
5 to eat and you use like a packet of sugar or Sweet-N-Lo or
6 Splenda that's one gram, the amount's in there. We only
7 report to one decimal now, and I did weigh each bag. They
8 weighed .02, two-hundredths of a gram, but combined it was
9 still less than 0.1 grams. So if it's not at least .1 grams
10 then we just say less than 0.1 grams.

11 Q So, it was .02 per bag?

12 A Right, but our policy is we report to one decimal, so
13 that's why we would say the .1 ---

14 Q Yes, ma'am.

15 A --- less than.

16 Q And again can you tell me and give the jury an idea, the
17 Sweet-N-Lo packet is one gram. So what would less than .1
18 gram of a Sweet-N-Lo packet be the equivalent of?

19 A I mean, if you look in the best kit you can see how much
20 powder was left after I tested. So, you know, size is
21 relative. It's what you compare it to, you know, whether
22 you're comparing it to an apple it'd be a small amount but if
23 you're comparing it to a molecule it's a large amount. So,
24 you know, this together would be .04 grams, so compared to one
25 gram it's less than that, but I mean, it was there.

Jill Clark - Cross by Defense

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1 Q Is there any way to put it in cooking terms like between
2 a dash and a pinch?

3 A It would be, I mean, a dash, a pinch, you could probably
4 describe it either way.

5 Q All right, nothing further. Thank you.

6 MS. RICHARDSON: Nothing further. We'd ask that this
7 witness be excused and released from her subpoena.

8 THE COURT: Thank you for coming, ma'am. You may
9 be excused at this time.

10 A Thank you.

11 THE COURT: All right, counsel, it's by the
12 courtroom clock right at five o'clock. So I think it's
13 probably a good time to recess for the day.

14 Madam Forelady, members of the jury panel, we're going to
15 go ahead and recess for the day. It's about five o'clock.
16 I'm going to ask you, please, on the overnight recess not to
17 discuss the case among yourselves or with anyone else you
18 might see on the break from court and please have a pleasant
19 night and we will see you in the morning. We'll start at
20 9:30, at 9:30, if you'd be back then. Thank you.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Do you know now how many witnesses
24 you're going to have, what do you plan to do with that?

25 MS. BESSENT: I need to speak with my client,

1 potentially just one.

2 THE COURT: Okay.

3 MS. BESSENT: If we call him at all.

4 THE COURT: All right, of course, we'll need to
5 question Mr. Jenkins as to whether he wants to testify or not,
6 but we can do that first thing we get back in the morning.
7 All right, you know of any specific, it's fairly simple looks
8 like to me, any specific requests to charge?

9 MS. RICHARDSON: No, Your Honor, just the standard.

10 MS. BESSENT: Standard, Your Honor.

11 THE COURT: Okay, I pretty well have that in
12 place. All right, but I will run over it with you in the
13 morning briefly before we, before I charge the jury. All
14 right, thank you. We'll start at 9:30.

15 MS. RICHARDSON: Thank you.

16 MS. BESSENT: Thank you, Your Honor.

17 THE COURT: I'll be here before that. I'll be
18 here around nine or so if something comes up if you need to
19 talk to me about it.

20 OFF THE RECORD

21 (On the record, the following takes place outside the presence
22 of the jury.)

23 THE COURT: Your Honor, one other thing we might
24 need to address is whether the Defendant should remain in
25 custody since the State has rested their case.

Motions

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1 THE COURT: Yeah, I think it'd probably be a - I
2 think it'd probably be a pretty good idea for him to remain in
3 custody tonight. The trial is going. We've already presented
4 the State's case and I think he needs to remain in custody
5 tonight. All right, thank you.

6 MS. RICHARDSON: Thank you, Your Honor.

7 OFF THE RECORD

8 (On the record, November 19, 2013.)

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Good morning, everybody. We're ready
12 to proceed this morning?

13 MS. RICHARDSON: Yes, Your Honor.

14 MS. BESSENT: Yes, Your Honor.

15 THE COURT: Okay, is the - has the State rested
16 yet?

17 MS. RICHARDSON: Yes, Your Honor, the State rests.

18 THE COURT: All right, I'll hear you with regard
19 to any motions you might wish to make at this time, counsel.

20 MS. BESSENT: Yes, Your Honor, at this time I would
21 move for a directed verdict. The State has not proven its
22 case with substantial, substantial circumstantial evidence.
23 They have established that there were drugs found on the
24 ground. They have not been able to link it to my client
25 either by a DNA, which could have been tested for, or

1 fingerprints. The video does not clearly show anything and
2 based on that I would move for a directed verdict.

3 THE COURT: All right, and looking at a motion
4 for directed verdict the Court's required to look at the
5 evidence in the light most favorable to the party against whom
6 the motion is being made. In this case looking at the
7 evidence in the light most favorable to the State I find there
8 is substantial evidence from which the jury could infer that
9 the State had proven the charge against the Defendant beyond a
10 reasonable doubt. For the record I would point out that you
11 got two officers who are on scene who testified they saw the
12 Defendant go to his mouth, pull out something, throw it down,
13 that one officer testified that Officer Scogin, Sergeant
14 Scogin testified that he saw him throw it down, saw where he
15 threw it down, that he walked him over there and picked it up
16 exactly where he saw him throw it and brought him back, placed
17 him under arrest for that. So there is substantial evidence
18 from which the jury could infer the State had proven the
19 elements beyond a reasonable doubt and I therefore deny your
20 motion for directed verdict. Any other motions?

