VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge

ORIGINAL
RECEIVED
MAR 29 2019
SC Court of Appeals

THE STATE,

RESPONDENT.

V.

DARELL ONEIL BOSTON,

APPELLANT.

Appellate Case No.: 2018-000504

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	DOCKET NO. 2015A1010201122
STATE OF SOUTH CAROLINA	
vs.	
WILLIAM HOLMES	
Defendant	
	TRANSCRIPT OF RECORD

November 30, 2017
Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	DOCKET NO. 2015A1010201114
STATE OF SOUTH CAROLINA	)	
vs.	)	
DARELL O. BOSTON	)	
Defendant	)	
	)	TRANSCRIPT OF RECORD

November 30, 2017
Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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DEFENDANT

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PROCEEDINGS

THE COURT: Thank you. I know there are several motions. Y'all tell me how you want to proceed; it doesn't matter to me because I know there is a motion to suppress and there is a motion to recuse. Probably I guess we need to have that heard my thought is first. Is that to recuse the Solicitor now?

MR. LEWIS: No, Judge. It would be at the time; as we discussed in chambers ---

THE COURT: --- so it's not a question of that being a problem at this point because it would be as we talked. She's free to stay in up until the time she has to testify should that become necessary.

MR. LEWIS: Absolutely.

THE COURT: That's fine. I just wanted to confirm that on the record to be sure because our conversation I don't think was on the record.

MR. LEWIS: It was not.

THE COURT: Thank you very much.

MS. SEMAN: Thank you.

MS. WILSON: Judge, if I could just for the record?

THE COURT: Yes, ma'am.

MS. WILSON: That was why I was here and it's my understanding in talking with Ms. Savas that we don't anticipate that becoming an issue based on the witness's

testimony. If it does we'll cross that bridge when we get to it but it doesn't seem like we will.

THE COURT: As I -- and I don't know whether I was right or wrong because it didn't get tested but at least that was the conclusion. I had the occasion to deal with that in a case involving the Catholic Diocese when they were sued and they moved to recuse Gregg Meyers because he was going to have to be a witness.

And I first ruled and said yes, he had to be recused. Then after the research it really becomes clear that the rule says when that person has to testify that they have the right to serve. That was my determination then and I really think that's the way it proceeds. So I'm comfortable with that if y'all are.

MR. LEWIS: Yes, Your Honor.

THE COURT: You don't have to agree with my assessment of whether they need to be recused or not but I don't think it affects anything that takes place with her involvement up until the time she testifies.

MR. LEWIS: That's correct.

THE COURT: Okay.

MS. WILSON: Thank you, Judge.

THE COURT: Thank you.

THE COURT: All right. I thank you for your briefs and I've had a chance to review them. I'll be happy to hear from you. If y'all want to have any opening statements, I guess we're going to have to take testimony obviously concerning the issues involved so. Do y'all -- any opening statements? I've read and I understand some of the issues involved.

MS. SEMAN: Your Honor, if you've read the brief I don't think I have an opening statement. I think we can start with testimony.

THE COURT: Thank you, Ms. Seman.

MR. LEWIS: The same.

THE COURT: Thank you. Okay. Ms. Savas, call your first witness.

MS. SAVAS: Would you like, just for logistics to when we do arguments to break it in pieces or would you like to hear full testimony from there are four witnesses?

THE COURT: I think the better thing here because it seems to me there is a flow of continuation of all of this so probably the better thing is to hear all of it and then we'll argue unless y'all want to proceed -- like to separate it.

MR. LEWIS: I think hearing it all straight through would be better.

THE COURT: I think it would be better for me at least.

MS. SAVAS: Yes, Your Honor. Thank you.

THE COURT: Thank you. And thank you for asking.

MS. SAVAS: Your Honor, the State calls Sergeant Joseph Sherwood to the stand.

THE COURT: Okay.

[Whereupon, Sergeant Sherwood comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Please state your full name and spell your last name for the record.

THE WITNESS: Joseph Payton [phonetic] Sherwood, last name S-H-E-R-W-O-O-D.

JOSEPH SHERWOOD,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Sergeant Sherwood, where are you currently employed?

A. At the North Charleston City Police Department.

Q. And what is your current title?

A. Sergeant.

Q. And what are you sergeant over?

A. South evenings team one and the Swat team.

Q. And what are some other previous positions you've held?

A. I did six years in a vice narcotics unit called the sweet [phonetic] team, a year in narcotics, I did vice, SRO school resource officer, patrol and that's about it.

Q. And how long have you been with the North Charleston Police Department?

A. It will be eleven years in February.

Q. And do you have any additional training certifications?

A. Yes. I have drug interdiction; several classes in that, patrol interdictions, drug identification, gang intervention; quite a bit, I'd have to look at all the stuff.

Q. So you have served both on the drug narcotic unit and have certifications and training in narcotics?
A. Correct. Yes, ma'am.
Q. And in your career how many drug cases would you say you've dealt with over the eleven years?
A. A thousand.
Q. And how many cases specifically involving manufacturing cocaine base or crack?
A. Easily a couple hundred.
Q. And have you been involved with search warrant cases before?
A. Yes, several.
Q. And that's both narcotics search warrants and SWAT search warrants?
A. Correct. And I've done personnel search warrants and DNA search warrants.
Q. Okay. And back on March 6, 2015 at the time of this incident what was your current title then?
A. Patrolman.
Q. And what area were you patrol over?
A. I was actually zone one officer which entitles our Chicora Cherokee community.
Q. And what were some of your duties as a patrol officer in that area?
A. To curb crime, to take calls for service, to try to

prevent the crime from happening, and to be there for anybody that needs our assistance.

Q. And do you recall the address of this current incident location?

A. Yes ma'am, [redacted].

Q. Okay. You said 1815. Do you believe that may have been [redacted]?

A. It is. I'm sorry; [redacted]. I haven't been over there in a while.

Q. And do you remember the apartment number?

A. Not off hand.

Q. Okay. If I show you the incident report will that refresh your memory?

A. Yes, ma'am. I'm sorry.

Q. That's okay.

MS. SAVAS: May I approach, Your Honor?

THE COURT: You may.

Q. [Ms. Savas] Sergeant Sherwood, this is your incident report. Feel free to refresh your memory.

[Whereupon, the witness reviews document]

A. Apartment [redacted].

Q. And in which city is that in?

A. North Charleston.

Q. Okay. And do you know which county?

A. Charleston County.

Q. Okay. And was part of your duties to patrol that area?
A. Yes.
Q. And what did you know about that area?
A. Since I've been working here in 2007 it's always been a hot spot for narcotics activity. More specifically recently before this incident we've had several complaints about the drug activity, illegal trespassing in the area quite often.
Q. And was there something significant about the housing in those apartment complexes?
A. Yes. I spoke with the owner of the housing. He said the people that live there, single occupants that live in there and that they have well, not mentally handicapped I'd say but they need to be assisted and easily taken advantage of I guess is a better way of saying it.
Q. And were there specific complaints about those apartments themselves?
A. Yes, specifically those.
Q. And did North Charleston do anything in regards to those complaints?
A. We tried to just step up patrols in the area and swing throughs and try to stop out people -- and find out who lives there. That's how I come to make contact with

people in the area who lives there.
Q. And on this day you were with other officers. Who were those officers?
A. Officer -- and Hoose [phonetic].
THE COURT REPORTER: Give those names again please?
MS. SAVAS: Etninan, E-T-N-I-N-A-N.
Q. [Ms. Savas] Who was Officer Etninan at that time to you?
A. I was training him. I'm also a field training officer. That's just a sub duty of what I have and I was training him.
Q. And in regards to this incident how did this sort of come about? What were you doing there at that time?
A. I don't remember the call for service but we had a dispatch call for service on Cody Street right there at Clements.
And we were down there myself and both the other officers and Sergeant Hoose [phonetic] and I were talking and we were in the area kind of just keeping a presence in there especially for the police.
Q. And Sergeant when you were in that area what did you observe about this case? How did this case come about?
A. I saw a taxicab pull up. Actually prior to that I knew -- like I said we help out people in the area. I knew several people in there but I saw a taxicab pull up.

And I saw the defendants exit the vehicle and walk up to apartment [redacted], which I know Ms. Denise she lives there from prior knowledge of talking with her. And they entered into the apartment and I found that odd just because of where I knew them from. I knew they did not live there and I knew Ms. Denise and her mental status.

Q. And have you had issues with narcotics with Ms. Denise at that apartment before?

A. Yes. Not necessarily -- well, yes I have. In the area I've stopped her and she had a couple of little run-ins but nothing too serious.

Q. Okay. And did you recognize or know these defendants prior to this incident?

A. Yes, I did.

Q. And how did you recognize them?

A. They used to live in a house on Osceola. I've had several run-ins with them.

Q. What did you do next after you recognized them and saw them approach the door?

A. Me and Sergeant Hoose [phonetic] continued our conversation and I brought it up to him and said that's kind of weird to see those two gentlemen go inside the apartment. I explained to him about Ms. Denise and I think they were in there about 15 minutes.

Q. And when you said you recognized them from that

other house on Osceola and around some run-ins what were those?

A. I don't know if they lived there. I've seen them there a lot.

Q. Okay. And what did you know about them in those prior situations?

A. We've done several search warrants there and a lot of run-ins with drug activity at that address.

Q. You've know them to have prior drug and narcotics issues?

A. Yes, ma'am.

Q. And as you discussed this with Sergeant Hoose [phonetic] what did you do next?

A. We decided to because of Ms. Denise there we decided we were going to go knock on the door to check on her and see if everything is okay.

Q. And what did you do when you knocked on the door?

A. We just knocked on the door and Ms. Denise answered. I spoke with her and I asked her if it was okay if I stepped inside and talked with her.

Q. And what did she say?

A. She said absolutely and she kind of seemed relieved.

Q. And when she opened the door was it a broad opening or just peeked her head through?

A. No, no, she swung the door all the way open.

Q. So she had opened the door all the way open ---
A. --- correct ---
Q. --- and you were standing at the front?
A. Yes, ma'am.
Q. And then you essentially performed a knock and talk?
A. Yes.
Q. Why do you perform those in law enforcement?
A. When he have the complaints that we were having and the elements that we had at this residence we will knock on the door to make sure that one, she is okay and two, see if there is any possibly any crime or if she had any information for us.

And maybe they were just friends and I would have been fine with that and said okay Ms. Denise see you later and just been on my way but there was a little more to than that.

Q. So is it common practice for officers in that area to perform knock and talks?
A. Absolutely.
Q. And when Ms. Denise had opened the door did she resist in any way?
A. No, she actually opened up the door in an inviting way. She opened the door all the way up and stepped back. That's when I asked her and she almost made a motion of come on in kind of thing. She moved out of the

way of the doorway itself as if to let somebody in.
Q. And was she in a friendly manner would you describe that?
A. Oh, yes, absolutely.
Q. Did you address yourself as a law enforcement officer?
A. Yes.
Q. And did she ever tell you not to come in at any time?
A. No, not at all.
Q. Did you make any threats to her?
A. No.
Q. Did you force your way into the house?
A. No.
Q. Did you intimidate her into giving consent?
A. No, ma'am.
Q. At any time during the interaction with the tenant did she ever appear to be uncooperative with you?
A. Not at all.
Q. Did she ever ask you to leave?
A. No.
Q. Did you consider her consent to be valid?
A. Yes.
MR. LEWIS: I'm sorry. I think we made a motion previously that all these witnesses should have been

sequestered before this hearing. Unfortunately, it's a little bit late now.

THE COURT: Yes, a day late and a dollar short. Thank you.

MR. LEWIS: Yes, Your Honor.

MS. SAVAS: We can have them removed, Your Honor if that is -- that's not an issue with the State. We would just ask that our case agent Sergeant Sherwood and our investigator Meyer [phonetic] remain. We're not sure who the defense has on their witness list.

THE COURT: Do you have any witnesses other than the defendants?

MR. LEWIS: The only person for this hearing would be if the court requires it Mr. Shahid was present with me when I visited the scene so that when I took the pictures he could authenticate those. If we can circumvent that rule of evidence I don't need anybody. And I don't think the rule of evidence actually applies for this hearing.

THE COURT: I was going to say I think if you're going to have pictures I think I'm the person who is going to make that call. He doesn't have to be here.

MR. LEWIS: All right. May I release him?

THE COURT: Yes.

MR. LEWIS: Thank you, Judge. Pictures and a

video walkthrough but nothing other than that.

THE COURT: Do you have an objection to the authentication of the pictures and the video?

MS. SAVAS: Not to the authentication, Your Honor. I would object to it -- well there is no jury present. At the time of the trial I would object to them being entered into evidence but not in this matter.

THE COURT: Okay. He can be excused.

MR. LEWIS: Thank you, Your Honor.

THE COURT: I'd like all the other witnesses other than the case agent then by consent to leave. Thank you.

MS. SAVAS: I'm sorry, you want the others...

THE COURT: Yes, all the other witnesses need to depart.

[Whereupon, individuals exit the courtroom]

MS. SAVAS: Court's indulgence.

THE COURT: Certainly. Take your time.

[Whereupon, Ms. Savas and Ms. Tran confer]

MS. SAVAS: Your Honor, at this time the State would seek to admit just for ---

THE COURT: --- for purposes of this hearing?

MS. SAVAS: Yes, sir exhibits 1 through 9.

[Whereupon, Ms. Savas and Mr. Lewis confer]

MS. SAVAS: Okay. I will do...

THE COURT: You already have 1 through 9?

MR. LEWIS: I have 1 through 9 so just for the court reporter's convenience I didn't want to double up.

MS. SAVAS: 10 through 17?

THE COURT: 10 through 17 without any objection for purposes of this hearing. Obviously it doesn't carry over.

MS. SAVAS: Thank you, Your Honor.

[Whereupon, State's exhibit numbers 10 through 17 are marked by the court reporter]

[Whereupon, State's exhibit numbers 10 through 17 are entered into evidence for purposes of this hearing only by the court]

Q. [Ms. Savas] Sergeant Sherwood, I'm going to show you what has been marked as State's exhibit number 10.

[Whereupon, the photograph is shown]

Q. And Sergeant Sherwood do you recognize this area?

A. Yes.

Q. Okay. And where would you say when you saw that taxicab pull up where would you say that was?

A. Just past that palm tree.

Q. And I think over there you can write on that. You can touch the screen.

A. Right around here [indicates].

Q. Okay. And where were y'all standing when you observed the taxicab pull up?

A. Right here [indicates].
Q. Okay. And I'm going to show you State's exhibit number 11.
[Whereupon, the photograph is shown]
THE COURT: Did I understand him to say he was standing there?
MS. SAVAS: Yes, sir.
A. Outside my vehicle.
THE COURT: And your vehicle was parked near you?
A. Yes, sir. I'm sorry. My vehicle was parked right there [indicates] and I was standing right next to the vehicle.
THE COURT: Thank you.
Q. [Ms. Savas] And Sergeant Sherwood on this picture which apartment did you go into?
A. This one [indicates].
Q. The green one?
A. Yes.
Q. Okay. And State's exhibit number 11. And on this one could you please point to which unit it was?
A. [Indicates].
Q. That green one?
A. Yes.
Q. Okay. And Sergeant Sherwood you said that she had given you consent to enter and y'all went inside the

house. Did you observe anything upon entering the home?
A. I did.
Q. And what was that?
A. When she stepped out of the way and said that I could come in I observed the defendants in the kitchen. To the left of the kitchen there is kind of an open doorway there and you could see them in the kitchen kind of huddled around the microwave area.
Q. And did you notice any objects?
A. Yes. There were two plastic bags with white residue on them.
Q. And what did you recognize that white residue to be?
A. Consistent with packaging of -- actually would be the unpackaging of cocaine.
A. Of cocaine?
A. Yes, ma'am.
Q. And how big would you say this apartment is? Is it large or is it small?
A. Maybe 400 square foot if not smaller.
Q. So if you're at the front door upon entering where would I be if you're talking about the kitchen?
A. Right there [indicates].
Q. So this close is where you -- it's a very small place.
A. Yes.

Q. Was it a studio or a one bedroom?
A. It's a one bedroom studio I guess you would call it. But through the doorway is a kitchen and a bathroom.
Q. Okay. Those are the only rooms. When you enter a living room, a kitchen and then a bathroom?
A. Yes, ma'am.
Q. Okay. And Sergeant Sherwood I'm going to show you what has been marked as State's exhibit number 12.
[Whereupon, the photograph is shown]
Q. Do you recognize this photo?
A. Yes ma'am, I do.
Q. And what is significant about this photo?
A. That was the packaging I observed.
Q. These two packages [indicates]?
A. Yes.
Q. So they were on the kitchen sink?
A. Yes, ma'am.
Q. Okay. And Sergeant Sherwood I'll show you what has been marked as State's exhibit 17.
[Whereupon, the photograph is shown]
Q. Do you recognize this photo?
A. Yes, that is the microwave. That's what I saw after they left from that so I could see.
Q. Okay. So if the microwave was on this side of the sink which is the left in photo 12 where the baggies were

where would that be in relation to the sink? The right?
A. To the right.
Q. Okay. And was that a clear view straight shot from the front door to that counter?
A. Yes, as I walked in when she told me to that's when I could see that.
Q. Okay. And you said that you noted the two individuals in there?
A. Yes, ma'am.
Q. And are they present in the courtroom today?
A. Yes ma'am, they are.
Q. And would you be able to point them out?
A. Yes there [indicates] and there [indicates].
Q. The plaid shirt and the green shirt?
A. Yes.

MS. SAVAS: Please let the record reflect the officer had identified the two defendants, Mr. Holmes and Mr. Boston in this case.

THE COURT: So noted.

MS. SAVAS: Thank you, sir.

Q. [Ms. Savas] And so you said that you saw them at the microwave in the kitchen. What happened next?
A. After she let me in I probably made a step or two in there and that's when I started taking the scene in. At that point they saw me. They turned around and they

observed me standing there. The microwave was running and they popped it open and I would say both of them and they turned around and Mr. Holmes in kind of a football handoff kind of motion ran into the bathroom along with Mr. Boston.

Q. Okay.

A. And they slammed the microwave door shut and that's when I kind of looked over there and I saw okay, there is a scale laying over there.

Q. So how would you explain their demeanor upon you entering the house?

A. Scared to the point where they actually scared me some. I thought there might have been a weapon involved. That's when I kind of got worried at that point due to me being there and also Ms. Denise and scared for her safety also at that point.

Q. Why would you assume there were weapons in the home?

A. Drug activity. Usually with drug activity there is definitely weapons involved most of the time.

Q. Okay. And you said though that the microwave they shut it closed. Did you open this microwave in this photograph?

A. Yes, I did.

Q. Okay. And can you see what that [indicates] says?

A. A minute 54 I believe.

Q. So that you would assume was in the middle of cooking?
A. Yes, ma'am.
Q. Okay. And you had mentioned also a digital scale. Is that in this photo?
A. Yes, you want me to circle it?
Q. Sure.
[Whereupon, the witness complies]
A. And then this [indicates] is the top to the digital scale. That's actually what I saw first and then this digital scale.
Q. Okay. And what is in this cabinet here [indicates]?
A. Baking soda is up top of that.
Q. Okay.
A. And then there is packaging.
Q. Okay.
A. And then I think that's where one of the whisks were but it wasn't a used one.
Q. Before we jump into all the items that were found I want to go back to when you had observed them running. Was anything unusual about that?
A. It was. Usually when I go into a house or any normal person goes in a house you kind of turn around and say hi or what are you doing. It wasn't that. It was a quick motion straight to the bathroom around the corner

concealed themselves where I could not see them anymore.
Q. And when you said that someone was holding something in their hand actually can you point to him in the courtroom?
A. Yes ma'am, [indicates] the green shirt.
Q. The green shirt?
A. Yes, ma'am.
Q. But they had both ran into the bathroom together?
A. Yes, ma'am. They were both right there close together. Just from the motion that they were both making I could not see their hands but the way they kind of ran off that's what concerned me.

The way they ran off they belayed their body completely away from me to the point where like I said I was getting worried at that point.
Q. And what happened after they had went into the bathroom?
A. That's when I saw them run into the bathroom like I said I got worried about weapons at that point because I saw the -- there is obviously drug activity going on.

As I started to approach I told them to come out of the bathroom which they both complied. They came right out of the bathroom and came right into the main room where Ms. Denise, Sergeant Hoose [phonetic] and I were.
Q. And what happened after that?

A. That's when we brought them in there. We cleared the couch so they could have a seat. Sergeant Hoose [phonetic] conducted a search of Mr. Holmes. That's when they found the scale and some other cocaine.

And that's when I entered into the kitchen and I walked into the bathroom where they ran to to make sure there weren't any weapons or anything in there just to do a protective sweep of it.

I went into the bathroom and on the tub, the edge of the tub there was a Pyrex cup there, a measuring cup with crack cocaine in it with steam still coming off it as if they just got done cooking it or still cooking it.

Q. I'll show you what has been marked as State's exhibit 13.

[Whereupon, the photograph is shown]

Q. Is that what you're talking about?

A. Yes, ma'am.

Q. And so where did you believe those items came from; the kitchen?

A. Yes, they did. And especially with the heat coming off it the way it was it was just removed from that microwave.

Q. And what is the purpose of law enforcement conducting a protective sweep?

A. To make sure there is no one else armed in there and

we can kind of let out guard down and start actually interviewing and also make sure there are no weapons so anybody that we were in there talking to wouldn't be able to get one. So it's for our safety and theirs so we don't have to...

Q. And so you felt a safety concern to conduct that at that time?

A. Absolutely, with the narcotics activity there.

Q. Okay. And Sergeant Sherwood what were they doing when you had walked in?

A. Manufacturing crack cocaine.

Q. So given your training and experience can you just briefly explain how one makes crack?

A. Yes. So the Pyrex cup they will fill it with water and cut which would be the baking soda they'll half and half it with the cocaine, put it in the microwave until it boils or most of the water or all of the water is gone. And the whisk is used to whip it so it actually turns into or it gets rid of all the bubbles and makes it a hard substance once it dries.

So like now right there in this state it's more of a pasty -- it's more of a paste. But once it dries out it turns into a rock which that right there on the street would be called a cookie due to its shape and they actually take a razor blade and cut it down into

increments for distribution.
Q. Okay. And looking at State's exhibit 17 these were the other items found. Are these all consistent with manufacturing crack?
A. Yes.
Q. So they were literally caught in the act making crack.
A. Correct. I've never seen that before.
Q. And about how long does it take to make crack?
A. As long as it takes to boil water.
Q. And once you performed the protective sweep and the defendants were detained what did you do next?
A. After I saw what I saw I went and secured a search warrant. We placed both the defendants in handcuffs just pending our search warrant.
Q. And did you do anything to the microwave prior to leaving for that warrant?
A. I did. I swabbed it.
Q. Let me show you State's exhibit number 14. It's a photo of the microwave.
[Whereupon, the photograph is shown]
A. Yes, ma'am.
Q. And why did you swab the microwave?
A. Well, in the manufacturing of crack cocaine when it steam boils it will actually boil over so it will leave a

cocaine residue inside of it. So I took a cocaine swab and I swabbed inside the microwave.

Q. And what does that cocaine swab show?

A. It shows it touched it for the presence of cocaine in the microwave.

Q. And how do you know that?

A. It turns blue. It's a pink swab that will turn blue.

Q. I'm showing you State's exhibit 16. Is this a photo of that swab?

[Whereupon, the photograph is shown]

A. That's correct.

Q. It's a little bit of a glare but is that what you're talking about, the blue?

A. Yes, ma'am.

Q. Okay. And State's exhibit 15, this is just a close up of that swab?

[Whereupon, the photograph is shown]

A. Yes, ma'am.

Q. Okay. And so that microwave tested presumptive for cocaine?

A. Correct.

Q. So then you went to write and execute a search warrant?

A. Yes, ma'am.

Q. Okay. Why did you get a search warrant when you had already seen the manufacturing items and found drugs in the house?
A. Through my experience I've found it's easier to keep everything aligned. Once you have your probable cause from something -- from a scene like this we would rather go just and secure a search warrant and let the judge make the ruling at that point if we had the probable cause to actually search or not.
MS. SAVAS: Court's indulgence.
THE COURT: Yes, ma'am.
[Whereupon, Ms. Savas and Ms. Tran confer]
Q. And you do eventually get that search warrant signed correct?
A. Yes, ma'am.
Q. And then what did you do once it was signed?
A. We executed it.
Q. Okay. And what does that entail?
A. A search of the residence.
Q. And then you had gathered the items of evidence?
A. Correct.
Q. Okay. And to the best of your knowledge all of those items were properly sealed and taken into evidence?
A. Yes, ma'am.
Q. Okay.

MS. SAVAS: Court's indulgence.

THE COURT: Okay.

[Whereupon, Ms. Savas and Ms. Tran confer]

Q. [Ms. Savas] Sergeant Sherwood, do you recall meeting with me over the past couple of years in this case?

A. Yes, ma'am.

Q. Okay. Do you recall mentioning that you had said that defendant Boston was the one concealing something in his hand?

A. Yes, with that -- like I said they were both standing around the microwave. And yes, both appeared to be concealing something the way they like I said they kind of scurried off pretty quickly.

Q. Was it a little -- you had mentioned they belayed their bodies to you. Will you please tell the court what that means?

A. So like kind of like how a magician would do; they would hide their -- they don't want me to see their hands. And in our training if you don't see somebody's hands that's what we look at; that's the things that hurt you or anybody else around you.

I could not see either one of their hands but the way they were motioning over there it was not to hide their face it was to hide what they had somewhere with their hands. They were hiding their hands from me versus

actually being able to -- usually people want to conceal their face if they are going to run from me they would probably do that but in that apartment there really no where for them to run.

Q. And at that time that's when you believed they had taken the crack out of the microwave and put it in the bathroom?

A. Oh yes, absolutely.

Q. And was Ms. Holman interacting in any way with this? Was she making the crack with them when you saw?

A. No, not at all.

Q. Okay. So she did not have -- she was not participating in making this crack.

A. No, ma'am.

Q. Okay. About Ms. Holman and using her apartment in your training and experience in that area is that common?

A. Absolutely.

Q. What would people typically do?

A. A lot of times they will either pay somebody that has the house to use their house to manufacture it whether it's in money or product. It's a take of either or; usually that's what happens. Or sometimes they're just nice and let them borrow a microwave and don't know what's going on.

Q. Why do they not use it in their own home?

A. So they don't get in trouble for it at their house. That's where the distribution part of it is taking place.

Q. Okay. And you think that was occurring at this time?

A. Yes, ma'am.

Q. Okay.

MS. SAVAS: Court's indulgence.

[Whereupon, Ms. Savas and Ms. Tran confer]

MS. SAVAS: Nothing further from the State, Your Honor.

THE COURT: Cross-examine, Ms. Seman?

MS. SEMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. SEMAN:

Q. Good morning, Sergeant Sherwood.

A. How you doing?

Q. You said today that you approached Ms. Holman's apartment when you saw the defendants get out of the taxi, is that right?

A. Uh Huh.

THE COURT REPORTER: Is that yes?

A. Yes; I'm sorry.

Q. [Ms. Seman] But in your incident report you said that you approached the apartment because of drug complaints?

A. That's kind of all in one --

Q. I'm sorry?

A. There are a lot of reasons why. I don't just do something for one reason; especially something like that, I'm going to do it for multiple reasons.

Q. Okay. But there wasn't actually a drug complaint made out of that apartment.

A. The whole apartment complex.

Q. There was a drug complaint made out the apartment complex?

A. Yes, ma'am.

Q. Okay. And you're familiar with the prior complaints

at that apartment complex.
A. Correct.
Q. And that's why you say you were monitoring the area, right?
A. Monitoring -- actually at the time at that moment we were just sitting there talking until they pulled up.
Q. Right. But you testified with the Solicitor that you had increased patrols in that area.
A. Our whole department has, yes ma'am.
Q. Yes, I didn't mean you specifically; I mean your department.
A. Yes, ma'am.
Q. So your department increased patrols of the area.
A. Yes, ma'am.
Q. And there was a prior complaint made in February of 2015, right?
A. Yes, ma'am.
Q. And you were familiar with that complaint.
A. Yes, ma'am.
Q. And in fact you listed that complaint number in your incident report for this case.
A. Correct.
Q. And the complaint in question was made by the landlord.
A. Yes, ma'am.

Q. And we know that because again the number matches the complaint that you put in your incident report.
A. I didn't do the incident report. That wasn't my report.
Q. You didn't write the incident report for this case?
A. I'm talking about the other cases you were referring to.
Q. But you were familiar with the incident report, right?
A. Yes, ma'am.
Q. And that was about a week earlier. That was February 27th, 2015, right?
A. I'm assuming so. I don't have it in front of me.
Q. Would it help you to look at a copy of that report?
A. If you have it, absolutely.
Q. I do.
A. I just know it was written by an officer I work with.

MS. SEMAN: May I approach?

THE COURT: You may.

[Whereupon, the witness is shown document]

Q. [Ms. Seman] So that is a copy of the report that matches the number that you listed in your incident report for this case, right?
A. Yes, ma'am.

Q. And so that was on February 27th, 2015.
A. Yes, ma'am.
Q. And that complaint was made by the landlord.
A. Correct.
Q. Mr. Franklin.
A. Yes, ma'am.
Q. And in that complaint Mr. Franklin complained that he had felt threatened by an individual that didn't live there.
A. Yes, ma'am.
Q. By a non-resident that came out of apartment 13.
A. Yes, ma'am.
Q. Which is a different apartment than was at issue in this case.
A. Yes, ma'am.
Q. Denise Holman lived in apartment [redacted]
A. Yes, ma'am.
Q. And in the complaint no one was identified by name or nickname, right?
A. Not that I'm reading, no ma'am.
Q. Indeed it was a bare minimum description; a black male with facial hair.
A. Yes, ma'am.
Q. That could fit a lot of people.
A. Correct.

Q. When the Solicitor asked you questions you said that when you came into Ms. Holman's apartment one or both people had some items in their hands, right?
A. Like I said their bodies were belayed from me. It appeared to me that they would have something in your hands in the way that they were standing and the way they ran off.
Q. Okay. So you didn't actually see their hands?
A. No, ma'am. That's why I was so worried at that point about weapons.
Q. And you didn't mention anything about seeing anything in their hands or believing that they had things in their hands in your incident report for this case.
A. No.
Q. In fact you said that two men came out of the back of the house, the kitchen area, right?
A. Yes, ma'am.
Q. And you also said that their hands were shaking?
A. Yes, ma'am.
Q. And their breathing was labored.
A. Yes, ma'am.
Q. But you said nothing about anything you thought was in their hands, right?
A. Right --
Q. I'm sorry?

A. It's not in the report, no ma'am; I didn't put it.
Q. And when the Solicitor asked you questions you said that both people Mr. Holmes and Mr. Boston were standing by the microwave.
A. Correct.
Q. And the microwave is really important because you think that's what they were using to manufacture crack.
A. Correct.
Q. And you said the microwave was running in fact when you walked in.
A. Yes, ma'am.
Q. So the microwave is a really important piece of evidence.
A. Yes, ma'am.
Q. And the defendant standing next to it is an important detail about that piece of evidence.
A. Yes, ma'am.
Q. In fact it's the most important detail because as the Solicitor said you're literally thinking you caught them in the act, right?
A. Yes, ma'am.
Q. But in your report though you didn't mention anything about the defendant standing next to the microwave.
A. Okay, yes.

Q. Would you like to review a copy of your report?
A. Is it a question?
Q. Yes? It is correct that in your report you didn't mention the defendant standing next to the microwave.
A. If I didn't put it in there, no ma'am I didn't mention it in the report.
Q. Well, I'm happy to show you a copy if you'd like to look at it?
A. I have it right here. I'll look at it.
Q. Okay.
THE COURT: Sergeant, put it on the side so when you look and turn and when you speak so you can speak towards the court reporter.
A. Oh, sorry.
[Whereupon, the witness reviews document]
A. No, I didn't put that in there.
Q. [Ms. Seman] And you're an experienced law enforcement officer aren't you?
A. I'd like to think so, yes ma'am.
Q. You're a sergeant.
A. Yes, ma'am.
Q. And you've been at NCPD you say for 11 years?
A. Yes, ma'am.
Q. And you know the difference between actual possession and constructive possession.

MS. SAVAS: Objection, Your Honor. It requires a statement of the law.

THE COURT: I overrule. For purposes of this proceeding, come on.

MS. SAVAS: Yes, Your Honor.

THE COURT: I'll consider it for what it's worth. Thank you. I don't know what -- you can ask the question but they're both in the room so whatever it is. I don't know what the deal is but go ahead.

MS. SEMAN: Thank you, Your Honor.

Q. [Ms. Seman] Actual possession is when an item is on a defendant's person, right?

THE COURT: W don't need to spend a lot of time on that Ms. Seman, really and truly do you?

MS. SEMAN: I believe I do, Your Honor. There is an issue with the incident report in this case that I think speaks to this exact issue.

THE COURT: I appreciate that. That's an incident report and that's fine and you can use this for deposition and I'm going to allow you to do that obviously. But for the purposes of this proceeding today of a suppression this report has some bearing but it is not going to be compelling I can tell you that, okay. Just keep on going.

MS. SEMAN: Yes, Your Honor. May I proceed or

would you like me to move on?

THE COURT: You do what you -- I'm not going to try your case. You do what you want. I'm just telling you. Just don't spend a lot of time on this.

MS. SEMAN: Yes, sir. It will just be a few more questions.

THE COURT: That will be fine.

Q. [Ms. Seman] Actual possession is when an item is on a defendant's person, isn't it?

A. There's lots of different possessions. I mean you're talking definitions here.

Q. Yes. But what I'm saying is I'm sure you've found drugs on people in a lot of different places.

A. Oh, yes.

Q. I'm sure in their shoe, in their pocket, in their socks, in a lot of unmentionable places I'm sure.

A. Uh Huh.

Q. And when you find someone in actual possession you don't have to ask who it belongs to, right, who the contraband belongs to, who the drugs belong to, who a weapon belongs to.

A. There is a lot of different scenarios that grow into this so there is not a definitive answer for that.

Q. Okay. But if you found something in someone's pocket for example you wouldn't have to ask ---

A. --- most of the time yes, it would be a 99 percent chance that it would probably be theirs so I would most assume that yes, absolutely.
Q. And that's different than constructive possession.
A. Yes.
Q. And that's when people have control over an area, right?
A. Yes.
MS. SAVAS: Objection, Your Honor. The detective is not a lawyer to comment on the law.
THE COURT: I appreciate it. I've overruled it. Move on please.
MS. SEMAN: Yes, Your Honor.
THE COURT: Thank you.
Q. [Ms. Seman]. And Sergeant Sherwood you wrote the search warrant in this case, didn't you?
A. Yes.
Q. And you had to write up an affidavit, right?
A. Yes.
MS. SAVAS: Objection, Your Honor. Respectfully this is not a Franks hearing. I did not go into those or admit that into evidence.
THE COURT: Well, you'll have a chance to ask follow-up questions, Solicitor. Overruled. We're going to have a hearing. Thank you, ma'am.

MS. SAVAS: Yes, ma'am.

THE COURT: Okay. Let's let this thing flow, please. Thank you.

MS. SEMAN: Yes, Your Honor.

Q. [Ms. Seman] So you wrote up the affidavit, right?

A. Yes.

Q. And you took it to a Magistrate, right?

A. Yes.

Q. And you had to get the judge's signature, right?

A. Yes.

Q. And then you went back to the apartment, right?

A. Yes.

Q. And then you went back inside.

A. Yes.

Q. And you executed the search warrant.

A. Yes.

Q. And that took awhile.

A. Yes, ma'am.

Q. Because you arrived at that apartment at 5:25, right?

A. Yes, ma'am.

Q. And the search warrant was signed at 6:49.

A. Yes, ma'am.

Q. And you still had to get back to Ms. Holman's apartment after that.

A. Yes, ma'am.
Q. So probably around 7 o'clock is when you returned.
A. It was -- I mean probably ---
Q. --- approximately.
A. I guess. We were really close to where the judge was.
Q. Okay. So it was maybe even a little earlier than that. That was about an hour and a half after you arrived at the apartment that day.
A. Yes, ma'am.
Q. And then you executed that search warrant and you found that Pyrex, right?
A. Yes, ma'am.
Q. And you felt it at that point.
A. Yes, ma'am.
Q. And you say at that point it was still hot to the touch.
A. Yes, ma'am.
Q. And you also say that you didn't arrest Denise Holman because she was too mentally handicapped, right?
A. Right. I use that word somewhat loosely when I say mentally handicapped but yes ma'am somewhat.
Q. Ad you even said that she didn't know what was going on.
A. I don't believe she did. I believe she knew what

was going on but she didn't have the capacity to say no to the defendants due to their stature that they had when they went in.

Q. But you specifically say in your report that she was unable to comprehend the situation at hand, right?

A. Yes. The way she came off to me was not that she was -- I'm not a doctor so I don't know 100 percent how to describe it but she didn't come off to me as when you say mentally handicapped as -- to the point she knew what was going on.

But like I said whether -- she knew what was going on for the most part yes, but there were parts that she probably didn't quite understand that was that right or wrong or whatnot.

Q. Okay. So are you saying she did or she didn't know what was going on?

A. I believe she did, yes.

Q. Okay. So -- but that's different though that what your incident report says.

A. Okay.

Q. Isn't it?

A. Yes, if that's what it is.

Q. Would you like to take a look at it? I'm happy to point you to the section ---

A. --- if you don't mind; it's a long report.

THE COURT: Ms. Seman, I assume you're quoting from it.

MS. SEMAN: Yes, Your Honor.

THE COURT: Come on. We don't have a jury here.

MS. SEMAN: Yes, Your Honor.

THE COURT: Okay.

Q. [Ms. Seman] But you did say that in your incident report right that she didn't understand what was going on.

A. Yes ma'am, fully -- I probably should have put fully.

Q. But you didn't put that in your report.

A. I didn't; I'm sorry.

Q. But you are aware that NCPD has arrested her over 30 other times.

THE COURT: I didn't understand that. What?

Q. [Ms. Seman] I said you're aware that North Charleston police department has arrested her over 30 other times.

A. There are 460 officers. I don't know who all arrested her. I've had one run-in with her.

Q. But you didn't arrest her that day.

A. No, I did not.

Q. And as we said before no one had complained about Ms. Holman's apartment specifically, right?

A. Correct.
Q. There were no drug complaints out of her apartment, right?
A. Not specifically out of hers; it's the whole complex. It's not a very big complex. It's like -- I don't know how many off hand but it's not very many.
Q. There was no weapons complaint out of her apartment.
A. Not specifically out of hers, no.
Q. There was no complaint of a wanted person being at her apartment.
A. No, ma'am.
Q. There was no complaint of someone armed and dangerous being at her apartment.
A. No, ma'am.
Q. You saw Mr. Boston and Mr. Holmes go in, right?
A. Yes.
Q. But you didn't have any information that they were committing a burglary or an armed robbery.
A. Not at all.
Q. And you were in the area for a traffic stop that day weren't you?
A. I can't recall what reason I was on -- it could have been a traffic stop or a call for service -- I can't remember what that was.
Q. But you at least know it was for something

unrelated.
A. Correct. It was completely unrelated. But everything is related to a policeman when you're on the job.
Q. And you saw Mr. Boston and Mr. Holmes get out of a taxi together and that's when you decided to approach.
A. Not at first. I kind of let it sink in and remembered who they were and where they were from and remembered about Ms. Denise. It took a while before I decided to actually act on it.
Q. So at that point you approached Ms. Holman's apartment door, right?
A. Yes, ma'am.
Q. And you knocked on the door, right?
A. Yes, ma'am.
Q. And she opened the door?
A. Yes.
Q. You said she didn't resist.
A. No, not at all.
Q. And you did not tell her she could say no to you coming into her apartment, right.
A. She could say no anytime she wanted.
Q. But you didn't make that clear to her is all I'm saying. You didn't mention that fact.
A. It would be like anybody asked her if it was okay to

come in and talk to her and she said that's fine.
Q. But she didn't give you permission to go into the kitchen did she?
A. Excuse me?
Q. She did not give you permission to go into the kitchen.
A. She said come inside.
Q. But she did not give you permission to go into the kitchen.
A. She didn't specifically say kitchen, no.
Q. And she didn't sign any consent to search form or anything like that.
A. No, ma'am.
Q. And you said on direct with the Solicitor that you had met Ms. Holman once -- or you had met her before, right?
A. Yes.
Q. More than once?
A. Yes -- no, I'm sorry; yes ma'am, I've met a couple of times but specifically one time.
Q. One time that you remember at this point?
A. Yes. Like I said I'm out working and I see so many people -- it's so hard to keep track of everybody.
Q. Sure. You had even searched her apartment before though hadn't you?

A. Not that I remember.

MS. SEMAN: May I approach, Your Honor?