21 MS. BESSENT: No, Your Honor.

22 THE COURT: All right, is the Defendant going to
23 testify?

24 MS. BESSENT: No, Your Honor.

25 THE COURT: All right, please bring him up and

Questioning Re: Rights

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1 let's put him under oath, let me question him about that
2 right.

3 MS. BESSENT: Do you want him on the stand, Your
4 Honor?

5 THE COURT: We can do it from where he is I
6 think. Madam Clerk, you can just place him under oath from
7 there.

8 (Defendant is sworn by the clerk.)

9 THE COURT: Sir, you're Robert Jenkins for the
10 record?

11 MR. JENKINS: Yes, sir.

12 THE COURT: And we've reached the stage of your
13 trial where you may present your defense. You have the right
14 to testify on your own behalf. However, no one can make you
15 testify. In the event you have a record for any conviction
16 involving dishonesty or false statement or for a crime
17 punishable by imprisonment for more than one year and this
18 Court determines that the probative value of admitting this
19 evidence outweighs its prejudicial effect to you the Solicitor
20 will be able to introduce this record for impeachment purposes
21 to attack your credibility. If you elect not to take the
22 stand I will charge the jury that they are not to give the
23 fact that you did not testify any consideration whatsoever and
24 there is to be absolutely no prejudice to you because you did
25 not testify. It is left entirely up to you whether or not you

1 testify. You may talk with your attorney, your family and
2 friends or anyone else, but the ultimate decision is left
3 entirely up to you. Do you understand that it is your
4 decision as to whether you will or will not testify in your
5 case?

6 MR. JENKINS: Yes, sir.

7 THE COURT: Have you discussed with your attorney
8 the advantages and disadvantages of testifying?

9 MR. JENKINS: Yes, sir.

10 THE COURT: And do you wish to testify, sir?

11 MR. JENKINS: No, sir.

12 THE COURT: Is that your decision, sir?

13 MR. JENKINS: Yes.

14 THE COURT: Thank you. You may be seated. Do
15 you have any other witnesses you plan to call?

16 MS. BESSENT: No, Your Honor.

17 THE COURT: All right, then I think what we'll do
18 is - well, counsel, approach just a minute, let you look at
19 the verdict form.

20 (Whereupon, a bench conference is held.)

21 THE COURT: All right, counsel, when the jury
22 comes back, the Defense will rest and all motions will be
23 considered timely made even though I'm sure you wish to renew
24 that motion at this time and I would, I would deny it for the
25 same reason but we'll consider it timely made and is part of

Motions

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1 the record in this case ---

2 MS. BESSENT: Thank you, Your Honor.

3 THE COURT: --- for your motion right now so we
4 don't have to send the jury right back out and do that.

5 All right, then when we bring them back out I'll ask you
6 to rest and then I'll tell the jury that we're to that part of
7 the trial where counsel will make their final arguments and
8 then we'll go from there.

9 MS. RICHARDSON: And I may not have rested in front of
10 the jury so if you want me to do that as well.

11 THE COURT: Pardon me?

12 MS. RICHARDSON: I think I told you I rested after the
13 jury went out yesterday.

14 THE COURT: Yeah.

15 MS. BESSENT: She did.

16 THE COURT: Yeah, that probably would be good,
17 make sure we're on the record with that.

18 Let me ask you, of course the Defense will get the last
19 argument because they didn't put up any testimony and evidence
20 in the case. We understand that. So the State will open up.
21 All right, so you can rest and then the Defense can rest and
22 then we'll, then we'll go from there.

23 MS. RICHARDSON: And so you're going to open or close
24 then charge.

25 THE COURT: Close and charge right behind it,

1 yes, ma'am.

2 MS. RICHARDSON: Okay.

3 THE COURT: Might have brought the jury in a
4 little sooner if I'd known we were going to move this fast
5 this morning, but I didn't anticipate that.

6 MS. RICHARDSON: That's fine.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: Good morning, Madam Forelady, members
10 of the jury panel. Hope you had a pleasant night last night.
11 We're ready to resume the trial at this time. Counsel ready
12 to proceed?

13 MS. RICHARDSON: Yes, Your Honor. The State rests.

14 THE COURT: All right.

15 MS. BESSENT: Your Honor, the Defense rests.

16 THE COURT: All right, Madam Forelady, and
17 members of the jury panel, that concludes all the taking of
18 testimony and evidence in this case. We have yet remaining
19 the final arguments from counsel and my instruction to you
20 with regard to the law that applies to the issues in this
21 case. I ask that you listen attentively now as counsel
22 address you in final argument.

23 MS. RICHARDSON: May it please the Court?

24 THE COURT: Solicitor.

25 MS. RICHARDSON: Good morning. Things moved pretty

Closing Argument by State

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1 quickly yesterday and we went through the witnesses like I
2 had, had told you in opening. You heard from both of the
3 officers. You saw both of the videos and you heard from the
4 people that we call chain witnesses that handle the drugs once
5 they were taken into custody, but basically this really is a
6 simple case. The Defendant is charged with possession of
7 heroin. The question is did he have heroin on him. The Judge
8 will instruct you on the law and tell you what the law of the
9 state is. You can't have heroin, any amount. Some, some
10 things were made of it yesterday about how much. You just
11 can't have it. It's illegal, controlled substance, heroin,
12 and you heard from the chemist that it was tested and that's
13 what it was. The question is did the Defendant have it.
14 That's it. That's all you got to decide, did the Defendant
15 have heroin on him.

16 You've seen the videos. Now this isn't ESPN where we're
17 going to zoom in and have this high quality and that sort of
18 thing, but you've seen the video. I'm going to show it to you
19 again. You see the motion. Walks away, you see it. That's
20 the first video I'm going to show you and I want you to look
21 at it. I'm going to show you Officer Scogin's video and I
22 want you to notice the time and how quickly everything
23 happened. This was Tempalsky's traffic stop. Notice how long
24 he follows the car before it's pulled over, plenty of time for
25 somebody to do what they're going to do when the police

1 officer is behind them and they know they got something
2 they're not supposed to have. Of course things went crazy
3 with the driver, but we're not here about the driver, and
4 we're not here about what happened with him. We're just here
5 today, this is Mr. Jenkins' day, but look how fast. Scogin is
6 minding his own business, patrolling, and gets a call,
7 "Backup, step it up, come on." Look what he sees when he
8 pulls up, an officer with a Taser drawn and immediately people
9 flying out of the car, and if you'll look at the time it's
10 less than one minute from the time - now, Scogin is busy.
11 He's Tasing Mr. Dennison and you'll see he's looking. He
12 catches him. He catches him. Was he distracted? Was he
13 busy? Yeah, he was, obviously. We all see that. They both
14 were, but it's kind of like when your kids ask you something
15 when you're on the phone, you know, they think they've got a
16 minute right there when you're not really paying attention to
17 catch it. He almost got away with it. He did. He did. How
18 he saw it, was it luck, was it fate or was it good policing?
19 I don't know but he saw it. How do we know he saw it? Well,
20 he told you he saw it. He came in here and got on the stand
21 under oath and he told you he saw it. How else do we know?
22 You see it. You see him look and you see him immediately in
23 less than one minute take him over there, you dropped it. You
24 dropped it and it's little. It's these little white bags in
25 here. It's little. Officer Scogin told you that these bags

Closing Argument by State

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1 with the heroin are folded three times, wrapped together with
2 a rubber band, folded together, so a third of this size. It's
3 little and then we've heard, well, DNA, why didn't you find,
4 you know, DNA? Well, this is not CSI. This is not like it is
5 on TV. The officer explained to you. You see the traffic,
6 you see the urgency, what they had going on to get it, not to
7 go get gloves and cordon off the scene and all that. I'm sure
8 if he had gotten DNA then we'd hear, "What if somebody spit on
9 the street?" I mean there's always a what if, but the Judge
10 is going to explain to you what reasonable doubt is and it's
11 not every what if. It's not. It's what's reasonable, what is
12 reasonable. You make these decisions every day. You see
13 things. You hear things. You figure out what happened. In
14 this case we're lucky we have it on video, not once, not twice
15 and we have the officer and it happened so fast, so fast that
16 the only way that that officer could have walked over there
17 and found that heroin in the middle of that street is if he
18 saw where it landed. You'll see how fast it happened, [snaps
19 fingers three times], just like that.

20 I'm going to show you these videos real quick, but I ask
21 after you look at them and after you hear from the Defense
22 attorney that you go back, use your good common sense, use
23 what you saw, look at what's reasonable, what you're firmly
24 convinced of, that Mr. Jenkins had heroin on him and he got
25 caught.

1 I'm going to show you both of these really quick.

2 (State's Exhibit One played in open court.)

3 MS. RICHARDSON: And this is Officer Tempalsky.

4 Notice the car that he's following.

5 And now from Officer Scogin's camera.

6 (State's Exhibit One played in open court.)

7 MS. RICHARDSON: How fast was that? Off camera
8 that's what you just threw down, just that quick. The Judge
9 is going to instruct you on what possession is. In this case
10 it's not where it was found in the floorboard, we're trying to
11 figure out which of the three of them own it and which of them
12 had dominion and control over it. It's not that kind of case.
13 It's a case where the officer says he had actual physical
14 possession of heroin. Thank you.

15 MS. BESSENT: May it please the Court?

16 THE COURT: Counsel.

17 MS. BESSENT: Good morning. This is a case purely
18 of did my client have heroin. The State would like for you to
19 believe that that simple hand gesture where you don't see
20 anything coming out of my client's hand is sufficient to
21 convict my client. I want you to think about all the holes in
22 their little story. Sergeant Scogin, a trained officer, wrote
23 an incident report right after this whole thing went down, yet
24 he failed to include the mouth gesture, hand to mouth gesture.
25 That does have DNA, and I'm not talking CSI New York and I'm

Closing Argument by Defense

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1 not talking CSI Miami and I'm not talking the original CSI.
2 It had DNA on it. There was a case a couple of weeks ago, DNA
3 was on a solo cup. It got tested. SLED also found two
4 samples. It's not like SLED doesn't know how to do their job.
5 They know exactly how to do their job. They can extract
6 multiple samples of DNA. They certainly could compare it to
7 Scogin because, well, he can give a DNA sample and my client
8 certainly could have given a DNA sample if there was any
9 confusion, but Scogin took it upon himself to be the DNA
10 expert. "It was contaminated, so, you know, why bother?" Why
11 bother? I mean, the man could just get convicted. That's
12 all. Why bother? "I know DNA better than SLED, to heck with
13 it." Makes a whole lot of sense, yet he comes in here and
14 testifies to you all about the whole mouth, hand. It was
15 significant enough to talk to you all about but not two years
16 ago when he wrote his incident report.

17 Tempalsky on the other hand did put it in his incident
18 report and did testify to it as well. Just kind of question,
19 Tempalsky put it in there, why didn't Scogin? Have they
20 talked about the case since? Who knows. Scogin also failed
21 to collect evidence properly. He's trained. He is absolutely
22 trained. Dennison had been subdued. Tempalsky was sitting on
23 top of him. He was no longer a threat at that point. My
24 client was in handcuffs, throw him in the back of the patrol
25 car, grab an evidence bag, walk across the street, pick it up.