THE COURT: Yes.

MS. SAVAS: Ms. Seman, may I see that?

MS. SEMAN: Oh, I'm sorry.

[Whereupon, Ms. Seman and Ms. Savas review document]

MS. SAVAS: Your Honor, the State would object to this line of questioning. This is about a different resident at a different location not relevant to this case.

THE COURT: I appreciate that, Solicitor. You don't get to make that determination. You can object all you want. The objection is noted. Go ahead and continue your examination. Thank you, sir.

MS. SEMAN: May I approach, Your Honor?

THE COURT: Thank you.

Q. [Ms. Seman] Do you recognize this?

[Whereupon, the witness is shown document]

A. It's an incident report.

Q. And your name is at the bottom of that incident report isn't it?

A. Yes, ma'am.

Q. I'll give you a chance to look over it so you can refresh your memory.

[Whereupon, the witness reviews document]

A. I forgot all about this.
Q. I'm sorry?
A. I forgot all about this.
Q. Okay.
A. Like I said it's hard to keep track of everything I've done. It's like asking you do you remember that guy.
Q. Absolutely. I totally understand.
THE COURT: Would somebody tell me what this document is that you just handed him so I can make a determination as to whether it is relevant or not.
MS. SEMAN: Yes, Your Honor.
THE COURT: I mean y'all -- please do have some modicum of movement in this. Y'all are having a conversation. I can't -- that doesn't help me.
MS. SEMAN: Yes, Your Honor. I have shown Sergeant Sherwood an incident report from ---
THE COURT: --- from when and what?
MS. SEMAN: March of 2014.
THE COURT: All right.
MS. SEMAN: In that incident report he searched Ms. Holman's apartment.
THE COURT: I just need to know what it is. It's about this apartment.
MS. SEMAN: It's a different apartment but it's the

same person.

THE COURT: Okay, then what's the relevance of that?

MS. SEMAN: The relevance is that in that case he asked her to sign a consent to search form.

THE COURT: So what? I appreciate that.

MS. SEMAN: Your Honor, I'm happy to move on.

THE COURT: Just move on. You've already made -- he didn't ask in this case, okay.

MS. SEMAN: Okay. Thank you.

THE COURT: Thank you.

Q. [Ms. Seman] When you first came into Ms. Holman's apartment you were standing in the living room, right?

A. Yes.

Q. And the kitchen was next to the living room.

A. Directly in front of it.

Q. And the kitchen counter was in the back of the kitchen from your vantage point.

A. Yes. It's the way I explained it.

Q. Okay. How would you explain it?

A. It was directly in front of me.

Q. Okay. And that's where you say you can see the plastic bags on the counter.

A. Yes, ma'am.

Q. And more than that you say you can see the powder residue in those plastic bags.

A. Yes, ma'am.
Q. From where you were standing in the living room?
A. Yes, ma'am.
Q. And then you performed a protective sweep, right?
A. Yes, ma'am. You're missing things in it but yes ma'am that's in the timeline.
Q. Okay. What am I missing?
A. When they exited out of the bathroom and ---
THE COURT: --- you need to move closer to the microphone.
THE WITNESS: I'm sorry, sir.
A. When they exited out of the bathroom.
Q. [Ms. Seman] And when you performed the protective sweep you hadn't found anything illegal yet, had you?
A. I mean as in the bags for narcotics packaging?
Q. But you hadn't tested anything at that point.
A. I don't have a test kit that I can use that quickly.
Q. But you said it was obviously drug activity, right?
A. Yes, ma'am. From my training and experience that's definitely consistent with drug activity.
Q. And you suspected it but you weren't sure at that point.
A. I was sure.
Q. And you didn't see any weapons?
A. No, ma'am.

Q. And you didn't see any paraphernalia.
A. Scales, yes ma'am.
Q. And because of that no one was under arrest yet.
A. No, ma'am.
Q. Mr. Holmes wasn't under arrest.
A. No, ma'am.
Q. Mr. Boston wasn't under arrest.
A. No, ma'am.
Q. And Ms. Holman wasn't under arrest.
A. No, ma'am.
Q. They were all detained, right?
A. At that point, yes ma'am.
Q. And then you performed the protective sweep.
A. No.
Q. Okay. You didn't perform a protective sweep?
A. I did perform a protective sweep. After they removed themselves from the bathroom and came out they sat down on the couch after I believe it was Sergeant Hoose [phonetic] who checked the cushions to make sure there was no weapon there either and they sat down.

That's when I did a protective sweep. It's a very small room, very quickly done. It's not very much room for other people or weapons to be stored. That's where the Pyrex --

THE COURT REPORTER: That's where what?

A. The Pyrex cup, it's a brand of measuring cup.
Q. [Ms. Seman] And again Sergeant Sherwood you wrote the affidavit for the search warrant, right?
A. Yes, ma'am.
Q. You went before the Magistrate.
A. Yes, ma'am.
Q. In person.
A. Yes, ma'am.
Q. You swore an oath.
A. Yes, ma'am.
Q. Just like the oath you swore today.
A. Yes, ma'am.
Q. And in that affidavit you wrote that you approached that apartment because of drug deals didn't you?
A. Yes, ma'am.
Q. And as you mentioned before the reason that you approached the apartment was because of that landlord's complaint, right?
A. That and other complaints, yes.
Q. But you didn't mention any other complaints in your incident report.
A. No, ma'am.
Q. And the landlord's complaint didn't involve any drugs.
A. Not in that incident report no ma'am. He's

complained before.

MS. SEMAN: Court's indulgence.

THE COURT: Certainly.

[Whereupon, Ms. Seman and Ms. Norris confer]

MS. SEMAN: No further questions, Your Honor.

THE COURT: Okay. Mr. Lewis.

MR. LEWIS: Thank you, Judge. And given the court's ruling about Mr. Shahid I assume I have a little bit of latitude as to photos here.

THE COURT: Yes, you do.

[Whereupon, Mr. Lewis and Ms. Savas confer]

MR. LEWIS: Judge, I want to clarify for you for the Solicitor's benefit that these were not taken the day of the incident because I took them myself.

THE COURT: Okay. That's fine. I don't know what that has to do with anything. If it resembles the apartment that's a cross-examination question, but again, that doesn't have anything to do with the questions.

MR. LEWIS: Thank you, Judge. Permission to approach the witness?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. LEWIS:

Q. Sergeant Sherwood I'm showing you something I've marked as exhibit number 2.

[Whereupon, the photograph is shown]

Q. Can you take a look at that and tell me if -- it's not going to be the same day but do you recognize that?

A. Yes. That's the same layout.

Q. Okay. And you should be able to see it on your screen as well. So having looked at this, this is actually from within the door frame, right?

A. Yes, sir.

Q. And you said that you were able to identify those baggies as definitely drug packaging material from right there.

A. Yes, sir.

Q. From here?

A. I mean that's a camera; that's not my eyes. That's a picture.

Q. I know. I get it. I'm sure you could see significantly better. But that's where you were.

A. Approximately, yes.

Q. Okay. And we're using the same -- we're talking about the same baggies that have previously been provided to the court, right?

A. Yes, sir.
Q. That you were shown. Is there anything at all in those?
A. There's a residue in them.
Q. Okay. So a white residue in a kitchen.
A. Yes, sir.
Q. And you immediately knew that to be cocaine. No question in your mind, no other possible substance.
A. It was packing narcotics doing a cut or for cooking.
Q. Well, is cut illegal?
A. An action of cooking, yes.
Q. If it's not packaged with cocaine is that illegal?
A. It depends on what it is. Cooking is a lot of things.
Q. Is baking soda illegal?
A. If baking soda is used then, no sir.
Q. Okay. Is flour illegal?
A. No.
Q. Is salt illegal?
A. No.
Q. Is sugar illegal?
A. No.
Q. Is cream of tartar illegal?
A. No.
Q. Or any other number of white powders in a kitchen

illegal?
A. No, sir.
Q. But from this distance you were able to immediately see that and using your eyes determine the chemical makeup of that substance at some point?
A. I mean no. I'm not a scientist so I can't ---
Q. --- exactly. But based on that you felt you had the ability then to conduct a protective sweep. Drug activity, right?
A. It was actually when they ran away from the microwave so it -- so to me at that point about weapons.
Q. Let's get back to that.
MR. LEWIS: And I'll try to be faster, Judge. I apologize.
THE COURT: Take your time. There's no problem.
MR. LEWIS: Ms. Seman was much more thorough than I normally am.
Q. [Mr. Lewis] In this you did a two page report in this case, right?
A. Yes.
Q. You did not mention that you saw someone slamming the door while manufacturing crack cocaine, did you?
A. No, it's not ---
Q. --- that would be a pretty big fact wouldn't it?
A. I mean maybe -- yes.

Q. Maybe?
A. Yes.
Q. Okay. But you didn't meet with them. You met with Ms. Savas at least three times.
A. Yes.
Q. Did you ever tell her that they slammed the door?
A. Yes.
Q. You did? When did you tell her that?
A. I don't know because you've asked me dates three different times. This is from 2015; I'm not 100 percent on what time and when.
Q. Sure. You met with her at least three times.
A. Okay.
Q. Was it the first time you met with her?
A. I have no idea.
Q. Okay. But you did definitely tell her that?
A. Yes.
Q. That they slammed the microwave?
A. Slammed, closed.
Q. Closed the microwave door.
A. That's fine.
Q. You told her that.
A. Yes.
Q. Okay. Do you acknowledge that in your incident report you did not say that anyone had anything in their

hands?
A. I think I said something -- no I did not put it.
Q. Right. But you did comment on their hands and how they appeared.
A. Yes.
Q. That they were visibly shaking.
A. Yes.
Q. You didn't put that when they came out you said as soon as you saw them their hands were visibly shaking. You can read your report.
A. Yes.
Q. And then after meeting with Ms. Savas you said that both parties had something in their hands. Not maybe, not their bodies were belayed; they did have something in their hands both of them, right? You told her that.
A. Are you telling me that's what I told her or asking me ---
Q. --- I'm asking you if you told her that. Yes, sure; did you tell her that?
A. I believed they had something in their hands they way they belayed their bodies.
Q. No, not believed. You definitely told her that they had things, each of them, in their hands.
A. I'm telling you what I said. I don't know what you're...

THE COURT: He's asking you did tell them that they both had something in their hands; that's the question.
A. I believe -- I'm telling you what I said. I believed they had something in their hands.
THE COURT: You can answer yes or no and you can explain it. Or you can explain it if you want to.
A. Yes, sir.
THE COURT: Thank you.
Q. [Mr. Lewis] So yes?
A. Yes.
Q. So you did tell her that they both definitely had something in their hands?
A. Not definitely. I mean...
Q. So if she sent us that information that they did that was a misrepresentation of what you told her?
A. I'm sorry, say it again.
Q. If she sent us an email saying that they both had something in their hands ---
MS. SAVAS: --- objection, Your Honor. The sergeant has no foundational knowledge of what emails I sent to defense. It's not relevant to this ---
THE COURT: --- he didn't ask -- he asked him a hypothetical, Solicitor. He said if she said it then would that be an incorrect statement. He's not saying that you sent something. He said if you did. Overruled.

Thank you.

MS. SAVAS: Thank you.

Q. [Mr. Lewis] If she sent a statement that said definitely they each had something in their hands is that accurately what you told her that they did; not maybe, not belayed, they did.

A. Possibly.

THE COURT: He's answered your question.

MR. LEWIS: Thank you, Judge.

Q. [Mr. Lewis] Did you at a later meeting then say specifically only Mr. Boston had something in his hands.

A. I could have.

Q. Did you or did you not?

A. I don't remember. You're asking me a specific time.

Q. No, no. I'm asking in a later meeting after the one we just talked about you said no, actually they both didn't it was just this guy [indicates].

A. Like I said I could not see their hands. It appeared they had something in their hands.

Q. So hypothetically speaking if there is an email that says that only this person [indicates] had something in this hands that's not what you told her?

A. I'm sorry; say that one more time.

Q. Hypothetically speaking if there was a conversation with Ms. Savas that says only he [indicates] had

something in his hands, not both of them, but only Mr. Boston you're denying that that ever took place? No, you never would have said that.

MS. SAVAS: Objection, Your Honor. He said just hypothetical, now he's asking ---

THE COURT: --- overruled. You will have a chance to ask him any questions, Ms. Savas, you want to ask him. You'll have redirect. Thank you.

MS. SAVAS: Yes, sir.

A. So?

Q. [Mr. Lewis] In a meeting with Ms. Savas would you have ever said only Mr. Boston had something in this hands?

A. Possibly.

Q. Okay. And you would agree with me that those three different versions are inconsistent with each other? There can't be nothing in their hands, both of them had stuff in their hands but I don't know what it is, and he [indicates] had something in this hands only? Those are not consistent with one another are they?

A. No, those are not consistent with one another.

Q. Thank you. I want to talk to you about your initial approach to the residence. What you testified to was that you sat by your car for about 15 minutes thinking about it, right?

A. Well, we were talking so.
Q. So the gentlemen, these two guys that you have identified had already gone into the house and had been inside for 15 minutes or so.
A. Approximately.
Q. Did you hear any screams?
A. No, sir.
Q. Did you see them carrying any firearms or any contraband as they approached the residence?
A. Not that I observed, no.
Q. Okay. So at the time you approached to conduct the knock and talk you saw nothing that suggested someone was committing a crime.
A. No, sir.
Q. Nothing?
A. No, sir.

MR. LEWIS: Judge, procedurally I know this is sort of awkward can I publish the video at this point and ask if it fairly and accurately represents what he saw, the layout of the apartment?

THE COURT: You can.

MR. LEWIS: Okay.

THE COURT: It's not admitted ---

MR. LEWIS: It's not admitted for anything ---

THE COURT: --- if that reflects it. Again, it was

not taken on the day of the...

MR. LEWIS: That's correct.

[Whereupon, the video plays]

Q. [Mr. Lewis] Can you see that on your screen?

A. Yes, sir.

[Whereupon, the video ends]

Q. Is the layout still the same as it was back when you saw it?

A. Yes.

Q. Obviously, this is taken after that and a different tenant and things like that.

A. Yes.

Q. But that would fairly and accurately from your experience represent the layout of apartment [redacted]?

A. That is apartment [redacted].

Q. I had asked it in the lawyer way but I appreciate it. And that is the same distance that you would have travelled into the kitchen to have seen this as contraband.

A. Yes.

Q. I want to talk to you briefly -- you mentioned that it was hot to the touch. Today after getting the search warrant in your incident report you said it was hot to the touch when you were doing the protective sweep? Do you remember what the ---

A. --- I saw steam coming -- you mean from the touch or from?
Q. Touch.
A. Initially when I saw it I used the back of my hand to see if it was at all warm but I could see that it was warm either way with the steam coming off of it.
Q. Okay.
A. So it was more of -- at that point that would be more of a figure of speech. It's obviously hot to the touch because of steam coming off of it.
Q. Okay. You also asked all three parties or at least Mr. Holmes and Mr. Boston if they would claim ownership of the drugs?
A. Yes.
Q. And no one claimed ownership of it?
A. No, sir.
Q. But what you testified to today is that you actively saw them basically whisking it up and then ran to the bathroom.
A. Yes, sir.
Q. But you asked them anyway?
A. Sir?
Q. You asked them anyway if that's what they were doing.
A. I'm going to just as out of an interview stance if

someone is going to admit to it.
Q. Okay.
A. It's kind of common practice for us.
Q. Today --
MR. LEWIS: If I already asked this Judge I apologize.
Q. [Mr. Lewis] Today you said Mr. Holmes; you said green shirt is how you described him was the one that had the object in his hands, is that correct?
A. Like I said I don't know about an object. The body was belayed as if they had something and they were concealing something.
Q. So hypothetically speaking you would have never said Boston was concealing something in his hands as they ran into the bathroom? You never said that?
A. Oh absolutely, I had said that.
Q. You did not say that?
A. Yes, I would have.
Q. Sorry; yes or no you did or did not ---
A. --- they're concealing something in their hands. I don't know what they're concealing. I'm believing that they are concealing something the way his motions and his body language was. That's what I saw through all my training and experience.
Q. Was that a yes or a no?

THE COURT: He answered the question very clearly. They are consistent given his answer.

MR. LEWIS: But Mr. Boston ---

THE COURT: --- you can argue the other way but that answer was responsive to your question in my opinion. Thank you.

Q. [Mr. Lewis] But specific to Mr. Boston, which one of these guys is Mr. Boston?

A. The gentleman on the left.

Q. Okay. So not the guy in the green shirt like you said in court today?

A. His last name is Holmes.

Q. Yes, I know that. You said today in court that the guy with the green shirt was the one who acted like a football player and ran into the other room with the stuff in his hands.

A. Correct. The reason I described it like was because when the quarterback hands off the football he conceals the football so he doesn't necessarily know if he has it or if it's a fake or not. That's what I mean by that.

Q. Okay. So your testimony for today would be you never actually saw any object in anyone's hands but if you were going to speculate it's the guy in the green shirt, not the guy in the black shirt?

A. They both belayed from me and they both did the

exact same thing.

MR. LEWIS: One moment, Judge.

THE COURT: Certainly.

[Whereupon, Mr. Lewis and Mr. Smit confer]

Q. [Mr. Lewis] Real briefly, there was no forensic processing of anything in this case?

A. You mean like DNA or fingerprints?

Q. Yes?

A. No.

Q. And when you touched you said you used the back of your hand?

A. Yes, those things get hot.

Q. No gloves on for you?

A. I could have but I don't remember.

Q. You never describe either of these gentlemen wearing gloves when you claim they're carrying this boiling pot of crack?

A. No, sir.

Q. But their hands were visibly shaking?

A. When they came out, yes sir.

Q. Didn't find any gloves?

A. No, sir.

Q. Okay. Thank you.

THE COURT: Now Solicitor you may redirect.

MS. SAVAS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. SAVAS:

Q. Sergeant Sherwood, just to touch to clarify one quick time when you wrote that complaint in your incident report about the landlord had made that initial about armed and dangerous suspects you weren't saying that those were these defendants are you?

A. No.

Q. Okay. That was just a reference about crime in that area?

A. Yes. And I talked to the officer that took the report I guess -- I didn't write that. I just talked to the officer that was there and he described it to me.

Q. Is it common practice when you are in a specific area like an apartment complex to sort of keep everything together for references for crime statistics or information?

A. Yes, absolutely.

Q. Sergeant Sherwood, you don't put everything you know in every single incident report do you?

A. No, ma'am. I'd write a novel if I did that.

Q. Okay.

A. It's the best recollection of that time is what I can put in it.

Q. About the search warrant Sergeant just briefly one

quick line.

MS. SAVAS: May I approach, Your Honor?

THE COURT: You may.

Q. [Ms. Savas] Sergeant Sherwood, could you read that first line under your probable cause.

[Whereupon, the witness is shown document]

A. That on March 6th, 2015 at approximately 5:25 p.m. members of the North Charleston Police Department went the [redacted] ---

THE COURT: --- slow down please, sir.

Q. [Ms. Savas] She has to take everything down that you're saying.

A. Oh, sorry.

Q. I'm usually the one talking fast; so slow down.

A. You want me to do it again?

Q. Yes, please.

A. That on March 6, 2015 at approximately 5:25 p.m. members of the North Charleston Police Department went to [redacted] Avenue, apartment [redacted].

Q. Okay. And can you just finish in reference to what?

A. Apartment [redacted] in reference to a complaint about drug deals using the apartments for drug sales --

Q. So apartments, correct?

A. Yes.

Q. And you meant the apartment complex?

A. Yes, ma'am.
Q. Which were you reasons for the area patrols and the crime that you say there were numerous complaints in that area?
A. Yes, ma'am.
Q. Okay. Also, just one more line, in your affidavit regarding the premises to be searched can you please what you wrote about that location specifically?
A. The location has been identified as the place where illegal narcotics are used, sold, or stored.
Q. Okay. And you're talking about that apartment complex, correct?
A. Yes, ma'am.
Q. Okay. Just to clarify Sergeant just briefly about Ms. Denise's capacity you're not a doctor?
A. No, I'm not.
Q. When you meant -- when Ms. Seman had asked you regarding her competency you told her that you do not think she had the capacity to say no to those defendants about entering her apartment.

Do you mean that they were threatening and intimidating her like to stand up to her or she doesn't understand how to say yes or no?
A. No, she possibly is intimidated by them.
Q. Okay. So you believe this is a case of

intimidation?
A. Yes.
Q. And at that time you believe she understood giving you consent to enter?
A. Oh yes, absolutely.
Q. Sergeant Sherwood, in common practice of knock and talks when you approached you don't need to know that a crime is actually occurring; it's an investigative technique, correct?
A. Yes, ma'am.
Q. Okay. And you felt you had enough information to approach the door?
A. Yes, ma'am.
Q. Okay. Sergeant Sherwood, Mr. Lewis alluded to baking flour cook ingredients. Did you see any other food items in that home?
A. No, I don't think there was anything food wise inside that home.
Q. There weren't bags of flour lying around?
A. No, there was nothing like that.
Q. They weren't baking a cake?
A. No. No cake baking.
Q. And why then did you think and believe that what you saw in residue was cocaine residue instead of like flour?
A. The way the bags were torn and sitting out on the

counter like that that is completely consistent with narcotics packaging or unpackaging I mean.

Q. So in your training and experience you're saying ---

A. --- I've seen that several times, yes.

Q. The same type of baggies.

A. Yes.

Q. The top open, residue?

A. Yes.

Q. Okay. So that's very common to cocaine preparing to make crack?

A. Yes, ma'am.

Q. Okay. Sergeant Sherwood, you had discussed with me on direct talking about when you came in the home you said in your report and today that you noticed the baggies upon entering the apartment, correct?

A. Yes, ma'am.

Q. So you weren't standing outside the door.

A. No, ma'am.

Q. Those photos that Mr. Lewis showed seem to be someone standing in the doorframe?

A. Yes, ma'am. When she opened the door and I asked if I could come in and speak with her she stepped -- according to the picture of the door open she stepped there [indicates] and so I came in of course and stepped to the left slightly.

Q. Okay. Just briefly, just real quick.

[Whereupon, the photograph is shown]

Q. So in this photo that they had shown you this [indicates] seems to be the doorframe, correct?

A. Yes, ma'am.

Q. This [indicates] is the bottom of the door.

A. Yes, ma'am.

Q. So you were already in here [indicates].

A. Yes. That bed [indicates] wasn't there.

Q. Okay. But you were already in this room looking at that counter [indicates].

A. Yes, ma'am.

Q. Okay. And so just to kind of get me straight where you were standing when you entered the home how far is that kitchen because this picture looks kind of strange.

A. Oh, it's really close.

Q. So to me ---

A. --- if you look at that bed there [indicates] they probably can't even open that closet.

Q. If I'm the kitchen counter where would you want to put me, here [indicates], here [indicates]?

A. A little bit further. Yes, right about there [indicates].

Q. So you can see that microphone right there [indicates]?

A. Yes, ma'am.
Q. Okay. Officer Sherwood, quickly, we met probably several times the past couple of years, correct?
A. Yes, ma'am.
Q. Okay. And with each conversation did I ask you different questions sort of to get a picture of this ---
A. --- yes, yes.
Q. Okay. And Sergeant Sherwood, are you giving more details even today on the stand with the questions from both defense and the State than what was in your initial incident report?
A. Yes, ma'am.
Q. Okay.

MS. SAVAS: Court's indulgence.

[Whereupon, Ms. Savas and Ms. Tran confer]

MS. SAVAS: Nothing further.

THE COURT: Recross, Ms. Seman?

MS. SEMAN: Very briefly, Your Honor.

THE COURT: Take as much time as you need.

MS. SEMAN: Thank you.

RECROSS-EXAMINATION

BY MS. SEMAN:

Q. Sergeant Sherwood, when Ms. Savas was questioning you, you said the incident report wouldn't contain everything you know, right?

A. I mean not everything. Yes ma'am, I said that.

Q. You said it would contain your best recollection at the time.

A. Yes, ma'am.

Q. But it should contain the important stuff, right?

A. Yes, ma'am.

Q. You also said that in your search warrant that the reason that you put down was about the apartment complex as a whole, right?

A. Yes, ma'am.

Q. Not the individual apartment.

A. Yes, ma'am.

Q. You also said that you believed that this woman had no capacity to say no to the defendants, is that true?

A. Yes, ma'am.

Q. Because she was intimidated, right?

A. Yes, ma'am.

Q. But you do believe that she had the capacity to say no to y'all, to the officers?

A. Yes, ma'am. I'm not --

THE COURT REPORTER: I'm sorry?

A. I wasn't intimidating her.

Q. [Ms. Seman] And you also said in response to Ms. Savas' question that you were giving more information today than you had previous, right?

A. Yes, ma'am.

Q. But you would agree with me that your memory would be better immediately after this happened than it would be today in court.

A. Yes.

MS. SEMAN: Court's indulgence.

THE COURT: Certainly.

[Whereupon, Ms. Seman and Ms. Norris confer]

MS. SEMAN: Nothing further, Your Honor.

THE COURT: Okay. Mr. Lewis, recross?

MR. LEWIS: Very briefly, Judge.

RECROSS-EXAMINATION

BY MR. LEWIS:

Q. You mentioned today that because of Ms. Holman's presence in front of you, you had to enter the house and step to the left?

A. Yes.

Q. Okay. So using our picture that we have I'm sure it's different than how you saw it.

[Whereupon, the photograph is shown]

Q. So you would have had to step to the left meaning the objects in front of you would have moved so you wouldn't be able to see that same angle that we see right here.

A. No, actually I could see when I stepped in there. I'm moving around. You can move your head and see a lot more. We call it tactically wise cutting pie.

You can actually when you walked in you could actually see the front of the microwave where both of them were standing and I could see the stove where you can't see in the picture.

And then I'm also standing in the doorway, because I've gone back and looked at it too also, I could actually see further towards to the right of the counter just in the doorway.

Q. When we actually took a video so that walks in and

you can see that on the video right there if you're coming through you cannot see that because there are two walls there are there not on either side of the doorframe?

A. There are two walls there.

Q. Okay. And you can't see through walls?

A. No.

MR. LEWIS: Nothing further.

THE COURT: Well, for the purpose of my edification I'm looking at the picture. There are red -- when you say right or left where the red object is are you moving in the direction of the red object or opposite the red object.

THE WITNESS: From the bed.

THE COURT: I understand. So the bed was there?

THE WITNESS: The bed was not there.

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

THE WITNESS: There was just a couch to the left over here [indicates].

THE COURT: You stepped what would be to my right looking at that picture?

THE WITNESS: Yes, sir. I'm sorry; no I stepped to the left.

THE COURT: So you stepped to the left side of that picture?

THE WITNESS: Yes, sir.

THE COURT: All right. Thank you.

Q. [Mr. Lewis] And so the microwave if it is in the back left corner would then be obstructed by the wall?

THE COURT: He doesn't have to agree with that.

Q. [Mr. Lewis] Don't agree with it.

MR. LEWIS: Sorry, Judge.

THE COURT: I can see it myself.

MR. LEWIS: Sorry, Judge.

THE COURT: Thank you. He can say what he wants. That's why I asked the question. Thank you. You may come down.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Let me take a break so we can -- you have what three more witnesses?

MS. SAVAS: Your Honor, I believe he did a thorough job so probably one.

THE COURT: That's great. We'll be at ease for about ten minutes.

MS. SAVAS: Thank you, Judge.

[Whereupon, court is in recess from 11:50 until 11:57]

THE COURT: Are you ready to call your next witness?

MS. SAVAS: Yes, sir. The State would call Ms. Denise Holman.

[Whereupon, Ms. Holman comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Speak into the microphone and say your full name and then spell your last name.

THE WITNESS: Denise Cassandra [phonetic] Holman, H-O-L-M-A-N.

DENISE HOLMAN,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Good morning, Ms. Denise.

A. Good morning.

Q. Ms. Denise, how old are you?

A. 52.

Q. And how far did you go in school?

A. I went all the way to the 12th grade and got my GED.

Q. You have your GED?

A. Uh Huh.

Q. Ms. Denise, we're going to talk about some things that happened a few years ago. Do you remember living at that apartment [redacted] Avenue, number 2?

A. Yes.

Q. Ms. Denise, I'm going to show you a picture. This is State's exhibit number 11.

[Whereupon, the photograph is shown]

Q. Ms. Denise, is this your apartment that you used to live in?

A. Yes, ma'am.

Q. Ms. Denise, you don't live there anymore, do you?

A. No, ma'am.

Q. Okay. And were you living alone at that time?
A. Yes.
Q. And how long did you live in that apartment?
A. Just -- years.
Q. Okay.
THE COURT REPORTER: How many years?
A. I don't remember.
THE COURT: A few years I think she said.
Q. [Ms. Savas] Some years?
A. Yes.
Q. And how long did you used to live in North Charleston?
A. Since I moved here. I had my kids here; about 30 something years.
Q. Okay. And how many kids do you have?
A. I have two, a boy and a girl.
Q. And are they grown children.
A. Yes, they grown.
Q. Okay. Where are you originally from?
A. New York.
Q. So Ms. Denise, I'm going to be frank. And I don't mean to embarrass you. Back then did you used to do drugs?
A. Yes.
Q. What kind of drugs did you used to use?

A. I used crack cocaine.
Q. Okay. That the one you used the most?
A. Yes.
Q. Are you using today?
A. No. Now I'm clean and sober.
Q. How long have you been clean?
A. About four months now.
Q. And were you part of a program to get clean?
A. Yes, I was.
Q. And did you just have something big happen yesterday?
A. Yes, I graduated --
Q. You graduated?
A. Yes, ma'am.
Q. I'm proud of you, Ms. Denise. So back then though you said you used to use crack.
A. Yes.
Q. And do you remember them [indicates] coming in your apartment to make crack?
A. Yes.
Q. And when they would come in and make the crack what would happen? Why did you let them in?
A. I've been knowing them from a while because I used to buy from them.
Q. You used to buy from them?

A. Yes.
Q. What would you used to buy from them?
A. Crack.
Q. Crack? So they would sell you drugs?
A. Yes.
Q. Did that happen a lot?
A. As much as I had money I guess.
Q. They were kind of your dealers?
A. If that's what you call them, yes.
Q. Okay. And when they came in to use your apartment what did they do in there?
A. Basically I guess they would cook it up.
Q. They would cook up the crack?
A. Yes.
Q. Would they give you any after?
A. What?
Q. Would they give you any after?
A. I was hoping for it.
Q. And that's why you let them in.
A. Yes.
Q. So it was kind of an agreement y'all had that they could come in and cook the crack and they would leave you a piece.
A. Uh Huh.
THE COURT: Is that a yes, ma'am?

A. Yes, ma'am. Sorry.
Q. She is writing down everything you say so you need to say yes or no; that's why he asked.
A. Okay.
Q. You're doing good. Ms. Denise, on this day did you invite them over or would they kind of show up whenever?
A. It was a show up.
Q. So sort of a routine that they would show up?
A. Yes.
Q. Okay. And you let them in your door?
A. Yes.
Q. And what were you doing while they are cooking all the crack?
A. I was playing on my game. I play videos on my phone.
Q. Okay.
A. So I was sitting in the living room playing my videos.
Q. So you were in your living room and they were in the kitchen?
A. Huh?
Q. They were in the kitchen?
A. Yes, ma'am.
Q. And did they usually bring the drugs to make in there or did you have it in your apartment already?

A. No, they usually bring it.
Q. They bring it, okay. So you would let them use your microwave?
A. Yes, ma'am.
Q. And you had -- I'm going to show you some pictures, Ms. Denise. I'm going to show you State's exhibit 17.
[Whereupon, the photograph is shown]
Q. Ms. Denise, is this your kitchen back then?
A. Yes, it is.
Q. And that was your microwave?
A. Yes.
Q. And that was all that baking soda up there [indicates]?
A. Yes.
Q. And that's where they were cooking it?
A. Yes, ma'am.
Q. You didn't have any food or anything up there.
A. No.
Q. You couldn't afford food?
A. No, not really.
Q. So when you were sitting on your couch playing games the police came and knocked on your door. Did you let them inside?
A. Yes, I did.
Q. And they asked to come inside?

A. Yes, they did.
Q. And on your own you said yes, they can come in.
A. Yes.
Q. You didn't tell them no?
A. No, I didn't.
Q. Did they threaten you?
A. No.
Q. Did they push you aside to walk in there?
A. No, they didn't do that.
Q. Did they yell at you?
A. No.
Q. And you remember they had their police uniform on?
A. Yes, ma'am.
Q. And did they say that they were the police?
A. Yes.
Q. And they asked for permission?
A. Yes, they did.
Q. And you said okay?
A. Yes, because I wasn't expecting nothing to go on.
Q. Right.
THE COURT: I'm sorry, what did you say?
A. I wasn't expecting nothing to be going on.
THE COURT: I see. Okay.
Q. [Ms. Savas] And do you remember where the police found the drugs?

A. No, I was in the living room part.
Q. Okay. So you stayed in the living room this whole time?
A. Yes.
Q. Okay.
MS. SAVAS: Court's indulgence.
THE COURT: Okay.
[Whereupon, Ms. Savas and Ms. Tran confer]
Q. [Ms. Savas] So Ms. Denise, just to clarify you recall this from March 6th, 2015, the day that they came in that house?
A. Okay.
Q. Okay.
MS. SAVAS: Nothing further from the State, Your Honor.
THE COURT: Cross-examine, Ms. Seman?
MS. SEMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. SEMAN:

Q. Hi, Ms. Holman.

A. Hello.

Q. Ms. Holman, you've had some health problems since this happened, haven't you?

A. Yes.

Q. You had a brain aneurysm, didn't you?

A. Yes, ma'am.

Q. And a stroke?

A. Yes.

Q. Those are pretty serious aren't they?

A. Yes.

Q. And recovery from that was a long process.

A. Yes, it is.

Q. And you were in a facility for a while, right?

A. Yes.

Q. But you're doing better now.

A. Much better.

Q. And since then though you've had some trouble remembering things haven't you?

A. Slightly, not much.

Q. For example you don't remember the name of that guy in the black shirt, do you?

A. All I know is by his street name.

Q. Okay. But you don't -- you do know his street name?
A. Yes, Bubba --
THE COURT REPORTER: --- what's his name again?
A. Bubba [phonetic].
Q. [Ms. Seman] And what about the guy in the green shirt over there [indicates].
A. Street name.
Q. Okay. And what's that?
A. D.
Q. In fact you even had trouble remembering when exactly this happened though haven't you?
A. The date?
Q. Sure or even just the general timeframe?
A. Yes.
Q. On March 6th, 2015 the day we're talking about today you were at home.
A. Yes.
Q. And you knew the guy in the black shirt and the guy in the green shirt.
A. Yes.
Q. And they came over to your house.
A. Not together.
Q. Okay. They came over separately?
A. Yes.
Q. But when they came over you didn't ask them to

leave?
A. No.
Q. You let them into your house.
A. Yes.
Q. They had permission from you to be there.
A. Yes.
Q. When the officers knocked on your door you opened the door.
A. Yes.
Q. And they asked you if they could come inside.
A. Uh Huh.
Q. And they didn't tell you that you could say no, though.
A. No.
Q. They didn't say anything about the fact that you could say no; that you could tell them no they can't come in.
A. I didn't say nothing like that, no.
Q. So you let them in.
A. Yes.
Q. And in your house on Clements Avenue when you walk in the front door you're in your living room, right?
A. Yes.
Q. And the kitchen was next to the living room.
A. Yes.

Q. It was separated by a door. There was a doorway there.
A. Yes.
Q. And there was a curtain in that doorway wasn't there?
A. Yes.
Q. The curtain separating the living room and the kitchen.
A. Yes.

MS. SEMAN: Court's indulgence.

THE COURT: Certainly.

[Whereupon, Ms. Seman and Ms. Norris confer]

MS. SEMAN: Nothing further, Your Honor.

THE COURT: Okay. Mr. Lewis, cross-examine?

MR. LEWIS: Very briefly.

CROSS-EXAMINATION

BY MR. LEWIS:

Q. Good morning.

A. Good morning.

Q. When you let them inside did they ask if they could look through your stuff?

A. Something like that. Well, when you say look through your stuff.

Q. Yes. Like look around and go through your property.

A. They asked if they could look around, yes.

Q. Did they ask you if they could do that?

A. I think so. I don't remember.

Q. Did you sign anything saying they had permission to search your house?

A. After the fact I did.

Q. You did? Tell me about that curtain. How did you have it set up?

A. I had it tacked up like with a nail hanging down.

Q. Okay. And when you talking about the curtain --

[Whereupon, the photograph is shown]

Q. And ma'am I know this is going to look different than when you saw it. Can you tell me -- this is court's exhibit 2. Do you recognize that, ma'am?

A. Yes, sir.

Q. This is a pretty neat screen. Show me where that

curtain would have been.
A. Right here [indicates].
Q. Go ahead and mark it.
A. Right there [indicates].
Q. So what would the curtain have covered?
A. The doorway.
Q. Can you see through it?
A. No.
Q. Okay.
MR. LEWIS: Nothing further, Your Honor.
THE COURT: That will be defendant's exhibit 2 for purposes of this proceeding.
[Whereupon, defendant's exhibit number 2 is marked by the court reporter]
[Whereupon, defendant's exhibit number 2 is entered into evidence by the court]
MR. LEWIS: Yes, Your Honor.
THE COURT: Recross [sic]
MS. SAVAS: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. SAVAS:

Q. Ms. Denise, just one question about that curtain. On the day they came in do you remember if it was down or pulled aside or not there at all?

[Whereupon, the photograph is shown]

Q. Now, this picture is not from that day. So in your head do you remember exactly how that curtain was?

A. Not exactly.

Q. Okay. That's okay.

MS. SAVAS: Nothing further from the State.

THE COURT: Recross?

MS. SEMAN: None, Your Honor.

THE COURT: Recross?

MR. LEWIS: No, Your Honor.

THE COURT: Thank you. You may step down, Ms. Holman.

MS. SAVAS: Your Honor, may I ask if this witness be excused?

THE COURT: Any objection?

MS. SEMAN: No, Your Honor.

THE COURT: She's free to leave. Thank you.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Is that the State's presentation by way

of testimony?

MS. SAVAS: Your Honor, no further witnesses.

THE COURT: Okay. Do you wish to call any witnesses in either of your cases?

MS. SEMAN: We do, Your Honor.

THE COURT: Very well. You may proceed.

MS. SEMAN: The defense calls Darell Boston.

[Whereupon, Mr. Boston comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: Please speak into the microphone and state your full name and spell your last name.

THE WITNESS: Darell Oneil Boston, B-O-S-T-O-N.

- - - - -

DARELL BOSTON,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SEMAN:

Q. Mr. Boston, how long have you know Denise Holman?

A. About 15 years.

Q. Where did you meet here?

A. In the neighborhood.

Q. And how did you meet her?

A. In the neighborhood.

Q. Do you have a nickname for her?

A. D.C.

Q. Have you been to her home before?

A. Yes. Not -- that was the first time I actually went to her Clements Avenue address but I've been to her other houses -- other apartments like the one on Calvert

[phonetic]. My home boy used to live downstairs. But she always got -- yes.

Q. About how many times do you think you've been to her home before?

A. In the past 15 years or so maybe 10.

Q. And what kind of reasons would you go over to her house for?

A. I mean people coming over. She got a lot of electronics and stuff over there too like laptops and stuff so I usually go over there and mess around with her electronics.

Q. Okay. What do you mean by mess around with her electronics? What kind of things would you do?

A. Like the last time I was there I was plugging up my phone actually uploading music.

Q. Did you ever spend the night at her house?

A. No.

Q. When you went to her house about how long would you spend there?

A. Long enough to do whatever I got to do. We used to get high at her house. We can smoke weed over there in peace.

Q. And you were an invited guest on March 6, 2015?

A. Yes. I actually called her and told her I was coming.

Q. And you had permission to be there.
A. Yes.
Q. And your reason for going to her house that day was what?
A. Uploading music on my cell phone. I just got out of prison and didn't know what was going on with what and I wanted some music on my phone.
Q. And where were you in the apartment when the police arrived?
A. Right there in the doorframe.
Q. And Mr. Boston I have to ask you this. Were you there to manufacture crack cocaine?
A. No.
MS. SEMAN: Court's indulgence.
THE COURT: Okay.
[Whereupon, Ms. Seman and Ms. Norris confer]
MS. SEMAN: Nothing further, Your Honor.
THE COURT: Do you wish to ask any questions, Mr. Lewis?
MR. LEWIS: No, Your Honor.
THE COURT: Ms. Savas?
MS. SAVAS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. SAVAS:

Q. Good morning, Mr. Boston.

A. Good morning.

Q. So you said that you knew Ms. Denise for about 15 years, right?

A. Yes, ma'am.

Q. And you would always go over there and y'all would go to her other homes but this was the first time at that Clements Avenue apartment?