1 What did he do? Drug my client across the street, picked it
2 up. Did he do it because perhaps there wasn't DNA on it?
3 Perhaps it had never been in his mouth to begin with. He
4 didn't follow proper protocol. He easily could have thrown
5 him in the back seat of his patrol car, walked across the
6 street and preserved the DNA. He didn't do it despite all his
7 years of experience of being a police officer, all of his
8 training. He threw it out the window and said, "Well, let the
9 jury decide it. They're going to believe me. Why should I
10 have to prove it? Why should there have to be DNA? Surely
11 there shouldn't, you know. The jury will buy it, hook, line
12 and sinker."

13 Both of these officers were deploying their Tasers,
14 Tempalsky not once, not twice, but three, Scogin soon as he
15 gets on the scene. You heard Scogin testify he does this
16 maybe once a year and granted going to the police academy does
17 teach you to be aware of your surroundings. It doesn't give
18 you super human abilities. He was deploying his Taser,
19 adrenaline rush, tunnel vision even. Both of them said
20 there's no tunnel vision, but you get that adrenaline pumping
21 through your veins and it might be hard to see what actually
22 is going on around you. You know, watching my child run out
23 into the street I can promise you I may know my neighbor's
24 standing out there but I can tell you my focus is on that
25 child and saving that child's life. The cops are trying to

1 save their lives. They thought they were in danger. They
2 thought he had a weapon. He very well could have, hence the
3 reason my client got out of the way. They make a big deal
4 about him walking across the street. He was not under arrest.
5 You had multiple Tasers going off. There was no telling if
6 Dennison was going to pull a gun. There was no telling if the
7 officers were going to pull weapons. So he walks across the
8 street, perfectly reasonable to me, but as soon as Scogin
9 says, "Hey, you, get back," what does he do? He comes back
10 and that's when you see that hand gesture.

11 Now, as Ms. Richardson said this wasn't a short police
12 chase. It took a minute or so. It was a minute amount of
13 heroin found. My client could have gone ahead and just
14 snorted it because that is one way to do heroin. You can
15 snort it just like cocaine. You don't have to shoot up. You
16 can snort it. He had plenty of time to snort it.

17 Next, car comes to a stop. All this is going on with
18 Dennison, Tasers flying, officers arriving on scene, you know,
19 they're yelling and screaming like they're taught to do. They
20 got that cop voice, kind of like mom and dad voice, they got
21 cop voice. My client's struggling to get out of the car to
22 get away from Dennison and all that's going on, but my
23 client's not an idiot. He could have left it in the car, be
24 pretty darn reasonable to leave it in the car. So he could
25 have gone head and snorted it. He could have left it in the

1 car. Furthermore he had his back to the police officers,
2 walking, why not just pitch it. Why wait like a moron, which
3 they want you to believe he is, walk back towards the cop and
4 then do it. I'm not saying my client's a genius but he's not
5 stupid. Even my little two and a half year old nephew knew
6 when he had his daddy's car keys, "You might want to hide them
7 while daddy's back was turned." That's a two and a half year
8 old child who had the presence of mind, "Oops, daddy can't see
9 me with these. Daddy's back is turned. Let's put them in the
10 sofa cushion." It took me two days to find those keys, but my
11 sweet little nephew at two and a half had the common sense to
12 do it. The State wants you to believe that this 63 year old
13 man has no common sense. It's incredulous. It was a small
14 amount of heroin. If it was his, heck, go ahead and snort it.
15 Heck, swallow the glassine bags, leave it in the car, throw it
16 away when your back's to the cops, but instead they want you
17 to simply believe instead of any other plausible thing he
18 could have done, assuming he had it in the first place, was
19 pitch it when the cops were watching.

20 Now let's get back to this whole scene. It was a tiny
21 amount, maybe a couple of bucks worth, you know, not \$40
22 worth, not \$20 worth, maybe one or \$2 worth because it's
23 between a pinch and a dash. Anybody that had been standing
24 around and all these looky-loos, all these passersby they
25 might want to drop it with all these cops around. It's a known

Closing Argument by Defense

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1 drug neighborhood. It's a dangerous neighborhood but it's
2 definitely known for its drugs, both dealing and using. Any
3 standing by, anybody driving by, anybody that was stopped in
4 their car to watch this thing go down could have easily just
5 put their hand out the window, put their hand in their pocket
6 and just dropped it and just casually walk away but it's
7 sitting there. You just don't know where it came from unless
8 you can conclude beyond a reasonable doubt that every part of
9 the Solicitor's story, the Prosecution's story and the police
10 officers' version of events makes sense, that every single
11 string is tied and knotted together such that you can only
12 reach the conclusion that my client had that heroin in his
13 possession. If the strings are just touching we got a problem,
14 we got a big problem. It's kind of like throwing spaghetti
15 against the wall and seeing what sticks. The truth is they
16 could have tested for DNA and what's better than DNA? It's a
17 great way to connect somebody to a crime, fantastic way. It's
18 almost irrefutable once you got that DNA, but no, Scogin, Mr.
19 DNA expert himself decided, "I'm not going to bother." Heck,
20 even Ms. Richardson at some point during her tenure as deputy
21 solicitor could have looked at it and said, "Hum, I might want
22 to send this back to SLED and see if there's DNA." It was
23 properly sealed. It's not like the DNA was degraded, but she
24 bypassed that as well. Everybody wants you all to believe and
25 to conclude that what the police did was absolutely

Charge

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1 acceptable, that they actually did their job to the standards
2 they're held to. However, we know they didn't do their job to
3 the standards they were held to. They didn't write complete
4 incident reports. They didn't properly preserve evidence.
5 They didn't ask for a DNA test and that, ladies and gentlemen,
6 I would submit should provide you with reasonable doubt.

7 Please consider all of this. Please consider this story
8 that they want you to tell - to believe and come back with a
9 guilty verdict, but please pay attention to the holes in their
10 story because the whodunit we still don't know. Thank you for
11 your time.

12 THE COURT: Madam Forelady, members of the jury
13 panel, that concludes final arguments of counsel and it's time
14 for me now to instruct you with regard to the law that applies
15 to the issues in this case. First of all let me say there
16 were a couple of people involved in this, including the driver
17 of the car. That was a separate incident. That's not to be
18 considered in any way in this case. Disregard that. The only
19 thing you're - before you today is Robert Jenkins, the
20 Defendant in this case, who's charged with possession of
21 heroin and that's the decision you have to make and disregard
22 anything else about that traffic stop and what happened there.

23 Now, the State charges Robert Jenkins with possession of
24 heroin. To the charge the Defendant has pled not guilty,
25 which then places upon the State the burden of proving the

Charge

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1 Defendant guilty. A person charged with committing a criminal
2 offense in South Carolina is never required to prove himself
3 innocent. I charge you that it is a vital important rule of
4 law that a Defendant in a criminal trial must always be
5 presumed innocent until his guilt has been proved beyond a
6 reasonable doubt. That, that presumption of innocence remains
7 with the Defendant at all times throughout the trial and is
8 only removed when and if the State has proved guilt beyond a
9 reasonable doubt for it is your solemn duty, ladies and
10 gentlemen, if not clearly convinced of guilt beyond every
11 reasonable doubt to the contrary to find the Defendant not
12 guilty.

13 Madam Forelady, members of the jury panel, I charge you
14 and emphasize to you the fact that the Defendant did not
15 testify in his own behalf in this case is not a factor to be
16 considered by you in any way in your deliberation. You must
17 not consider the fact that the Defendant has chosen not to
18 testify when you determine the guilt or innocence of the
19 Defendant. It must not be considered by you in any manner
20 whatsoever either against or for the Defendant. A Defendant
21 has the constitutional right to remain silent. The assertion
22 of that constitutional right cannot and must not be considered
23 by you in your deliberations. Under your oath then you are to
24 reach no inference and draw no conclusion whatsoever from the
25 fact that the Defendant did not testify. The fact that the

1 Defendant did not testify should not even be discussed in your
2 jury room. The burden of proof as I have stated to you is
3 upon the State. It is not the burden of the accused to prove
4 his innocence. The burden of proof remains upon the State to
5 prove guilt beyond every reasonable doubt.

6 So the State has the burden of proving the Defendant
7 guilty beyond a reasonable doubt. What is a reasonable doubt?
8 Some of you may have served as jurors in civil cases where you
9 were told it is only necessary to prove the fact is more
10 likely true than not, such as by the greater weight or
11 preponderance of the evidence. However, in criminal cases the
12 State's proof must be more powerful than that. It must be
13 beyond a reasonable doubt. Ladies and gentlemen, proof beyond
14 a reasonable doubt is proof that leaves you firmly convinced
15 of the Defendant's guilt. There are very few things in this
16 world that we know with absolute certainty and in criminal
17 cases the law does not require proof that overcomes every
18 possible doubt. A reasonable doubt may also be described as
19 the kind of doubt that would cause a reasonable person to
20 hesitate to act. If you have such a doubt as to the guilt of
21 the Defendant then he would be entitled to a verdict of not
22 guilty. Reasonable doubt may arise from evidence which is in
23 the case or from the absence or lack of evidence in the case.
24 If based on your consideration of the evidence you're firmly
25 convinced that the Defendant is guilty of the crime charged

Charge

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1 you must find him guilty. If on the other hand you think
2 there is a real possibility that he is not guilty you must
3 give him the benefit of the doubt and find him not guilty.
4 You alone must make the determination of whether or not
5 reasonable doubt exists as to the guilt of the Defendant.

6 Madam Forelady, members of the jury panel there are two
7 types of evidence which are generally presented during a
8 trial, direct evidence and circumstantial evidence. Direct
9 evidence directly proves the existence of a fact and does not
10 require deduction. Circumstantial evidence is proof of a
11 chain of facts and circumstances indicating the existence of a
12 fact. Crimes may be proven by circumstantial evidence. The
13 law makes no distinction between the weight or value to be
14 given to either direct or circumstantial evidence. However,
15 to the extent that the State relies on circumstantial evidence
16 all of the circumstances must be consistent with each other
17 and when taken together point conclusively to the guilt of the
18 accused beyond a reasonable doubt. If these circumstances
19 merely portray the Defendant's behavior as suspicious the
20 proof has failed. The State has the burden of proving the
21 Defendant guilty beyond a reasonable doubt. This burden rests
22 with the State regardless of whether the State relies on
23 direct evidence, circumstantial evidence or some combination
24 of the two types of evidence.

25 Madam Forelady, members of the jury panel, you've heard

1 the testimony of witnesses who have special knowledge, skill,
2 experience, training or education in a particular field who
3 have given opinions as to matters in which they are skilled.
4 To determine the weight to be given such opinions you should
5 consider the qualifications and credibility of the expert
6 witness and the reasons given for his or her opinion. You're
7 not bound by such opinions. Give them the weight, if any, you
8 deem them entitled.