A. Yes.

Q. So that was the first time in that apartment but you've been to her other homes?

A. Yes, Calvert [phonetic] Street. And she used to live in front of my cousin on Dorchester Road before that.

Q. Okay. And you knew she uses right?

A. Yes.

Q. And you knew like you said you can go smoke weed and do drugs and it's kind of peaceful because it's only her, right?

A. Right. Not only her; she has company and stuff over but she at her Calvert [phonetic] address she had a back room. We used to just sit in her back room and get high in peace.

Q. Right.
A. Without being out in public.
Q. Right. Without being afraid you're going to get in trouble.
A. Right, Right.
Q. Okay. And you just said you went over there this time because you just got out of prison?
A. No, not just got out of prison. But I didn't know anything about these phones and stuff, these smart phones but they did.
Q. And you were in prison for trafficking crack, weren't you?
A. Crack and cocaine.
Q. And cocaine. How many years did you serve?
A. Four.
Q. And you had ten over your head but you got out on four?
A. Yes.
Q. You got a history too, right? You got a history of cocaine charges?
A. No, one, two; two charges, two prior charges.
Q. So 2003, twice in 2009, and this was 2010 you were serving a trafficking charges so four years. That was '14 and this happened in March of '15. So just got done?
A. Correct.

Q. Okay. So you're pretty knowledgeable about crack and coke; that's kind of your thing?
A. No.
Q. What's your thing?
A. What's my thing like how?
Q. Like what's the one you most frequently use? Your charges are consistently cocaine and crack.
A. Which one I frequently use?
Q. Right.
A. None of those. I'm a weed smoker.
Q. Okay, you smoke weed. You just deal the cocaine and crack?
A. No, used to.
Q. Used too. I mean not right now. I'm saying back then you used to.
A. Yes.
Q. That's why you got those convictions.
A. Yes. That's why I pled guilty to those convictions.
Q. I understand. So in dealing that did you make it yourself or did you get it from other people?
A. No.
Q. So you got it from other people and then you would sell it.
A. Yes.
Q. And you would sell it to Denise.

A. I have sold her some.
Q. Okay. And you sold her crack before or just cocaine?
A. Crack.
Q. That's what she likes?
A. Well, actually I didn't even sell it to her. I gave it to her.
Q. Oh, that's nice. And you would give it to her how many times do you think?
A. Not very often. You can't make money if you give away your product.
Q. True. Good point. So when you would give it to her you would come over and use it together or you would just have her come pick it up from you?
A. I don't smoke crack.
Q. So would you come to her and give it to her or would she come to you?
A. If she needed something she -- we had each other's phone number.
Q. Right.
A. If she needed something if I had it she could get it. But I'm not even going to make excuses for being a drug dealer.
Q. You don't have to.
A. So that was past ---

Q. --- right.
A. This is present and we ain't even going to go through it. But if you want to we could but that's all irrelevant.
Q. Go through what?
A. My history.
Q. Well, we just talked about it a little bit.
A. I know. That's all irrelevant though.
THE COURT: Mr. Boston, you're here to testify so not to have a conversation. You're here to answer questions.
THE WITNESS: Yes, sir.
THE COURT: Thank you, sir.
Q. [Ms. Savas] So on this day on March 6th you went to Ms. Denise's home, correct?
A. Correct.
Q. And you said that you called her up?
A. Prior to that, yes.
Q. Okay. And you knew that she lived at that new place?
A. On Cody [phonetic], yes.
Q. So y'all got in a taxi and you came over to that Clements Avenue place?
A. Yes.
Q. And when you got that taxi did you have them come

back or how were you getting home after that? Did you have your car there?
A. Call the cab back.
Q. You were going to call the cab back?
A. Yes.
Q. And how long were you about to stay over there for?
A. As long as it took me to smoke my blunt and upload that music.
Q. I hear you. So not too long, just enough to get that done?
A. Yes.
Q. Did you call the cab ahead of time to let them know to come back or did you have his number? Do you have like you favorite cabbie?
A. A local cab driver?
Q. Yes?
A. He lives in the neighborhood.
Q. Okay. And did you tell him when you got into the apartment to come back to pick you up or were you going to call him when you were done?
A. I was going to call him to come back and pick me up.
Q. Okay. And on this day y'all were using Ms. Denise's kitchen, right?
A. No. I was using Ms. Denise's laptop.
Q. Okay. Were you ever in the kitchen?

A. No.
Q. So you never stepped inside her kitchen the whole time you were in there?
A. No. I stepped in the living room. The edge of the couch is right there at the doorframe to the kitchen.
Q. Sure, okay. You remember the police coming in, right?
A. I looked right at them.
Q. It's a small place and you can see them pretty clear, huh? Were you sort of surprised that Ms. Denise let them in?
A. No.
Q. Why weren't you surprised?
A. Because I watched her open the door.
Q. And she didn't fight them or anything?
A. No.
Q. She just straight opened the door.
A. Yes.
Q. They didn't push her down or yell at her?
A. No.
Q. None of that? So when the officers walked in were you standing in the kitchen, right?
A. Sitting on the couch at the edge of the couch.
Q. On the couch, okay.
A. I stood up and my phone fell off my lap.

Q. Okay.

MS. SAVAS: Court's indulgence.

THE COURT: Okay.

[Whereupon, Ms. Savas and Ms. Tran confer]

MS. SAVAS: Nothing further, Your Honor.

THE COURT: Okay. Redirect?

MS. SEMAN: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. SEMAN:

Q. Mr. Boston, when you were talking to the Solicitor you were talking about a history of dealing.

A. Yes.

Q. And you were talking about when you picked up those trafficking charges, right?

A. Yes.

Q. You're not talking about when this happened.

A. No.

Q. You're talking about those trafficking charges that you pled guilty to.

A. Yes.

Q. Right?

A. Yes.

Q. But even when you were dealing you said you didn't manufacture anything.

A. No.

MS. SEMAN: Court's indulgence.

THE COURT: Yes, ma'am.

[Whereupon, Ms. Seman and Ms. Norris confer]

MS. SEMAN: Nothing further, Your Honor.

THE COURT: You didn't vote in the primary I'll let you have an opportunity to ask any questions at this time.

MR. LEWIS: I'm still good.

THE COURT: Any follow-up, recross?

MS. SAVAS: Nothing from the State, Your Honor.

THE COURT: Thank you. You may come down Mr. Boston.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Do you have any additional witnesses, Ms. Seman?

MS. SEMAN: Your Honor, I believe we have one potential impeachment witness but we may want to call...

[Whereupon, Ms. Seman and Mr. Lewis confer]

MS. SEMAN: Is that all right with you?

THE COURT: Whatever y'all want is fine. Out of your order is good.

MR. LEWIS: There is no jury so I think we got a little wiggle room. We call William Holmes.

[Whereupon, Mr. Holmes comes forward]

[Whereupon, the witness is duly sworn by the Clerk of Court]

CLERK OF COURT: State your full name speaking into the mic and spell your last name.

THE WITNESS: William Holmes, H-O-L-M-E-S.

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WILLIAM HOLMES,

Having been first duly sworn,

Was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEWIS:

Q. All right William, keep your voice man up so she can hear you and the Judge can hear you.

THE COURT: Pull up closer to the mic too.

Q. [Mr. Lewis] Sometimes when we talk on the phone I have a hard time hearing you. Did you see Denise Holman in court today?

A. Yes, sir.

Q. How do you know her?

A. From out the neighborhood.

Q. How long would you say you have known her?

A. Like 13 or 14 years. Since I was a little boy she

was in the neighborhood as long as I can remember.
Q. Is she -- what is the nature of your relationship with her?
A. I'm just friends with her from out the neighborhood.
Q. Is she just a customer of yours?
A. I'm a dealer.
Q. Have you ever been to her home?
A. Yes, sir.
Q. You know why we're here. You know the case we're talking about. Were you at her home that day?
A. Yes, sir.
Q. What was your purpose of being at her home that day?
A. I was chilling and cooling out with Boston. We was going to get some music and get high.
Q. Okay. So for people who aren't as cool as you are excluding me what does chilling out cooling mean?
A. We just hanging.
Q. Socializing?
A. Socializing.
Q. Were you there for commercial purposes?
A. No, sir. Just to get high and party.
Q. Were you there to cook up crack?
A. No, sir.
Q. You got to be honest about something though did you have drugs on you?

A. Yes, sir. I had cocaine and marijuana.
Q. What was that for?
A. That's what we was getting high off.
Q. Okay. And did you posses that?
A. In my pocket, yes sir.
Q. Okay. And when the police came in and did what they did, did they ask you if they could search you?
A. Yes, sir.
Q. And what did you say?
A. Yes, sir.
Q. And you let them know you had it on you.
A. It was in my pocket.
Q. Okay. When you were in her home did you feel safe?
A. Yes, sir.
Q. Did you think that someone was staring at you?
A. No, sir.
Q. Or listening to you?
A. No, sir.
Q. Were you there to be in a private place?
A. What do you mean?
Q. Were you out in public?
A. No.
Q. Or were you in private?
A. Private.
Q. Okay. Did you think that someone would harass you

while you were visiting with Denise?
A. No, sir.
Q. Did you feel comfortable there?
A. Yes. I knew her for a good bit of years.
Q. Have you ever done anything around her house or done anything with her?
A. Probably helped her clean house after we eat --
Q. Did you ever see her kids?
A. I can't recall.
Q. But she did have kids that you knew about?
A. [Indicates]
THE COURT REPORTER: Is that yes?
Q. [Mr. Lewis] You got to answer verbally so that she can write it down.
A. Yes, sir.
Q. Again, just to sum it up did you view her as a friend or as a customer of yours?
A. Friend.
MR. LEWIS: Thank you, Judge.
THE COURT: Cross-examine, Ms. Seman?
MS. SEMAN: No, Your Honor.
THE COURT: Ms. Savas?
MS. SAVAS: Briefly, Your Honor.

CROSS-EXAMINATION

BY MS. SAVAS:

Q. Mr. Holmes?

A. Yes, ma'am.

Q. You had said that you knew Ms. Denise from the neighborhood, right?

A. Yes, ma'am.

Q. You knew her to be a user, right?

A. Yes, ma'am.

Q. And you even said just now that you were her dealer.

A. I said I'm a dealer?

Q. I must have misheard you. I thought you just told Mr. Lewis that you're her dealer.

A. I said I don't deal.

Q. Oh, you don't deal, okay. But on this day you did have cocaine in a plastic baggie in your pocket?

A. Yes, ma'am.

Q. And you had a plastic baggie of weed in your pocket?

A. Yes, ma'am.

Q. Okay. And it was one of them clear plastic baggies, right?

A. Yes, ma'am.

Q. And that's usually how you keep the cocaine in your pocket, not just loose; you've got it in a little baggie?

A. Yes, ma'am.

Q. Okay.
A. That's how it come --
Q. I'm sorry?
A. It came in a little baggie.
Q. It came in a little baggie when you got it?
A. The same way they find it in my pocket.
Q. So you bought it with a little baggie?
A. Yes.
Q. So that's how it was dealt to you?
A. Yes, ma'am.
Q. I hear you. And you used to do drugs with Ms. Denise at her house?
A. I just get high. I never get high with her.
Q. Okay. And you brought that cocaine over for her or for you?
A. For me.
Q. For your own personal use?
A. Yes, ma'am.
Q. Okay. And because you use too, right?
A. Yes, ma'am.
Q. But you even got some convictions for trafficking and some distributions in your past, right?
A. When I was -- yes, ma'am.
Q. Of crack?
A. Yes, ma'am.

Q. Okay. So you've been around it and you know it, right?
A. Yes, ma'am. That was when I was younger --
Q. Okay.
THE COURT REPORTER: What was the last thing you said when you were younger?
A. When I was younger 17 or 18.
Q. [Ms. Savas] And at this time you just had in -- this is 2015, in 2013 you had possession charges for crack and cocaine, right?
A. [Nods affirmatively]
THE COURT: Was that yes?
A. Yes ma'am; sorry.
Q. [Ms. Savas] And in the early 2000 late 90's that's when you had your trafficking crack charges and your distributions?
A. Yes, ma'am.
Q. And do you -- were you on the lease with Ms. Holman?
A. No, ma'am. Lease?
Q. Right. She was the renter on the apartment. You didn't pay any of her bills for her?
A. No, ma'am.
Q. Did you bring over any food or anything like that? Her cabinets were pretty empty.
Q. No, she asked if I could give her something to eat

like that but I don't bring no groceries.
Q. Okay. Y'all don't really hang out outside her place?
A. If I see in the street we'll sit and talk.
Q. Because you recognize her.
A. Yes.
Q. Okay. And you consented to the officers searching your person, right?
A. Yes, ma'am.
Q. And you saw Ms. Denise open the door for the officer, right?
A. Yes, ma'am. I was right there.
Q. You were right there. And you were standing in the kitchen, right?
A. No, ma'am. I was by -- like when you came in I was as soon as they walk in I was like right here [indicates]. I been the first one he grabbed.
Q. Okay. But you know that she had opened that door for the officers.
A. Yes.
Q. And they asked to come in ---
A. --- you can hear when --
Q. I'm sorry?
A. I hear when they say it was North Charleston.
Q. Oh you heard ---

A. --- I hear it when they knocked.
Q. Okay. And you've seen Sergeant Sherwood before right?
A. Yes, ma'am.
Q. And y'all actually saw him last night when they did a search warrant on your house.
A. Yes, ma'am.
Q. Which they found drugs there too last night, right?
A. Yes, ma'am.
Q. Some more cocaine?
A. They find -- I going to get high.
Q. Right.
A. It ain't been nothing major.
Q. And that's at your new place over on Craft [phonetic] right?
A. Yes, ma'am.
Q. Where they found all those drugs over there, okay.

MS. SAVAS: Nothing further, Your Honor.

THE COURT: Okay. Redirect?

MR. LEWIS: I always like to find out new information when we're in here.

REDIRECT EXAMINATION

BY MR. LEWIS:

Q. I assume you didn't get arrested?

A. No.

Q. All right.

A. No sir, I didn't.

MR. LEWIS: That's all.

THE COURT: Any questions?

MS. SEMAN: No, Your Honor.

THE COURT: Anything further?

MS. SAVAS: No, Your Honor.

THE COURT: Thank you. You may step down.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Any additional witnesses?

MR. LEWIS: Judge, ultimately it will be up to you about through Officer Sherwood's testimony and the issues we talked about before with those emails. I think he was certainly inconsistent with the accounts that were provided to us and were provided to you in our motion to suppress.

THE COURT: Well bottom line I appreciate that. I don't think it's necessary for her to testify at this time to any of that. As I said I don't find it inconsistent with what he said. I find it to be fairly consistent. The real crux of this case is really not so much that part of it; it's what took place the day and I'm sorry that's the essence of it. And to me the issue that I want to re-read with specificity your briefs but I want to hear your arguments now. But I don't think it's necessary to have Ms. Savas testify.

MR. LEWIS: Yes, Your Honor.

THE COURT: It's not going to change anything because I don't think there is any inconsistency there. Thank you. At least that's my finding right now for purposes of this proceeding. I'll be happy to hear from y'all and then Ms. Savas you can respond to it.

MS. SAVAS: Thank you, Your Honor.

THE COURT: Ms. Seman, you've thoroughly briefed it but please feel free to state whatever you feel necessary.

MS. SEMAN: I'll only hit the highlights, Your Honor. I understand you've reviewed it. I don't want to waste the court's time but I do want to go over just a couple of things. Your Honor, the crux of the first issue is of course whether the defendants had a reasonable expectation of privacy in Ms. Holman's home. That's very important.

THE COURT: Let me ask you something because I haven't pulled all your cases. I haven't read them thoroughly. You have a case that says a visitor has a right to say -- they have to get the visitor's consent before they can search a home?

MS. SEMAN: I'm sorry?

THE COURT: Before they can enter a home that they have to get the people that everybody there has to consent to it?

MS. SEMAN: The officer's need the consent of a visitor before they can search is that what you're asking?

THE COURT: Yes.

MS. SEMAN: No Your Honor, I don't.

THE COURT: I hadn't seen one. Okay. So the

reasonable expectation of privacy doesn't have anything to do with in this particular case I don't quarrel the fact that they went there and they had a reasonable expectation of privacy as well. The threshold question to me here is knock and talk we all know what that means and the question of whether she consented to enter the house. Once you enter the house there is some testimony that I'll agree is in conflict.

It really doesn't go so much -- I was sitting here thinking oddly enough my first case that I ever had a trial in trafficking because there was a motion to suppress in that case too. That's when I first realized holy cow; this is a very serious offense and all you've got to prove is possession of the drug and the amount.

You don't have to prove they were making money. You don't have to prove any of these things. And it was a stop and the guy had it on his person, it wasn't in his car. They stopped him for a violation; no other issue and no other indication of anything at all. And he ran and when he ran they arrested him and searched him. incident to the arrest. Bingo.

Here we've got some conduct that I want to look at specifically and read the cases but was an activity described not so much whether he had anything in his hand or who had what because obviously if this case goes to

trial is going to be a possession case; who had it, constructive possession. And it also reminds me of the case I tried out of Sumter with all the people that were accused of Mr. Kline's [phonetic] involvement when he embezzled about six million dollars from the school district.

But one of the persons that was never charged was his right-hand man. And the questions were asked to him by cross-examination of a very competent lawyer you did everything my client did, why weren't you charged. He said I don't know. But it finally dawned on me it's like when you get stopped speeding and when you say I was going as fast as everybody else was going. Then the officer says that's fine but I didn't stop them; I stopped you. And therein lies the issue.

So whether or not he should have arrested her, whether it was her cooking the crack that's going to be obviously an issue from what I've heard right now it seems. But from the standpoint of the officer being present and observing what he observed it was probably there. Now I have some real concern about and no disrespect to the officer, about whether you can pick out that that's cocaine in a cellophane bag in a kitchen. If that was all I was dealing with I think I need to study really hard. But I've got activity of a person he's

described running into a bathroom coming out of a bathroom hands shaking. Now we're getting closer to that case of the guy that ran and that's my concern. So if you want to focus -- I've shared with you my thoughts and where I am. I haven't decided a thing but that's my -- and maybe I'm -- I share that also to say but Judge you're missing a major point here. So please feel free to continue.

MS. SEMAN: I understand, Your Honor. Thank you. I won't argue to you the reasonable expectation of privacy based on what ---

THE COURT: --- no, you briefed that.

MS. SEMAN: It's in the memo. And I would argue too that Your Honor even if Your Honor did not find that there was a reasonable expectation of privacy that South Carolina provides more protection than the 4th Amendment. And that the reason that South Carolina provides that and the reason we can tell that is that in the statute preventing unreasonable searches and seizures just like the language for the 4th Amendment it also prevents unreasonable expectations of privacy; that language is added.

So again I would argue that even if they don't have a reasonable expectation of privacy there is heightened protection under the South Carolina Constitution. That

brings us to the knock and talk. I'm glad Your Honor brought that up. In South Carolina knock and talks require reasonable suspicion. Reasonable suspicion is particularized. It's individualized. It's not a general reasonable suspicion. And Your Honor respectfully in this case I believe if we are considering that reasonable suspicion then he would have had reasonable suspicion to enter every apartment in the entire complex.

THE COURT: I'm with you on that. I understand. That's why I said the knock and talk is a threshold issue to start with.

MS. SEMAN: Yes, Your Honor. I don't think there was any reasonable suspicion here. There was no drug complaint as mentioned in the incident report. And the fact that he might have known our clients were involved in some illegal activity before or might be even then at that time is not enough to prove reasonable suspicion. So Your Honor again I would say that's an improper and unconstitutional knock and talk as I briefed.

As far as consent, Your Honor, I don't believe that the scope of consent was broad enough. I don't believe that the officer considered that that consent was free and voluntary. And I think that's the reason he felt the need to follow up with a search warrant because he had gotten a search warrant before. He had asked her to sign

a consent to search form before in another case and not gotten a search warrant. As far as plain view I agree with Your Honor. I'm not sure that he could really see or immediately tell the incriminating nature of a plastic bag in a kitchen. I'm not sure he could see residue from where he was standing either. And maybe my eyes are just worst than his; I'm not sure. Your Honor saw the pictures of the layout of the apartment and where exactly the bags were. And I don't believe those bags were in plain view.

As far as the protective sweep Your Honor, typically protective sweeps occur incident to an arrest. I agree with Ms. Savas, they are not limited to that reason. But there was no indication of any weapon being used. And in fact I'm especially troubled by the fact that the knock and talk without reasonable suspicion then led to an intrusion into every room in the house because if that were true, and I think the reason for limitation of protective sweeps ---

THE COURT: --- let me ask you a question ---

MS. SEMAN: --- yes, Your Honor ---

THE COURT: --- about the protective search. Maybe I just missed it but I didn't know that drugs were found on him.

MS. SEMAN: After.

THE COURT: After.

MS. SEMAN: That's my understanding at least, Your Honor, that is was after all this happened.

THE COURT: That's fine.

MS. SEMAN: But again as far as the protective sweep I think the reason that in general it is incident to an arrest is because at that point the State has already established probable cause. And at that point there is already reason to believe that a criminal activity has happened.

THE COURT: But again, I'm going to ask you this because again as I understand your client's testimony contradict everything the officer described. But we're not talking about snapshots; we're talking about things in motion.

He comes in and then there is activity in the kitchen, which he clearly no question about opening the door once he walked in the door there is no question from what I have seen there is no way that those two individuals if there is any activity, scurrying activity back there, there is a major concern if I'm a law enforcement officer what's going on back here. I've come into a place and somebody is moving around I'm now concerned especially in today's world. So I don't have any problem with his protective sweep. Again, we go back

to the threshold question to me and then there is clearly evidence that somebody -- now I agree with you the incident report is not consistent with what the testimony was but clearly the incident report has them coming out of the bathroom as I recall and then observing hands shake.

Then we've got going into the bathroom and then coming back out. So that's a matter for a jury to believe if believing that the drugs were not theirs and they were not even there because that's what they will have to believe and that probably I don't know if that will affect creditability of their position or not; that will be up to a 12 person jury.

But clearly, clearly there is enough for my concern to justify all of the things that follow once he enters that house. The activity and what he is describing. They denied that and that's fine. But I don't find that to be -- I find that to be credible frankly and so that part of it gives me enough concern that I would -- and I'm one that it wasn't similar but it was a terry frisk and I ruled you have to articulate it. And they said basically for officer safety and I heard the testimony for it. And I respect officers and God knows I wouldn't trade places with them and I thank them for what they do and the risks they take every day of their lives and I

mean that sincerely. But I suppressed that one because I didn't think it was proper. This one in that small area that we're talking about? Uh Uh. And I understand there was no -- your argument and I want to read specifically for this about activity in that house but there is no question that he's right. He better be remembering everything if you're going to protect yourself when you're out there. You better understand where I am.

And maybe that's a broad generalization of that and really a labeling of an area. It is what it is. But if they ignore that then they've made a mistake that could be deadly; it could cost them their lives. And so I don't have any problem with a heightened awareness and being attuned to anything that is just -- you know if it's as your clients have said they're sitting there, standing there and the lady is standing there all three of them then no, there is no reason for that. But I think...

MS. SEMAN: And Your Honor will be able to read the incident report and ---

THE COURT: --- I did ---

MS. SEMAN: --- and compare that with the officer's testimony ---

THE COURT: --- I do. But the incident report the difference is -- I agree with you there is some

significant difference insofar as sequencing as whether or not he saw hands, what he saw in the hands. He clearly said he saw the hands because I think you pointed that out; he saw them shaking but he doesn't describe it. But again, he's talking about his recollection and that will be up to the jury as to whether -- but excuse me for interrupting you.

MS. SEMAN: Oh, no Your Honor. One other thing I would like to mention is the fact that Ms. Holman testified while she was here today that there was a curtain inbetween ---

THE COURT: --- but she didn't remember if it was up or down ---

MS. SEMAN: --- the living room and the kitchen.

THE COURT: And I agree with you. And I don't disagree with that at all.

MS. SEMAN: So just responding to Your Honor about the furtive movements that supposedly happened if that were true those would have been hidden by the curtain.

THE COURT: If the curtain was down.

MS. SEMAN: Correct. Correct, Your Honor. At the end of the day, Your Honor, I think I briefed ---

THE COURT: --- you have thoroughly and very effectively too I might add.

MS. SEMAN: Thank you. Your Honor, we believe the

search was an illegal search; an unconstitutional search in violation of the 4th Amendment, a violation of South Carolina's heightened right to privacy. For those reasons we believe that all this evidence should be suppressed. Thank you.

THE COURT: Thank you so much.

THE COURT: Mr. Lewis?

MR. LEWIS: Thank you, Judge. I just had a phrase I needed to use that is fun that you don't ever get to argue to a jury but reasonable articulable suspicion is more than a reason.

THE COURT: Oh, I agree with that.

MR. LEWIS: Not just a reason. So when you're sitting there for 15 minutes and you don't hear anything and you don't see anything and just because you're in a high crime area doesn't give you carte blanche to go into anyone's home.

THE COURT: You and I -- I don't disagree with you. I don't disagree with anything you've just -- as I said to me the first question is what was the right to walk up and knock on the door. What was the necessity?

MR. LEWIS: And Counts says there is none. And I appreciate the State's efforts at saying to his training and experience and heightened sense of beliefs as a law enforcement officer. There will be none in either brief or anyone's brief or anything that has been provided to the court specific complaints to that residence, specific complaints regarding these parties; I'll defend them both while I'm here, nothing. And because of that if this happened in Kentucky where I'm from you're screwed because you don't have -- there is no reasonable suspicion required for a knock and talk. It is just an

investigative technique. But thankfully South Carolina cares about our privacy and has given us a nice case that gives us extra protection. The example that I try to use that frustrated me and I do have to comment on it briefly in regards to the reasonable expectation of privacy if Ms. Ford or Ms. Seman or anyone else comes over to my house for dinner and the cops kick in my door without a search warrant and arrest me they should be allowed to challenge that too.

THE COURT: Oh, I agree.

MR. LEWIS: And thankfully I believe the court has given us that.

THE COURT: We're all on the same -- I think that's the real crux of this particular case as far as I'm concerned.

MR. LEWIS: So you've got my brief. I'm not going to talk about any of the other stuff. But again I beg you to focus in addition especially today on 15 minutes of time that was testified to, I don't know whether it's true or not but that's what we were testified to, which means you're sitting there and you have nothing happening for 15 minutes. But let's go; let's go knock on this door. That's the problem and Counts says it's not okay. And for those reasons Judge I'd ask that you read that part of my memo and suppress. Thank you, Judge.

THE COURT: Ms. Savas?

MS. SAVAS: Thank you, Your Honor. May it please the court?

THE COURT: Sure. And Your Honor I appreciate you taking the time to read the briefs that were submitted so as well make it efficient to the points in question here.

THE COURT: Thank you.

MS. SAVAS: The State does contend that the defendants do not have standing in this case. And I will say this specifically there actually is a South Carolina case -- I'm sorry a Supreme Court case and that is again in Minnesota v Carter. That case is actually nearly identical to this case. There it was a drug transaction so the court determined that to be a commercial transaction. They did not have a reasonable expectation of privacy of that third person. In that case the officers had seen through a window the two defendants bagging cocaine.

THE COURT: And therein lies -- that's an important distinction for me because I don't have that right now.

MS. SAVAS: Right, well ---

THE COURT: --- not until the door is open.

MS. SAVAS: Correct, Your Honor. However the standing argument can be made that there was not a violation of rights because they do not have a reasonable

expectation of privacy. Therefore, once the court determined that there is no need to further analyze the knock and talk consent and sweep and search warrant because at that point in time they were not social guests. The defense is setting it up to say that these defendants were social guests. That's the exception.

The Supreme Court has determined when you are there for drug purpose only you do not have a reasonable expectation of privacy in the other person's home. Both defendants testified on the stand that they were there to use drugs. Now whether they were going to admit to the statement it was going to be crack or smoke weed it was there. Mr. Holmes had brought that cocaine into the home and weed; he admitted he brought it in there.

Ms. Denise had testified that she said that they did bring the cocaine. This is a common thing for them. It was not contested by the defense that they commonly go there to smoke weed and use drugs there. And Mr. Boston even testified to being her drug dealer. Ms. Denise said they got the drugs. They're from the same streets. She's a user, they fed that addiction. There is no relationship here outside of that. They testified when I asked they didn't take her out to dinner, they didn't fill her house with groceries; they weren't making dinner or nothing like that, Your Honor. All they were there to

do is simply make crack as the evidence and photo evidence proves that in this case. Whether they are going to testify on the stand as what they did or not as Your Honor had mentioned is a question for the jury. However, at this point in time there is no evidence to the contrary that they were there; whether they were playing music in the background, that's fine. Defendant Boston had testified he was only there for a short enough period of time to smoke some weed ---

THE COURT: --- smoke a blunt.

MS. SAVAS: Exactly, Your Honor. Which could take minutes, Your Honor just as it could be to make that crack. They testified they called the cabbie and they would come pick them up as soon as they were done. In that Supreme Court case the timeframe was an important distinction like it is here. They were only there for two -- they were there for two and a half hours in that case. In this case these defendants were here just enough to smoke that blunt or make that crack which Sergeant Sherwood testified can take as long as to boil water; ten minutes.

Your Honor, that is the distinction in this case. They were not there as social guests. They are not friends of hers. They were her drug dealers and she is an addict; that is uncontested. They used her apartment

to give her drugs; they left a piece. Sergeant Sherwood said that is typical for these sorts of situations. Ms. Denise said that's what they did and they said they brought her drugs to that home. Because of that, Your Honor and following the Supreme Court ruling although there is a heightened expectation of privacy in South Carolina and in the United States we have carved out these exceptions.

The Supreme Court specifically dealt with this isn't a vehicle pursuit, this is not their home. They are a third party. They do not have standing to contest these issues. They do not have a violation -- or an expectation of privacy therefore their rights cannot be claimed to have been violated. The exclusionary rule does not apply, Your Honor.

If the court does claim or rule that they do have standing; the knock and talk. Your Honor, the knock and talks as you had mentioned is for officer safety. That is the most important -- I'm sorry, the protective sweep. The knock and talks, Your Honor ---

THE COURT: Knock and talk first of all means I talk to you. Doesn't mean I go in the door ---

MS. SAVAS: --- sorry, that's in my head and I'm jumping around. The knock and talk, Your Honor the South Carolina Supreme Court in State v Counts actually

specifically said that this is an exigent circumstance and a compelling need for an official action and no time to secure a warrant. The United States Supreme Court ruled that they are permissible constitutionally. And in the 4th Circuit case nearly every circuit as I mentioned in my brief had determined that the voluntary response to officer's knock and talk at the front door does not generally implicate the 4th Amendment. And officers generally do not need probable cause or reasonable suspicion to just plain knock on the door. However, South Carolina did go ahead and say they need that articulable reasonable suspicion.

THE COURT: Precisely.

MS. SAVAS: Yes, sir in State v Counts. And they did say though that this is permissible to not hamper law enforcement investigative techniques. Sergeant Sherwood testified this is an investigative technique commonly used at the North Charleston Police Department and in law enforcement. You do no need to prove you are committing a crime. They don't need to be running free with guns and weapons flying through the air; just that there is reasonable suspicion. In this case, Your Honor ---

THE COURT: --- you're not Roy Moore are you?

MS. SAVAS: No.

THE COURT: Okay, thank you.

MS. SAVAS: In this case, Your Honor, Sergeant Sherwood testified there were several drug complaints in this apartment complex. He recognized these defendants as known drug dealers, which they even testified they had prior drug convictions for trafficking, distribution, possession charges. They are on proactive patrol in this area. They were on area checks. Sergeant Sherwood knew Ms. Denise was a user, had incidents with her specifically near that apartment and he ---

THE COURT: --- let me just ask you something.

MS. SAVAS: Yes, sir.

THE COURT: This is curious to me. Is it your opinion then because I know I see them and I know the Sergeant sees them too, repeat offenders, does that mean every time he sees someone that he has arrested he can just walk up to that person's door and say I'd like to come talk to you?

MS. SAVAS: Absolutely not, Your Honor.

THE COURT: Okay. I wanted to sure that we were -- I wanted to read that case otherwise.

MS. SAVAS: Yes, sir. But in the South Carolina case they do specify that there were anonymous tips that were there. There was other points that had led them to that house. They knew that drugs were previously used at that location. They had cars, things of that nature.

Here there was sufficient ---

THE COURT: --- that location meaning the apartment complex?

MS. SAVAS: Yes, sir.

THE COURT: Okay.

MS. SAVAS: That was in the State v Counts case. In this case they had known that there were drug issues. There were numerous complaints. So Your Honor as written in the brief and supplemented with his testimony today the State respectfully requests that you deny this motion as there was a lawful knock and talk performed as the investigative strategy technique at that point in time. That then leads to the consent, Your Honor. I don't ---

THE COURT: --- I really -- y'all have briefed that. You really don't need -- you can rely on your briefs there because I think I've articulated if I can get in my mind a legitimate constitutional right to get inside that door then I'm comfortable with everything else. No problem.

MS. SAVAS: Yes, sir. And one more issue on that knock and talk Mr. Lewis had brought up that I cited Sergeant Sherwood said his training and experience in State v Burden a Supreme Court -- or appellate case here, South Carolina appellate case they had said that an officer may rely on a law enforcement experience to infer

a specific reasonable suspicion, which is what Sergeant Sherwood had done here. As for the protective sweep, Your Honor, I think Your Honor had made clear points on that. That was for the safety and the State as well finds that to be lawful. I do not believe the search warrant is currently at issue. The State contends that is lawful as well.

THE COURT: Okay. Thank you. Response Ms. Seman first and then Mr. Lewis.

MS. SEMAN: Yes, Your Honor, very briefly. As far -- of course I disagree with some of the characterizations of some of the facts ---

THE COURT: --- of course ---

MS. SEMAN: --- but you yourself have heard them so I'm sure you understand that. As far as the Minnesota v Carter case I also disagree that it is about whether there is illegal activity happening. In Minnesota v Carter the court focused on the fact that it was a commercial enterprise. Of course that's what we are denying here and that's kind of the crux of the case. And whether something illegal was going on of course would be a question for the jury and not for Your Honor at this point in time.

However, that is the focus of that case and I don't think they are able to prove that at this point. I think you heard testimony from Mr. Boston and Mr. Holmes that there was social purpose. So again we would agree -- we believe that they have standing.

However, one thing that the Solicitor mentioned does I think bear on that. And she said in general knock and talks don't implicate the 4th Amendment, which means I'm not even sure they need to have standing to challenge the constitutionality of the knock and talk according to the 4th Amendment. I haven't been able to find a good answer

to that question, Your Honor.

THE COURT: My thought was and this isn't an indication of what my ruling is going to be, but maybe just so that we can get the law clarified in South Carolina this is the perfect case for it. There is no question about that. So we'll frame it up there and see.

MS. SEMAN: Yes, Your Honor.

THE COURT: And I think reading the recent case you can't do it until a conviction but the State might can do it if I keep it out right now. They can take it up given what the most recent decision I read from last week or week before.

MS. SEMAN: Your Honor, as far as the Counts case the case that we're citing for the proposition that reasonable suspicion is necessary for a knock and talk in that case officers performed a knock and talk. And the reason that they did that is because there had been a specific complaint at that residence. And so that's where the distinction is because in Counts the court did find that it was a proper knock and talk. They said it needed to have reasonable suspicion but they said it met that standard.

THE COURT: It did.

MS. SEMAN: So what we're saying here is there is nothing pointing to that apartment or to these people

that says that there is criminal activity happening. So we don't believe that they had the right to approach that door in the first place. Thank you.

THE COURT: Thank you. Mr. Lewis?

MR. LEWIS: I join.

THE COURT: And the other part of that there is no question the cases have said the officers may rely on with his or her experience and I understand that. And I certainly have an abundance of testimony concerning that officer's experience and what he has been doing with it. So I'm going to look at it, read it, and if need be I'll assemble the group to reargue but if not I'll just let you know. Thank you. I appreciate it so much.

MS. SEMAN: Thank you, Your Honor.

MR. LEWIS: Thank you, Your Honor.

MS. SAVAS: Thank you, Your Honor.

THE COURT: Thank you for your patience with me too. And Sergeant, I meant every word I said to you. Thank you so much.

SERGEANT SHERWOOD: I appreciate it, Your Honor.

********END OF TRANSCRIPT OF RECORD********

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina on the 30th day of November, 2017.

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

December 8, 2017

Joyce C. Rueger, CVR-M
Court Reporter

Certified Transcript provided to Benjamin Lewis, Esq.

Certification reference # 120817 (Original)

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON CASE NO. 2015-GS-10-06087

STATE OF SOUTH CAROLINA,

PLAINTIFF,

vs.

DARELL ONEIL BOSTON,

DEFENDANT.

TRANSCRIPT OF RECORD

FEBRUARY 5-7, 2018
CHARLESTON, SC

B E F O R E:

HONORABLE R. DENNIS MARKLEY, JUDGE, AND A JURY.

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(The following proceedings were held February 5, 2018, Charleston County, South Carolina, @ 10:56 a.m.)

MR. LEWIS: Judge, I understand from our bench conference, but I need to make my official objection on the record to going forward without my client being present. I ask the Court not to TIA.

THE COURT: What's the basis?

MR. LEWIS: I can tell the Court that I had contact with him over the weekend. It was not as specific as this courtroom on this date. It's please be here, our trial starts on Monday. Priority we are first up. I have not had contact with him today. I have attempted contact. But I think with this sort of case, especially one where I know the Court has ruled on my beliefs and consistencies from the suppression motion, the lack of the ability to talk about each party being identified separate times by Officer Sherwood would be incredibly detrimental to Mr. Holmes, I would ask that we not go forward.

THE COURT: You have numbers and you had contact with him and you just stressed all that to him? He was not aware that it was important and

critical he be here?

MR. LEWIS: I did not go that far, Judge.

THE COURT: I am sorry. That was a mistake then, Mr. Lewis. Thank you very much.

MR. LEWIS: I am saying I did not --

THE COURT: I understand you are making a technical motion, but your client knew the importance of being here and his case was going forward to trial, correct?

MR. LEWIS: Yes, Your Honor.

THE COURT: Thank you, sir. Your motion is denied.

MR. LEWIS: Thank you, Judge.

THE COURT: I don't want the record to reflect that there was some misunderstanding about what was going to happen today. Thank you.

MS. SAVAS: Your Honor, we have some brief housekeeping issues.

THE COURT: Before we pick a jury?

MS. SAVAS: One of the them, Your Honor, is just regarding timing and I wanted to confirm --

THE COURT: Timing of what?

MS. SAVAS: Just want to confirm, Your

or not you can be a fair and impartial trier in helping us resolve this dispute. And they really don't have any correct answers. They only pertain to you and are correct insofar as your answer is concerned in that regard.

First I'm going to identify the participants involved. Of course the party that brings the claim that is making a claim is the State of South Carolina. But the State has made claims against the individuals. We are trying them together. Mr. William Holmes and Mr. Darell Boston. Mr. Boston has been accused of committing the offense of manufacturing crack cocaine and possession with intent to distribute crack cocaine. He is present. Stand please, Mr. Boston, and face the jury panel.

(The Defendant stood.)

Mr. Boston is the gentleman in the middle. Thank you. You may be seated. Are there any members of the jury panel related by blood or marriage, have any business dealings with, are socially or casually acquainted with, have any connection with Mr. Boston? If so, please stand.

(No response from the jurors.)

Thank you. There appear to be none.

Mr. Boston is represented by Ms. Seman. If you will identify yourself and anyone that will be assisting you.

MS. SEMAN: Thank you, Your Honor. My is name Taylor Seman. I am representing Mr. Darell Boston. Along with me is co-counsel Pete Shahid.

THE COURT: Thank you. Are there any members of the jury panel related by blood or marriage, have any business dealings with, socially or casually acquainted with or ever been represented by Ms. Seman and Mr. Shahid? If so, please stand.

(No response from the jurors.)

Thank you. There appear to be none. Mr. Williams Holmes is also accused of committing the offense of manufacturing of crack cocaine, possession with intent to distribute crack cocaine and possession of crack cocaine. Are there any members of the jury panel related by blood or marriage, have any business dealings with, socially or casually acquainted with Mr. William Holmes? If so, please stand.

(No response from the jurors.)

Thank you. There appear to be none. Mr. Holmes is represented by Mr. Lewis; if you will

I give jurors an hour and-a-half just because of seating situations and finding places to eat. It's a little bit easier than just saying an hour. Today it will be a little bit longer because there's some matters of law that I need to take up outside of your presence and that will be -- we will talk about that more, but typically matters of law will be resolved when you are not here. Just like when you resolve the factual disputes we won't be present in your jury room. You haven't any evidence, of course are not at liberty to speculate or discuss the case among yourselves. Don't allow anybody while you are out to talk about this case in your presence or talk to you about serving on this case. Don't talk among yourselves. And have a good lunch. You will be exiting through the door there to your right. The bailiffs will show you to your jury room where you need to report. I'd ask you to be back in the jury room at 2:00. Have a good lunch and we will see you at 2:00. Thank you so much.