9 Madam Forelady, members of the jury panel, under the
10 constitution of South Carolina you are the finders of facts in
11 this case. I do not have the right to pass upon the facts or
12 even to express any opinion I might have as to the facts, nor
13 may I suggest in any way what I may think about the guilt or
14 innocence of the Defendant. You should form no opinion in
15 that regard from anything I may have said or any ruling I have
16 made during the course of the trial. As the sole judges of
17 the facts in this case you're also necessarily the sole judges
18 of the credibility or believability of each of the witnesses
19 that have testified during the course of the trial. There are
20 a number of factors which you may consider in arriving at your
21 assessment as to a particular witness's credibility or
22 believability. Some factors I'm going to list for you and
23 should you think of other factors that you believe also ought
24 to be considered when you go back into your jury room on the
25 question of credibility then you should consider those factors

Charge

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1 as well, but you may consider the demeanor of the witness from
2 the witness stand, what was that witness's manner of
3 appearance, was the witness straightforward in answering
4 questions or hesitant in responding to questions. Simply put,
5 do you believe the witness was telling the truth or not
6 telling the truth. Do you believe the witness knew of what
7 that witness testified or did not know of what that witness
8 testified. You may consider whether or not the testimony of a
9 witness is consistent or inconsistent with that witness's own
10 testimony or with other testimony or evidence presented during
11 the course of the trial. You may also consider how the
12 witness came to know the facts to which he or she testified.
13 You may consider the opportunity that a witness had to observe
14 or hear, that is to perceive the existence of a fact by means
15 of their senses. You may also consider whether or not a
16 witness is biased or prejudiced, that simply means do you find
17 that a particular witness had some reason to come into court
18 and testify one way or another to help or hurt one side or the
19 other. You may also consider whether or not the testimony of
20 a witness was strengthened or weakened by other testimony or
21 other evidence presented during the course of the trial. You
22 as the finders of the facts in this case and the judges of the
23 credibility or believability of each of the witnesses that
24 have testified may believe as much or as little of what a
25 witness testifies to as you deem appropriate. You may believe

1 all of what a witness says, you may believe none of what a
2 witness says or you may believe only part of what a witness
3 says.

4 Madam Forelady, members of the jury panel, the same
5 constitution that makes you the finders of the facts in this
6 case makes me the sole and only instructor in the law. You
7 must accept as correct the law that I charge and apply to the
8 law the evidence as you find it and reach your verdict. Put
9 aside any conceptions you may have had as to the law before
10 coming here today and accept the law as I instruct it to be.
11 You for purposes of your duty as jurors today should not be
12 concerned about what the law ought to be but what I charge you
13 the law is now in this state.

14 Madam Forelady, members of the jury panel, I charge you
15 with regard to criminal intent. Criminal intent is a
16 necessary element of each crime that must be proved by the
17 State beyond a reasonable doubt. Criminal intent is always a
18 matter that must be determined by the jury from the
19 circumstances surrounding the situation. There is no way to
20 prove intent to a mathematical certainty. There is no way
21 medical science can dissect a person's brain and determine
22 what he had in mind. So the law says that criminal intent may
23 be inferred from the circumstances shown to have existed.
24 This is how the jury makes a determination of whether or not
25 the element requiring intent was present. Criminal intent is

Charge

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1 a state of mind which operated jointly with an act is the
2 commission of a crime. Criminal intent is a mental state, a
3 conscious wrongdoing. So it is up to you the jury to determine
4 what the Defendant intended to do based on the circumstances
5 shown to have existed. I tell you that the State must prove
6 criminal intent beyond a reasonable doubt just as the State
7 must prove every element beyond a reasonable doubt. It is not
8 necessary to establish intent by direct and positive evidence,
9 but intent may be established by inference in the same way as
10 any other fact by taking into consideration the acts of the
11 parties and all of the facts and circumstances of the case.
12 While the State may prove motive it is unnecessary that the
13 State do so. However, the State must prove intent.

14 Now, Madam Forelady, members of the jury panel, I charge
15 you specifically now with regard to the law with regard to the
16 charge against Mr. Jenkins in this case. The State charges
17 Robert Jenkins with the offense of possession of heroin. I
18 tell you that the amount of the heroin is not, is not
19 significant. It's against the law of South Carolina to
20 possess heroin in any amount. To prove possession the State
21 must prove beyond a reasonable doubt that the Defendant had
22 both the power and the intent to control the disposition or
23 use of the heroin. Possession may be either actual or
24 constructive. Actual possession means that the heroin was in
25 the actual physical custody of the Defendant. Constructive

1 possession means that the Defendant had dominion and control
2 or the right to exercise dominion or control over the heroin.
3 Mere presence at the scene where the drugs were found is not
4 enough to prove possession. Actual knowledge of the presence
5 of the heroin is evidence which the jury may consider of the
6 Defendant's intent to control its disposition or use. Two or
7 more persons may have joint possession of a drug.

8 Madam Forelady, members of the jury panel, nothing I may
9 have said or done during the course of this trial has been in
10 any way intended to express, suggest a view of the case, an
11 opinion as to the facts, the weight of the evidence or the
12 credibility of the witnesses. If any of my actions or words
13 have seemed to so indicate you will disregard such and form
14 your own opinion as to these matters. You've been selected as
15 fair and impartial jurors, sworn to impartially try and
16 determine the facts of this case and when you comply with your
17 oath to do so no one will have a right to criticize your
18 verdict and you'll have fully discharged your duty as jurors.
19 You are to decide this case according to the testimony you've
20 heard from the lips of the sworn witnesses, along with other
21 evidence introduced during the course of the trial. I charge
22 you that as jurors you must decide the issues in this
23 proceeding without bias and without prejudice to any party.
24 You cannot allow yourself to be governed by sympathy, by
25 prejudice, by passion, by public opinion or any other

Charge

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1 arbitrary factor. Both the State and the Defendant have the
2 right to expect that each of you will carefully and
3 impartially consider all of the evidence in the case and you
4 will follow the law as I have explained it to you.