(Thereupon, the jury exited the courtroom at 12:08 p.m.)

THE COURT: I know there is some matters we need to take up, motions. An hour

should be enough time, don't you think, to hear those?

MS. SEMAN: I believe so.

THE COURT: From what I have looked at I think it is.

MR. LEWIS: I think more than enough.

THE COURT: Sir?

MR. LEWIS: I think that's more than enough time.

THE COURT: Let's be back about 1:15 and we will do that. And then I want to hear your motion and we will deal with any other matters you all have. Have a good lunch. Defendant has been on bond?

MS. SEMAN: He has been on bond, Your Honor.

THE COURT: I will allow him to remain on bond at this point. Hopefully we will hear from Mr. Holmes. Thank you, sir.

(A luncheon recess transpired.)

THE COURT: I will be happy to hear from you on the motions for the election. I think we briefed it, but I will be happy to hear from you.

MS. SEMAN: Your Honor, I did not make

the motion. I believe that counsel for --

THE COURT: Mr. Lewis, you did.

MR. LEWIS: I mentioned it in chambers. Having reviewed it --

THE COURT: You decided not to?

MR. LEWIS: I decided not to at this stage.

THE COURT: I figured.

MR. LEWIS: But I think that in the event that both -- I think that the controlling case says that when they go back to the jury they can only find guilt on one or the other. That's what we would argue.

THE COURT: Well, we will see where we are with that. I think that a lot has to be done between now and then in my opinion.

MR. LEWIS: Yes.

MS. SEMAN: I would agree with that.

THE COURT: There is no law that says an election -- in fact, on the civil side the only time that there is required to be an election is when there is different -- one is in law and one is in equity and in this I have found no cases. Thank you.

MS. SAVAS: Your Honor, for the record,

I did submit that brief on Friday regarding that.

THE COURT: All briefs are incorporated. That's fine.

MS. SAVAS: Thank you, sir.

THE COURT: Any other issues that we have in limine?

MS. SEMAN: Normal sequestration.

THE COURT: All right. Sequestration for all. Who is your case agent?

MS. SAVAS: Your Honor, Sergeant Sherwood is here with us. And, of course, my investigator and everyone else is sequestered at this time.

THE COURT: That would be fine. How many witnesses do you anticipate calling?

MS. SAVAS: Nine or ten, Your Honor.

THE COURT: Okay.

MS. SAVAS: The State would like to make a motion in limine, Your Honor, about one of the officers involved in this case. Officer Smoak is no longer with North Charleston Police Department. We just would respectfully ask the defense do not go into those details not relevant to this case. And I don't anticipate on calling her anyways, just to make sure that we don't get

into that line of questioning.

THE COURT: Wait a minute. If you are not going to call her then how do we get into the line of questioning?

MS. SAVAS: One of our witnesses is in internal affairs and I just wanted to just as a precautionary measure, she was involved in the case; however, I wanted to avoid that commentary.

MS. SEMAN: Your Honor, we didn't plan to go into it anyway even if she was called.

MR. LEWIS: The only reason she would be important would be for any statements. After our conference in chambers and from talking to the State it doesn't sound like they're going into any statements, so we are certainly not going to talk about a witness who is not testifying.

THE COURT: That would be my -- again, motions in limine are great, but I rule on any objection that you want to make about any question whether they are proper or not. So that's not a problem.

MS. SAVAS: Thank you, Your Honor.

THE COURT: All right. Anything else in limine?

MS. SAVAS: Yes, Your Honor. Just also

regarding our pretrial hearings and the ruling on the record, we just want to avoid again the calling into question the consent and search warrant knock and talk and actions of the officers since they were found proper. We wanted to insure that they did not go into any sort of muddy waters and raise question with the jury since they were found proper, those questions.

THE COURT: I'm not sure I understand that.

MR. LEWIS: I definitely don't either.

MS. SEMAN: Nor do I.

MR. LEWIS: The credibility issue is what we are bringing up.

THE COURT: All right.

MS. SAVAS: Right.

MR. LEWIS: And the --

THE COURT: I have ruled upon on the fact that the knock and talk met the standard. So that's my ruling. That's as a matter of law. But as far as whether they saw what they did, how they did it, that's all credibility issues.

MS. SAVAS: Absolutely, Your Honor.

THE COURT: Okay. So I mean that's fair game.

MR. LEWIS: One last part in regards to the suppression, Judge. I know that there was an order that accompanied it. I think to make sure that Mr. Holmes's record is complete I want to make sure that I'm not confused and that the Court found reasonable suspicion based on Officer Sherwood's knowledge that they had prior drug history and that Ms. Holman might be a vulnerable party. I do not believe there was anything else that contributed to that. If there is I wanted to --

THE COURT: The order has been reduced to writing so there it is. You have what the order says. That's what I signed so that's -- those are my reasons for it and if that's not in the record then it's not part of the order.

MS. SEMAN: For purposes of Mr. Boston's record, Your Honor, I would like to renew the motion as well.

THE COURT: I understand. That's one of the reasons we wanted it in writing. Frankly I wanted to frame it because I really think the courts seemingly go into this as I think Justice Pleicones -- although the dissent said why should they be treated any differently than any individual that goes up to a door. And I understand that they

throw in reasonable suspicion so they got to deal with that, but I think the order articulated those reasons that I said.

MR. LEWIS: Yes, Your Honor. And lastly, I know the Court won't hold it against me, I am trying to make my record. If I am objecting too much it is just because I thought and have always thought that was the most paramount part of this case for Mr. Holmes and I don't want to screw that up.

THE COURT: Mr. Lewis, one thing I have learned both as a lawyer, but more profoundly as a judge, and I will not, and if I do you request a bench conference so you can say, Judge, all I'm trying to do, don't restrict me. I encountered that, that's not pleasant, as a trial lawyer. I hope I've never done that. I don't plan to do it so, no, sir. That's as important as anything else in this case because one of the things that I have had, a conversation I had with somebody I was just talking about some of the issues in this case, I think I mentioned when I ruled, I'm sure there's a distinct rational distinction for why the State gets to appeal the suppression but the Defendant doesn't. That doesn't make any sense to me. The

risk of putting somebody on trial and then having to get up and have all the things that are associated with that and then it's no, no, you shouldn't have done that. Or you should have suppressed it. If I would have suppressed it there wouldn't have been any trial. So I don't understand that and I am saying that for the record purposes. I'm not being critical of anybody. I just appreciate them making it clear what it was supposed to be. So no, sir, no problem preserving your record.

MR. LEWIS: Thank you, Your Honor.

THE COURT: You bet. Any other issues we need to address? Anything else, solicitor?

MS. SAVAS: Nothing from the State, Your Honor.

MS. SEMAN: Just for housekeeping matters, Your Honor, we plan to question first, Mr. Boston will question first, and then Mr. Lewis has agreed to go second.

THE COURT: That's fine. We will keep that order throughout.

MR. LEWIS: And lastly I know you just commented on motions in limine and just for the purposes of the opening, the only other thing that

I would throw in, we talked about previously, we talked about field tests. And then the other issue is I hope there will be no testimony regarding Ms. Holman's mental state or the apartment complex is labeled for people with disability because there is not a witness to testify to that.

THE COURT: Again, things that are argumentative, we need to be strict with what the rules allow. It's non-argumentative statements concerning facts. And if there is any question, any challenge, reserve that for the argument, free to argue it all day long in the closing arguments, but not in opening statements, okay?

MR. LEWIS: Thank you, Judge.

THE COURT: Thank you. But, again, that's my statement of how I will probably rule, but until I hear it in the context in which it is made, I can't really rule in a vacuum. So I know we're told and as lawyers we want to be very careful about objecting during opening statements and closing arguments, but I don't know any other way to do it other than preserve the record than to do it as occurs. So okay. But I'm not going -- I think I have done it a couple of times. I can't deny that I haven't done it, but I try not to do

that sua sponte. So I will wait until the objection. Anything else?

MS. SEMAN: Not from me, Your Honor.

THE COURT: We will be at ease until 2:00 I think we said. Now, what about Mr. Richards?

MS. TRAN: Mr. Richards was here. I don't know if he is here right now.

THE COURT: If you want to see if he is there maybe we can have the hearing. Thank you. If he is I just want to have just a conference concerning the trial that we were not going to go forward at this time. When do you plan to try it?

MS. TRAN: Your Honor, I am in the process of checking with my witnesses and making sure they are available, but I believe we can go forward next month.

THE COURT: Next month.

MS. TRAN: The next trial docket is --

THE COURT: March.

MS. TRAN: Yes, Your Honor.

MR. LEWIS: Lastly, just to keep the Court aware, it puts me in a weird spot to update you about my client, but the phone was turned back on. It would not answer for me. Would answer for

something up and let me -- does the Defendant object to that?

MS. SEMAN: Defendant Boston doesn't object.

MR. LEWIS: To her being seated or to remain seated? No, I do not object.

THE COURT: The case was reversed because I objected -- I granted the motion and I said okay. That's fine. The lady said she would be fair and impartial. Thank you very much.

MS. SAVAS: Thank you, Your Honor.

THE COURT: Okay. The State ready to proceed?

MS. SAVAS: Yes, Your Honor.

THE COURT: Defendant Boston ready?

MS. SEMAN: Yes, Your Honor.

THE COURT: And Defendant Holmes is ready?

MR. SMIT: Yes, Your Honor.

THE COURT: Let's bring in our jury, please. The case is State v. Stone, the cite is 350 S.C. 442.

MS. SAVAS: Thank you, Judge.

(Whereupon the jury entered the courtroom at 2:03 p.m.)

THE COURT: Thank you, ladies and gentlemen. I hope you had a good lunch and we are ready to continue. Let me talk about before we administer your oath the seating. As I mentioned to the jurors, Ms. Daly and Mr. Robinson, when you left you were selected as alternates and that term really doesn't have any significance other than where you may sit right now. Your role would be at the conclusion of this trial if the first 12 are able to continue then you will not participate in the final deliberations.

But it is not uncommon for us to have the alternate move into the jury panel so please do not let that detract in any way from your attention and I know that it won't. While you are the alternates you may occupy any of those seats on the back row. The first 12 occupy the seats on the first two rows. The only other assigned seat is the first chair on the first end of the first row. That will be occupied at some point in time by a person I guess more common name is foreperson or foreman or forelady of the jury. I call them presiding jurors because that's what in essence you do. Someone has to be responsible for signing a verdict form on behalf of jurors. Someone has to

be responsible for receiving any evidence that may be introduced during the trial and then returning that evidence to the court when the jury has completed its deliberations. And the statute allows me to appoint the presiding juror or you to select the presiding juror. And it's been my experience over the last 24 years to let you pick the presiding juror. Once you have done that that person, if you will identify that person and I will ask that individual then occupy that first chair on the first row. Until that is done, please feel free to occupy any of the seats that are on the first two rows.

Again, you select, doesn't have to be done right away, just at some point take care of that. You may say what does that entail? Well, I guess in some minds they think the foreman controls the deliberations. I don't think that's the case at all. I don't think that's what happens in jury rooms. It has been my thought that a presiding juror is really a facilitator of deliberations. Some persons are better facilitators than others. And so that's why I say you pick the person and you select. Once you do that then that person can occupy that chair. Thank you very much. Give your

attention now to Mr. Urichio as he administers your oath.

(Jury sworn by clerk.)

THE CLERK: Let the record reflect the jury has been sworn.

THE COURT: Thank you. Thank you, ladies and gentlemen. You now have become the judge with me. As I mentioned to you when we qualified you and now the two of us, two in the sense of I and you as a collective body will work to resolve this dispute. You brought with you when you came in everything that you are going to need to apply with that. I told you there is no one in the world more qualified than you are to perform the task that you just accepted. Because what you said in essence is what we have been saying throughout this entire time, and you recall that last question I asked you before we selected the jury. And you each said there is nothing about this case that would give you any concern about your ability to decide the facts and the law and that you would be fair to both sides. That's precisely what you promised to do. You brought with you your common sense. Your sense of logic, sense of reason, those things and those tools

you've used in your life when you have had to make a decision and I really believe so strongly that's what you are going to do when you are instructed to begin your deliberations.

You also brought something else, we haven't said in so many words, you brought something else that's critical to honor that commitment. And that is an open mind. Because you said I don't know anything about him. There is nothing about it that would give me any concern about predetermining anything, and I will tell you now and remind you of it throughout the trial of this case you can't change that position. You can't remove that open mind until the Court tells you to begin your deliberation because if you do, then you will have violated your oath. You will have commenced your individual deliberations. Because that's what happens. In that part you will then discuss with your fellow jurors, discuss the case and until you get to that point, you are simply not to decide anything at all.

Now, you are going to hear evidence. And we're human. Some of us, I don't know what you are, I happen to live with someone who is a detail person. And if you happen to be a person like

that, then you want to hear all of it. You want to be able to think about it before you respond. Probably won't ask questions. Won't be able to do that. You can ask questions of your fellow jurors when you begin your deliberations, but not before.

But if you happen to be a bottom line person or someone accuses of me being too quick to get to a decision, maybe too quick sometimes, I confess that, that's the trouble that will get you in, then you're going to have to do something that's very uncommon. You are going to have to keep reminding yourself judge told me if I do that I'm going to be violating the oath. And it is important to the oath and it's important to the process.

Why do I say that? There are four distinct parts to this process to dispute resolution. Two of them the attorneys have a chance to speak to you. First opportunity will be in just a moment when I have completed my remarks and they will discuss with you in what we call opening statements. A broad overview of the dispute. They may discuss some of the evidence that they expect that you will hear, they even discuss some of the law that you will be asked to

apply. Those remarks will be helpful to you as we move into the evidentiary portion of the proceedings. And then after we have -- after you have heard all the evidence they speak to you again in what we call closing arguments. And the difference is quite obvious. You have heard the evidence. And now in the closing arguments they can discuss that evidence with you and suggest legal inferences that you may draw from that evidence. Their remarks I am confident you will find very beneficial to you. They are officers of this court as I mentioned to you when I qualified you. Very important responsibility, very important role in this process of dispute resolution.

So please give them your attention because I know you will. But remember something. Equally important. While they are officers of this court with a very important role never, never consider their remarks to be evidence. Because the evidence will come in through the testimony of the witnesses. And it is that evidence that you ultimately rely on.

After you have heard the opening remarks of the attorneys the State will proceed. Why is that? Because as I mentioned to you in this

state and every state in the United States as far as I know the party, in this case the State, who makes the accusation, accuses someone of committing a crime, that party alone has the responsibility of proving this case.

Now, I will tell you that the process of whether it is a civil case or criminal case that's involved, it's the same. The same four parts. But there are some differences in this case. In a criminal case they are significant. First of all, in a civil dispute the party that makes the claim is called the Plaintiffs. They have the burden of proving their claim. But there are occasions when the Defendant in that situation has a burden of proof. Maybe some of you may have sat on a civil jury. Don't expect that in this dispute.

Why? Because the Defendants have no burden to prove anything at all. They don't have to say anything. They don't have to present any evidence. They don't have to do one thing. Why? Because as I will charge you the law says you are to presume them to be innocent. That presumption is an active, real presumption. We will talk about that when I charge you. And it's sufficient. You

don't have to have anything else to carry the day so to speak. At the end of the trial when you are instructed to begin your deliberations if you are not convinced beyond a reasonable doubt that the State has established each element of the charge that they have made then you have to return a verdict of not guilty. Why? Because the State didn't remove that presumption of innocence which everyone is entitled to.

So that's an important distinction. The other very important distinction between a civil and a criminal, in a civil case typically the burden of proof that the party makes the claim has what is called the preponderance of the evidence or greater weight of the evidence. It's a legal name for most probable. Well, a criminal case is more than that. It has to be proof beyond a reasonable doubt. That's more than just be probably guilty. I will define it for you when I give you the charge, but I tell you now that a reasonable doubt is that doubt that would make an honest, sincere conscientious juror who is searching for truth in a case to hesitate to act or take some action. So that's the standard that you will apply.

When I say apply what do I mean by

that? Well, when we finish the trial, when we have gone through the three parts and you have received the charge, and the last instruction I will give you is when you may begin your deliberations. So until you hear that, please remember not only does it violate your oath that you have made, it violates the commitment that you have made to both sides, but it is also inconsistent with the law. Because the charge is when I give you the law and the last thing I will tell you is when you may start your deliberations.

So once you get that then you go back in and you start the process. And you are looking at the evidence. You take each element, I will define for you each crime that has been raised, and you will ask yourself am I convinced of that standard that the State met its burden of proof as to that particular crime? If your answer collectively is yes, then the State has met its burden and you must return a verdict of guilty. If on the other hand, it is not, one or more, has to be unanimous, if you are in agreement the State hasn't met its burden of proof the State has failed. Can't recover. You have got -- well, that would be a mistrial. If all of you agree and you

convince everyone then you must return a verdict of not guilty. Any verdict has to be unanimous. And I will tell you about that when we finish. But that's important to remember that it's only then that you begin that process.

Now, let's talk about what you are going to be deciding. You are going to be deciding the truth and credibility of witnesses. That's primarily what you do in your analysis. Somebody says something, you have to decide whether you believe it.

There are many things that we use to assist us in our life to make those types of decisions. We will talk about several of them when I give you my charge. And if you happen to hear something, you know, you and I both know it is not only what somebody says sometimes, but maybe facial expressions, maybe body language. You see something in the presentation of testimony that gives you some concern, make a mental note. Say that's something that's giving me pause for concern about the truthfulness or voracity what someone is saying in my life. But don't go to the ultimate conclusion. Don't say well, I don't believe it. Why? Because you would have started your

deliberations. But when you began your deliberations you bring that up. Maybe it will be confirmed that your feeling was correct. But then again maybe your fellow jurors can allay that concern and explain why that doesn't apply here.

So that's what I am saying. Don't make your decisions. Make those mental notes, of course, but just reach the ultimate conclusion of what you find to be credible or believable. Once you have heard the State's case, while the Defendant has nothing to prove or disprove they still have the right to present additional testimony if they choose to. A very logical reason also why you don't want to rush to judgment, you don't want to jump to a conclusion because you need to hear all the evidence before you make a decision. But most importantly, and more than just hearing it all, you also have to go through each phase of this process. It is critical to the process. It is critical to the fundamental fairness of what we do as judges in this case.

So I know that you will honor that. The last phase is when I will give you the law and talk about various elements and some other factors. And then I will give you that instruction to begin

your deliberations. And I am confident at that point you will retire, apply that common sense and sense of logic and reason that you have brought with you, then make your decision and change that open mind as to whether or not the State has met its burden of proof in this particular case because that's what a verdict says in a criminal dispute. Guilty means the State convinced 12 jurors that the person committed the offense. Not guilty means the State failed to meet its burden of proof and that jury of 12 said no, not entitled to a guilty verdict. And you will make that decision and you will do it fairly and impartially as you promised to do.

I thank you for your attention to my remarks and ask you give that same attention now to the attorneys as they give their opening statements. Solicitor, you may proceed.

MS. SAVAS: May it please the Court, good afternoon, ladies and gentlemen of the jury. In North Charleston there's an area called Chicora-Cherokee and in that neighborhood there's an apartment complex called the Clements Arms Apartments on Clements Avenue. Now, this area is known for high crime and drugs.

THE COURT: Sustain the objection. That's augmentative, solicitor. Confine it to statement of nonargument facts right now.

MS. SAVAS: Yes, Your Honor. On March 6th, 2015, Sergeant Sherwood was on patrol in that area when he noticed the two Defendants in this case exit a taxicab and go to Apartment No. 2. Sergeant Sherwood knows Apartment No. 2, a lady by the name of Ms. Denise lives there.

Now, these apartments are small. They are probably less than 500 square feet efficiencies. You walk in, there is a living room. You can see to the kitchen with an adjoining bathroom. Sergeant Sherwood also is out there with two other North Charleston officers, Sergeant Hoose and Officer Etminan who Sergeant Sherwood was training that day. For several reasons they decided to approach the door. Sergeant Sherwood knocked on the door and Ms. Denise answered.

Now, Ms. Denise is very friendly and she opened the door wide open. And she consented to having the officers come inside her apartment. Well, when Sergeant Sherwood stepped into the apartment he noticed the two Defendants in this case, Mr. Darell Boston and Mr. William Holmes,

standing at the kitchen at the microwave and immediately next to them on the counter were two clear plastic bags containing cocaine residue.

As soon as Sergeant Sherwood entered the apartment kind of made eyes, the Defendants turned around and saw him and immediately they scurried and ran into the bathroom in an attempt to conceal something from the police.

They had to call the two gentlemen into the living room. And for safety purposes Sergeant Sherwood had just done a quick sweep of the apartment to make sure no one else was there. As soon as he entered the bathroom sitting right on the bathtub was a clear plastic measuring cup with bubbling crack and a whisk. Immediately Sergeant Sherwood knew he had caught them in the act of cooking crack.

The Defendants then consented to the officer searching their person. Sergeant Hoose had searched Defendant Holmes and in his pocket he had found a clear plastic bag of cocaine and a digital scale. Later once the Defendants were taken into custody during a routine intake search at the jail that deputy, Deputy Newcomb, also found another clear plastic baggie of cocaine on Mr. Holmes. Due

to the evidence found in the apartment the officers then obtained and executed a lawful search warrant of the home. And they had found several items known to manufacturing crack. Pyrex dishes, measuring cups, the whisk, digital scales which are used to measure weight and drugs for sale, the cocaine, baggies of reside from the cocaine that they used to make the crack, and baking soda which they also used to mix in with the cocaine and water to make the crack and other items. The evidence was then collected and secured and eventually sent to Columbia at the South Carolina Law Enforcement Division where they tested these drugs. The Pyrex bubbling crack from the bathroom came back as a total weight of 5.83 grams of cocaine base or crack. The two baggies from Mr. Holmes's person from the search at the scene and at the jail both tested positive for cocaine as well.

The Defendants in this case were acting together and in joint cooking crack. So they were subsequently charged with manufacturing cocaine base or crack, possession with intent to distribute crack for the drugs that were actually found they made, that 5.83 grams, and Defendant Holmes was additionally charged with cocaine for the actual

baggies found on his person.

As the judge explained he will explain the law. That's something that we will come back in closing as well in our argument argue our positions and apply the law to the case. But to briefly discuss, manufacturing crack is what it seems. By finding the items that shows the intent to actually manufacture the crack, items used in making this. For possession with intent to distribute crack when there is a weight of a drug over only one gram, it automatically shows that is the weight needed --

MR. LEWIS: Objection.

THE COURT: What's the basis?

MR. LEWIS: The specific statement of law is inaccurate.

THE COURT: I'm going to instruct as you know they are to disregard the lawyers, either what you or the solicitor says the law is. Overruled.

MS. SAVAS: Thank you, Your Honor. If there is anything that I misstate or that the judge corrects, the judge is the ruler of the law. So what he says y'all apply.

Now, as Judge Dennis has mentioned, the

State has the burden of proof in this case. It is my responsibility and I take that very seriously. I take it seriously representing the State of South Carolina and our Charleston community in these matters. The judge will rule on the law. Your responsibility as a juror is to find the facts. Your role is to determine whether in fact they were manufacturing crack and cooking it at that time and whether they had that over five grams of crack in their possession to sell. And that possession can also be shared. It can be actual like on Holmes's person or constructive, so dominion and control which basically means within their reach and they knew it was there. Again something that we will revisit later.

You will hear evidence of the testimony from the officers that were there that day and from our chemist. Most importantly you will hear from Ms. Denise herself. Her apartment that was used at this time. And she will explain to you what exactly was going on in her apartment at that time. As I said, the State has the burden of proof in this matter. And given the overwhelming evidence and the testimony that you will hear throughout the course of this trial I am confident that you will

reach a guilty verdict on all charges for both Defendants. Thank you.

THE COURT: Thank you, solicitor.

MR. SHAHID: Thank you, Your Honor. Good afternoon. The State is trying to manufacture a case to make Darell Boston guilty. You will hear that on March 6th, 2015, Officer Sherwood and Etminan of the North Charleston Police Department were in the neighborhood near [redacted] Avenue on an unrelated call. All of a sudden they see a taxicab pull up. And they see two black men get out of the taxicab, go to apartment No. 2 at [redacted] Avenue. One of those men was Darell Boston. What you are not going to hear is that these two black men had anything in their hands when they got out of the taxi. They didn't have any Pyrex, didn't any have baggies, didn't have any scales, didn't have any guns, didn't have any drugs. What you also won't hear is you won't hear there was any sort of conflict inside that apartment. They merely knocked on the door and went inside.

But what you will hear is that you'll hear that Officer Sherwood and Etminan decided after waiting for some time hey, let's go take a

look as well. The owner of that apartment as the State said was a woman named Denise Holman. And you will hear that Officer Sherwood had known Denise Holman. When he goes to knock on the door she answers, they recognize each other. He knows that she lives there. And as the State said, she opens the door. She lets him in the apartment.

There's three people as I said in that apartment. One is Denise Holman, two, Mr. Boston and the third person being Mr. Holmes. The officers come in, they are going to tell you what they saw. They saw some clear plastic bags in Denise Holman's kitchen. They will tell you they saw a Pyrex measuring cup, baking soda and a whisk in Denise Holman's kitchen cabinet. You are going to hear they saw a black digital scale on her kitchen counter. And they are going to tell you that they found another Pyrex measuring cup and another silver whisk in Denise Holman's bathroom in her bathtub.

Members of the jury, these are tools that are used to make crack. And inside next to a Pyrex that was found in Denise Holman's bathroom next to Denise Holman's bathtub there was in fact crack cocaine. After drugs are found all three

members of the house are searched. Denise is searched. Mr. Holmes is searched and Mr. Boston is searched.

Now, did the police find any baggies on Mr. Boston? No. Did they find any guns on Mr. Boston? No. Any scales on Mr. Boston? No. Any whisk, Pyrex measuring cup on Mr. Boston? No. As I'm sure you guessed, there was no crack cocaine found on Mr. Boston.

Did they still arrest Mr. Boston? Yes. Manufactured guilt. Members of the jury, Darell Boston did not live at [redacted] Avenue, Apartment [redacted]. He had been inside that apartment for at most a few minutes. He did not participate and could not have participated at all in the criminal activity in that short time frame. On March 6, 2015, Denise Holman's apartment he was just there. He was hanging out. He was merely present. And that's not illegal.

Those three people inside of her apartment you need to think about and listen to the evidence in this case and consider which of these three people is unique? Which of these three just doesn't fit? Which of these three had the access, the opportunity and the ability to comit these

crimes?

We also ask you to consider the evidence you are not going to see throughout the trial. You are not going to see any body camera footage that shows the search. You are not going to see fingerprints from the Pyrex cups. You are not going to see any DNA from those metal whisks. In fact, you will not see any physical evidence whatsoever that links Mr. Boston to the crimes that were committed in [redacted] Avenue Apartment [redacted]. We are confident that when you go back to the jury room, you take with you not only knowledge of the case, the law the judge will charge you with and as Judge Dennis said your own common sense, you are going come to the one possible verdict in this case that is not only just, but it is fair in regards to Mr. Boston. We ask you to return that verdict of not guilty. Thank you.

THE COURT: Thank you. Mr. Smit.

MR. SMIT: Thank you, Your Honor. May it please the Court, facts don't change. The truth doesn't change. Pretty simple concepts, right? Certainly don't need a law degree to understand that. Facts don't change. The truth doesn't change. And on behalf of Mr. Holmes I'm asking

that y'all do one simple thing for me as we go through this trial for the next day or so. As Judge Dennis stated earlier to you, I'm asking that y'all use your common sense. Again, not a ground breaking concept here. As Judge Dennis stated earlier in his remarks to you, each of you is perfectly suited to try this case. You have all the tools that you need. Your common sense, I'm asking that y'all use your common sense as we go through the facts, as we go through the testimony. And I ask that you apply that when analyzing what you hear.

Now, as you heard from the State, as you just heard from Mr. Shahid, police arrive at the apartment in North Charleston. No. 2. Belonged to Denise Holman. As you have heard, Denise Holman is the only person who is not charged on that day. As police entered the house they proceeded through the house, officers noted what the State will present as drugs or the making -- the manufacturing of crack cocaine in the house. Police went up to Mr. Holmes and Mr. Boston. They detained them. They asked for consent to search both men and they agreed.

Now, I will tell you Mr. Holmes was

breaking the law that day. When Mr. Holmes was asked to be searched and he allowed them to search him he had a small amount of cocaine on him. When we get to the close of this trial and you are given the charges I ask that you find Mr. Holmes guilty, guilty for what he is guilty of. But as the only -- as the only correct facts will show Mr. Holmes and Mr. Boston were ultimately arrested and charged with manufacturing of crack cocaine, with possession with intent to distribute crack cocaine because they were in the home.

As I'm sure that you picked up at this point this is not an overly complex case. This is not a case that I believe any of us are anticipating that will take all week certainly. But I am asking as you go through the case to use your common sense when looking at the facts. Because if Mr. Holmes is guilty the facts should be there. What I am asking you is that you look as Mr. Shahid just mentioned a moment ago as to the facts that are not there.

What do I mean by that? The forensics evidence that should be provided by the State. A microwave the State will allege was used. Pyrex mixing cups. The State will not be able to present

any testimony that Mr. Holmes's fingerprints were on any of those items. The State will not be able to present Mr. Holmes's touch DNA, his unique biological code, was on any of those items. The testimony you will hear, the stories that you'll hear from the officers on that stand I ask you pay attention to what the officers say. To what facts that the officers are stating that they observed, to what facts very well may have changed throughout the course of this investigation.

How do we know if something is true? Because of the lack of facts. Now, no matter what your personal views or political views may be of the current system that we have, the one thing that I can tell all of you is that America has the greatest judicial system in the world and that has not changed. It is the greatest judicial system in the world because of one thing. Because when the government brings a charge against you you are not guilty merely because the government brings a charge. The government puts their case together. The government has to take each and every one of those facts, put those facts and make sure that they meet every single element. And if the government cannot do that, they have not met their

burden of proof and you must find a verdict of not guilty.

Members of the jury, I'm asking again as we go through the trial that you use your common sense, that you look at the facts, that you hold the government to that standard. Again, how do we know if something is true? Because of the lack of evidence. Facts can't change. The truth cannot change. Thank you.

THE COURT: Thank you, Mr. Smit. You may call your first witness, solicitor.

MS. SAVAS: Thank you, Your Honor. The State calls Sergeant Sherwood.

JOSEPH SHERWOOD

having been duly sworn, testifies as follows:

THE CLERK: Please state your full name and spell your last name for us.

THE WITNESS: Joseph Payton Sherwood, S-H-E-R-W-O-O-D.

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Good afternoon, Sergeant Sherwood.

A. Good afternoon.

Q. Where are you currently employed?

A. North Charleston Police Department.

Q. And what is your current job title at the North Charleston Police Department?

A. I was just promoted to sergeant.

Q. And how long have you worked at North Charleston?

A. Eleven years.

Q. And what are the different positions you held prior to being promoted to sergeant?

A. I was -- did six years in our special operations division. It's a vice narcotic unit called Speed Team. I also worked in narcotic detectives. I worked at SRO, school resource with children. I've also been on the SWAT Team now for quite some time.

Q. And what are your current duties as a patrol sergeant?

A. Right now I'm in charge of the South Evenings Team One, in charge of that evening shift team. I am also the -- one of the -- I'm training sergeant on the SWAT Team kind of like extra duty.

Q. When you say the south area, what sort of neighborhood does that encompass?

A. The Chicora-Cherokee, Wayland Terrace, Union Heights; it's our more violent end of the city unfortunately.

Q. And do you have any special training or specifications?

A. Yes. I have got a lot of different types of drug interdiction, drug identification, prostitution, there was quite a few.

Q. And in your career how many drug cases would you say that you have been involved in?

A. Thousands of them. I couldn't tell you a number.

Q. How many cases specifically involving cocaine or crack?

A. A good bit of those were definitely involved with crack and cocaine.

Q. So a few or out of thousands what would you say?

A. Good half of them were.

Q. So a few hundred?

A. Oh, yes, absolutely a few hundred of them.

Q. How many cases involving manufacturing crack?

A. I'd say around a hundred or so. That's not something we come across in law enforcement too often.

Q. And you have been involved in search

warrant cases?

A. Correct.

Q. And specifically narcotics search warrant cases?

A. Yes, lot of narcotic search warrants, mostly narcotic search warrants.

Q. Okay. And on March 6th, 2015, during the time of this incident what was your current job title then?

A. I was a private first class. I had also another collateral duty as a field training officer. I trained new officers coming in.

Q. And I just sort of want to start from the beginning. How did you get involved in this case? What were you doing that date out there?

A. I don't recall why we were in the area, but we were there for an unrelated call in the Clements Avenue, we call it Clements and Cody, kind of one of our problem areas. I was in that area for a call. Myself and another officer were speaking out front, my training course that was in my car. While we were out there I noticed a taxicab pull up and saw the Defendants exit out of the taxicab. I watched them walk up to Apartment [redacted] which I do know Ms. Denise, I have had several

run-ins with her. She was -- she was in a bad place, easily taken advantage of.

MR. LEWIS: Objection, Your Honor.

THE COURT: Basis?

MR. LEWIS: Calls for speculation and also how he is classifying the witness.

THE COURT: Sustained. Lay the foundation if you want to have an opinion.

BY MS. SAVAS:

Q. And, Sergeant Sherwood, did it kind of raise cause to you with these two men going into Ms. Denise's apartment?

A. Yes.

Q. And do you recall the address that that apartment was located?

A. [redacted] Avenue, Apartment [redacted].

Q. And in which city was that in?

A. North Charleston, County of Charleston.

Q. And what did you know about the housing in that area as a patrol officer?

MS. SEMAN: Objection.

THE COURT: What's the basis?

MS. SEMAN: Calls for speculation, Your Honor.

THE COURT: She asked what did he know.

I will allow him to answer the question. Overruled.

THE WITNESS: We have these things that are in the department called plan of the day. They come out daily. And they put on new complaints on there. Clements Avenue has been one of the ones that's been on there since quite a long time. That one -- this area specifically just before that we had a report taken by an officer, owner of the place was really concerned about the drug activity.

MR. LEWIS: Objection.

THE COURT: Sustained. Disregard that as hearsay. Answer the question. Solicitor.

BY MS. SAVAS:

Q. Yes, Your Honor. And as a result of the several complaints from that area were you tasked with anything special?

A. Yes. Like I said they -- we usually will amp up our patrol in the area when we get the complaints. We got something called comstat that we use in our department. It's a map basically showing where the crimes are and that's one of our areas.

Q. And what did you do after you had seen the Defendants walk into Ms. Denise's apartment?

What do you do next?

A. I actually told -- at the time it was sergeant. My sergeant was out there. I told him, I said look, I know those guys from another area in that neighborhood. And we kind of waited out front while we talked about it. Didn't really pay too much attention, that's Ms. Denise's apartment. I thought that was odd for those guys to be there at her apartment.

Q. And were there specific rules in the apartment complex that you knew about --

MR. LEWIS: Objection.

MS. SEMAN: Objection.

MR. LEWIS: Hearsay.

THE COURT: Let her finish the question, please. Don't answer the question, Sergeant Sherwood, until I hear the full question.

BY MS. SAVAS:

Q. Did you know any of the rules regarding the housing and the occupancy maximum or how many people are allowed to live in there?

THE COURT: He can answer the question as to whether he knew.

THE WITNESS: They are single occupancy.

THE COURT: No, you can't testify what they were. The question is did you know.

THE WITNESS: Yes, I did.

THE COURT: That's as far as I'm going to allow it. You can try to get it in another way, but that's the extent that I will allow it.

BY MS. SAVAS:

Q. Yes, Your Honor. And did you end up approaching the door?

A. Yes, I did.

Q. And what did you do when you approached the door? Who answered the door?

A. Ms. Denise. I knocked on the door and Ms. Denise answered.

MR. LEWIS: At this point, Judge, just the objection we discussed previously. I need to renew it.

THE COURT: Rulings have been made previously in this matter, matters of law that were heard outside of the presence of the jury. Those rulings continue. The objection is noted. The rulings of the Court are there. If you need to elaborate I will afford that opportunity at first break.

MS. SEMAN: Same objection for Mr.

Boston.

THE COURT: That applies to both Defendants. You may proceed.

BY MS. SAVAS:

Q. Thank you, Your Honor. Sergeant Sherwood, did you ask Ms. Denise consent to enter?

A. Yes.

Q. Did she give you that consent?

A. Yes, she did.

Q. And did you address yourself as a police officer?

A. Yes, I did.

Q. And did you tell her why you were knocking on her door?

A. Yes, I did.

Q. And what was her demeanor when she answered the door for you?

A. She seemed relieved. She did -- she kind of opened up the door, looked to see who it was and saw it was me.

MR. LEWIS: Objection.

THE COURT: Sustained. You can't -- that's an opinion under 602. Unless he can lay a foundation he can't give an opinion on how a person appeared or the definition of it. Lay a further

foundation if you want.

BY MS. SAVAS:

Q. Sergeant Sherwood, I'm going to show you some photographs. I am showing you what's been premarked for identification purposes as State's Exhibits No. 19 and 20. Do you recognize these?

A. Yes.

Q. And do they appear to accurately represent what is depicted in those photographs?

A. Yes.

Q. At this time, Your Honor, the State would seek to admit State's Exhibit 19 and 20.

THE COURT: Okay. Any objection?

MR. LEWIS: No objection.

MS. SEMAN: No objection.

THE COURT: Very well. Without objection State's 19 and 20 will be admitted. You may publish.

(STATE'S EXH. 19 and 20 in evidence.)

BY MS. SAVAS:

Q. Sergeant Sherwood, are these the apartments from that day?

A. Correct.

Q. And on your screen, you can touch it. Can you point to which apartment you approached

that was Ms. Denise No. 2?

A. Hard to see, it's blurry. This one.

Q. I am showing you State's Exhibit No. 20. And whereabouts were y'all standing when you had observed the taxicab pull up?

A. Right about here (indicating).

Q. So you were literally right out front of the apartment?

A. Yes.

Q. What happened when Ms. Denise gave you that lawful consent?

A. I went inside with her.

Q. And what did you notice upon entering?

A. The two Defendants standing in the kitchen area. I immediately saw them.

Q. And did you notice anything in view in the kitchen?

A. Yes, I took note of two plastic bags that appeared to have residue on them.

Q. Ms. Denise --

MR. LEWIS: Same objection from previously.

MS. SEMAN: Yes, Your Honor. Same for Mr. Boston.

THE COURT: Those objections have been

addressed. I will allow it. What are the exhibit numbers?

MS. SAVAS: No. 1, Your Honor, and Exhibit No. 7.

THE COURT: 1 and 7 are admitted subject to objection of counsel previously argued.

(STATE'S EXH. 1 and 7 in evidence.)

MS. SAVAS: Your Honor, the State would request to publish to the jury.

THE COURT: You may.

BY MS. SAVAS:

Q. I am showing you State's Exhibit No. 1. What is this a photo of?

A. That's the bag I saw on the counter.

Q. And who took these photos?

A. Me.

Q. You did?

A. Yes.

Q. Okay. And, Sergeant Sherwood, I'm going to hand you State's Exhibit No. 7.

A. That's the bag that has the residue in it.

Q. So these are the clear plastic baggies that you had found that day in the kitchen?

A. Yes, ma'am. They were more puffy and

pulled apart, but --

Q. They are kind compressed from being collected?

A. Yes.

Q. Sergeant Sherwood, I am also going to show you State's Exhibit 2, 3, 4, 5, and 6. Do you recognize these?

A. Yes.

Q. And do those accurately reflect what's depicted in those photos?

A. Yes.

MS. SAVAS: At this time, Your Honor, the State would seek to admit evidence items 2 through 6 and publish to the jury.

MR. LEWIS: I need to see what those specific ones are, Judge.

MS. SAVAS: (Handing.)

MR. LEWIS: Judge, I have specific objections in regards to 3, 4 and 5 that are in addition to the previous objection. It may be a matter of law.

THE COURT: All right. What's the basis of the objection just without arguing?

MR. LEWIS: It would be speculation and not qualified as an expert to render an opinion.

THE COURT: Well, I haven't heard what he's going to testify to, but as to whether -- that doesn't go to the picture -- the pictures are the pictures. Go to the testimony concerning that. So I don't understand that -- subject to that objection I will allow it, but I don't think that's pertinent as to the admissibility of the photograph. The photograph is a photograph. What he can testify about it, that's a different story.

MR. LEWIS: Yes, Your Honor.