5 Whatever your verdict in this case it must be your
6 unanimous verdict, all 12 jurors must agree on the verdict
7 which the foreperson will be authorized to write on behalf of
8 the jury.

9 Now, Madam Forelady, I have prepared for your use in the
10 jury room a verdict form. I'm going to go over that verdict
11 form with you at this time. On the verdict form there appears
12 two possible verdicts. The first one reads, "We, the jury,
13 find the Defendant guilty of possession of heroin." The
14 second possible verdict is, "We, the jury, find the Defendant
15 not guilty of possession of heroin." In preparing the verdict
16 form I have to put the possible verdicts on the verdict form
17 in some order. I do it the same way every time, but the order
18 in which the possible verdicts appear on the verdict form
19 means absolutely nothing and you should infer nothing from it.
20 What you should do, Madam Forelady, the jury should
21 deliberate. Once the jury has reached a unanimous decision
22 then you will simply go to the verdict form, find the verdict
23 which corresponds to the unanimous verdict reached by the
24 jury, put a checkmark in the blank beside that particular
25 verdict, sign your name on the line above the word

1 foreperson's signature, date it, knock on the door, let the
2 bailiff know you've reached a verdict and we'll bring you back
3 out to receive that verdict.

4 Now, I charge you, Madam Forelady, once you begin
5 deliberations that you maintain some order in those
6 deliberations, everyone who wishes to participate and to be
7 heard in deliberations be allowed to do so. If for any
8 reasons any member of the jury panel should take a break from
9 deliberating all should take a break, by that I mean all 12
10 jurors should be present and deliberating when deliberations
11 are going on.

12 Now I'm going to ask you if you will at this time to
13 retire to the jury room but do not yet begin your
14 deliberations. I have to give counsel an opportunity to
15 request additional instructions on the law. If additional
16 instructions are requested and I deem them necessary I'll
17 bring you back out and give you those additional instructions.
18 If no additional instructions are necessary I will send to you
19 by means of the bailiff the verdict form and all exhibits
20 which have been admitted into the record and instructions to
21 begin deliberating. Please do not begin deliberating till you
22 get that instruction. Please retire to the jury room all
23 except the alternate. Ma'am, I'll ask you at this time not to
24 go into the jury room but wait just outside the courtroom door
25 for further instructions. Thank you. Please retire. You'll

Charge

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1 need to go out, but just outside the courtroom door, please,
2 not in the jury room, okay. Have the alternate wait just
3 outside the courtroom door, please.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Exceptions, additions to the requests
7 to charge from the State?

8 MS. RICHARDSON: None, Your Honor.

9 THE COURT: From the Defense?

10 MS. BESSENT: None, Your Honor.

11 THE COURT: All right, counsel, please check the
12 exhibits and make sure only those that are actually admitted
13 into evidence go back to the jury, if both of you will do
14 that, please.

15 (Exhibits reviewed and approved by counsel for the State
16 and Defense.)

17 THE COURT: Here you go, sir, sir, Mr. Bailiff,
18 if you'd take the verdict form and tell them they can begin
19 deliberating, please, sir, okay.

20 (Deliberations begin at 10:37 a.m. Alternate dismissed
21 with instructions on when to return.)

22 THE COURT: All right, we'll be at ease.

23 OFF THE RECORD

24 (On the record. Verdict reached at 10:49 a.m. The following
25 takes place outside the presence of the jury.)

Verdict

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1 MS. BESSENT: Your Honor, when the jury reads the
2 verdict would you prefer that we stand or stay seated? Some
3 judges do it differently.

4 THE COURT: No, just keep your seat, please.
5 Keep your seat, please.

6 All right, please bring them in, sir.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: Madam Forelady, have you and the jury
10 reached a unanimous verdict in this case?

11 FORELADY: Yes, sir, we have.

12 THE COURT: Please, ma'am, hand the verdict form
13 up to the bailiff if you will, please.

14 (Complies with request and Court reviews.)

15 THE COURT: The Clerk will please publish the
16 verdict.

17 CLERK: The State of South Carolina, County
18 of Georgetown versus Robert Jenkins, Defendant, the verdict
19 form for case 2011-GS-22-1292, we, the jury, find the
20 Defendant guilty of possession of heroin.

21 THE COURT: Madam Forelady, members of the jury
22 panel, this be your verdict so indicate by all raising your
23 right hand, please.

24 (All jurors raise right hand.)

25 THE COURT: Let the - you can put your hands

Verdict

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1 down. Thank you. Let the record reflect all jurors raised
2 their right hand. Any request from the jury panel from the
3 State?

4 MS. RICHARDSON: No, Your Honor.

5 THE COURT: From the Defense?

6 MS. BESSENT: No, Your Honor.

7 THE COURT: Okay, all right, Madam Forelady,
8 members of the jury panel, this, of course, will conclude your
9 service on this case. We are asking the jury come back today
10 at two o'clock to the jury assembly room. So between now and
11 two o'clock you're free to do anything you'd like to do all
12 except one juror I have already told her, ma'am, that you
13 won't have to come back this afternoon. This will conclude
14 your service for the week and you are Ms. Israel; right? I
15 had told you before once we were through with this case I knew
16 you had some other things that had to be done; and so we're
17 going to go ahead and excuse you, but the rest of you if
18 you'll please be back in the jury assembly room at two o'clock
19 when we expect to start another trial.