THE COURT: Subject to the objection of counsel State's Exhibits 2, 3, 4, 5 and 6 are admitted. We will argue further on the record if necessary.

(STATE'S EXH. 2-6 in evidence.)

BY MS. SAVAS:

Q. Thank you, Your Honor. So Sergeant Sherwood, just to recap, you entered the apartment and you saw the plastic baggies and the two men at the microwave. Then what happened next?

A. They turned around and looked at me. And then that's when I heard, you know, the shuffling over there by where the microwave was located. You could hear the microwave open, close really quickly and they -- I guess I'd describe it

as a football handoff, both of them ducked down and went around the corner which I later found to be a bathroom. I wasn't too familiar with the inside of those homes at the time, but there was a bathroom right there.

Q. And when they went into the bathroom what did you do next?

A. I asked them to come back out because it scared me. I took it that as possibly a weapon being involved. Was really small kind of area, really -- I was pretty on edge at that point. Just the way, the demeanor as a possible weapon involved.

Q. And what did you do once you had called them into the living room?

A. As they came in the living room the other officer, he patted them down. I went back there to make sure there was no weapons or anybody else back there because I only saw those two gentlemen at the time. I just wanted to go back and make sure there was no one else in there. That's when I went into the bathroom and I saw that there was a Pyrex measuring glass cup and it had steam actually coming out of it and the crack sitting in it. How it is made is called cooking at

that point. But it's a round shape of a cookie sitting in the glass or along with the whisk with some tape around it. It was sitting next to it on the edge of the bathtub.

Q. And after finding those drugs what did you do next?

A. When I came back in I told everybody to detain everybody which we do that by placing them in handcuffs.

Q. And what happened once they were detained?

A. That's when -- prior to that Sergeant Hoose -- I don't know if I can talk about -- prior to that Sergeant Hoose, he requested consent and gained that and located some narcotics on Mr. Holmes and then that's when he started putting handcuffs is when I came back out and said cuff him, everybody was put in handcuffs.

Q. Once these items were found what was your next step in the investigation?

A. We removed them from inside of the apartment to keep the integrity of it. I went and typed up a search warrant and I had a judge sign it to just make sure we had a search warrant, our I's dotted and T's crossed at that point.

Q. And did you end up executing that search warrant?

A. Yes.

Q. Did you collect that evidence?

A. Yes, I did.

Q. And, Sergeant Sherwood, I am showing you State's Exhibit No. 2. And, Sergeant Sherwood, would you please describe what we see in the picture? What is the significance to you?

A. Like I said, this is the microwave they were standing in front of. When they left from it this is -- other than the microwave wasn't open. It was open at the time. I can circle? There is a scale sitting right here and then the top of the scale is sitting right here. Very common scale that's used. You see right here that's the box for old different type of scale. And back here that's more bags back there and then up here is the baking soda which is the cup that they used for manufacturing crack cocaine. It's 50 percent cocaine and 50 percent of a cut which in this case was baking soda. They use other things also at times. The other part I took note of was that the timer on the microwave is at a minute 54 so they never actually finished cooking it all the way.

They had a minute 54 I guess left on the microwave.

Q. So the microwave was in use upon your entry of the apartment?

A. Yes.

Q. And as -- given your training and experience in narcotics can you simply explain to the jury how you actually manufacture crack?

A. Yes. So normally what happens is you'll combine your -- you boil the water in a Pyrex cup, Pyrex being easier to measure the water out. Put the water in there. Certain part, they will put an amount of cocaine in it and an amount of baking soda in it. Boil the water. It will actually start to boil out of the Pyrex cup into the microwave. And they use the whisk, they call whip it, and it takes all the air bubbles out and turns to a hard rock. That's why it's called crack cocaine, a lot of people call it rock because it's a rock form.

Q. And, Sergeant Sherwood, I'm going to show you what's been premarked for identification as State's Exhibit No. 8.

MR. LEWIS: Same objection.

THE COURT: Same objection as previously argued? Subject to the arguments of

counsel that's been previously argued in this matter it is admitted.

(STATE'S EXH. 8 in evidence.)

MS. SAVAS: State requests to publish.

THE COURT: You may.

BY MS. SAVAS:

Q. Sergeant Sherwood, could you please describe what that is?

A. It's an AWS scale.

Q. And is that the scale that was found on the kitchen counter near the microwave that day?

A. Yes.

Q. So what does someone in your experience and training use a scale for?

MR. LEWIS: Objection, Your Honor.

THE COURT: Sustained. Doesn't matter what they can use the scale for. He can only confine it to testimony he found the scale. Thank you.

THE WITNESS: I can tell that you the scale --

THE COURT: No, sir. You can't answer the question until it is asked, sir.

BY MS. SAVAS:

Q. So this scale was found on the scene?

A. Um-hmm.

THE COURT: Is that a yes?

THE WITNESS: Yes.

BY MS. SAVAS:

Q. And, Sergeant Sherwood, I'm going to show you State's Exhibit No. 9.

MR. LEWIS: Same objection.

MS. SEMAN: Same objection.

THE COURT: Subject to the previous objection argued on the record State's 9 is admitted.

(STATE'S EXH. 9 in evidence.)

BY MS. SAVAS:

Q. State requests to publish to the jury. Sergeant Sherwood, is this the Pyrex cup found in that kitchen cabinet that day from the photo?

A. Yes.

Q. And, Sergeant Sherwood, I'm going to show you what's been premarked as State's Exhibit No. 10.

MR. LEWIS: Same objection.

MS. SEMAN: Same objection.

THE COURT: Subject to the previous objections argued State's 10 is admitted.

MR. LEWIS: Both Defendants.

THE COURT: Both of them. Unless I state otherwise it will be continuous for both Defendants.

MR. LEWIS: Thank you.

(STATE'S EXH. 10 in evidence.)

MS. SAVAS: State requests to publish to the jury.

THE COURT: You may.

BY MS. SAVAS:

Q. Sergeant Sherwood, this is No. 10. Is that the Pyrex you collected from the bathroom?

A. Yes, that's it.

Q. And how do you recognize that as being the one in the bathroom?

A. If you look at it you will see a ring around it. Not all of the cocaine or the baking soda will actually adhere to the cooking and when you're making it it will go on the edges so this actually right here has cocaine in it still.

Q. So you had mentioned this was the one that was --

MR. LEWIS: Objection, Judge, in regards to the labeling of the substance itself.

THE COURT: Overruled.

BY MS. SAVAS:

Q. This is the one you had mentioned that was found bubbling in the bathroom?

A. Yes.

Q. Sergeant Sherwood, what happened to the substance inside here?

A. I took it out, we put it into a BEST kit to be sent off to a lab to be analyzed.

Q. And just briefly, what's a BEST kit?

A. It's -- I am sorry. South Carolina Law Enforcement Division, it's the state law enforcement, they have a lab there. And we will package it into a BEST kit, just a manila envelope with some paperwork and plastic bag in it. And we will ship it off to SLED and let SLED test it because we don't have the funds at all to be able to test that kind of stuff.

Q. I will show you what has been marked as State's Exhibit No. 11.

MR. LEWIS: Same objection.

MS. SEMAN: Same, Your Honor.

THE COURT: Subject to the objection previously argued as to both Defendants admitted.

MS. SAVAS: The State seeks to publish to the jury.

THE COURT: You may.

(STATE'S EXH. 11 in evidence.)

BY MS. SAVAS:

Q. Sergeant Sherwood, is this that --

A. Yes, ma'am.

Q. -- baking soda from the kitchen cabinet?

A. Yes.

Q. You had mentioned -- how is this used to manufacture crack?

A. They will usually half it with the cocaine. Like I said, they will dilute it with the cocaine in order to make it a rock form.

Q. Sergeant Sherwood, I'm going to show you what's been premarked as State's Exhibit No. 12.

MS. SEMAN: Same.

THE COURT: Subject to the objection previously argued and ruled upon as to both Defendants it is admitted.

(STATE'S EXH. 12 in evidence.)

MS. SAVAS: The State seeks to publish to the jury.

THE COURT: You may.

BY MS. SAVAS:

Q. And, Sergeant Sherwood, is that the

whisk from that picture, looks like a little red is over it?

A. Yes.

Q. So you had located this in the kitchen cabinet?

A. Yes.

Q. And again in the manufacturing of crack what would this be used for?

A. To mix it into a paste so it can let it dry into a rock.

Q. Sergeant Sherwood, I'm going to show you what's been premarked for identification as State's Exhibit No. 13.

MR. LEWIS: Same, Your Honor.

THE COURT: Subject to the objection previously argued and ruled upon it is admitted.

(STATE'S EXH. 13 in evidence.)

MS. SAVAS: The State seeks to publish to the jury.

THE COURT: You may.

BY MS. SAVAS:

Q. Thank you. Sergeant Sherwood, what is that?

A. That's another whisk. This is the one that was next to the Pyrex with the crack cocaine

in it and you can look at it and there is still residue on the whisk itself.

Q. So this was -- you found this on the bathtub?

A. Yes.

Q. Why is that significant?

A. That's how you mix it. That's the one that they were physically using to mix it up with.

Q. Sergeant Sherwood, I am going to show you State's Exhibit No. 14.

THE COURT: Subject to the objection of counsel for both Defendants as previously argued it is admitted.

MS. SAVAS: The State seeks to publish to the jury.

THE COURT: You may.

(STATE'S EXH. 14 in evidence.)

BY MS. SAVAS:

Q. And, Sergeant Sherwood, is this the other item obtained from Defendant Holmes?

A. Yes.

Q. What is this?

A. Digital scale.

Q. Was this a result of Sergeant Hoose's consent to search of his person?

A. Yes, ma'am.

Q. This was found in his pocket?

A. Yes, ma'am.

Q. And, Sergeant Sherwood, I'm going to show you what's been marked for identification purposes State's Exhibit No. 15. And do you recognize this?

A. Yes.

Q. Okay.

THE COURT: What is it?

THE WITNESS: Crack cocaine.

THE COURT: It's a substance?

THE WITNESS: Yes, sir.

BY MS. SAVAS:

Q. Sergeant Sherwood, I'm going to show you for identification purposes only State's Exhibit No. 16. Do you recognize the item 1.1 in there?

A. Yes. It's a substance. Crack cocaine.

THE COURT: It's -- I assume it is a container containing a substance.

MS. SAVAS: Yes, sir.

THE WITNESS: It's a baggie.

THE COURT: Let him identify it in that fashion so we know what it looks like.

MS. SAVAS: Yes, sir.

BY MS. SAVAS:

Q. And do you recall where the 1.1 was -- where you had obtained that from, put it in that BEST kit?

A. This was the one from Mr. Holmes.

Q. And do you recall who gave you that? Was that Officer Etminan during the collection?

A. Yes.

Q. And 1.12, there's another small baggie. Do you recognize that?

A. Yes. That was the one taken from the jail.

Q. Okay. And do you recall who had given that to you?

A. A deputy at the jail. They do a strip search and they recovered that. Officer Smoak recovered that.

Q. And, Sergeant Sherwood, just to briefly go over it, you had then combined these into those BEST kits for testing?

A. Yes.

Q. And everything was properly sealed to the best of your knowledge?

A. Yes, ma'am.

Q. And, Sergeant Sherwood, do you recall what you did with the BEST kits and who collected this evidence to put it into evidence?

A. As in who physically put it into evidence? Myself and my trainee.

Q. And who was your trainee?

A. Pai Etminan. We call him Pai. He has a hard last name.

Q. And, Sergeant Sherwood, through your training and experience how long does it actually take to cook crack?

A. About as long as it takes to boil water, maybe a little longer. And then just let it sit and harden up and cool off and it will turn hard. Not very long.

Q. And was it enough time from the time that you had seen them go into the door from when you made entry?

A. Oh, yes.

Q. Okay. Showing you what's been admitted as State's Exhibit No. 6. And what is that a picture of?

A. That's what I saw when I went to the bathroom. That's a picture of crack cocaine in the Pyrex cup and the whisk sitting right next to it.

Q. So that's what the Pyrex looked like prior to you removing the crack from it?

A. Yes. That's -- and you can actually see a nice little circle like that.

Q. So it was these items that you had collected?

A. Yes.

Q. And you could just see them on the bathtub sitting there?

A. Yes.

Q. And who had brought those items into the bathtub?

A. Mr. Boston.

MR. LEWIS: Objection.

THE COURT: Sustained unless you can lay a foundation for that.

BY MS. SAVAS:

Q. Sergeant Sherwood, when you had seen the Defendants in the kitchen did you see them run into the bathroom?

A. Yes.

Q. And you had seen them immediately open the microwave?

A. Yes.

Q. And what is your understanding as to

what they were doing?

MR. LEWIS: Objection.

THE COURT: Speculation, solicitor. I won't allow that. Thank you.

BY MS. SAVAS:

Q. Sergeant Sherwood, when you approached the microwave did you do anything specific to that microwave?

A. We field tested it. We have a --

MS. SEMAN: Objection.

THE COURT: What's the basis of the objection?

MR. LEWIS: In regards to any conclusions drawn.

THE COURT: What do you usually do. I think he said field tested. That's fine.

BY MS. SAVAS:

Q. Just for the jury's understanding what is a field test?

A. Ours I have -- can I show you? Just a swab. You can swab cocaine with it and it has cocaine in it and it turns blue.

Q. And so --

MR. LEWIS: Objection to the science behind it, Judge.

THE COURT: He's testifying to a swab. He hasn't testified to the validity or anything. Overruled. Thank you. Allow the testimony what a field test is.

BY MS. SAVAS:

Q. Sergeant Sherwood, showing you State's Exhibit No. 3. Is that that cocaine swab you were discussing?

A. Yes.

Q. And it's a little blurry, but if I zoom in, can you please explain what that is?

A. So this is the cocaine swab that our department has on it -- has for us. What I did was I opened it up and I wiped the inside of the microwave on the plate area right there where I could see residue at and when I did that it turned blue as you can see a circle right here.

Q. What does the blue signify?

A. That it's testing presumptive --

MR. LEWIS: Objection.

THE COURT: I will allow you to cross-examine. Subject to objection of counsel I will overrule the objection. You may answer the question.

BY MS. SAVAS:

Q. What does the blue signify?

A. That it's testing presumptive for the presence of cocaine.

Q. And showing you what's been admitted as State's Exhibit No. 4, is that just a close-up of your swab?

A. It is. I just didn't have a good camera so the flash kind of --

Q. The lighting may have --

A. Flash kind of dimmed all out.

Q. And showing you State's Exhibit No. 5. And what is significant in this photo?

A. I took this prior to swabbing. So if you look at right around here, you can see that's the residue that comes off from when you are cooking it.

Q. And was there anything significant in the microwave then that you had found?

A. Not at this point.

Q. And given your training and experience in the field testing what was your determination about that microwave?

A. It's been used in the cooking of crack cocaine.

Q. And, Sergeant Sherwood, in

manufacturing crack you typically use a microwave to heat it up and boil the water like you had said?

A. Yes.

Q. Were there any other food items that you had located in that kitchen?

A. No, ma'am.

Q. So this is the picture of her kitchen? There was nothing else used for food?

A. No, ma'am. It was -- didn't have -- it was kind of -- was pretty empty.

Q. So there was no other items that you could possibly be baking with, no flour?

A. No.

Q. Sugar, cookies?

A. No.

Q. Okay. And, Sergeant Sherwood, did you ever see that taxicab again?

A. I did.

Q. You did?

A. I did.

Q. And when did you see it?

A. We were outside dealing with our paperwork we have to do when you arrest somebody. We were outside and the taxicab driver that originally dropped them off came to pick them up.

Q. Okay. Beg the Court's indulgence.

THE COURT: Okay.

(Off-the-record conference.)

MR. LEWIS: Judge, I need to object to that last statement as hearsay.

THE COURT: Thank you. Saw the taxicab?

MR. LEWIS: The reason that it was there.

THE COURT: The question has been asked and answered without objection.

(Off-the-record conference.)

BY MS. SAVAS:

Q. And, Sergeant Sherwood, do you see -- do you recognize anyone in the courtroom today as one of the Defendants from that day?

A. Yes, ma'am.

Q. And can you please point him out to me?

A. Right there (indicating).

Q. In the white shirt?

A. Yes, ma'am.

Q. Let the record reflect that Sergeant Sherwood has identified the Defendant Darell Boston in this case.

THE COURT: It will so reflect.

BY MS. SAVAS:

Q. And, Sergeant Sherwood, sort of explain briefly again the size of the apartment, how big -- would you say it would be about this blue carpeted area or a little bigger or smaller?

A. Probably a little smaller if you are talking from the table to here, probably about that. A little differently shaped, but yes, about that.

Q. And, Sergeant Sherwood, did you have a clear view once you entered that apartment of what was going on?

A. Yes, I did.

Q. Okay.

MS. SAVAS: Nothing further from the State. Please answer any questions the defense will have.

THE COURT: Ms. Seman.

MS. SEMAN: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. SEMAN:

Q. Good afternoon, Sergeant. I want to talk to you a little bit about your investigation. As part of any investigation you gather information, right?

A. Yes, ma'am.
Q. You respond to a call and immediately you begin to collect information, right?
A. Yes, I guess.
Q. You look around for things that might be important, don't you?
A. All the time, yes, ma'am.
Q. You talk to people?
A. Yes, ma'am.
Q. Potential witnesses?
A. Yes, ma'am.
Q. And you take notes about these things and these people?
A. Mentally usually, yes.
Q. At some point you decide to write down those mental notes, right?
A. Are you talking about this or in general?
Q. In a report?
A. Talking about a report? Yes, I take reports, yes, ma'am.
Q. And you have to be careful to record what you saw and what you heard, right?
A. Correct.
Q. You may ask witnesses to give some

written statements, right?

A. At times, yes, ma'am.

Q. To record what they saw or heard?

A. Yes, ma'am.

Q. But first, though, you look around and you listen, right?

A. In general or are you talking about --

Q. When you arrive at a call?

A. Every call is different. Yes, I guess, yes, ma'am.

Q. And then at some point you write down what you saw and what you heard?

A. If that scene calls for an incident report. We don't take reports for everything.

Q. But you do have a standard form official report that your office uses, don't you?

A. Yes.

Q. And your job when you write a report is to make sure that everything in the report has been written down accurately?

A. Best as I can, yes, ma'am.

Q. And that's a standard police practice, right?

A. Yes, ma'am.

Q. Here in Charleston and probably just

about everywhere else?

A. Yes, ma'am.

Q. And when you go to the academy you learn that practice of writing reports, don't you?

A. Not necessarily, no.

Q. You don't learn how to write a report?

A. That's done with your department, yes, ma'am.

Q. You were trained in how to write a report?

A. Correct, yes, ma'am.

Q. And everybody already knows how to write a report when they start on the job, right? They know how to write, not write a report, but they know how to write?

A. I hope so, yes, ma'am.

Q. I would think so. But everyone still has to learn how to write a report, right?

A. For the most part. Sometimes we get lucky and get people from other agencies.

Q. But report writing is special?

A. Yes, ma'am.

Q. It's different, it serves a purpose, right?

A. Yes, ma'am.

Q. Because documenting your investigation is very, very important?

A. Yes, ma'am.

Q. It helps your memory?

A. Correct.

Q. Because there is often a lot of time between when you write an arrest report and between when you come to court like today, right?

A. Yes, ma'am.

Q. For example, here this was almost three years ago, wasn't it?

A. Yes, ma'am, almost.

Q. And it would be difficult for anyone to remember a lot of details from something that happened three years ago?

A. It could be, yes, ma'am.

Q. Especially someone like yourself, right? Who sees a lot of cases and meets a lot of people every day?

A. No, I remember this one. This is kind of a special case.

Q. Okay. But anyway, you write down the important stuff in a report, right?

A. Yes, ma'am.

Q. And you work on more than one case at a

time, don't you?

A. Yes, ma'am.

Q. Cases that start on different dates, start at different times and have different witnesses?

A. Yes, ma'am.

Q. And it might be difficult to keep all the facts straight?

A. No, ma'am. I'm a professional. I have pride in my work.

Q. That's why you write a report?

A. Yes, ma'am.

Q. To help you remember?

A. Part of it, yes, ma'am.

Q. And you review that report before you come into court and you testify, don't you?

A. Yes, ma'am, a lot of times I will read them.

Q. Just like you did before you came in to testify today?

A. Yes, ma'am.

Q. And you have been cross-examined before, haven't you?

A. In the court? Or for this case in general?

Q. In general.
A. Yes, ma'am.
Q. You have been in court before, haven't you?
A. Yes, ma'am.
Q. Testified before in other cases?
A. Yes, ma'am.
Q. And when you testify in court you want to be truthful, right?
A. Yes, ma'am.
Q. And because you rely on your report when you testify that report needs to be truthful, right?
A. Report has to be truthful, yes, ma'am.
Q. It would be silly to write down anything false?
A. Right.
Q. The report needs to be accurate, right?
A. Yes.
Q. Meaning precise and detailed?
A. Best we can. We are not -- we're police officers so...
Q. But sometimes the details are important?
A. Correct.

Q. And it's not always easy to remember, right?

A. Right.

Q. Your report also needs to be complete meaning that it has to have everything that you know in it, doesn't it?

A. Best as I can.

Q. Because the truth if given in parts can be misleading?

MS. SAVAS: Objection, Your Honor. I am not sure of the line of questioning.

THE COURT: Overruled. It's cross-examination.

THE WITNESS: I said that would be a lie then. If you don't tell the truth it's still a lie.

BY MS. SEMAN:

Q. You took an oath to tell the whole truth?

A. Yes, ma'am.

Q. So your report needs to be true, needs to be accurate and needs to be complete, right?

A. Yes, ma'am.

THE COURT: Let's confine it to questions and not argumentative.

MS. SEMAN: Yes, Your Honor.

THE COURT: Thank you. You made your point. Move on, please.

BY MS. SEMAN:

Q. So let's talk about your report in this case. In this case you told the solicitor during your questioning that you approached Ms. Holman's apartment to check on her, right?

A. Yes, ma'am.

Q. But in your incident report you said that you approached her apartment for drug complaints, right?

A. Yes, ma'am.

Q. And in your report you even listed another case number, didn't you?

A. Yes, ma'am.

Q. A case number that referred to a report that another officer wrote?

A. Yes, ma'am.

Q. And you're familiar with that report?

A. Yes, ma'am.

Q. It was about something else that happened at the apartments, right?

A. Right.

Q. The report involved a complaint that

happened a week earlier when the landlord felt threatened by a non-resident?

A. That's part of it, yes, ma'am.

Q. Involved Apartment 13, right?

A. Yes, ma'am.

Q. And Denise Holman lived in Apartment [redacted]?

A. Yes, ma'am.

Q. And it definitely did not involve drugs?

A. The complaint?

Q. Correct.

A. Yes, ma'am.

Q. So to the extent that your report says you were responding for drug complaints under case No. 2015006889, meaning that other case, your report was wrong?

A. No. We have a plan of the day we go off a lot of times and that's where it's at our squad briefing that we go over where the specific complaints are. One complaint is trespassing, another would be drug activity. We have several different complaints from that area. To this day we still have them.

Q. But in this case your report says that you responded for a drug complaint under case

number 2015006889, right?

A. Yes, ma'am.

Q. But that complaint didn't involve a drug complaint?

A. I would have to look at the report. I don't recall offhand.

Q. I beg the Court's indulgence.

THE COURT: Sure.

MS. SEMAN: May I approach the witness, Your Honor?

THE COURT: You may.

BY MS. SEMAN:

Q. Let the record reflect that I am showing Mr. Sherwood an incident report, the incident report that he mentioned in his --

THE COURT: Let's have it marked for identification.

MS. SEMAN: Yes, sir.

THE COURT: Defendant's 1. ID only.

(DFT. EXH. 1, report, was marked for identification.)

BY MS. SEMAN:

Q. Officer -- Sergeant Sherwood, have you had time to refresh your memory on that?

A. Yes, ma'am.

Q. And this report definitely doesn't involve drugs?

A. No, it didn't say anything about drugs in there.

Q. You were in the area for a traffic stop, right?

A. Like I said, I'm sorry, I didn't recall. I'm sure that's what it was.

Q. At least something unrelated?

A. Yes. Completely unrelated.

Q. And you saw the Defendants get out of the taxi, right?

A. Yes.

Q. Together?

A. Yes.

Q. They didn't have anything out of the ordinary?

A. I just paid attention to their faces. I didn't continue to look at them.

Q. Didn't see a weapon?

A. No.

Q. Didn't see any contraband?

A. No, ma'am.

Q. Because if you had you would have stopped them?

A. Correct.
Q. And you didn't. Instead you sat for 15 minutes, didn't you?
A. Yes, ma'am.
Q. And you watched the apartment?
A. I didn't watch it, kind of stayed there in the area, but --
Q. That's when you decided to approach?
A. Yes, ma'am.
Q. Right? To see if a crime is being committed?
A. I mean that and to check on Ms. Denise, yes, ma'am.
Q. When you spoke with Ms. Savas you said when you came into Ms. Holman's apartment Mr. Boston and Mr. Holmes were at the microwave cooking crack?
A. Correct.
Q. You had a direct view to the kitchen?
A. Yes, ma'am.
Q. Nothing was in your way?
A. No, ma'am.
Q. And they were at the microwave?
A. Yes.
Q. That microwave is an important detail?

A. Yes.
Q. Important because you think it was used to manufacture crack?
A. Yes.
Q. So it's important evidence?
A. Yes.
Q. You say that the microwave was on?
A. Yes, ma'am.
Q. You say that something was inside?
A. I didn't say anything was inside. I never said that.
Q. But you say that the Defendants were actively manufacturing?
A. Yes, ma'am.
Q. And you say you know what was inside?
A. Yes, ma'am.
Q. You say it's a Pyrex?
A. Yes, ma'am.
Q. That Pyrex is important because you found crack inside of it?
A. Yes, ma'am.
Q. And you say it's that Pyrex you seized from that microwave?
A. Yes, ma'am.
Q. And that Pyrex is very important

evidence because you say that the Defendants were caught in the act?

A. Correct.

Q. The act being making crack?

A. Yes, ma'am.

Q. And catching somebody in the act is an important detail?

A. Yes, ma'am.

Q. The most important detail?

A. Right.

Q. Would make the whole case a slam dunk?

A. Yes, ma'am.

Q. Because you say you caught them in the act?

A. Yes, ma'am, I did.

Q. These are all incredibly important details and you would have written them down?

A. Yes, ma'am.

Q. And you wrote a report after this, didn't you?

A. Yes, ma'am.

Q. In the report, though, you don't say anything about this most important detail?

A. I would have to check, but, yes, ma'am.

Q. Would you like to refresh your

recollection?

A. No, I'm good.

Q. In your report you don't say anything about this?

A. I'm sorry?

Q. About the Defendants being at the microwave cooking crack?

A. Okay.

Q. You don't say they were standing at the microwave?

A. Yes.

Q. Would you like to see a copy of your report? I am happy to show it to you.

A. I'm fine. I believe you. I don't need to see a copy of it.

Q. You don't say in your report that the microwave was on when you came inside the apartment?

A. No, ma'am.

Q. You don't say something was inside the microwave?

A. No.

Q. You don't say that there was time remaining on the microwave?

A. No, ma'am.

Q. You don't say you saw them close the door, do you?

A. No, ma'am.

Q. You don't say that you learned what was inside the microwave at that time, do you?

A. No, ma'am.

Q. You don't say that anyone carried anything?

A. No, ma'am.

Q. And you definitely don't say that anyone had that Pyrex?

A. No, ma'am.

Q. You don't say anything about anything in anyone's hand in your report, do you?

A. No, ma'am.

Q. And you've said different things about who had what in their hands, haven't you?

A. No.

Q. Previously you have said that my client, Mr. Boston, had something in his hand, didn't you?

A. I said he tried to hide it from me. He concealed himself. I would assume that there would be something in his hand.

Q. Previously you also said on the record

that Mr. Holmes had something in his hand, didn't you?

A. Again the same thing. When you display yourself like that as if you were taking a football handoff I would assume you have something in your hands.

Q. And today you're saying you didn't see them, but they both had something in their hands?

A. Yes.

Q. Right? In your report you do say that two men came out of the back of the house, don't you?

A. The bathroom.

Q. And more than that you describe those men?

A. Yes, ma'am.

Q. You describe where they came from like you just said?

A. Yes, ma'am.

Q. You say their hands were shaking and their breath was labored?

A. Yes.

Q. Nothing about items in hands?

A. Huh-uh.

Q. Nothing about standing there by a

microwave?

A. No, ma'am.

Q. Right? Meaning that the most important detail was left out of your report?

A. It's an opinion.

Q. So your report was incomplete?

A. I mean if that's an opinion, but I guess.

Q. You never amended it?

A. No, we don't. We are not going to amend a report.

Q. You never filed anything like a supplemental report?

A. Huh-uh.

THE COURT: No?

THE WITNESS: No.

BY MS. SEMAN:

Q. And that's a report that you might file afterwards to correct or to add any details, isn't it?

A. A supplemental? At times. Like I said, I remembered this from -- pretty good.

Q. And you also asked everyone who the drugs belonged, didn't you?

A. Yes.

Q. That was important enough for you to write down?
A. Yes, ma'am.
Q. The drugs in this case were found in a Pyrex measuring cup, right?
A. Yes, ma'am.
Q. You recovered that cup?
A. Right.
Q. And you see it on the evidence table right now?
A. Right. The one that was steaming.
Q. And you put that into evidence?
A. Yes, ma'am.
Q. And you sent off the drugs and that BEST kit that you talked about with Ms. Savas?
A. Yes, ma'am.
Q. And SLED sent you back a report on those drugs, right?
A. Yes.
Q. And told you what they were and what they weigh?
A. Yes, ma'am.
Q. And that Pyrex is still in evidence, isn't it?
A. Right here.

Q. You all kept it for the trial and it's here on this table?

A. Right.

Q. But you didn't test it for fingerprints or for DNA, did you?

A. No, ma'am. DNA, we can't test for DNA. It's too extensive and takes too long.

Q. So you can't tell us whose fingerprints or DNA might have been on that Pyrex?

A. No.

Q. Also the baggies. You say those baggies are what alerted you to the criminal activity in the first place, didn't you?

A. Yes, ma'am.

Q. Plastic bag in the kitchen with the residue?

A. Yes, ma'am.

Q. You kept those?

A. Yes, ma'am.

Q. They are here in court on that table. But you didn't test those, right?

A. No, ma'am.

Q. Didn't send those to SLED, did you?

A. The bags? No. It's a residue.

Q. There were no fingerprints, no DNA?

A. Can't take fingerprints off bags.

Q. We don't have a lab report saying there was anything illegal in those baggies?

A. No, ma'am.

Q. You also seized other items like the whisk and scales, didn't you?

A. Yes, ma'am.

Q. You all kept those for testing or for trial, excuse me? Kept those for trial?

A. Yes, ma'am.

Q. But again no testing, right?

A. No, ma'am.

Q. No fingerprints, no DNA?

A. No.

Q. You said earlier that y'all did not arrest Denise Holman, right?

A. Yes, ma'am.

Q. Because you didn't think she was a participant?

A. No, ma'am.

Q. But she was there?

A. She was there, yes.

Q. She would have been a witness to what happened?

A. Yes.

Q. You didn't take a statement from her, did you?

A. Verbally.

Q. But you routinely take written statements from witnesses, don't you?

A. No. That's not the routine. Depending on what it is.

Q. I beg the Court's indulgence.

THE COURT: Certainly.

(Off-the-record conference.)

BY MS. SEMAN:

Q. And you have talked with other officers involved in this case, haven't you?

A. Yes, ma'am, I work with them.

Q. You have talked about this case specifically?

A. Yes, ma'am.

Q. And you talked with Ms. Savas before you came to court today, right?

A. Yes.

Q. You met with her in her office?

A. Not today.

Q. But before coming to court today?

A. Yes.

Q. Meaning at some point in time in the

past?

A. Yes.

Q. I apologize. And you have met with her several times?

A. Correct.

Q. At least three times?

A. Probably.

Q. Maybe even more?

A. Um-hmm.

Q. You reviewed your report and earlier statements, right?

A. Yes.

Q. And you talked about what you would say in court today?

A. Yes, ma'am.

Q. She asked you questions, right?

A. Correct.

Q. And she helped you remember some things?

A. Yes, ma'am.

Q. Because this happened a while ago?

A. Yes.

Q. Almost three years ago?

A. Yes, ma'am.

Q. Hard to remember what happened years

ago, though, right?

A. No. I mean depends. It's an opinion.

Q. You wrote a report and you talked with the solicitor?

A. Yes.

MS. SEMAN: No further questions, Your Honor.

THE COURT: Cross-examination, Mr. Lewis.

CROSS-EXAMINATION

BY MR. LEWIS:

Q. Good afternoon, sir.

A. Good afternoon, sir.

Q. I apologize ahead of time if this sounds cumulative; there is two of us working on it. I want to talk to you again about that original response. You said that you responded because of a callout board, something like trespassing or something like that?

A. I am confused.

Q. In your incident report? Why did you respond that day?

A. To that house?

Q. Yes.

A. We were in the area. Like I said then,

we had reports, we actually knew what those houses were used for, they were used for less fortunate people.

Q. We don't need to go into that. I think you're going beyond the question I asked you. I am not asking you who told you something about those houses. What I am saying is you gave an explanation as to why you were there that day. And that explanation was wrong, right?

A. For the traffic stop?

Q. No. For the drug complaint at the location under 2015006889 that Ms. Seman asked you about?

A. Right.

Q. Doesn't have anything to do with drugs?

A. Well, trespassing and drugs, we always look at go hand in hand.

Q. There is trespassing and drugs.

A. Drug dealers usually trespass.

Q. I'm not trying -- this is not a trick question. If I have drugs on me does that mean I have to be trespassing?

A. Not necessarily.

Q. If I am trespassing does it mean I have to have drugs on me?

A. No.

Q. Okay. So when you said you responded there for a drug complaint, that was not true, was it?

A. Not at the moment. We have had tons of complaints.

Q. Like you said, when you put something in there that's inaccurate that's a lie, right?

A. Okay.

Q. Right?

A. That's an opinion.

Q. If it's true is it -- if it is not true is it a lie?

A. Yes.

Q. Okay. You claimed you were responding for a drug complaint. But that was not true, was it?

A. We were there for drug complaints. I have several complaints on that.

Q. Under what reference number?

A. Just have to have the reference number for a complaint whether it's trespassing or drugs.

Q. So the one that you provided has nothing to do with drug?

A. It was trespassing. That's what it was

in reference to.

Q. Nothing having to do with Mr. Holmes or Mr. Boston?

A. Not that I know of.

Q. Nothing having to do with Apartment [redacted] where Ms. Holman lives?

A. No, not necessarily, just the whole entity itself.

Q. Apartment 13 is a specific apartment, right, just like Apartment [redacted] would be?

A. Right.

Q. That was the other end of the complex?

A. That guy made his specific complaint to the officer that took that report. But he also relayed other things that we didn't document.

Q. That no one documented?

A. People in the area don't want things documented because they are scared of repercussions of drug dealers.

Q. I am not asking you to speculate about what other people do. What I am saying is you didn't jot anything about that down?

A. No, sir.

Q. I want to talk to you about what you said you were able to see in plain view today. You

said as soon as you came into the apartment you were able to see these baggies that were published to you contained cocaine?

A. I didn't say cocaine. I said residue, cooking residue.

Q. You knew they were manufacturing because you could see these?

A. Um-hmm.

Q. Right.

THE COURT: Was that a yes?

A. Yes.

Q. How far were you? About right here?

A. That's about right.

Q. So about right here you can tell what is in there?

A. Yeah. I mean you can see it's a bag.

Q. Looking into a kitchen you can see baggies and tell what is in them at that distance?

A. I have a lot of training, sir.

Q. They look empty to me.

A. They are empty. It's a cloudy residue that's inside. If you get a regular plastic bag you can see it.

Q. You can see it from 15 feet?

A. Give or take, yes.

Q. This distance. So I'm that distance from the jury and you were about that far away, right? You can see?

A. Yes.

Q. And you knew that this white powder, I know you said you searched through and couldn't find any other powder. You did find baking soda, right?

A. I did what?

Q. You found baking soda, right?

A. Yes.

Q. How did you know that wasn't baking soda?

A. Possibility of it being baking soda, could be a cup in the assisting of the cooking of the crack cocaine.

Q. That means you can't say what it was even though you claimed at that distance you could tell exactly what it was?

A. It's packaging for narcotics, yes, that's what I call it.

Q. Again, this is not a trick question. If you don't know what the white powder is you can't say what it is, right?

A. Again, I mean it wasn't powder. It was

residue is what I am saying. It's using my words differently.

Q. Okay. If you can't tell what the residue is you can't label it as cocaine or flour or baking soda or baking powder or any other white substance, can you?

A. Correct.

Q. Without a chemical analysis?

A. Right.

Q. You didn't test it?

A. I didn't test it.

Q. But you made that conclusion? You said that you saw two males -- in your original incident report, not what you testified to today -- that you saw two males come out of the bathroom and kitchen area? Their hands were visibly shaking?

A. Yes.

Q. And as Ms. Seman asked you, they were not holding anything in their hands?

A. Right.

Q. If they are visibly shaking there is nothing in their hands?

A. Right. There's nothing in their hands.

Q. But you have met with the solicitor three different times at least and we will get to

the different days, I know you have trouble with the days, but around the right time, and you told her different accounts on those days, different details were added; is that fair?

A. Yes, sir.

Q. But never in any of those meetings with her did you tell her that they opened an operating microwave, right? Never told her that the microwave was on?

A. Before?

Q. Ever?

A. Ever tell her that?

Q. Have you ever told her that?

A. I mean depends when.

Q. Ever?

A. Yes.

Q. When?

A. I just said. I was telling you about it.

Q. When did you tell her?

A. I don't know dates. You said you have it on paper.

Q. I don't have on paper any time you told her that.

THE COURT: Hold on a second. Talk one

at a time, please. Don't talk when he is asking the question. When you ask the questions allow him to answer it, please.

BY MR. LEWIS:

Q. Yes, Your Honor. It is your testimony today that before this trial you told her that that microwave was on?

A. Correct.

Q. And that they opened it and closed it?

A. I could hear it opening and close, yes.

Q. When did you tell her that?

A. I don't remember.

Q. Ballpark. It's been three years.

A. Within the three-year period. I don't know.

Q. Three years ago, was it two years ago?

THE COURT: He said he doesn't know. He would be speculating now. Move on.

BY MR. LEWIS:

Q. I want to talk about the search warrant that you prepared in this case.

A. Yes, sir.

MS. SAVAS: Objection, Your Honor. It's a matter of law previously handled.

THE COURT: I don't know what the

question is.

MS. SAVAS: Yes, sir.

BY MR. LEWIS:

Q. You go and you prepare an application? You ask a judge to sign it, right?

A. Yes, sir.

Q. You are supposed to tell the truth in that because you swear under oath for that as well?

A. Yes.

Q. And in that you say drug dealers using the apartment for drug sales, that's why you were there?

A. Um-hmm.

Q. That's not true?

THE COURT: Was that a yes?

THE WITNESS: Yes.

THE COURT: Sergeant, we can't take huh-uh. You need to use the words, please, so the court reporter can be sure what your response is.

THE WITNESS: Yes, sir. Trying to correct myself. I am sorry. Can you say it again?

BY MR. LEWIS:

Q. In that application you said that you responded to Apartment [redacted]?

A. Yes.

Q. For a complaint about drug deals. I assume you meant drug dealers, using the apartments for drug sales?

A. Yes, the apartments.

Q. Nothing having to do with Apartment [redacted]?

A. I said plural apartments.

Q. Nothing having to do Apartment [redacted]?

MS. SAVAS: Objection, Your Honor.

THE COURT: That's argumentative. Thank you.

BY MR. LEWIS:

Q. Did you have any distributions or other drug complaints out of Apartment [redacted]?

A. I haven't outlined the whole area. I'm not -- I don't have a written down complaint from specifically Apartment [redacted], no.

Q. Is that a no you did not have any out of Apartment [redacted]?

A. That I know of, no.

Q. But you swore to that under oath?

A. I said apartments.

Q. Just like you are doing today, testifying under oath?

A. Correct.

Q. You met with the solicitor around

November 16th, 2016, to discuss this case?

A. Yes.

Q. And at that time you explained that there were no narcotic complaints associated with the residence, the reason you were there was because of that other complaint at the other end? Apartment 13.

A. The area is really small. There is only four apartments. It's a very small area so it's all used for the same reason. The whole general complaint is about the whole apartment complex.

Q. But different people obviously live?

A. Yes, absolutely, yes.

Q. So if one person calls for service you are not going to respond to all of them, you are going to respond to that person?

A. Depends if it's on the complex or on the specifics, the apartment.

Q. When you met with Ms. Savas around November --

MS. SAVAS: Objection, Your Honor. I believe this falls under a 404 question, Your Honor.

THE COURT: I don't know what the

question is.

MS. SAVAS: Regarding prior statements, Your Honor.

THE COURT: Ms. Savas, I don't know what the question is.

MS. SAVAS: Yes, sir.

THE COURT: Thank you. Allow him to ask the question. Don't answer until he completes the question.

BY MR. LEWIS:

Q. So that was around 620 days after the incident, that meeting?

A. I believe. I don't recall.

Q. At that meeting you never pointed out that either Mr. Holmes or Mr. Boston had any items whatsoever in their hands at all?

A. Yes, you know.

Q. I do.

A. You are asking me a question you know.

Q. Okay. And you met with her again around January 23rd of this year, sorry, last year 2017, that would have been 689 days?

MS. SAVAS: Objection, Your Honor.

THE COURT: What's the objection?

MS. SAVAS: I believe this falls under

Rule 613(b) and it's attempting to bring in prior statements. There is no statements that are made.

THE COURT: I don't know anything about the statement, Ms. Savas. The question is meeting, that's all it is saying. Thank you. Your objection is noted and overruled. Thank you. Ask the question, please.

BY MR. LEWIS:

Q. This time you claim that they did have items in their hands during this second meeting?

A. Okay.

Q. So first meeting no items. Second meeting items?

MS. SAVAS: Objection, Your Honor. These statements and questions are improper.

MR. LEWIS: That is inconsistent.

THE COURT: Ms. Savas, we are talking about the statement of him. He is entitled to ask those. Overruled. Thank you.

MS. SAVAS: Yes, sir.

BY MR. LEWIS:

Q. First statement nothing in their hands, right? Second statement they have items in their hands. Those are not consistent with one another, are they?

A. No.

Q. Okay. So only one of those could be true?

A. Yes.

Q. In this statement now you specifically say they were at the microwave?

A. Yes, sir.

Q. So you hadn't said it in your incident report, right?

A. Yes.

Q. You hadn't said it in the first time you met with her 600 and something days after the arrest, right?

A. Right.

Q. Not until the second time that you met with her did you say they were at the microwave?

A. Correct. I'm pretty sure I did before say they were at the microwave, but --

Q. If it's in your report please show me. Show me where it is.

A. You are talking statements, not reports.

Q. Right. But remember big important detail, right, in a manufacturing case, would be I saw somebody manufacturing drugs, right?

A. Yes.
Q. So you wrote that down, didn't you? Show me where did you write that down in your report.
A. That's what I am saying.
Q. That you didn't?
A. Misstatement. I did not write it down in my report.
Q. You didn't wear a body cam?
A. Our department does not issue -- was not issuing body cameras at that time.
Q. You didn't record it on your phone, right? I'm sure you have got a smart phone to take pictures?
A. Not using my phone for work purposes, no.
Q. But you had one, you could have?
A. Not going to do that, no. It's turned into evidence and I might need my phone.
Q. The camera is not in evidence, right? The one that you used to take those pictures?
A. No, it is not in evidence. That's department.
Q. You could have done the same thing?
A. That's the department's.

Q. Not documented anywhere until two years later you got to meet with her a few times, right?

A. Met with her a lot of times, yes.

THE COURT: Speak up, please.

THE WITNESS: I am trying to lean forward.

THE COURT: Do what you can, sir. I am having trouble hearing you.

BY MR. LEWIS:

Q. Then you met with her again February 8th, 2017, 705 days after the original incident. Now you remember that only Mr. Boston was trying to the conceal items in his hands, not both of them, right?

A. I didn't say only.

Q. You didn't say it was Boston?

A. I did not say only. The question was they both did.

Q. So on that date, February 8th, 2017, you told her they both did, not just Mr. Boston?

A. I believe we were discussing Mr. Boston.

Q. Okay. Now you remember the order that they ran in, but you have never documented that any time before, whether it was Boston or Holmes in

front? Your memory has gotten better after three years, right?

A. It's an opinion I guess.

Q. Had you documented that anywhere previously?

A. Not in any incident report, no.

Q. Anywhere on a supplemental?

A. No.

Q. E-mail to the solicitor maybe?

A. No.

Q. Anywhere?

A. No.

Q. Okay. So you would agree with me most people's memory doesn't get better over time?

A. I mean that's where I am getting at is that's not true, no.

Q. Memory does or does not?

A. That's an opinion. I'm not a doctor. I don't know.

Q. Does your memory get better over time?

A. Possibly certain things, yeah. It's not about getting better, it's remembering the situations that were handled, things get tunnel vision.

Q. Tunnel vision?

A. Tunnel vision, that has happened to people.

Q. You are talking about like Slager now?

A. What? No.

MS. SAVAS: Objection, Your Honor.

THE COURT: That's argumentative. Let's refrain from that kind of talk.

BY MR. LEWIS:

Q. Are you testifying you had tunnel vision that day?

A. No, what I am saying is that it happens. You are talking in general.

Q. I am talking about you.

A. You are talking in general.

THE COURT: Move on, please. You made the point. Let's move on to something else.

BY MR. LEWIS:

Q. They give you a note pad, right, so you can write this stuff down, right?

A. Write down the incident report?

Q. No, what you see. People's information, things that you don't forget. You often keep it right here, note pad?

A. Right here.

Q. So you have it on you?

A. Got it.

Q. So you can write down something if it was important?

A. It's for notes. It's hard for us. There's a lot to take in on the scene when we are out there. There is a lot to take in. And in order to sit here and write accurate reports, I write my reports as accurately as possible. I pride myself on that. If there's been an inconsistency you feel, I don't see that.

Q. Did you put that you saw people manufacturing crack cocaine in your incident report? This is as basic as it gets.

A. I did not put the exact words in there.

Q. Or that they opened and closed the microwave?

A. No. I thought common sense would see if you have steam coming out.

Q. Did you document steam with your camera? Is there a picture that shows steam?

A. I didn't do anything until I got a search warrant, no.

Q. So you didn't document steam?

A. No. It is steam.

Q. Camera was in your car to take the

pictures?

A. Yes.

Q. Now, after meeting several times with the State your memory has gotten clearer, you have gotten more details?

MS. SAVAS: Objection, argumentative, asked and answered.

THE COURT: You are cumulative now. Move on, please.

BY MR. LEWIS:

Q. You now remember the most damaging information?

MS. SAVAS: Objection.

THE COURT: Again, Mr. Lewis, you are being argumentative under 611(a). Move on, sir.

BY MR. LEWIS:

Q. I want to talk to you about the forensic aspect of it. You said that's too expensive for us to do any testing, right? You can't do DNA, it's too expensive?

A. Yes.

Q. Okay.

A. They are not going to do DNA.

Q. You got to try if you want it to be analyzed, you have to do a swab?

A. Right. They have certain cases that that precedence over it which is usually burglaries and crimes of violence.

Q. You have crime scene people who work with you and you chose not to call them out to even take pictures of this scene?

A. They don't come out to scenes like that.

Q. Did you try?

A. For a crime scene, no. I am just as capable of documenting the scene.

Q. Did you take a picture of the front door leading in to show what it looked like when you were able to see them manufacturing?

A. I can't do that. They weren't there.

Q. I don't mean the person. I mean the layout of the room. Did you take a picture of the room itself where they were supposedly manufacturing crack?

A. Y'all did.

Q. Did you?

A. Like I said --

Q. I'm a public defender. Did you as a law enforcement officer?

A. Documented the crime. The crime is on

the front door.

Q. So you didn't take any pictures of the whole layout to what it looked like in there?

A. No, sir.

Q. To show what somebody could have seen when they came in --

A. No.

Q. -- the front door. You said that it is too expensive to do DNA analysis. What about fingerprinting? That's not too expensive, right?

A. Fingerprints aren't.

Q. You didn't have these items that you put into evidence, none of these items were fingerprinted, right?

A. No, sir.

Q. Not the scale, not either of these Pyrexes, not the box of the baking soda, not the whisk, nothing?

A. Correct.

Q. You had nothing checked to see hey, this guy was actually holding an item, right?

A. Correct.

Q. But you did ask hey, whose drugs are these?

A. Yes.

Q. Which you wouldn't have needed to ask had you seen whose drugs those were?

A. Okay. It's a statement. I'm not sure what your question is.

Q. Did you process the microwave for forensics to see if someone had touched those buttons and actually cooked this crack, to see if Denise did it?

A. Denise wasn't near it.

Q. I thought she was in the living room.

A. Yes. The microwave was in the kitchen.

Q. Okay. Did you test it to see who had done it?

A. Fingerprints aren't that solid. It's not real. CSI is not how the world works unfortunately.

Q. Is the answer no?

A. We did not process it for fingerprints, no.

Q. Not the microwave, not any of that evidence?

MS. SAVAS: Objection, asked and answered. They didn't process.

THE COURT: Answer that question, then move on.

THE WITNESS: It was not processed for fingerprints. None of it was processed for fingerprints.

BY MR. LEWIS:

Q. You didn't arrest the homeowner that day, Ms. Holman?

A. No, I did not.

Q. But it was clearly her microwave that was being used?

A. It's her house, yes.

Q. You didn't see Mr. Holmes or Mr. Boston bringing in a microwave?

A. No. It's her house.

Q. But she was not arrested?

A. No, she was not.

Q. Had she claimed the drugs you would have arrested her, right?

A. She was nowhere near it. There's no way.

Q. So if she had said they were my drugs you wouldn't have arrested her?

A. It depends -- that's an opinion. I'm not there. That didn't happen so I can't answer that question.

Q. But you're claiming today that you did

see those two men manufacturing?

A. Correct.

Q. Never made that claim before?

A. That I have never made the claim before?

MS. SAVAS: Objection, mischaracterization of statements.

THE COURT: You will have a chance to redirect. Thank you.

THE WITNESS: I charged them with that.

BY MR. LEWIS:

Q. You never wrote it down anywhere?

A. On the incident report, no.

MR. LEWIS: One moment, Your Honor. Nothing further.

THE COURT: Do you have redirect?

MS. SAVAS: Yes, Your Honor.

THE COURT: We will take a break at this point, ladies and gentlemen, let you go to your jury room. Do not begin to deliberate, don't discuss the case. We will be with you in about ten minutes. Thank you.

(Thereupon, the jury exited the courtroom at 4:01 p.m.)

THE COURT: Anything from the State

before we recess?

MS. SAVAS: No, Your Honor.

THE COURT: From either Defendant?

MS. SEMAN: No.

MR. LEWIS: No.

THE COURT: We will be at ease. Sir, you can step down, but do not have any conversation with anyone.

(A recess transpired.)

THE COURT: State ready for the jury?

MS. SAVAS: Yes, Your Honor.

THE COURT: Defense ready?

MS. SEMAN: Yes, Your Honor.

MR. LEWIS: Yes, Your Honor.

THE COURT: Let the record reflect that Mr. Boston is present. Let's bring in our jury, please.

(Whereupon the jury entered the courtroom at 4:28 p.m.)

THE COURT: Thank you, ladies and gentlemen. We are ready to continue. Solicitor, you may redirect.

REDIRECT EXAMINATION

BY MS. SAVAS:

Q. Sergeant Sherwood, I just want to clear

up the confusion. Do you write everything that ever happens on every single scene in your incident report?

A. No, it's really hard to do that. That's what I was trying to tell him.

Q. And do you write what is sufficient to make the arrest?

A. I try to do better, but sometimes you don't.

Q. And you went the extra step in this case and actually took photos, didn't you?

A. Yes.

Q. And regarding the microwave that was open or on, you did not -- may not have specifically wrote that in your incident report, but you took a picture of the microwave, right?

A. Correct.

Q. Picture is worth a thousand words, ain't it? And you pointed to that is the time it was in use?

A. Yes, ma'am.

Q. You testified today they literally opened it and ran away?

A. Correct.

Q. And we have met a lot about this case?

A. Yes, we have.

Q. And do I ask you the same questions every single time?

A. No.

Q. And when I phrase questions differently do you give me different answers?

A. Yes, they are different.

Q. Okay. But you have always remained consistent that they were both standing at the microwave, correct?

A. Yes.

Q. And they both ran to the bathroom, correct?

A. Yes.

Q. And they both came out of the bathroom?

A. Yes, ma'am.

Q. Was there anyone else in the kitchen or bathroom with them?

A. No, just those two.

Q. So where was Denise at this time?

A. She stood up front right by the door. She didn't move at all, stood right there.

Q. And if I asked you a certain question at a certain point you did say Mr. Holmes was at the microwave and ran to the bathroom and attempted

to conceal, correct?

A. Yes.

Q. And then you say Mr. Boston did the same thing, right?

A. Right, they were both right there.

Q. Okay. They did this together?

A. Correct.

Q. And about the specific words of manufacturing crack, what did you arrest them for?

A. Manufacturing crack.

Q. And did you write an arrest warrant?

A. Yes, I did.

Q. And did that arrest warrant state that they were manufacturing crack?

A. Yes, it did.

Q. And the two-page incident report that you took detailed notes on and listed items found, were those items found when manufacturing crack?

A. Yes.

Q. What were they doing that day when you walked in the door?

A. They were manufacturing crack.

Q. Okay. Also I want to talk about your memory. Have you ever walked in on someone in the middle of making crack or cooking crack?

A. No, never.

Q. So was this a really rare case?

A. Yes. Actually we use it for training scenarios now.

Q. You use this exact case for training. Why?

A. Yes. Sorry. Because it's --

MR. LEWIS: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: It's a good case and I have remembered it for so long so I use it for the new guys coming in, letting them know how to further their investigations into drugs and narcotics.

BY MS. SAVAS:

Q. And we have literally discussed this probably every month in preparation for trial, right?

A. Yes, ma'am.

Q. Okay. Probably sick of me. I want to quickly just touch on the forensic issues. You did field test the microwave, correct?

A. I did.

Q. So that was the testing you do in a specific narcotics case, correct?

A. Yes.
Q. Specifically making crack?
A. Yes.
Q. Okay. And you testified that the Pryex was super hot to the touch and it was steaming, right? In your report?
A. That's why I knew I was 100 percent correct.
Q. So I know you are not crime scene, but in your overall police experience and training if something is so hot and steaming you are not really going to get any DNA prints, right?
MR. LEWIS: Objection, Your Honor.
MS. SEMAN: Objection.
THE COURT: Sustained. Lay a foundation how he can know that.
BY MS. SAVAS:
Q. Do you make the assessment on the call whether to call crime scene out?
A. I do.
Q. Okay. And so why didn't you call crime scene out in this case?
A. It was sterilized.
MR. LEWIS: Objection.
MS. SEMAN: Objection.

THE WITNESS: It is boiled.

THE COURT: Sustain the objection. He can't lay that -- the jury will disregard his response. Solicitor, if you are going to ask for opinions you got to lay the foundation and lay it completely. He has not been declared an expert. Thank you.

BY MS. SAVAS:

Q. Right, Your Honor. Sergeant Sherwood, why did you not take fingerprints?

A. I don't know how to answer it.

Q. Sergeant Sherwood, if you literally saw someone in the act of doing something do you need further affirmation that they were the ones standing there that you saw them?

A. No.

Q. So do you trust your own two eyes?

A. Yes.

Q. Is that sufficient?

A. Yes.

Q. And that was sufficient to draw out the arrest warrants?

A. Yes. It's not common practice for us to call in crime scene for every scene or we would be -- the crime scene guys are already busy enough

doing a lot of stuff.

Q. Especially when you literally walk into the room where they are comitting the crime, right?

A. Correct.

Q. Also I want to talk about these little baggies. Is there a crime of residue?

A. There is a charge of paraphernalia. That's about it.

Q. So in your experience in these cases you chose not to send this to the SLED. Why did you not send this to SLED?

A. It wasn't nothing -- it's hard to test stuff like that.

Q. So what happened to the cocaine inside this?

A. It got --

MR. LEWIS: Objection, Your Honor.

THE COURT: Sustained.

BY MS. SAVAS:

Q. And, Sergeant Sherwood, in your training and experience in narcotics, okay, in your 11 years of doing this, thousands of cases, why are these baggies specifically significant to you? Why did --

MR. LEWIS: Objection.

THE COURT: Ask the question.

BY MS. SAVAS:

Q. Why did it raise your suspicion to think there was cocaine inside?

THE COURT: Overruled. I will allow it.

THE WITNESS: I can answer? Those are commonly used to package narcotics. Most of the time you come across narcotics that's packaged in that kind of packaging.

BY MS. SAVAS:

Q. The packaging are these little baggies?

A. Yes, sandwich, they are actually the sandwich bag, not the zip lock ones, they use the fold over.

Q. And were these the same plastic baggies, the ones found in Mr. Holmes's pocket actually containing cocaine?

A. The same type, yes.

Q. Okay. I'm going to briefly talk about this issue of another incident report and cases. Sergeant Sherwood, you said that this is a -- y'all do proactive patrol for the crime incidents in that area, right?

A. Right.

Q. And in this case you did reference another case number. Is that common to sort of keep everything together?

A. Yes, that would be.

Q. And you're not saying you never did and you haven't said that you were at Denise's door specifically for that complaint, did you?

A. No.

Q. So also, Sergeant Sherwood, you don't need a specific complaint to perform a knock and talk, do you?

A. No, not necessarily.

Q. And a lawful knock and talk, is that just a basic investigative technique?

A. It's how we talk to people. We do that daily.

Q. And why do you do that? Why do you take the effort to go talk to people?

A. In that community we are instructed a lot of times to actually make contact with people on our own especially if there is burglaries, drug activity in the neighboring houses. Knock on the door, notify them of the crimes and a lot of times we solve being able to go back and talk with the people because they are not very forthcoming with,

you know, with information unless we are actually physically standing there.

Q. And you had mentioned that you had approached the door because you knew Ms. Denise. Were you concerned for her?

A. Yes.

Q. Why were you concerned for Denise?

A. I spoke with her in the past and just she seemed like she's a little off. She was enough for me to pay attention to her a little more, talk with her.

Q. And why was it concerning that they approached the door to her? Is this something that usually happened in apartment complexes?

MR. LEWIS: Objection.

MS. SEMAN: Objection.

THE COURT: Sustained.

BY MS. SAVAS:

Q. In your several complaints the defense has alluded to those are narcotics complaints. Are there narcotic complaints?

A. Yes, there is a lot of narcotic complaints. I have spoken to Ms. Denise in the past about that.

Q. And generally what do those complaints

entail?

A. Drug abuse, manufacturing, and once again the trespassing, they let the drug dealers on the property.

Q. So that apartment complex is known for having drug dealers?

A. Oh, yes. It's probably one of the most dangerous areas.

Q. And do they do it out in public or how does that work?

A. For the sales a lot of times --

MR. LEWIS: Objection, Your Honor.

THE COURT: Basis?

MR. LEWIS: Relevance and speculation.

THE COURT: I will sustain the objection. We have already established. Let's move on, Solicitor. This is not necessary.

BY MS. SAVAS:

Q. And, Sergeant Sherwood, why didn't you arrest Denise?

A. Ms. Denise was standing in the front and she was nowhere near where they were actually manufacturing. If she was standing with them I would have arrested her, but she wasn't there. Ms. Denise, she knew it was going on, but she didn't

have any part in it.

MR. LEWIS: Objection, speculation.

THE COURT: Overruled.

BY MS. SAVAS:

Q. And, Sergeant Sherwood, you said that she knew what was going on. Do you think she was an active role in it?

A. No, she's a user. I have dealt with her in the past. I have stopped her in the past. One time she had a stem, crack pipe, but she's just a user or was.

Q. And, Sergeant Sherwood, when you approached the door you didn't approach the door as defense said simply because there were two black men, did you?

A. No.

Q. You had other reasons?

A. Yes.

Q. What were those reasons?

A. I knew the Defendants from the other side of the neighborhood.

MR. LEWIS: Objection.

MS. SEMAN: Objection.

THE COURT: Sustained.

MS. SAVAS: He opened the door.

THE COURT: No, he did not. No, ma'am. I will sustain the objection.

MS. SAVAS: Yes, sir.

MR. LEWIS: Your Honor, may we approach?

THE COURT: Ladies and gentlemen, I will let you go to your jury room. Do not begin your deliberations. There is a matter of law that I need to take up.

(Thereupon, the jury exited the courtroom at 4:42 p.m.)

THE COURT: All right. Mr. Lewis.

MR. LEWIS: Judge, I have to move for a mistrial. This is the heart of the issue. She has declared that they are prior bad actors in front of the presence of the jury. It wasn't relevant to start with. Propensity wouldn't come in anyway. We can't unring this bell.

THE COURT: What's the State's position?

MS. SAVAS: Your Honor, with all due respect and understanding that, I did not ask those questions on direct examination. I asked them on cross because they had made mention, specifically said two black males, alluded to the fact that this

officer is racist. They --

THE COURT: That's baloney.

MS. SAVAS: -- spent 30 minutes --

THE COURT: Ms. Savas, that's baloney. I don't know where you got that from frankly. At all. That's just nuts. No suggestion that he is a racist. From the standpoint of what and why in the world you went back on something I already ruled on. This jury does not have a thing in the world to do as to why you went there. You spent all that time for nothing as far as the Court is concerned and created some problems.

From the standpoint of why he was there I agree they opened the door. From the standpoint of him having previous calls for problems, but not specifically as to these two people.

Now you have framed it in their -- you have made the problem. And the reason being that we know we can't because he has had prior dealings with them and a drug part and that came out I think in the hearing we had on the knock and talk. But why in the world you went there is just absurd.

MS. SAVAS: Yes, Your Honor. And I respectfully understand your position.

THE COURT: Well, I respectfully

understand you're an advocate, but I respectfully remind you that you need to pick your battles. You were battling something that you didn't need to fight in the first place to be honest with you. But now how do I unring the bell?

MS. SAVAS: Your Honor, I believe there are curative instructions. However, in this position --

THE COURT: What? Disregard that there has been testimony about their being prior drug deals or drug involvement?

MS. SAVAS: Your Honor, I think it creates an incomplete picture and incomplete --

THE COURT: Precisely the point. Good point. An incomplete picture.

MS. SAVAS: Yes, sir. When they questioned this officer for nearly an hour on why he approached the door, there's significant reasons and when we had brushed it over on direct they went back and question after question, Your Honor, about why he did that and not to put that picture in I understand, I agree, Your Honor, on direct it was not the appropriate time.

THE COURT: Ms. Savas, you failed -- you keep going back to I want to win the war and

defending something that you have been accused of and it's been clearly obvious throughout your objections and everything else. You didn't need to defend a thing. Lawyers talk to clients all the time. He is your client. He is part of the state. He's your -- of course you are going to talk to him. The bottom line is they asked him all of the questions that dealt with inconsistencies in his recollection. Not yours. Not whether something should or shouldn't. It's just something for the last 24 years, doesn't surprise me. I hear that all the time. I am sure the sergeant has heard that all the time. That's not in your report. Of course it is not in my report. I don't write down every single thing said. What in the world were you doing arguing that except to defend your position? And the trouble is it showed up. You got angry. Your questions were angry. I am sorry. They were. You were going to get something and prove that you were doing something that he had a right to do. And he had a right. He's already testified to that. I have already ruled on that. Again your focus -- I don't know what -- I kept telling you. I said in my ruling if that's wrong it's wrong. It's preserved. Once he got in the

door I said everything that he saw legitimized what he did. But you have defended and continued to defend why he went up there in the first place.

The jury is not going to be able to deal with that at all. So all you have done is focus the focal point on something else which is what? You were right. It's an incomplete story. Why would he be focused on those two persons other than the fact that they were -- they had prior drug involvement? And now you asked him the question, haven't you?

MS. SAVAS: Your Honor, with respect, I did not ask him if they had prior drug involvement and I believe his answer was he knew them from the neighborhood, the neighborhood that is already --

THE COURT: He answered that on direct. There's no question about that. He knew them. Let's find out what the -- could you tell me what -- Ms. Weese, what the question was and what specifically was said?

(The Court Reporter played the question commencing on page 178 line 4 and the answer concluding on page 178 line 12.)

THE COURT: Opened the door. I will agree that's a term of art. Opened what door? I

don't know that necessarily goes where you wanted it to go. So I think we stop it. I will give a curative instruction concerning disregarding that generally that's not a matter for their consideration. I have ruled as a matter of law and that I think will protect that.

MS. SEMAN: Your Honor, I just want to make clear that I do join in Mr. Lewis's motion as well and we would -- we believe that a curative instruction is not enough. Of course understanding your ruling, I wanted it to be clear for the record.

THE COURT: I will be happy not to give any curative instruction.

MR. LEWIS: If you remember, it puts us in that weird posture where if we don't object to your curative we have screwed up our record as well.

THE COURT: I understand. I don't have any problem, but --

MR. LEWIS: We need you to give one, but then object to it.

THE COURT: No, I hate to do this to you. That's been done on -- you are going to -- we agree and this what I am going to tell them to

disregard and if you want me to tell them more, fine. Because you are going to make this call because that's typically what I do. I will say nothing which I think is probably the best thing to do. But if you want me to tell them what we ruled, they are to disregard it, I will be happy to do that, but it emphasizes it.

MR. LEWIS: I can't speak for her, obviously for --

THE COURT: My feeling is it is to do exactly what you said. What happened is perfectly normal. It is not -- nothing is wrong, that's what -- how we are supposed to do it. Sometimes we can deal with objections without them leaving, sometimes we have to. That's why they left is what I intend to tell them. But when I rule I will tell them that I'm going to tell them in my charge, but they are not to raise any or draw any inference from the objection in my ruling or not to consider that at all. That would be invading my province and vice versa. I will give them my typical statements I give in my jury charge concerning those issues. But that's what I propose to do, but if you don't want me to do anything then fine or you want to give more, tell me more.

MR. LEWIS: I would just ask that you ask the last series of questions be disregarded and allow her to begin on some new theme.

THE COURT: That's fine.

MS. SEMAN: I'm fine with that, Your Honor, as well.

THE COURT: All right. All right. Solicitor, anything else you want to -- let's go on to something else.

MS. SAVAS: Yes, sir. I would conclude my --

THE COURT: You may want -- if you want to ask a question, I won't make you stop, but don't go any more into that area. Sergeant, thank you very much. You just listen to the question and answer it, okay?

THE WITNESS: Got you, sir.

THE COURT: If you will bring them back.

THE CLERK: Your Honor, here is a juror note. One of the jurors has to make a phone call for child care.

THE COURT: All right. Let them use the phone, but be present. Juror 60. We will make that Court's Exhibit 1.

(COURT'S EXH. 1 marked for identification.)

(Whereupon the jury entered the courtroom at 4:54 p.m.)

THE COURT: Thank you, ladies and gentlemen. Thank you for your patience. I told you the process has a method to it and one of the things that we do and you have seen objections made and rulings and no argument or you have heard me say I have ruled on that previously.

Typically it's not uncommon for jurors to have to leave, I try to minimize that as much as I can. But sometimes it becomes necessary to place the reasons for the objection and argue them on the record. That's what just happened. The fact that an attorney makes an objection, that's exactly what they are supposed to do. There are matters of evidence dealing with rules of evidence typically. And I have to make those rulings. And the fact that my rulings on them, that's not for your consideration. You are the judge of the facts. You don't have anything to do with the legal part and if you infer anything from what an attorney objects to or the fact that I restrict a witness from answering the questions or allowing them to

answer the question, don't -- if I allow it don't say well, I guess I have to believe, I have to accept that because the judge permitted that. If you think that way then you have let me step into your area of responsibility. Quite honestly it probably is the greatest example of how I can illustrate to you how we work together. If I ruled and excluded it don't place any emphasis because that's my job, to exclude that. That was what I believe the rules require me to do.

But if I have allowed it it now shifts to you. And you have to decide whether or not you believe it or not and, if so, how strongly you believe it. So you focus on what the testimony you have, not that part that's been excluded. I am going to instruct you that the objection was made. I have ruled and sustained the objection. You are to disregard the last question and the response given.

So that's a matter of law that I have taken care of and now we are going forward and, Solicitor, you may ask your next question. Thank you.

MS. SAVAS: Thank you, Your Honor.

BY MS. SAVAS:

Q. Sergeant Sherwood, just to clarify, is baking soda typically found in orange boxes or in little baggies?

A. Either way.

Q. Do they sell them in these baggies or in a box?

A. In a box, yes, ma'am.

Q. And were there any other ingredients or food or possibilities they were making anything other than crack that day?

A. No, ma'am, not that I thought.

Q. And, Sergeant Sherwood, were they both standing in the kitchen making crack when you walked in?

A. Yes.

MS. SAVAS: Nothing further from the State.

THE COURT: Thank you. Redirect?

MS. SEMAN: No recross.

THE COURT: Excuse me. Recross?

RECROSS-EXAMINATION

BY MR. LEWIS:

Q. Just from me, Judge, very briefly. The solicitor asked you, I believe you agreed, you said it was super hot to the touch, right, when it came

out of the microwave it had been boiling?

A. I didn't say super hot. I said steaming. Later on it was hot, that's what I said.

Q. Okay. I think she said super hot and I thought you agreed?

A. I didn't hear super hot, sorry.

Q. Hot to the touch?

A. Yes.

Q. Boiling?

A. Yes.

Q. That's how you make crack?

A. Right.

Q. And you said it was right in the process of being made?

A. Correct.

Q. Still being cooked, got to be really hot?

A. Yes.

Q. Did Mr. Holmes or Mr. Boston have on a pair of gloves when they were supposedly doing this?

A. Not that I saw.

Q. You arrested them. You searched them. Did you find any gloves on them?

A. No.

Q. So they were carrying this boiling crack. Did they spill any on them, did you see any?

A. I didn't check, no.

Q. You didn't see any like discolorations on their shirt, any burn mark on their hands?

A. Not that I saw, no.

Q. You would have to get them treatment if they were injured, right?

A. Right.

Q. You didn't see anything or document anything like that?

A. No.

Q. I also want to direct your attention back to three things that you said. You said this was very rare to walk in on someone manufacturing, right?

A. Yes.

Q. You trained on this?

A. Yes.

Q. And you've never seen it before like actively walking in?

A. Not in person, no. Never seen. Only in training, only in different training that I have taken.

Q. But it's that rare and you still didn't write it down?

A. I guess not.

Q. All right.

MR. LEWIS: Nothing further, Judge.

THE COURT: Thank you. Sergeant, you may step down. Thank you.

THE WITNESS: Thank you, sir. Appreciate it.

THE COURT: Ladies and gentlemen, at this point we are going to take our recess for the evening. Please remember that you are not at liberty to talk about the case among yourselves. You are not liberty to talk with anybody outside the courtroom about this case. And typically when you go home tonight and there is somebody there I imagine the first question is going to be what are you doing and what's going on. And natural tendency would be to talk about it. If you do, then you will have started your deliberations. Just tell them no, judge won't let me talk to you about it until we finish and you will be finished this week. I promise you that. So talk about something else. But don't discuss this case or any part of it.

I'm going to let you come back a little later tomorrow because I have a matter that's already been scheduled for 9:00 not related to this case. So we will start back on this case. Be in the jury room, please, by 10:00. Also please remember something else. And I'm not -- don't know that you will. I have had jurors do this and the chief justice several years ago admonished all the trial judges to be sure we mention this. Having raised three children and now six grandchildren helping raise I am always reluctant to tell my child don't do something because I don't know about y'all, maybe my child was more disobedient, but that's the first thing they wanted to do is when you tell them not to. So I had that hesitancy, but we are not children.

But one of the things that you can't do, we have tremendous access to resources, Google, all these sorts of things. After this case is over if you want to look at the law please feel free to do so. But while we are trying it you cannot do that either.

And let me give you a specific example of the dangers of doing that. I had a case when I was asked to administer an oath to an elected

official and I have done it several times. And I had a copy of the oath in my office. But I was going to meet him before going to my office and I thought well, wait a minute. That's out of the code. I will look at the code. I got the code section and looked at it and I thought wow, I don't remember asking him this provision that I thought good gracious, I have done this several times. I guess I messed up. The next morning I did run by and I grabbed the code section and I opened it and our code has a supplement and the supplement contains any changes that have been made since they printed the volume. Well, lo and behold I hadn't asked it because it had been repealed and it was no longer the law. So that's what Google had. And if I had just relied on that I would have made a mistake.

So please I share that with you just to again reemphasize don't do any independent research about it. After it is over please feel free to do that. But until then just refrain from that. Don't discuss anything with anyone or allow anyone to talk to you. I doubt there will be any news accounts, but if you happen to turn it on and they talk about a trial going on, turn it, flip the

channel. Do something else. Have a good evening. Thank you so much for your work today and we will see you tomorrow at 10:00.

(Thereupon, the jury exited the courtroom at 5:04 p.m.)

THE COURT: All right. Anything else from the State?

MS. SAVAS: No, Your Honor.

THE COURT: Defense?

MS. SEMAN: No.

MR. LEWIS: No, Your Honor.

THE COURT: Now, with respect to the curative instruction, any additions that you want to or exceptions that you want to make specifically to the curative instruction? Other than you think I should have granted a mistrial.

MR. LEWIS: Yes, Your Honor. I have been instructed by appellate defense to better do my job effectively that I have to get a curative instruction and object to it since I should have got the mistrial. Take that for what it's worth.

THE COURT: I understand.

MS. SEMAN: Same, Your Honor.

THE COURT: That's fine. Yours is you can't unring the bell.

MR. LEWIS: Yes.

MS. SEMAN: Yes.

THE COURT: My feeling is the bell was not rung for the reasons I stated. I think to open the door, is that opens the door, opens a Pandora's box, what door was opened. It could have been anything under the sun. So that's the reason -- that's one of the reasons in addition after hearing it I didn't find it to be that egregious warranting a mistrial. And I think that it was dealt with. It was handled with respect to telling them that would be improper for them to consider that which we ruled inadmissible. So I did that in a generic fashion.

MR. LEWIS: Thank you, Your Honor.

THE COURT: Thank you very much.

(These proceedings were adjourned at 5:06 p.m., February 5, 2018, Charleston County, South Carolina.)

(The following proceedings were held February 6, 2018, Charleston County, South Carolina, @ 10:02 a.m.)

THE COURT: Let the record reflect Mr. Boston is present. Mr. Holmes is still not present.

MS. SAVAS: Your Honor, we would like a motion to excuse Juror No. 138 and seat an alternate. I know we had briefly discussed this yesterday; however, after further looking into it, there are new -- there's a lot of new information that would have given rise to a peremptory strike and it turns out, Your Honor, in fact the juror's son, you did not sentence him. Judge Harrington had sentenced him to PWID marijuana, possession of crack and a possession of MDMA in 2016. In 2017 you did issue a bench warrant for him. But it was later rescinded once he obtained counsel. He currently -- this is the issue -- has pending charges with our office for PWID cocaine and a possession of crack offense.

And through our extensive voir dire, there were numerous questions asked regarding addiction, family members, family members being prosecuted by this office and things of that nature. And we have done some research and we find the case law supports that regardless whether it was an intentional or unintentional concealment from the voir dire as well as her statement made to the Court about you sentencing her son, perhaps she just didn't know the disposition. There is case

law in 2014, State v. Coke from the Supreme Court of South Carolina and which cites your case that you had referred to State v. Stone and it says paralleling the inquiry in cases of intentional concealment, the trial court in the unintentional concealment situation must determine whether the information concealed would have supported a challenge for cause or would have been a material factor in a party's exercise for its peremptory challenges.

And yesterday the State had only used six out of their ten strikes. And this would be an exact situation if that information was disclosed at that time and while the jury has been under oath that the State would have most certainly used a peremptory challenge and strike given the very similar nature in cases and the tie to this office.

THE COURT: You wish to be heard?

MS. SEMAN: Yes, Your Honor. Given the note that was sent to Your Honor yesterday we would argue there was no concealment. Simply because the juror doesn't know the exact nature of her son's pending charges does not mean that she was concealing intentionally or unintentionally anything from this court.

Your Honor, we would also argue that this is information that the State had reasonable access to before the jury was seated. We are not opposed to this juror remaining on the panel. Of course we will defer to your judgment. Thank you.

MR. LEWIS: Judge, all I would add is you asked her at the bench if she could be fair and impartial to both sides and she said she could. If the Court needs to voir dire her further on that issue, so be it, but I will join in the motion.

THE COURT: The problem I have is this: Stone case talked about -- and I failed to make a determination that it was voluntary or involuntary. There was nothing to indicate she had tried to hide anything. That's -- I took it to heart to understand that. But the problem I have is this: It doesn't delve so much into the question of whether or not she would be prejudiced by the fact that what she disclosed that I sentenced which was apparently incorrect. I issued a bench warrant. Judge Harrington sentenced. There were several questions asked of a very general fashion, family members being involved in drugs, any connection with any prosecution. Her son has been prosecuted. She's didn't disclose that. That gives me great

concern and if it was just one little situation, but it wasn't. There were numerous mentions, any involvement with the solicitor's office, so clearly those are things.

But this, oddly enough, I guess you learn a lot when you have and I guess they quit assigning death penalty cases to old judges because I haven't had one since Dickerson, hopefully I don't have another one in my lifetime.

But Judge John who was then assistant counsel to Maureen West in the Titus Huggins death penalty case made a similar motion. After the guilt phase we were going to start the penalty phase. And I come back ready to start it and he said judge, we have a problem. I said what's the problem. He said well, Mr. Huggins's sister was in the courtroom during the closing arguments and she noticed one of the jurors she went to high school with. And he was representing Mr. Huggins. Mr. John, Judge John now. And he said if we had known that we would have used a peremptory challenge and excused her.

I said you would excuse somebody that's familiar with? He said yes, sir, absolutely. And the reason he said that is just why the solicitor

just said that. They would -- if they had that and they had that knowledge and it wasn't disclosed and they having known that they would have a peremptory challenge, we exhausted, I think it would be safe, but that case gave me concern then and I assure you after spending a week getting a jury and trying one every time I see Steve I talk to him about doing that.

Because we had to retry it, but I think the solicitor -- I'm not doing it because of -- I don't think she intentionally did this. I am doing it based on the case that says that she had known that and there was ample opportunity for that to have been disclosed and it wasn't. I'm not going to go -- I'm not sure I have to go that far to infer that she is intentionally hiding it. But clearly there were questions asked that would have disclosed. I don't quarrel -- for the sake of the record, I agree they had ample opportunity to have that, they had that information available to them, but when you go so far as to have a question and they asked a specific question about trouble, any problems with the solicitor's office, any other cases, I didn't ask it verbatim as they requested. I asked it in the generic fashion.

And I think it would be unfair to not grant them that motion based on the fact that had they known it that I'm sure they would have, there is no question they would have. It is obvious any lawyer would have done that. That would have been a slam dunk. I used -- we used to use X's. I don't know what you all do. Six X's was absolutely you had to go and you would start putting down and that one would have been six X for me for sure if I had been prosecuting it. So for that reason I grant the motion. That's juror number?

MS. SAVAS: 138.

THE COURT: Is Ms. Harley here?

THE BAILIFF: I'm sure she is.

THE COURT: If you would ask her to come in, please.

THE BAILIFF: Yes, sir.

THE COURT: While we are doing that, in this one we draw unless you all want to use the first alternate. I defer to you. The typical way is to draw out of a hat or we can go with the first alternate selected. What is your pleasure?

MS. SEMAN: Either one is fine.

THE COURT: Do you have a preference?

MS. SAVAS: No, Your Honor. Whatever

you see fit.

THE COURT: Let's get the first alternate. Mr. Lewis, I see you looking.

MR. LEWIS: I was going to defer to my second chair. I'm going to sit down and let you do what you want to do. Whatever the Court prefers.

THE COURT: Understand. I acknowledge typically and customarily we draw. In the civil side it's the first alternate selected moves up which makes sense to me. I don't know why we don't do it that way anyway.

But being that, if you don't have any objection I'm going to make the first alternate selected move on to the jury. Any objection from the State?

MS. SAVAS: No, Your Honor.

THE COURT: Any objection from either Mr. Boston or Mr. Holmes?

MS. SEMAN: No.

MR. LEWIS: No, Your Honor.

THE COURT: Thank you. Okay.

(Juror 138 brought to courtroom.)

THE COURT: Good morning, Ms. Harley. Ms. Harley, thank for your conversation yesterday. We have had some further discussion about it and

out of an abundance of caution because of your son's involvement and apparently your son also has a pending case now that is handled by this solicitor's office; is that correct?

JUROR NO. 138: Yes, sir.

THE COURT: Why was that not disclosed to me, ma'am, when I asked you if you had any involvement with the solicitor's office? You just didn't hear it or you didn't understand it?

JUROR NO. 138: I just didn't understand it.

THE COURT: That's fine and I understand that. I appreciate that. But out of an abundance of caution I'm going to go ahead and excuse you from participation in this dispute. You are free to leave. If you will call the number after six tonight and just follow that instruction with regard to the remaining panel and have a nice day. Thank you so much.

(Juror 138 left the courtroom.)

THE COURT: Any exception or additions from the State regarding my conversation with Ms. Harley?