20 I want to thank you for your service and your patience
21 with us so far this week and your service, we deeply
22 appreciate it. Thank you. I beg your pardon, if you'll
23 report back to this, this courtroom instead of the jury
24 assembly room, just report back here and we'll draw the next
25 case, a jury in the next case here in the courtroom. So

1 please get some lunch and be back at two here in the
2 courtroom. Thank you.

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

5 THE COURT: All right, you have your sentencing
6 sheet ready?

7 MS. RICHARDSON: I do, Your Honor.

8 THE COURT: Okay, let me, let me give you an
9 opportunity to make any motions you might wish to make at this
10 time if you wish to make any, counsel.

11 MS. BESSENT: No, Your Honor.

12 THE COURT: All right, if you, if you have a - if
13 you'll bring the Defendant around, please. Does the State
14 wish to be heard on sentencing?

15 MS. RICHARDSON: Your Honor, this was an enhanced as a
16 third or subsequent offense. I do have certified convictions
17 from Georgetown County from October 22nd, 2004, where he pled
18 to distribution of heroin second offense. He also has in 2004
19 a possession of crack and possession of heroin. Your Honor,
20 he does have an extensive criminal record, both here and in
21 New York. He has these charges here. He has a 1997 federal
22 conviction for conspiracy to distribute heroin. He also has
23 some drug charges from the State of New York from the
24 seventies and eighties regarding possession of controlled
25 substance and assault third degree.

Sentencing

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1 THE COURT: Do you want to make those enhanced
2 part of the record? You want to make them exhibits in the
3 case?

4 MS. RICHARDSON: I can, Your Honor. I'll just do the
5 second offense one.

6 THE COURT: Well, I think I'd ---

7 MS. RICHARDSON: Ms. Bessent has a copy.

8 THE COURT: Okay, all right.

9 (Court's Exhibit Number One [Sentencing Sheet]
10 appropriately marked.)

11 THE COURT: All right, counsel.

12 MS. BESSENT: Yes, Your Honor, my client is
13 currently on Suboxone which is a drug used for people with
14 drug problems that blocks the receptors in the brain to the
15 drug. He has been clean for over three months at this point.
16 In addition I would like the Court to note that he did spend
17 124 days at the Georgetown County Detention Center. This case
18 was a 2011 case. He was - he's been roll-called in more times
19 than I can even count. He missed one roll call date and a
20 bench warrant was issued for failure to appear. He did not
21 receive the notice to come in for the roll call and he
22 subsequently did spend 124 days at the Georgetown County
23 Detention Center.

24 Given that Mr. Jenkins is clean now and did spend 124
25 days in the detention center I would respectfully request a

1 time served sentence.

2 THE COURT: Thank you. Mr. Jenkins, anything you
3 wish to say to the Court?

4 MR. JENKINS: Yes, I want to say something. Your
5 Honor, I'm sorry for the inconvenience, and listen, I'm trying
6 to do better for my life, so, you know, I don't think the
7 penitentiary going to help me none. I'm doing all I can.

8 THE COURT: All right, Mr. Jenkins, one of the
9 things I look at in sentencing is somebody's record. If they
10 have an absolutely clean record I take that into consideration
11 and try to, you know, give them, to do whatever I need to do
12 there. If somebody's got an extensive criminal record, keeps
13 getting involved over and over and over with these things then
14 I take that into consideration. So I have to take that in
15 consideration in your case. In case number 2011-GS-22-1292
16 the jury found the Defendant, Robert Jenkins, guilty of
17 possession of heroin, this being a third drug offense, the
18 sentence of the Court is be committed to the State Department
19 of Corrections for a determinat term of five years. The
20 Court recommends alcohol and drug treatment during
21 incarceration, that unit, give him credit for 124 days of jail
22 time.

23 MS. BESSENT: Thank you, Your Honor.

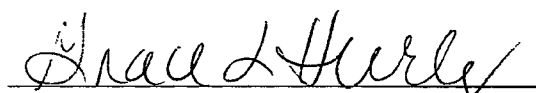
24 MS. RICHARDSON: Thank you, Your Honor.

25 (Adjourned.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State versus Robert Jenkins, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on November 18-19, 2013.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

February 5, 2014.

WITNESSES

Georgetown Police Department

DOCKET NO. 2011GS2201292

The State of South Carolina

County of Georgetown

Scott R. Hixson

11G00866

COURT OF GENERAL SESSIONS

NOVEMBER, 2011 TERM

ARREST WARRANT NUMBER

J539007

CDR: 0178 §44-53-0370(d)(1)

DOI: September 24, 2011

THE STATE

VS.

ROBERT JENKINS

GEORGETOWN, SC 29440

DOB: [REDACTED]

SSN: [REDACTED]

B/M

ACTION OF GRAND JURY

ATTORNEY: Fox, J. Eric

TRUE BILL

Indictment for

Richard C. Holmes

Foreperson of Grand Jury

Date: 11-16-11

VERDICT

POSSESSION OF HEROIN

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on November 16, 2011, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION OF HEROIN

CDR: 0178 44-53-0370(d)(1)

That Robert Jenkins did in Georgetown County on or about September 24, 2011, knowingly and intentionally possess a quantity of Heroin, a controlled substance under provisions of Section 44-53-110, et. Seq., S.C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(d)(1), S.C. Code of Laws, 1976, as amended.

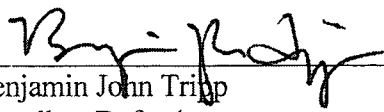
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 9, 2014


Benjamin John Tripp
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

CERTIFICATE OF COUNSEL FOR APPELLANT

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July 9, 2014


Benjamin John Tripp
Appellate Defender

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JUL 09 2014

SC Court of Appeals

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ATTORNEY FOR APPELLANT