MS. SAVAS: No, Your Honor.

THE COURT: Any additions or exceptions

from Mr. Boston?

MS. SEMAN: No, Your Honor.

THE COURT: Mr. Holmes?

MR. LEWIS: No additional.

THE COURT: Thank you very much. Appreciate that. Thank you all.

THE CLERK: Your Honor, for the record Juror 81 will replace.

THE COURT: That's correct. I agree. Anything else from the State?

MS. SAVAS: Nothing further from the State, Your Honor.

THE COURT: Anything from Mr. Boston?

MS. SEMAN: No, Your Honor.

THE COURT: Anything from Mr. Holmes?

MR. LEWIS: No, Your Honor.

THE COURT: Let's bring them in. Thank you all.

(Whereupon the jury entered the courtroom at 10:13 a.m.)

THE COURT: Ms. Daly, you may now assume the seat on the panel right there. Thank you. As we told you, from time to time we have to use an alternate and that has come up this time and so, please, you're not to infer anything from that.

That is normal. That's nothing unusual. And that's why we have alternates, and Ms. Daly, you are now part of the panel. Okay?

Now you can't sit on the back row any more. And I hope that, Mr. Robinson, you're okay. If you feel lonely just let me know; we will let you sit down there. Thank you so much, ladies and gentlemen, I hope you had a good evening. We are ready to continue in this matter and I ask you now to give your attention to the next witness.

Solicitor, good morning. You may call your next witness.

MS. SAVAS: Thank you. The State calls Ms. Denise Holman.

DENISE HOLMAN

having been duly sworn, testifies as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: Denise Holman, H-O-L-M-A-N.

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Thank you. Good morning, Ms. Denise.

A. Good morning.

Q. Ms. Denise, I want to start with some

background questions. How old are you?

A. Fifty-two.

Q. And how far did you go in school?

A. I went to the 11th grade and got some GED so I got about a year and-a-half of GED.

Q. Okay. Good. And, Ms. Denise, did you used to live at [redacted] Avenue Apartment No. 2 back on March 6th, 2015?

A. Yes, ma'am.

Q. And, Ms. Denise, I'm going to show you a photo, State's Exhibit No. 19. Is that your old apartment, that green one?

A. Yes, it is.

Q. And how long did you live there?

A. I think about like two or three years.

Q. Okay. And where did you live before that?

A. Okay. I kind of have memory problems so before that I live -- let's see.

Q. Did you live in North Charleston before?

A. Yes, I did.

Q. Where are you from originally?

A. Originally from New York.

Q. And when did you come down to South

Carolina?

A. My mom retired and she moved to Aiken and I went to Columbia to go to college and got my GED in Columbia.

Q. And do you have any children?

A. Yes. That's where I lived with my children's father, in Columbia.

Q. How many children do you have?

A. I have two, a boy and a girl.

Q. And are they adult children now?

A. Yes, ma'am.

Q. What do they do for a living?

A. My daughter, she is a designer and my son, he's in the military.

Q. And, Ms. Denise, I don't mean to embarrass you. We talked about this. We need to be honest. Back in 2015 did you use drugs?

A. I did.

Q. And what was your drug of choice?

A. Crack cocaine.

Q. Okay. Would you say you were addicted at that time?

A. Yeah. I was really addicted.

Q. And how long were you using crack for? How did that start?

A. It started I would say about like 13 years ago.

Q. So for about 13 years?

A. Yeah.

Q. And, Ms. Denise, would you buy the drugs or how did you get crack?

A. I would buy them. Sometimes I would turn what they call tricks. So yeah.

Q. And, Ms. Denise, do you use drugs now?

A. Thank the Lord no, I don't.

Q. You are clean?

A. Yes, I am.

Q. How long have you been clean?

A. Okay. So far I have been clean a little over seven months.

Q. Congratulations. And what did you do to take those steps to stay clean?

A. I go to drug classes. One of my main things why I am clean is that I had an aneurysm and it was because of what they told me some bad drugs. I don't remember. But I am doing much better now.

Q. And did you graduate from any classes?

A. Yes. I just got to graduate from IOP, called intensive outpatient unit. It's a drug program and now I am in Stage 2 of it.

Q. Good. And what is Stage 2? What do you do for that?

A. Okay. In the regular IOP you go four days a week. Okay. And now when you graduate I go once a week.

Q. So you are currently going once a week for drug classes?

A. Yes, ma'am.

Q. Good for you, Ms. Denise. And did you -- have you since moved from that apartment?

A. Oh, yeah, I had to leave that area.

Q. Why did you leave the leave?

A. Not by choice. Well, was my idea if I get away from the drugs and drug people I will do better. I moved up there with my son. My son lives up there.

Q. And, Ms. Denise, back on this day on March 6th when you were in your apartment what was going on that day?

A. Well, what was going on with me?

Q. Yes, ma'am. Inside your apartment.

A. Okay. On that day I had got a call saying they wanted to come to my house.

Q. Who called you?

A. Bubba, his name.

Q. Bubba?

A. That's his street name.

Q. And did someone else call and say they were coming over?

A. Yeah.

Q. Yes? Who was that?

A. Yes, ma'am. I don't remember.

Q. Ms. Denise, do you recognize anyone in the courtroom today that was in your apartment that day?

A. Yes.

Q. And who do you recognize?

A. The one we call Bubba.

Q. And is he in the black shirt?

A. Yes, ma'am.

Q. Let the record reflect that the witness has identified the Defendant, Mr. Boston, in this case.

THE COURT: It will so reflect.

BY MS. SAVAS:

Q. And, Ms. Denise, what did Bubba call you for? What was he coming over to do?

A. From my understanding he wanted to use my kitchen.

Q. He wanted to use your kitchen?

A. Yes, ma'am.

Q. What did he want to use it for?

A. I don't get into their business so I just said sure.

Q. So he called you and said he's going to come use your kitchen?

A. Yes.

Q. And when they came over that day did they go into your kitchen?

A. Yes, ma'am.

Q. What were they doing in there?

A. Well, I don't know exactly. I assume that's what they were there to cook.

MR. LEWIS: Objection.

MS. SEMAN: Objection.

THE COURT: Sustained. She said she didn't know exactly.

BY MS. SAVAS:

Q. That's okay. And, Ms. Denise, I'm going to be quite frank with you. Did you have drugs in your apartment that day?

A. I didn't bring them. I mean I didn't buy none.

Q. Who brought them?

A. I guess when they came.

MS. SEMAN: Objection.

MR. LEWIS: Objection.

THE COURT: I will allow that.

BY MS. SAVAS:

Q. And, Ms. Denise, do you remember the police coming in that day?

A. Yeah.

Q. And do you remember them knocking on your door and you opened your door for them?

A. Yes, I do.

Q. And did you allow them to come inside?

A. Yes, I did.

Q. They didn't threaten or push you down or anything like that?

A. No. They were pretty okay with it. They was nice about it.

Q. And, Ms. Denise, when they came in your apartment where were you when they knocked on the door; do you remember what you were doing?

A. Actually I had a video game in my hand and I was playing my video game on my foldout couch.

Q. And was your couch in your living room?

A. Yes. That was my bedroom.

Q. Were you in the kitchen with Bubba and

the other man?

A. No, ma'am.

Q. Were you ever in the kitchen with them?

A. No.

Q. And, Ms. Denise, were they using your microwave in your kitchen?

A. I think so, yes.

MR. LEWIS: Objection.

MS. SEMAN: Objection.

THE COURT: Sustain the objection. Speculation.

BY MS. SAVAS:

Q. Ms. Denise -- beg the Court's indulgence?

THE COURT: Certainly.

(Off-the-record conference.)

BY MS. SAVAS:

Q. Ms. Denise, when Bubba and his friend came over were you hoping to get something from them?

MR. LEWIS: Objection.

MS. SEMAN: Objection, leading.

THE COURT: I will allow the question. It is not leading.

BY MS. SAVAS:

Q. You can answer.

A. Being that I was an addict normally that would be the pay and they give me some of what they were doing.

MR. LEWIS: Objection.

MS. SEMAN: Objection.

MR. LEWIS: 404(b).

THE COURT: Ladies and gentlemen, I am going to let you go to your jury room. I have a matter of law that I need to take up outside your presence. Do not begin your deliberations, please.

(Thereupon, the jury exited the courtroom at 10:26 a.m.)

THE COURT: Objection on 404(b) is basically other crimes. That's not other crimes. This is the crime.

MR. LEWIS: She is talking about prior distribution.

THE COURT: No, she's not. She said what did you expect to get out of this meaning this particular visit is the question I heard. I don't think it's a 404(b) situation. If you want her to reask the question that would be fine. We can rephrase. But clearly it is not -- does not in my opinion invoke or ingest any other drug use of

these people. Her, yes, she has already testified to that. But furthermore, based on your cross-examination, you have -- why didn't you charge her? So I mean this clearly is knowledge that you and everybody expected she was involved in that from the questions of the officer. And his statement was I think as I recall, may be misquoting it to some extent, she was using it. That was basically it.

And so there's a basis for the question that does not take it out beyond the purview of this particular setting. So that's not a 404(b) in my opinion.

MS. SEMAN: I also think it is speculation, Your Honor.

THE COURT: What, that she was going to get something out of this?

MS. SEMAN: Yes, Your Honor.

THE COURT: Folks, I don't know -- she already testified one time that she was. So I don't know where the question is going, but I know that that be the case. She has already testified to how she got her drugs. She didn't elaborate about tricks. I assume I know what trick means to me. I don't know what it means in her vernacular,

but if you want her to rephrase the question so it is clarified, I don't think it implicates anything outside of this setting. So but --

MR. LEWIS: Judge, maybe it is my fault for getting a little bit ahead. I just want to make sure that we head this off at the pass, especially in light of yesterday.

THE COURT: I understand that, Mr. Lewis, but again, I can't rule on questions that might come up. I can rule on the question that comes up. And this question doesn't hit 404(b) and that's why I pulled 404(b.) I thought I don't think so, but I read it again and I just -- you and I may agree to disagree, but I don't think it is 404. I don't think it's that situation.

MR. LEWIS: I agree for this situation it would not be. I think if she says they had done it before.

THE COURT: I concur in that. Solicitor, be careful of that given the previous ruling and the request for a mistrial.

MS. SAVAS: Your Honor, if you might instruct Ms. Denise.

THE COURT: I cannot instruct anybody. That puts me in a practice of law. Thank you very

much. You prepare your witnesses and I understand your situation. Regardless of the facts. Ready for the jury?

MS. SAVAS: Yes.

THE COURT: I will overrule the objection based on the reasons stated. Thank you. Bring them back in. Ms. Holman, just listen to your lawyer's questions and the other lawyer's question and answer that question, please, ma'am, okay? Thank you.

(Whereupon the jury entered the courtroom at 10:31 a.m.)

THE COURT: Thank you very much. Thank you, ladies and gentlemen. We are ready to continue. Solicitor, you may resume your examination.

MS. SAVAS: Thank you, Your Honor.

BY MS. SAVAS:

Q. So, Ms. Denise, specifically that day what were you expecting to get from them?

A. To be honest with you, at that time I was hoping there would be some drugs.

Q. And what kind of drugs?

A. Crack cocaine.

Q. Okay. And, Ms. Denise, did you have

any other food or anything like that in your cupboards or in your pantry at that time?

A. Not -- I had plates.

Q. Okay. Thank you. No further questions. Please answer questions defense is going to ask, okay?

A. Yes, ma'am.

THE COURT: Ms. Seman, you may cross-examine.

MS. SEMAN: Thank you.

CROSS-EXAMINATION

BY MS. SEMAN:

Q. Good morning, Ms. Holman.

A. Good morning.

Q. When you spoke with the solicitor you talked about your drug problem, right?

A. Yes.

Q. You are addicted to drugs?

A. I was.

Q. Specifically crack cocaine?

A. Yes.

Q. Right?

A. Yes.

Q. And you were addicted to crack cocaine when all this happened, right?

A. Yes.

Q. You were using crack when all this happened, right?

A. Yes.

Q. And you had even turned in your crack pipe to Sergeant Sherwood the week before this happened?

A. I don't remember.

Q. Because crack use makes it hard to remember things sometimes, right?

A. True.

Q. Especially things that happened when you were using, right?

A. Well, in my case I had an aneurysm so a lot of my memory have left.

Q. And in your house on Clements Avenue, the front door opened to your living room, right?

A. Yes.

Q. That was the first room?

A. Yes.

Q. And the kitchen was next to the living room?

A. Yes.

Q. Separated by a doorway?

A. Yes.

Q. There was a curtain in the doorway?
A. Yes.
Q. A curtain separating the living room and the kitchen?
A. Yes.
Q. A curtain that would block the view of the kitchen?
A. Yes. I also kept it to keep the heat in the living room.
Q. Keep the heat in the living room?
A. Yes.
Q. On that day when police came to your house you let them in?
A. Yes.
Q. They talked to you, right?
A. Yes.
Q. But they never asked you to write down what happened, did they?
A. No.
Q. So you didn't?
A. No.
Q. I beg the Court's indulgence.
THE COURT: Certainly.
(Off-the-record conference.)
BY MS. SEMAN:

Q. And, Ms. Holman, you mentioned an aneurysm, right, having an aneurysm?

A. Yes.

Q. And that happened after this happened, right?

A. Yes, yes.

Q. So you didn't have the aneurysm before all of this happened?

A. No.

Q. Ms. Holman, you talked with Ms. Savas before you came to court today, right, this lady right here?

A. Yes, ma'am.

Q. And you met with her in her office, right?

A. Yes, ma'am.

Q. And you talked about what you would say today in court, didn't you?

A. Basically, yes.

Q. And she asked you questions about what happened?

A. Yes.

Q. And her questions helped you remember some things, right?

A. Yes.

Q. And it happened a while ago?
A. Um-hmm.
Q. More than almost three years ago?
A. Yes.
MS. SEMAN: No further questions, Your Honor.
THE COURT: Very well. Mr. Lewis.

CROSS-EXAMINATION

BY MR. LEWIS:
Q. Thank you, Judge. Good morning, Ms. Holman.
A. Good morning.
Q. You testified that you have been clean for about seven months now?
A. Yes, sir.
Q. So after those events back in 2015 you continued to use for several years?
A. I did.
Q. But you finally started to get clean, right?
A. Under the circumstances when I got the aneurysm is when I got clean.
Q. Yes, ma'am. And I know we have talked some about your house back there at Apartment [redacted]?
A. Um-hmm.

Q. You had a microwave, right?
A. Yes, ma'am.
Q. That was your microwave?
A. Yes, sir.
Q. You had some Pyrex and baking soda and whisks and things like that in your house?
A. Yes, ma'am.
Q. Those were yours?
A. Yes, sir.
Q. So the items that were in that house that you have said today they were using, those were yours?
A. Eventually they became mine. They left them there and eventually I just started owning them.
Q. During all this you were never charged?
A. Huh-uh.
Q. You were never charged with manufacturing crack?
A. No, sir.
Q. Even though it was your house that was supposedly being used, right?
A. Correct.
Q. Your microwave, right?
A. Correct.

Q. Your Pyrex, your whisks, all those items were yours?

A. Okay. The fellows who come there, they bought them with their own money. They just left them there so when they be there they have something to use.

Q. On that day, you said you were expecting to get something in return for this?

A. Yes.

Q. You were never charged by that? They never brought a case against you, did they?

A. No.

Q. So you avoided that punishment for that activity, right?

A. I guess.

Q. Thank you.

THE COURT: Redirect, solicitor? Any questions?

MS. SAVAS: Beg the Court's indulgence.

(Off-the-record conference.)

REDIRECT EXAMINATION

BY MS. SAVAS:

Q. Ms. Denise, I just have one question.

A. Yes, ma'am.

Q. I didn't make promises to you or anything about you coming in to testify, did I?

A. You? No, ma'am.

Q. Thank you, Ms. Denise. Nothing further.

THE COURT: Okay.

THE COURT: Recross?

MS. SEMAN: No, Your Honor.

MR. LEWIS: No, Your Honor.

THE COURT: You may step, Ms. Holman. Thank you very much. You wish the witness to be excused?

MS. SAVAS: Yes, Your Honor.

THE COURT: Any objection to Ms. Holman leaving?

MS. SEMAN: No, Your Honor.

THE COURT: Ms. Holman, you are free to leave. Thank you, ma'am. Call your next witness, please.

MS. SAVAS: Thank you, Your Honor. The State calls Sergeant Hoose.

FRED HOOSE

having been duly sworn, testifies as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: My name is sergeant Fred Hoose, H-O-O-S-E, and I am with the North Charleston Police Department.

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Good morning, Sergeant.

A. Good morning.

Q. Sergeant, you stated you're with the North Charleston Police Department. What is your position there?

A. I currently work in the office of professional standards.

Q. And what does that entail for you?

A. We normally -- it's referred normally as internal affairs and we investigate policy violations and police misconduct.

Q. And how long have you been doing that?

A. Since July of last year.

Q. And how long have you been with the North Charleston Police Department?

A. Probably 19 years.

Q. And before you were sergeant with internal affairs what were you doing before?

A. I was a supervisor, a sergeant still of the Speed Team which is a uniformed street crimes

unit. We handle street level narcotics and prostitution and other things as well.

Q. And about how long were you the sergeant over at Speed Team?

A. Two years.

Q. And what was your position before that?

A. I was the Sergeant of South Evenings Team One. And that's just a patrol team that works the area that we call the south bureau of the City of North Charleston.

Q. And what kind of neighborhoods does that entail in North Charleston, kind of get a view, which locations?

A. They are like Chicora, Union Heights, Chicora-Cherokee, it's kind of two neighborhoods in one. There is Dorchester Waylyn, Dorchester Terrace, if you are familiar with Spruill Avenue, below Park Circle, we kind of go from like Park Circle down to like the very edge of the City of Charleston's northern jurisdiction.

Q. And prior to being sergeant for the patrol what was your duties before that?

A. I was a patrolman on the PACE Team. It's an acronym. I wouldn't be able to tell you what that meant, but basically it was a street

level saturation unit that was assigned to the patrol division and we just worked in -- we have comstat areas. There was a statistical analysis put into where the high crime areas are and patrol units are assigned to those areas and they change all the time. We were mainly assigned to the areas that were not comstat areas.

Q. Okay. And before that? I know I am making you think back.

A. Before that I worked in patrol, just a patrol unit, did various shifts.

Q. And what was your background prior to joining North Charleston Police Department?

A. Well, I have been a police officer for 25 years. Simultaneously with my law enforcement career I have been in the Army Reserves. I am currently not in the Reserves anymore, but I was a commissioned officer in the Army Reserves in logistics.

Q. And with the North Charleston Police Department have you had any specialized training?

A. Yes. I have had training in investigations, crime scene for investigators, domestic violence investigations, forensic -- I used to work at Mt. Pleasant. I had forensic

pathology training. Drug -- I took a drug unit commander course. It was basically how to manage drug units, develop operational plans, informant management. I have taken deescalation training.

Q. And so you have had significant narcotics training?

A. I would say so. I had basically drug level recognition a long time ago and at one point when I first started at North Charleston I worked in an undercover capacity for probably like three or four months.

Q. Okay. And back on March 6th, 2015, of this incident what was your position then?

A. I was the supervisor of the South Evenings Team One.

Q. And were you Sergeant Sherwood's supervisor at that time?

A. I was.

Q. And I'm going to show you State's Exhibit No. 19. Sergeant Hoose, were you also at this location that day?

A. That's correct.

Q. Okay. Was that second unit?

A. It was.

Q. And, Sergeant Hoose, how were you

involved in this case?

A. Being the supervisor I kind of go around to where my officers are and I believe Officer Sherwood was -- I think it was a traffic stop or another call. I can't remember. But we were sitting there talking and after he was finished with his business and he observed some activity that kind of he thought we should check into.

Q. And did you go with and approach the Apartment No. 2?

A. I did.

Q. And what happened when he had knocked on the door?

A. The door opened and a lady by the name of Denise Holman answered the door. And he asked for permission to enter in the apartment.

Q. And she gave that lawful consent?

A. She did.

Q. And what did you notice when you entered the apartment?

A. Well, at first I was kind of a little -- I didn't have a direct view inside the apartment, but when I went in I noticed some individuals exiting. I didn't know it was a

bathroom at the time, but apparently a bathroom attached to the kitchen.

Q. And do you see one of those individuals today?

A. I do.

Q. Can you please point to him?

A. He's right there in the khaki pants and black shirt.

Q. Let the record reflect the witness has identified the Defendant in the case, Mr. Boston.

THE COURT: Okay.

BY MS. SAVAS:

Q. And, Sergeant Hoose, what happened after they had run out from the bathroom?

A. Well, they didn't really run out. They kind of like -- were kind of it was almost like they didn't know what to do and Sergeant Sherwood called him -- called them out. I kind of stayed -- it's a really small apartment so I was not in the kitchen. I was kind of more to the living room. And they kind of were called out to where I was.

Q. And what happened once they came into the living room by you?

A. I conducted a Terry frisk I believe. I know I conducted a Terry frisk of Mr. Holmes, but I

believe I also conducted a Terry frisk of Mr. Boston because Sergeant Sherwood was still in the kitchen.

Q. And what was a Terry frisk? What's the purpose for it?

A. The purpose is it's when you have like criminal activity that may be going on or just occurred if you have reason to believe that someone may be armed, that gives you the legal permission to do an outer patdown of clothing, not going in pockets or anything like that to search for weapons.

Q. And why did you find that necessary at that point in time?

A. Well, just based on all the facts at the time. It was location, this apartment complex for lack of a better term is known for drug activity. And I believe Sergeant Sherwood was suspicious there might be drug activity going on. When they went they were kind of like hiding out in the bathroom and coming out. So I felt like with the drugs and guns go hand in hand, plus we have a lot of violent crime in the area I thought was best to pat him down.

Q. But ultimately they did not have

weapons --

A. They did not.

Q. -- on them. And that's pretty much for safety purposes of everyone involved?

A. It is, mainly for safety.

Q. And did Mr. Holmes in this case give you consent to search his person?

A. He did.

Q. And, Sergeant Hoose, what did you end up finding on his person at that time?

A. It's a small baggie of I want to say it was crack, but cocaine in his -- it was in one of his right pockets. I think he was wearing a jacket. I can't remember if it was the jacket pocket or pants pocket. And also a small digital scale.

Q. In your training and experience what are digital scales typically used for?

MR. SMIT: Objection.

THE COURT: What's the basis?

MR. SMIT: Speculation.

THE COURT: Overruled.

THE WITNESS: Digital scales are used in drug transactions. They are used to weigh out the amount of drugs that you're going to give

somebody or take.

BY MS. SAVAS:

Q. Sergeant Hoose, I'm going to show you what's been admitted as State's Exhibit No. 14. Is this that digital scale from his pocket?

A. It appears so.

Q. Okay. And, Sergeant Hoose, I'm going to show you just for identification purposes what's been premarked for ID State's Exhibit No. 16 and inside is 1.1. Do you recognize that item?

A. Yes. That's off white -- the off-white substance that was in his pocket.

Q. And when you recovered that and the scale what did you do with them?

A. I gave it to Officer Pai.

Q. And what was he going to do with them?

A. He was going to take care of the evidence process.

Q. And at that time was any of the evidence tampered with in any way?

A. No.

Q. And was that substance correctly procured and secured in evidence?

A. It was.

Q. Beg the Court's indulgence.

(Off-the-record conference.)

MS. SAVAS: Nothing further from the State. Please answer questions from the defense.

THE COURT: Ms. Seman first. We will do Mr. Boston first.

MR. SHAHID: May it please the Court.

CROSS-EXAMINATION

BY MR. SHAHID:

Q. Good morning.

A. Good morning.

Q. Still sergeant?

A. It is.

Q. Okay. This incident occurred on March 6th, 2015?

A. That's correct.

Q. At that time you were still a sergeant?

A. I was.

Q. At that time you were Speed Team, correct?

A. No, I was supervising the patrol unit down there evening shifts.

Q. You mentioned on direct that you were Sergeant Sherwood's ranking officer at that time?

A. That's correct.

Q. At that time Sergeant Sherwood was

training, you guys call him Officer Pai?

A. It's Officer Pai. It's a -- his last name is hard to pronounce. And first name is really long and starts with Pai, so he prefers to be called Officer Pai.

Q. For purposes of this proceeding would you mind if we call him by his last name?

A. That's fine. I will butcher it for sure.

Q. I will too so don't worry. It's Etminan?

A. That's correct.

Q. So Officer Sherwood was training Officer Etminan?

A. That's correct.

Q. All right. Let's just say given your rank at the time you were kind of training Officer Etminan too?

A. In a way.

Q. In a way. Before going in [redacted] Avenue you were there with Officer Sherwood for something completely unrelated?

A. That's correct.

Q. You are with Officer Sherwood and you see two black men got out of a taxicab, correct?

A. That's correct.

Q. One of those men is Mr. Boston?

A. Um-hmm, that's correct.

Q. When you guys see them get of the taxicab you don't see anything in their hands, right?

A. No.

Q. Okay. No Pyrex in their hands?

A. That's correct.

Q. No whisk in their hands?

A. No, sir.

Q. No backpack on them?

A. No, sir.

Q. No bag of any kind with them?

A. No, sir.

Q. All right. Just two guys exiting a cab going into an apartment?

A. That's correct.

Q. You would say this was an observed activity?

A. That's correct.

Q. You said before going up to No. 2 you and Officer Sherwood waited a couple of minutes?

A. That's correct.

Q. And you knocked on the door?

A. Yes, sir.

Q. Apartment No. 2. Based off no prior drug complaint there?

A. That's not totally true.

Q. Well, that's correct. There was a complaint about another complaint in that area, correct?

A. That's correct. There have been several.

Q. Several. But specifically there was complaints about the landlord being threatened?

A. That's correct.

Q. All right. But there was no recent complaint written at least that involved a drug complaint at Apartment No. 2?

A. Yes, sir, that's correct, other apartments, not Apartment [redacted].

Q. But not Apartment [redacted]. All right. There was no complaints of specifically listing Darell Boston?

A. That's correct.

Q. There was no complaints specifically listing William Holmes?

A. Not that I know of.

Q. All right. So Sherwood goes up and he

knocks on the door?

A. Yes, sir.

Q. You mentioned on direct examination you had -- you didn't really have a clear view; is that right?

A. That's correct.

Q. Were you standing behind Officer Sherwood?

A. Kind of behind and off to the side. It's basically a -- when you approach a door you don't really want -- if you can help it you don't want to be in what they call the fatal funnel. You don't want to be in front of the main part of the door. Sometimes it can't be avoided. Sherwood wasn't able to avoid that because the stoop is so small. So I kind of stood off a little canted behind to the side still on the stoop.

Q. You were not the one making the original investigation, it's him?

A. He's the contact officer, yes, sir.

Q. So he knocks on the door. The door opens. Denise Holman. He speaks to Denise?

A. Yes, sir.

Q. And you can see in the apartment with still an obstructed view?

A. Well, I can -- the door opens, I think if you are facing it, the door opens to the inside towards the wall. I guess to the right, to my right. So I can see just a little bit. There's like a little wall there. And then I can see a little bit into there, but I don't have a clear view straight through the kitchen.

Q. Once he goes in?

A. I am following him, yes.

Q. So you follow, you go inside. You see there's a curtain between the kitchen and the main room?

A. There was a curtain, but it was pretty -- you could see through to where they were.

Q. Okay. And you didn't take any pictures when you walked in, did you?

A. No, sir.

Q. Okay. Officer Sherwood you said goes in the bathroom. But you stay in the living room?

A. I do.

Q. And Officer Etminan is with you?

A. He's kind of behind me. I am not really aware of where he is, but he's not with Sherwood. He's probably behind me.

Q. Let's say about a couple seconds pass

and Officer Sherwood brings out Mr. Holmes and Mr. Boston; is that right?

A. Probably less than a couple seconds. So it's not like he pulled them. Like they kind of come out on their own and he kind of directed them to the living room.

Q. And we are talking about Mr. Holmes first and then I will ask you another series of questions and come back to Mr. Boston if that's all right with you. Some sort of search is conducted on Mr. Holmes at this time?

A. That's correct.

Q. And you find a scale and some off-white substance?

A. That's correct.

Q. While that's going on you hold Ms. Holman, Mr. Boston, Mr. Holmes and you are kind waiting around while Officer Sherwood goes and gets the search warrant?

A. That's correct.

Q. Ms. Holman is there too. You were there when they were read their rights, Mr. Boston?

A. I don't believe they were read their rights in the apartment. I think it was after they got outside somewhere.

Q. But Officer Sherwood comes back and executes the search warrant at the house?

A. That's correct.

Q. And then Mr. Boston is then arrested with Mr. Holmes?

A. I believe they were both in handcuffs at the time.

Q. They were officially charged?

A. Officially charged and all that after.

Q. But Ms. Holman is released?

A. Yes, sir.

Q. This was her apartment?

A. It was.

Q. She is a known drug user?

A. I didn't know her at the time, but I would say, yes, that's probably a correct assessment at the time.

Q. And she has had interaction with your agency before?

A. I don't have any specific knowledge of that.

MS. SAVAS: Objection.

THE COURT: Basis?

MS. SAVAS: He answered the question.

THE COURT: Thank you. Withdrawn.

BY MR. SHAHID:

Q. What I am going to do now, Sergeant Hoose, is going back originally. So you also searched Mr. Boston, correct?

A. I don't recall searching him. I believe I did a patdown, but he may have been searched by Officer Sherwood.

Q. During the course of your patdown you didn't find any cocaine on him?

A. No, there was no contraband on Mr. Boston.

Q. No marijuana on him?

A. No, sir.

Q. No crack pipe on him?

A. No, sir.

Q. No scales on him?

A. No, sir.

Q. Nothing that would indicate on his person at least that he had comitted a crime?

A. That's correct.

Q. Okay. Sergeant, you said you're currently in internal affairs?

A. I am, yes, sir.

Q. And part of your job in internal affairs is to investigate misconduct in the police

force?

A. That's correct.

Q. So you kind of know -- and being in internal affairs you have to know what a good officer looks like?

A. Yes, sir.

Q. You didn't write a report in this case, did you?

A. I didn't.

Q. You didn't take any notes in this case?

A. No, I did not.

Q. But you keep a little note pad on your person?

A. No, sir.

Q. You don't? Okay. You are trained as an officer to normally make reports though?

A. I should have made a supplemental report. Yes, sir, I should have.

Q. But you didn't in this case?

A. I did not.

Q. And you should have made one because they -- reports help refresh your memory?

A. That's correct.

Q. You have got thousands of cases?

A. Well, not thousands, but quite a few

cases.

Q. It has been about three years since this arrest?

A. Yes, sir.

Q. You did review at least something before testifying?

A. I did.

Q. That was a report written by somebody else?

A. Yes, sir.

MR. SHAHID: No further questions.

THE COURT: Mr. Smit.

CROSS-EXAMINATION

BY MR. SMIT:

Q. Sergeant Hoose, a handful of questions for you. As you stated already you were the senior most officer there?

A. That's correct.

Q. And, again, certainly you would say Sergeant Sherwood, Officer Etminan would have been looking to you for instruction?

A. I would say so.

Q. And, again, had you seen anything going wrong in the course of the investigation you certainly would have stepped in and said something?

A. That's correct.

Q. And, again, had you -- again, you were the approving officer on the report that was ultimately submitted?

A. Yes, sir.

Q. So as approving officer your job is to look at the report and review that report?

A. Yes, sir.

Q. And, again, had you seen anything in that report that stood out to you as being incorrect you certainly would have said something?

A. Yes.

Q. Now, again, as Mr. Shahid was asking a moment ago, you stated you should have filled out a supplemental report?

A. Yes.

Q. That's --

A. Fair.

Q. That's common for officers to do? Officers that are involved in a case to fill out a supplemental?

A. That's correct.

Q. Because officers are potentially in different positions and have different perspectives in what they see?

A. Yes.

Q. Again, you would agree your job is a job of details?

A. Yes. No doubt about that.

Q. Exactly. And every little detail as you're seeing is important to ultimately make a case, correct?

A. Yes.

Q. And, again, that's why it is important to write these details down, because when you're there on March 6th, 2015, you don't ultimately know how the case is going to resolve?

A. That's right.

Q. You don't know if this is ultimately going to go to trial?

A. Correct.

Q. And, again, we're roughly almost three years removed from the day that you were?

A. That's correct.

Q. In that house. Again, because you did not fill out a report you're simply trying to rely on your recollection when testifying here?

A. Yes.

Q. And, again, since March 6, 2015, you have had handled roughly 100 cases or so?

A. Several hundred probably.

Q. Several hundred probably. All with incredibly important details?

A. That's correct.

Q. Now, as you stated on the day of this incident you all were responding to an unrelated call?

A. Well, he was already doing -- finishing up -- I think it was a traffic stop. It might have been another call.

Q. You don't remember the specifics of that incident?

A. No, sir.

Q. Because you didn't write a report?

A. Well, I don't think I would have normally put that in a report, but that's a fair assessment.

Q. And, again, you all saw a taxicab pull up. Two black men get out and go into the house?

A. That's correct.

Q. There was no issue of them getting into the house?

A. No, they went in the house unimpeded. They were invited in the house.

Q. There was nothing inherently suspicious

about seeing them walk into that house?

A. With other facts I guess. With other facts I guess, yes.

Q. Again, looking at them as they walked into that house there were nothing inherently suspicious about how these two men went up and went into the house?

A. Right. So how they got out of the cab and went into the house, no, sir.

Q. As you stated, you were directly behind officer -- Sergeant Sherwood as he entered into the house?

A. Right. He kind of entered first. I went right behind him.

Q. You are immediately behind him. Again, as you are initially coming into that doorway you couldn't see all the way into the house?

A. Well, I could see straight through to where the bathroom was and the kitchen.

Q. Okay. You said just a moment ago as you entered into the house literally within seconds Mr. Holmes and Mr. Boston came out from the bathroom into that --

A. It was almost kind of simultaneous. As Sergeant Sherwood reached that area they kind of

popped out and he kind of directed them out. If I could back up one time. So once I got in the house I can see back into the kitchen. When I was outside I couldn't.

Q. And it was almost simultaneous that you all were entering into the house that Mr. Holmes and Mr. Boston come from out of that bathroom?

A. Right.

Q. And I believe you stated on direct that they didn't run from the bathroom, they more came out and looked like they didn't know what to do?

A. Kind of startled, you know, right, exactly.

Q. So you didn't see anything as you are going in the house of hearing a microwave slam shut?

A. No, sir.

Q. Had you heard something like that that would have been something important to put in a report?

A. Oh, correct.

Q. You didn't see any type of football handoff and these two men running into the bathroom?

A. No, sir.

Q. Again, had you seen something like that that's an important detail?

A. It is.

Q. That's an incredibly important detail because that would be in a report?

A. It should be, yes.

Q. It should be. Now, as Mr. Holmes and Mr. Boston are there you essentially detain them immediately, correct?

A. Little patdown first.

Q. And Officer Sherwood performed --

A. Right, protective sweep.

Q. And then, again, ultimately you asked for consent to search both men, correct?

A. I would say that I definitely asked consent to search Mr. Holmes. I cannot recall --

Q. You asked consent to search Mr. Holmes and he gave you that?

A. He did.

Q. And upon searching him he had a small amount of cocaine on his person?

A. And a scale, yes, sir.

Q. Now, again, ultimately you were again as I stated the approving officer and reviewed the report?

A. Yes, sir.

Q. Reviewed the evidence that was ultimately collected?

A. Yes, sir.

Q. And, again, ultimately collected there was 7.2 grams of off-white rock like substance that was collected in the house, correct?

A. Yes, sir.

Q. Brief moment, Your Honor.

THE COURT: Certainly.

(Off-the-record conference.)

MR. SMIT: Nothing further at this time, Your Honor.

THE COURT: Redirect?

MS. SAVAS: Your Honor, I believe we have a matter of law.

THE COURT: Approach, please. Ladies and gentlemen, what we are doing here is having a bench conference for purposes of talking about this issue to see if it might can be done at a later point. It is perfectly normal and the conversation will be not within your hearing. So that's by design.

(Off-the-record conference.)

THE COURT: We have had a bench

conference concerning the matter and I have indicated we will afford the opportunity to place it fully on the record, Solicitor, when we take our break. Thank you so much.

MS. SAVAS: Thank you, Judge.

THE COURT: Any questions on redirect?

MS. SAVAS: Yes, Your Honor. Just briefly.

REDIRECT EXAMINATION

BY MS. SAVAS:

Q. Sergeant Sherwood -- Sergeant Hoose, sorry, just to clarify, you mentioned that you had seen them exiting the bathroom. You didn't have a view of inside the apartment prior to your entering, did you?

A. No. Just that small bit as the door is opened where there's a wall.

MS. SAVAS: Thank you. No further questions.

THE COURT: Recross?

MR. SHAHID: No.

MR. SMIT: No recross, Your Honor.

THE COURT: You may step down. You wish this witness to be excused?

MS. SAVAS: Yes, Your Honor.

THE COURT: Any objection?

MS. SEMAN: No, Your Honor.

MR. SMIT: No.

THE COURT: You are free to leave. Ladies and gentlemen, at this point you heard there is a matter I need to put on the record. We will use that as an opportunity to take our break. Typically I try to go about an hour and-a-half. We have been not quite that, but we will use this for our morning break. Do not begin your deliberations and don't discuss the case. We will be with you in about 10 or 15 minutes. Thank you.

(Thereupon, the jury exited the courtroom at 11:08 a.m.)

THE COURT: Solicitor, you brought to my attention that you believe some of the questioning in cross-examination of Sergeant Hoose opened the door to allow you to bring in evidence of the prior drug usage so I will be happy to hear from you now.

MS. SAVAS: Thank you, Your Honor. May it please the Court, in the cross-examination of Sergeant Hoose by Mr. Shahid he had asked specifically, he began the questioning of specific drug complaints as they did with Sergeant Sherwood

in that specific apartment unit and the complex and then he specifically asked were there any drug complaints regarding the Defendants.

That I believe is opening the door and Sergeant Hoose to the best of his knowledge has answered that question; however, there are significant factors in questioning Ms. Denise and prior interactions with Sergeant Sherwood that we have avoided according to your ruling.

Later Mr. Smit had cross-examined Sergeant Hoose and specifically said twice they were inherently -- whether they were inherently suspicious walking into the house. Once again, with the description of being two black males and he didn't allow Sergeant Hoose to fully answer that very, very specific question he asked twice.

And because of that, Your Honor, we then believe under Rule 404(b) it would be admissible evidence to show their knowledge of manufacturing crack because it shows that there's a common scheme or plan and that motive there and why they were there that day as Ms. Denise has testified to and they had asked her on cross-examination as well about the items, whether they brought them or not.

So, Your Honor, we think there has been sufficient statements made by defense in their questioning that would allow the State to enter that further explanation.

THE COURT: Please tell me here because I don't have to make this point -- I don't have to do this. In what way do you think that prior making of crack cocaine has more probative value than to outweigh the prejudice of some prior drug use? How is that more probative than what you have already in this case?

MS. SAVAS: Yes, Your Honor. I think it not only paints a clear picture, but it shows that they knew how to make it. Their intending strategy is that it was Ms. Denise, it was her house. It was her items. She was the one that was making --

THE COURT: Solicitor, let me just stop you. Because that's just absolutely what I said up here. I appreciate you and I just have to agree to disagree. I think that would do nothing but taint the record in this case dramatically when it is totally not necessary for these reasons.

Number one, you have a call person identified can I come to your apartment. There is

nothing to suggest, there's no food there, there is nothing there. The witnesses testified yep, they came. You had testimony from your witness, I guess you are not comfortable with that. He said I saw him making crack cocaine. I found them in the process of making crack cocaine.

I think the testimony is it's the first time in my career I have ever seen somebody actually making crack cocaine. But now we need some additional evidence to say that they know what they are doing? That doesn't make any sense. That's no probative value. All that does is create something that's not necessary in this case and first of all, the prior drug use has all been in the generic. You know, really I want this on the record too because this is precisely one of my concerns about the knock and talk. I know what you are trying to do. You are trying to create the knowledge that he had and that's what led them to go up there and so everybody that has a prior drug use under that theory under the knock and talk, get ready to have them walk up and knock on your door every day. I don't think Supreme Court went that far, but that's the way it is structured.

So I want the record to be clear that

bothered me in my ruling. It bothers me now that we are constantly trying to say just because these gentlemen have used drugs in the past we got the right to go wherever they go any time. And I understand that dissent. I understand the Supreme Court said nothing more than any citizen walking up and knocking on a door. And that's the way I have couched this. I want it to be framed so the Supreme Court if they have to address this can at least answer that question.

So thank you very much. I put that on the record for a specific reason. Hopefully it will be of some benefit. Anything else?

MR. SMIT: Nothing from us.

MR. SHAHID: Nothing from Mr. Holmes, Your Honor.

THE COURT: Thank you. We will be at ease. Appreciate it. We will take about a ten-minute break.

(A recess transpired.)

THE COURT: Let the record reflect Mr. Boston is present. Mr. Holmes is not. Are you all ready?

MS. SAVAS: Yes.

MR. LEWIS: Yes.

THE COURT: All right. Let's bring in our jury.

(Whereupon the jury entered the courtroom at 11:30 a.m.)

THE COURT: Ms. Reed, I have seen you sitting in that chair from the start. Have they selected you as the presiding juror?

THE JUROR: I don't know. I like the chair. I guess.

THE COURT: It's unanimous. That's fine. Thank you very much, ladies and gentlemen, I appreciate you doing that. And it's interesting how that is accomplished from time to time. But you have done a good job of doing that role thus far so you are the presiding juror. Thank you so much and that will be your seat for the balance of the trial. Thank you very much.

Ladies and gentlemen, give your attention to the next witness, please. Solicitor, you may call your next witness.

MS. SAVAS: Thank you, Your Honor. The State calls officer Pia Etminan.

PAIAM ETMINAN

having been duly sworn, testifies as follows:

THE CLERK: Please state your full name

and spell your last name.

THE WITNESS: Paiam Etminan, last name is E-T-M-I-N-A-N.

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Good afternoon. And what agency do you work for?

A. North Charleston Police Department.

Q. And how long have you worked with them?

A. I have worked with them since June of 2013.

Q. And what is your current position?

A. I'm a neighborhood resource officer.

Q. And what does that entail?

A. I'm basically the liaison for a specific community in the community to the police department so I problem solve for the communities and handle issues within the communities.

Q. And which area are you the neighborhood resource officer?

A. Wando Woods in the south bureau.

Q. And how long have you been the NRO over there?

A. It will be about six months now.

Q. And what was your job before that?

A. Before that I was a patrolman on night shift.

Q. And what area were you patrolman?

A. South bureau.

Q. And in March of 2015 what was your position then?

A. March 2015 I was in training.

Q. And who was your field training officer?

A. Sergeant Sherwood.

Q. And have you gone through training with the North Charleston Police Department, extra training certifications?

A. No.

Q. You have been trained through the academy?

A. Trained through the academy and then field training with Officer Sherwood.

Q. Okay. And how are you involved in the case?

A. Mostly just observing and following the direction of my field training officer.

Q. Okay. So when you are a trainee is that typical? What's that like being a trainee?

A. Well, you're at the direction of your

field training officer so you are mostly observing and you do what they tell you to do unless otherwise stated.

Q. Chain of command?

A. Yes.

Q. And do you recall going to the apartment in this case?

A. I do.

Q. And showing you State's Exhibit 19, is that the apartment?

A. Yes.

Q. And can you tell us a little bit about that when y'all approached? Did you -- where were you when Sergeant Sherwood knocked on the door?

A. I was following him up to the door. I was behind him.

Q. Okay. And what happened when you knocked on the door?

A. I believe when he knocked on the door -- I don't recall actually. I don't recall.

Q. Do you recall someone answering the door?

A. Yes, someone did answer the door. I don't know who answered the door though.

Q. Do you know if it was male or female?

A. No.

Q. Okay. Were you just not in the view for that?

A. I was not in view.

Q. So looking at the stoop where were you positioned and you can kind of put a little mark on your computer there.

A. So Officer Sherwood was here. And I was coming up behind him.

Q. Okay. So you are pretty much on that sidewalk?

A. Yes.

Q. And once y'all entered the apartment what did you observe?

A. I observed two males and a female Denise and the -- it was a living room, then a kitchen in the back and that's all I could see.

Q. Okay. And where was everybody positioned when you walked in the apartment?

A. So I was at the door most of the time just standing at the door. And so Denise -- it's a square room. Denise was to my right, Sergeant Hoose and Sherwood were to my left and the two Defendants.

Q. Okay. And what were you tasked with

doing in this case?

A. I was evidence. I helped -- I assisted with collecting evidence.

Q. Okay. And, Officer Etminan, I'm going to show you what's been marked for identification only -- what's been premarked as State's Exhibit No. 15. And can you just actually describe what the collection process is of the evidence?

A. Well, there's a return form and as you're gathering the evidence you have to mark down specifically describing on the return form quantity and so on.

Q. Does it also describe the location of the items found?

A. Yes.

Q. Okay. And, Sergeant Sherwood, showing you what's been identified as State's Exhibit No. 15, do you recognize this?

A. Yes.

Q. And how do you recognize that?

A. That was found on one of the Defendants in the apartment.

Q. I just want to clarify for you though -- one second. Officer, was there also another substance taken from that apartment that

day?

A. From the apartment?

Q. Yes, besides what was on someone's person?

A. There was several items.

Q. As far as a white substance?

A. That I don't recall.

Q. Okay. Officer, would it help if I show you the chain of custody form?

A. Yes.

Q. Would you explain what a chain of custody is?

A. It's basically when you transfer evidence from one person to the other you have to document who is getting it, who is receiving it and who is transferring it.

THE COURT: Have it marked for identification, please.

MS. SAVAS: Yes, Your Honor.

(STATE'S EXH. 21 was marked for identification.)

BY MS. SAVAS:

Q. And, Officer Etminan, I'm going to -- can you explain -- did you ever recover any of these substances at that time as collected in the

evidence?

A. No.

Q. And put them in BEST kits?

A. I did put them in BEST kits, yes. That was after we collected everything on the return.

Q. Okay. And, Officer Etminan, is that your signature on this BEST kit?

A. Yes.

Q. Okay. And in the BEST kits is everything given a specific number?

A. It is.

Q. Okay. And in this one showing you what has been premarked for ID as State's Exhibit No. 21. Does the chain of custody help determine the location that it was found? Does that -- do you recall that substance being collected at the scene?

A. Yes.

Q. Okay. And based on that what did you do with that substance?

A. This was sealed in the bag and turned into evidence.

Q. Okay. And do you recall who received it from the evidence?

A. Cindy Hearn.

Q. Okay. And, Officer Etminan, I am going to show you what's been premarked for identification purposes as State's Exhibit 16. Do you recognize this BEST kit as well?

A. Yes, I do.

Q. How do you recognize that?

A. This was the substance that was found at the jail during the strip search of one of the suspects.

Q. Did that come into your possession?

A. Yes.

Q. Where did you get that from?

A. It was received from Officer Sherwood.

Q. You said you received it from the jail. Would that come from a deputy at the jail?

A. Yes, it came from the deputy at the jail who conducted the strip search.

Q. And there's two baggies in there, correct?

A. Yes.

Q. Okay. And so once you obtained this evidence you also -- did you sign that BEST kit as well?

A. I did.

Q. Okay. And in that second baggie in

there do you recall Sergeant Hoose performing a consent search?

A. Yes.

Q. Okay. And did you also place baggies into the same BEST kit?

A. I did.

Q. Do you recall them coming from Defendant Holmes?

A. Yes.

Q. And do these appear to be tampered in any way?

A. No. No, they've just been removed from the original bags by SLED for testing and placed back in the bag.

Q. And has it been preserved to the best of your knowledge?

A. Yes.

Q. Officer Etminan, did you also Mirandize the Defendants in this case?

A. I did.

Q. And did they speak to you specifically?

A. They did not speak.

MR. SMIT: Objection.

THE COURT: What's the basis of the objection?

MR. LEWIS: Your Honor, we discussed it.

THE COURT: I understand that. I don't know what the relevance is given the pretrial discussions. If you lay a foundation where you're going with that. I don't know what they talked about here. I will allow that question. Whether they talked with him or not. I will allow you to answer the question. Did you talk with them?

THE WITNESS: They did not speak.

BY MS. SAVAS:

Q. Okay. And, Officer Etminan, after you had collected the evidence you had completed the lawful search warrant return?

A. Yes.

Q. Okay. Beg the Court's indulgence.

(Off-the-record conference.)

BY MS. SAVAS:

Q. Officer Etminan, when you say you submitted the evidence at North Charleston, what is that procedure? Is this a secured facility?

A. Yes, it's a secured facility. You have to use an access card that North Charleston gives to you to get into it and then you have to fill out a sign in form, state what you're placing into

evidence, where you are placing it because there's lockers or there's a drop box for different items.

Q. And what happens with the drugs when they need to be tested? What is your procedure for that?

A. When they need to be?

Q. Tested and sent to SLED?

A. They are put into the BEST kit. They're turned into evidence and evidence has a procedure for turning it over to SLED.

Q. Okay. And you completed those procedures in this case?

A. Yes.

Q. Okay.

MS. SAVAS: Nothing further from the State.

THE COURT: Cross-examination, Mr. Shahid.

CROSS-EXAMINATION

BY MR. SHAHID:

Q. It's Etminan, correct?

A. Yes, sir.

Q. So you weren't in here, but I butchered it earlier. I hope you weren't offended.

A. No, not at all.

Q. Officer Etminan, you mentioned on direct on March 6th, 2015, you were observing and following Officer Sherwood, correct?

A. Yes, sir.

Q. He was your field training officer at that time?

A. Yes, sir.

Q. And observing and following he was tasked with giving you certain things to do at a crime scene?

A. Um-hmm.

THE COURT: Is that a yes?

A. Yes.

Q. Because he wanted you to take the skills you learned at the academy and bring them down to the real world level?

A. Yes.

Q. That's fair to say?

A. Yes.

Q. Okay. He can tell you to put handcuffs on someone?

A. Yes.

Q. He could tell you to search somebody?

A. Yes.

Q. Read someone Miranda warnings?

A. Yes.
Q. To write a report?
A. Yes.
Q. Write a supplemental report?
A. Yes.
Q. On March 6th at [redacted] Avenue he only told you to do one of those things, right?
A. Yes.
Q. He didn't tell you to search anyone?
A. No.
Q. You didn't put handcuffs on anyone?
A. No.
Q. He didn't tell you to write a report?
A. No.
Q. He just had you read Mr. Boston and Mr. Holmes their rights in Officer Smoak's car?
A. Yes.
Q. He could have told you to write a report, couldn't he have?
A. Yes.
Q. And you could have written one to add to the file at any time?
A. Yes.
Q. Okay. You did also collect some items from the home or apartment I should say?

A. Yes.
Q. Included in those items were some items from Ms. Holman's cabinet?
A. Yes.
Q. In the kitchen?
A. Yes.
Q. That was the Arm & Hammer baking soda and the whisk?
A. Yes.
Q. And you collected some items found next to the bathtub?
A. Yes.
Q. One of those was the off-white rock like substance?
A. Yes, sir.
Q. And that was sent to SLED, wasn't it?
A. Yes, sir.
Q. Prior to it being sent to SLED you weighed it?
A. Yes.
Q. Would you agree it weighed about 7.2 grams?
A. Yes.
Q. Okay. Officer Etminan, you did come prepared to testify today, didn't you?

A. I did.
Q. And reviewed the case for trial?
A. I did.
Q. And the reports?
A. Yes.
Q. Those were prepared by somebody else?
A. Yes.
Q. They were?
A. As far as the incident report?
Q. Yes, sir.
A. Yes. The incident report was done by Officer Sherwood.
Q. One final question, Officer. We are going to step back in time a little bit and I know chronologically this question isn't nice and pretty. But when you originally approached the house, you're standing kind of far behind Officer -- Sergeant Hoose and Officer Sherwood at that time?
A. Yes.
Q. You eventually make your way inside of the house?
A. I wasn't into the house until we collected the evidence. I was at the door.
Q. When you go in the house you're in the

main living area?

A. Yes.

Q. And you see a curtain that separates the kitchen and the living room?

A. That I don't recall.

MR. SHAHID: No further questions, Your Honor.

THE COURT: Very well. Mr. Smit, any questions?

MR. SMIT: Brief moment, Your Honor.

(Off-the-record conference.)

MR. SMIT: No questions.

THE COURT: Redirect, solicitor?

MS. SAVAS: Nothing from the State.

THE COURT: Thank you, officer. You may step down. You wish him to be excused?

MS. SAVAS: Yes, Judge.

THE COURT: Any objection?

MR. SMIT: No.

MR. SHAHID: No objection.

THE COURT: Thank you very much. You are free to leave, sir. Call your next witness, Solicitor.

MS. SAVAS: The State calls Deputy Newcomb.

JUSTIN NEWCOMB

having been duly sworn, testifies as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: Justin Newcomb, N-E-W-C-O-M-B.

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Good afternoon, Deputy Newcomb. Where do you work?

A. Charleston County detention center.

Q. And how long have you worked there?

A. About eight and-a-half years.

Q. And what are some of your responsibilities, your job duties?

A. I'm an intake officer so as soon as someone comes in I take the paperwork, check the paperwork and patdown the subjects when they come in, take anything they have on them off.

Q. And can you sort of describe that patdown process that you take?

A. So the initial patdown when they first come in when they are still in cuffs, we pat them down and take anything out of the pockets like their cell phone, wallets, keys and everything like

that.

Q. And do you also do another type of search?

A. So if the charge -- depending on the charge, if somebody comes in on a drug or weapon charge there's a second search that is done. It will be a strip search. We take them into a room behind a curtain and we conduct a strip search to make sure they have no other contraband or anything else on them.

Q. And that is if there is evidence potentially hiding underneath their clothes?

A. Yes, ma'am.

Q. On their person. And were you involved in this case back on March 6th, 2015?

A. Yes, ma'am.

Q. And how were you involved?

A. So I was the strip search officer on this.

Q. And did you perform a strip search of the Defendants in this case?

A. Yes, ma'am.

Q. Okay. And did you also find any substance in this case?

A. From what I recall from my report it

was a small clear bag with a white powdery substance.

Q. Okay. Deputy Newcomb, I am going to show you what's been premarked for identification State's Exhibit No. 16. This is Item 1.12. Do you recognize that baggie?

A. It could be. I mean it's been a couple of years.

Q. Okay. And just in your procedure in doing that what happened once you located a baggie?

A. Once we collect and whatever we find on them inside the room we turn it over to the arresting officer who brought them.

Q. In this case did you do that?

A. Yes, ma'am.

Q. And do you recall who you had turned it over to?

A. I can't recall by name or face.

Q. But was it a North Charleston police officer?

A. It would have been, yes, ma'am, North Charleston.

Q. And did you follow the policy and procedures in this case?

A. Yes, ma'am.

Q. Beg the Court's indulgence.

THE COURT: Very well.

(Off-the-record conference.)

BY MS. SAVAS:

Q. And, deputy, did you do anything else in this case?

A. Not that I recall.

MS. SAVAS: Nothing further from the State.

THE COURT: Cross-examination.

MS. SEMAN: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MS. SEMAN:

Q. Deputy, you searched both Defendants in this case, right?

A. From my report the only one I remember from the report would be Holmes, but at the time if I was doing patdowns, yes, ma'am, I probably dealt with them.

Q. So that baggie that you were talking about, you did find that on Mr. Holmes, right?

A. Yes, ma'am.

Q. Not on Mr. Boston?

A. Not that I recall.

Q. Thank you.

MS. SEMAN: Nothing else, Your Honor.

THE COURT: Cross-examination?

MR. LEWIS: No questions.

THE COURT: Thank you. Any redirect?

MS. SAVAS: Nothing further from the State.

THE COURT: You may come down. Thank you very much. You wish the witness to be excused, Solicitor?

MS. SAVAS: Yes, Your Honor.

THE COURT: Any objection?

MS. SEMAN: No.

MR. LEWIS: No, Your Honor.

THE COURT: Thank you, sir. You are free to leave. Call your next witness, please.

MS. SAVAS: Your Honor, may we approach?

THE COURT: Sure.

(Off-the-record conference.)

THE COURT: Ladies and gentlemen, at this point we will take our lunch break. Do not begin your deliberations. Don't discuss the case among yourselves. I will let you have lunch until 1:30. Be back in the jury room at 1:30. Have a good lunch. Thank you.

(Thereupon, the jury exited the courtroom at 11:53 a.m.)

THE COURT: For planning purpose you have how many more witnesses, solicitor?

MS. SAVAS: We have the remaining four chain witnesses.

THE COURT: Okay. And then you would be resting after their testimony.

MS. SAVAS: Yes, Your Honor.

THE COURT: All right. Do you have witnesses prepared to go forward?

MS. SEMAN: Your Honor, at this time I don't think we will be calling any witnesses.

THE COURT: All right. Let me go ahead and do this at this point and use this opportunity. Mr. Boston, you may stand or remain seated, whatever your pleasure. Very well. Thank you, sir.

You have had the opportunity to discuss with your lawyers your right to testify or not to testify, sir?

THE DEFENDANT: Yes, sir.

THE COURT: And you have had a chance to ask them any questions or concerns you may have regarding that issue?

THE DEFENDANT: Yes, sir.

THE COURT: And you have discussed it, I don't want to know anything about strategies or anything else, you have discussed with them potential strategies of testifying or not testifying?

THE DEFENDANT: Yes, sir.

THE COURT: And they have, of course, advised you that you have the absolute right not to testify.

THE DEFENDANT: Yes, sir.

THE COURT: As you already heard me tell the jury, they shouldn't look to you to prove or disprove anything because you don't have to prove anything. In fact, I told them and I would re-enforce that, you don't have anything to present, you don't have to say a word and do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: But it is your right if you choose to present any additional testimony for the jury's consideration. Do you realize that?

THE DEFENDANT: Yes, sir.

THE COURT: Have you made a decision at this point, sir, as to what you wish to do, whether

you will testify?

THE DEFENDANT: Yes, I won't be testifying. They did a good enough job for me.

THE COURT: I appreciate that very, very much. And you are satisfied with the manner in which they have represented you thus far?

THE DEFENDANT: Yes, sir.

THE COURT: You are not under the influence of any medication or anything like that today?

THE DEFENDANT: No.

MS. SEMAN: He is under the influence of Jolly Ranchers.

THE COURT: That hasn't affected your ability to think or reason?

THE DEFENDANT: No, sir.

THE COURT: And you are comfortable with your decision?

THE DEFENDANT: Yes, sir.

THE COURT: If you change your mind at any point between now and when the State rests, I am going to ask -- I will revisit this briefly, but I want to go into this in depth at this time. If you change your mind just let your lawyers know. They can make me aware of that. We will resume

this discussion. But if you don't then I will assume that you stand by your response to my question and you are comfortable with that.

THE DEFENDANT: Yes, sir.

THE COURT: And is that fair to you, sir? You agree that's fair that I don't have to ask you again?

THE DEFENDANT: That's fair.

THE COURT: Okay. I find that -- thank you very much, Mr. Boston. You may be seated. I find that Mr. Boston has certainly had the benefit of very competent counsel and he has indicated that he is totally satisfied with their representation. I find his decision not to testify to be one he makes freely, voluntarily, knowingly and intelligently and we will go with that until you tell me otherwise. Okay. Thank you. Anything from the State before we recess?

MS. SAVAS: No, Your Honor.

THE COURT: Anything from Mr. Boston?

MS. SEMAN: No, Your Honor.

THE COURT: From Mr. Holmes?

MR. LEWIS: No, Your Honor.

THE COURT: Thank you so much. We will resume at 1:30, please. Have a good lunch.

(A luncheon recess transpired.)

THE COURT: Is the State ready to proceed?

MS. SAVAS: Yes, Your Honor.

THE COURT: Defendants are ready to proceed?

MS. SEMAN: Yes, Your Honor.

THE COURT: Let the record reflect that Mr. Boston is present. Mr. Holmes is still not present. His lawyers are there and ready to go. Thank you.

MS. SAVAS: Your Honor, I am sorry. Sergeant Sherwood may have to leave. There's sort of an emergency SWAT situation so I wanted to bring that to the Court's attention.

THE COURT: He can leave any time he wants. That's not a problem. When he comes back he can come back within the rail too. That's not a problem. Of course just out of an abundance of caution, I know I don't have to say this to you, don't discuss your testimony with any other witnesses of course. Thank you. Any objection from Mr. Boston?

MS. SEMAN: None.

MR. LEWIS: Absolutely not.

THE COURT: Thank you. Let's bring in our jury then, Mr. Pryor. Thank you so much, sir.

(Whereupon the jury entered the courtroom at 1:50 p.m.)

THE COURT: Ladies and gentlemen, thank you. Sorry to keep you waiting. I had some business outside that took longer than I anticipated. I apologize to you all. Hope you had a good lunch. We are ready to continue now. Solicitor, thank you for your patience as well. You may call your next witness.

MS. TRAN: Thank you, Your Honor. The State calls Cindy Hearn.

CINDY HEARN

having been duly sworn, testifies as follows:

THE CLERK: Please state your name and spell your last name.

THE WITNESS: My name is Cindy Hearn. H-E-A-R-N.

DIRECT EXAMINATION

BY MS. TRAN:

Q. Good afternoon, Ms. Hearn. Where do you work?

A. I work for MUSC.

Q. And what is your occupation at MUSC?

A. Yes.

Q. And you personally did not remove anything?

A. No.

MR. LEWIS: Thank you. Nothing further, Judge.

THE COURT: Redirect?

MS. TRAN: No, Your Honor.

THE COURT: Thank you. You may step down, Ms. Davis. You wish this witness to be excused?

MS. TRAN: Yes, Your Honor.

THE COURT: Any objection?

MS. SEMAN: No, Your Honor.

THE COURT: You are free to leave. Thank you. State may call its next witness, please.

MS. SAVAS: Thank you, Your Honor. The State calls Ms. Shana Sorrells.

SHANA SORRELLS

having been duly sworn, testifies as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: Shana Sorrells, S-O-R-R-E-L-L-S.

DIRECT EXAMINATION

BY MS. SAVAS:

Q. Good afternoon. What is your current occupation?

A. I am currently a forensic analyst with the South Carolina Law Enforcement Division.

Q. And how long have you been in that position?

A. I have been working as a drug chemist for four years.

Q. And what are your duties as a drug chemist?

A. As a drug chemist I analyze and determine if unknown substances, powder, liquids, crystal substances contain controlled substances or noncontrolled substances.

Q. And have you had the occasion to analyze what tested positive for narcotics?

A. Yes.

Q. And what type of training and education do you have as your background?

A. I have a Bachelor's Degree in Chemistry from the University of South Carolina. I also have my Master's Degree in Analytical Chemistry from the University of South Carolina. I spent eight years

as a toxicologist where I looked for drugs and chemicals and other poisons in blood, urine and body tissues such as liver and brain before I switched over to the drug analysis department. I also had inhouse extensive training by senior drug chemists within the lab and I have also attended seminars from DEA for drug training.

Q. And do you have special equipment in your lab as for testing the drugs?

A. We do.

Q. And is that equipment precise and accurate in its testing ability?

A. Yes, it is.

Q. And have you had the occasion to analyze what's tested positive for cocaine or cocaine base?

A. In general?

Q. Yes, ma'am.

A. Yes, many, many times.

Q. Very basic question. About how many times would you say?

A. I work 12,000 cases a year. And probably I would say at least -- oh, wow, I don't know, half of those are cocaine or cocaine base.

Q. And have you previously been admitted

as an expert in court in drug analysis?

A. Yes, I have.

Q. And how many times?

A. Four times.

MS. SAVAS: Your Honor, at this time the State moves to admit Ms. Shana Sorrells as an expert in the field of drug analysis.

THE COURT: Do you care to examine her as to qualifications?

MS. SEMAN: No, Your Honor.

THE COURT: Mr. Lewis.

MR. LEWIS: No, Your Honor.

THE COURT: Very well. She will be permitted to render opinions in the area of drug analysis.

BY MS. SAVAS:

Q. Thank you, Your Honor. Ms. Sorrells, were you involved in the case State v. Boston and Holmes?

A. Yes, I was.

Q. And doing your drug analysis do you also generate reports?

A. Yes, we do. For every case that we get a report is generated.

Q. Okay. And did you do that in this

case?

A. I believe I did, yes.

Q. I'm going to show you what's premarked as State's Exhibits No. 17 and 18. Do you recognize these?

A. Do you mind if I compare them with what I have?

Q. Go ahead.

A. Thank you. Just to make sure. Yes, these are my reports that I generated for today.

Q. And, Your Honor, at this time the State seeks to publish to the jury State's Exhibit No. 17 and 18.

THE COURT: Any objection?

MS. SEMAN: No, Your Honor.

THE COURT: Mr. Lewis.

MR. LEWIS: No, Judge.

THE COURT: State's 17 and 18 are admitted without objection.

(STATE'S EXH. 17-18 in evidence.)

BY MS. SAVAS:

Q. Ms. Sorrells, I want to briefly describe this document. So this is your report?

A. Yes, it is.

Q. And that is your signature at the

bottom?

A. Yes, it is.

Q. And in this case can you explain what that information is up here in the headings?

A. On the top left when a report is generated when the evidence is submitted the officer submitting it fills out the information on the top left with their name and I'm not sure if this is the officer submitting it or the investigating officer. But with their name, their department and where if we need to mail them the report where to send it to.

Q. So it would be the case agent?

A. It could be the case agent. We're not -- we actually don't worry about that. That's what the officers put in. We have -- SLED itself has nothing to do with that portion of it.

Q. Yes, ma'am. What is this heading up here?

A. The heading on the right that is the department that it's assigned to as soon as it comes which in this case is our drug analysis department, the date that the report is generated. In this case the report was generated on August 13th, 2015. Every case that comes in is

given a unique SLED lab number which is the L number, L15, in this case 3479. When we say your case number, that is the case number that the police department or the investigating agency assigns to it. We don't change that number, it's again whatever they enter in. The incident date is the incident date of the event that again the agency enters in, not us, and the suspect that the agency enters in.

Q. In this case what is the suspect's name?

A. In this case the suspect's name was William Holmes.

Q. And what is the next section as far as the items of evidence, subsection one?

A. Subsection one is the item that was actually delivered. And so on March 13th, 2015, an item was delivered to SLED for analysis. Those items that needed to be tested were received in what is called a BEST kit which every BEST kit has a unique number; in this case the BEST kit was B247361. That was delivered from a Ms. Cindy Hearn of the North Charleston Police Department.

So that's just telling us the items, how they got into where we are with the items that

were going to be tested.

Q. And, Ms. Sorrells, showing you what's been premarked as identification for State's Exhibit No. 16. Do you recognize this?

A. Based off of that handwriting and my initials this was the case that I worked back in 2015.

Q. And does that BEST kit number match the one on the report you have there?

A. Yes, it does.

Q. And did you then, in fact, test this substance?

A. Yes, I did.

Q. And is this materially in the same condition as when you received it or is there any changes to the --

A. There's some changes. There is some slight changes. When it is -- when we received it we received it in these little plastic bags. That's how they were submitted to us. To analyze it we have to take it out of the plastic bags to weigh it, to look at it. And just for our ease and if for some reason we have to go back and retest it if the test didn't work properly, we repack it in these little zip lock bags just so it is easier to

get the evidence out. If a zip lock bag is added in there we actually write bag added on the bag saying that that did not come from the case, that did not come from the submitting officer, that came from us specifically.

Q. And in this case do you recall who you had received this from for testing within SLED?

A. I believe I received it from Jackie Davis.

Q. Yes, ma'am. At this time, Your Honor, the State seeks to admit evidence Item 16 and publish to the jury.

THE COURT: Any objection subject to the objections previously noted when the introduction that was argued concerning that exhibit, any other additional objections?

MS. SEMAN: No.

MR. LEWIS: No additional.

THE COURT: Very well. Subject to -- 16 is admitted subject to the objection previously on record and previously argued.

(STATE'S EXH. 16 in evidence.)

BY MS. SAVAS:

Q. Thank you, Your Honor. And, Ms. Sorrells, I would like to explain that there are

two separate bags, a 1.1 and 1.2. Did you test these together?

A. They were tested separately.

Q. And can you please describe that process and your results?

A. Okay. When we say an evidence bag you can kind of see it back here. It's in the back. But it was just a simple evidence bag and inside again were the two what we call plastic corner bags, just little corner bags. I cannot tell the difference between the two corner bags. There was no distinguishing marks. So at that point I just tested both of them. We do not test them together. Each one is weighed separately. Each one is tested separately. So a separate indicative test, a separate confirmatory test on both of them. But for ease for the report we add up the weight of the two since both substances came back to be the same thing and that's where when after both substances were analyzed you see that cocaine was found in both of them. And so we say that the cocaine was found in the sample two tested because we had two bags or two separate tests and the total net weight which is the combination of both bag one and bag two was 0.57 grams.

Q. And as far as your confidence level 99.7, can you explain what that means?

A. That confidence level is just -- that confidence level is for the weight. Things can alter the weight just slightly. Different atmospheric conditions, humidity, it's not going to make a significant change in the weight. So we say but to add in that error we try to keep the lab as temperature controlled, as humidity controlled as possible.

But what we are saying with that 99.7 percent is that 99.7 percent of the time that you go in and weigh these samples they will come out to add up to 0.57 grams.

Q. So this tested, both of these baggies, .57 grams of cocaine?

A. Yes, that's correct.

Q. And these were the items that came from the Defendant William Holmes?

A. That was the suspect that was attached to the case.

Q. Okay. And just on the second page of your report, is this just a basic affidavit?

A. It is. It is just something that is how many years I have been working at SLED. This

is number of months. This is how many times I have testified and at the bottom you see a list of checked boxes. That's what we did for this case. So for each item I did a chemical test which is just an indicative test, just a color test that kind of tells which way we need to go to analyze this. And then, of course, gas chromatography mass spectrometry which will give you a fingerprint of the drug that is very unique at its specific retention time and that way we can confirm that what we are seeing is cocaine.

Q. Okay. Thank you for that explanation. Show you State's Exhibit 17 that's been admitted. And is this your second report that you generated in this case?

A. Yes, it is.

Q. Okay. And up here at the suspects listed are those the Defendants in this case, both of them? I am sorry. William Holmes and Boston Darell, correct?

A. Yes.

Q. And that was given to you from the agency?

A. That was also given to me from the agency. That's not something that we put in there.

Q. Okay. And I'm going to show you what's been marked for identification purposes as State's Exhibit No. 15. Do you recognize this?

A. Again. Yes, it is my handwriting and my initials and the date from 2015.

Q. And does that BEST kit match the BEST kit number in your second report?

A. Yes, it does.

Q. And was this materially and substantially in the same condition as when you received it?

A. Again, you can see there's the word evidence. That's the evidence bag in the case. The substance was within the evidence bag. That evidence bag is separated from the substance. It is weighed and analyzed and placed back into the bag that says bag added saying that I added that little zip lock.

MS. SAVAS: At this time, Your Honor, the State seeks to admit and publish to the jury State's Exhibit No. 15.

THE COURT: Other than the objections previously made and argued any additional objections?

MS. SEMAN: No, Your Honor.

MR. LEWIS: No additional.

THE COURT: Very well. Subject to those objections previously argued and preserved in the record Exhibit 15 is admitted.

(STATE'S EXH. 15 in evidence.)

BY MS. SAVAS:

Q. And, Ms. Sorrells, could you explain what your results were in this Exhibit No. 15 in this lab number?

A. Yes. In this case again I had the evidence bag containing a rock substance. This rock substance again went under preliminary tests which indicated that it could possibly be cocaine base, was run on the gas chromatography mass spectrometry where again we got the fingerprint. Cocaine base was found in the sample tested and had a net weight of 5.83 grams.

Q. And, Ms. Sorrells, is there an explanation if the officers had stated it weighed approximately a gram or more, does that change as far as in your reports and the actual analysis of the substance itself?

A. That -- we more often than not we get where the officer weighs it beforehand just to kind of get an idea is what we have been told. A lot of

times it is not safe for them to weigh it outside of the bag that it is in. So when they weigh it you are getting an approximate weight on the scales. So sometimes it can include the packaging whereas we do not include packaging in our weight.

Another thing is cocaine base especially can be wet when it is formed. It's a drying process. And so when it's wet water adds weight. So a lot of times when we get it it actually weighs less than what is submitted. We have had times where we have gotten it and I don't know if it's summer heat sometimes where it will actually absorb and it weighs more. What we report on our report is what it weighed at the time that we analyzed it.

Q. And so it looks like here it's a little dried out; is that correct?

A. That looks fairly dry, yes.

Q. And so you said the water weight could add to it. Would that be true if it was freshly made?

A. Yes, if it's freshly made it is going to have that weight in there. And it is a drying process so it takes time to dry. So by the time we get it some of that water has evaporated. It has

dried out. And the weight will be less than what the actual weight was reported on the scene.

MS. SAVAS: Nothing further from the State. Please answer any questions the defense may have.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. SEMAN:

Q. Good afternoon, Ms. Sorrells. Is that how you say your name?

A. Yes.

Q. As you testified on direct you're a forensic scientist?

A. That's correct.

Q. So it's your job to test stuff?

A. That's correct.

Q. And in this case it is drugs?

A. That's correct.

Q. So here the police department sent you the drugs, right?

A. Yes.

Q. And you tested them?

A. Yes.

Q. And after you tested them you wrote that report?

A. Yes.
Q. And your report says what you found and how much?
A. Yes.
Q. Not your job to say who the drugs belonged to?
A. No, it is not.
Q. Or whose guilty?
A. No, it is not.
Q. Just what you found?
A. That's correct.
Q. How much of it?
A. That's correct.
Q. SLED also has different departments, right?
A. Yes, they do.
Q. Not just drug analysis?
A. No, we do not.
Q. You or other people at SLED can test things other than drugs, can't you?
A. Yes, that's correct.
Q. For example, SLED can test things for fingerprints, right?
A. Yes, they can. We have a latent prints, it is a latent print department which is

for fingerprinting.

Q. And they can test things for DNA?

A. Yes, they can.

Q. And no fingerprint or DNA testing was submitted to you from this case, right?

A. No. We actually get cases in where they have requested fingerprints and DNA. In that case we extract the drugs from whatever evidence is given and then will we send it down, back down to our log in department. And they let latent prints and/or DNA department know that they now have a case for them that was sent from us.

In this case there was not latent print nor DNA requested. So there was no reason to send it back down to our log in department for those two departments.

Q. So again in this case you just received the drugs and you tested them and you wrote a report?

A. That's it.

MS. SEMAN: No further questions, Your Honor.

THE COURT: Cross-examination, Mr. Lewis.

CROSS-EXAMINATION

BY MR. LEWIS:

Q. I want to talk to you about that exact thing that she just said at the end. So if someone submitted something and wanted a DNA test or a fingerprint test of the baggie that the drugs came in, that could be done?

A. Yes.

Q. You don't say no, we do not get fingerprints off of bags of drugs? You do the testing?

A. No, we send it down and they try, yes.

Q. And that's -- you have had that done before?

A. Yes.

Q. Often?

A. Not too often. I just had one yesterday, but not -- it doesn't happen often, but it does come up.

Q. But yesterday it happened?

A. It happened yesterday.

Q. And I don't want to go far into that with you, but that would have helped establish identity?

MS. SAVAS: Objection, outside her area of expertise.

THE COURT: Overruled.

BY MR. LEWIS:

Q. That would establish identity? You will just worry about content, but somebody else could have said who possessed it?

A. Again, that's -- I just tell you what the drugs are. I am not familiar with the latent print DNA department. So that would be on them to ask if they could identify it based off of fingerprints or DNA.

Q. You know that's what their purpose is?

A. That's what they try to do, yes.

Q. If I can, I want to show you what has been marked as State's Exhibit 1. Try not to mess this up too badly. Can you tell me what is in these baggies right here, please?

MS. SAVAS: Objection, Your Honor. Outside of her personal knowledge.

THE COURT: She is asking not -- he asked what's in that. The witness can answer the question. Thank you, Solicitor. She's an expert. Been qualified. Thank you. The objection is overruled.

A. I honestly could not. I can't say what is in that bag.

Q. Because you're a scientist?
A. Yes.
Q. You have to analyze things?
A. Yes.
Q. You don't just use your eyes, you have incredibly advanced machines that break down the chemical analysis to see how long something goes through and please forgive my ignorance here, but in general how long it takes to come through the GCMS?
A. That's correct.
Q. And you as an expert looking at that bag have no clue if there's any controlled substance in it whatsoever?
A. No, I do not.
Q. What if it was 15 feet away from you? Would that make it easier?
A. No, it would not.
Q. Either way you can't tell?
A. Yes. No, I cannot tell.
MR. LEWIS: One moment, Judge.
(Off-the-record conference.)
MR. LEWIS: No further questions.
THE COURT: Redirect?
MS. SAVAS: Nothing further from the

State, Your Honor.

THE COURT: You may come down. Thank you very much. You wish the witness to be excused?

MS. SAVAS: Yes, Your Honor.

THE COURT: Any objection?

MS. SEMAN: Not from Defendant Boston.

MR. LEWIS: No, Your Honor.

THE COURT: You are free to leave. Thank you. You may call your next witness, Solicitor.

MS. SAVAS: At this time, Your Honor, the State rests.

THE COURT: All right. Ladies and gentlemen, there are some matters of law now that I have to take up out of your presence. I'm going to send you to your jury room. Do not begin your deliberations however, don't discuss the case. We will be with you as quickly as we can. Thank you.

(Thereupon, the jury exited the courtroom at 2:36 p.m.)

THE COURT: Any motions from the State at this point?

MS. SAVAS: We just renew our pre-existing motions, Your Honor, but nothing additional.

THE COURT: Pre-existing motions for what?

MS. SAVAS: Just regarding what we had our bench status on and your rulings on the Court, but nothing at this point, Your Honor, no.

THE COURT: Those rulings -- that's why what we kept having a little problem and I understand what you were doing, but if we -- if the Defendant had the same opportunity the State does and that is to appeal the direct ruling of suppression or allowing they wouldn't have had to make all that and you wouldn't have had to ask all these questions. It's the only chance they get to build a record for the review purpose and that's the whole purpose of that. That's why I persistently and consistently allowed the examination of that. Does not have anything to do with your charge, it per se necessarily creates a doubt, might not, but clearly it's for the purposes of review of what was there for my granting or not granting the motion, whether or not I should have gone further. So those reasons the motion is -- I don't think you have to, but because I have already ruled on them for the sake of protection they are noted. Thank you.

MS. SAVAS: Yes, Your Honor.

THE COURT: Any motions now from the Defendant Boston?

MS. SEMAN: Yes, Your Honor. For purposes of the record we would move for a directed verdict in favor of Defendant Boston.

THE COURT: And looking at this -- in fact this has -- it's not the first possession of intent to distribute charge I have ever done, but I have never done a charge -- in fact, Judge Clary and Judge Floyd didn't even bother to do in our bench book a charge on manufacturing. They don't even have a form for it. I guess that's because we maybe as the sergeant said I have never seen that and that's it.

But clearly if you read the statute, why it could be a separate offense, and this is why I am articulating this, I anticipate the same motion from Mr. Lewis as well, and why it would be is it duplicative as it's subsumed basically. Technically they were both established by the same code section, manufacture or possession with intent to distribute. We all know that. But the jury could conclude that these Defendants manufactured it but it was not for their possession. It was for

her possession. Which is -- that's one -- if I am on the jury I don't conclude that, but I can't ignore that as being and it is against the law to manufacture it period. You don't have to possess it. If you manufacture it then you violate that section as I read that section.

There is evidence, it's challenged, but there is evidence that suggests that these two persons manufactured it. For that reason I am denying the motion. If the jury believes it in the light most favorable to the State, they could, then I think it establishes it.

With respect to possession, that is an interesting one that will be up to the jury to say. Maybe that's why they are insisting on the manufacturing because they don't know who was in real possession. They have got to prove actual constructive. Clearly they were in constructive possession. There is evidence to establish that by virtue of the fact they were found in the bathroom with the drugs if the jury believes that. And that should be control, evidence of control and then of possession, constructive possession. Physical possession, that's -- that could be anybody in this situation. So but there's a way to construe it in

the light most favorable to the State that I think creates the ruling.

MS. SEMAN: Your Honor, may I be heard on that briefly?

THE COURT: Sure, absolutely.

MS. SEMAN: Your Honor, we have some case law actually suggesting they may not continue being charged with both of these offenses. And we have the State v. Brown case. I have a copy for you if would like.

THE COURT: I'd love to see it. I have Westlaw up.

MS. SEMAN: Yes, Your Honor. So in the case the Defendant possessed four ounces of a controlled substance. He distributed two ounces of that controlled substance to a confidential informant. Was later charged with both distribution for that two ounces and possession with intent to distribute for the remaining two ounces that he had in his possession.

Now, the court in this case said that the Defendant could not be convicted of both offenses at the same time. That was multiple punishment according to double jeopardy. We believe that that case applies here. We believe

that the content was merged or that the conduct was merged, excuse me, and that case will tell you the language is almost exactly that. There is a merger of the conduct. It's the same subsection. It's the same drug. It's the same actions.

So we believe that both charges, while they can be submitted to the jury, that the jury cannot find guilt on both. Thank you.

THE COURT: Thank you. All right. Mr. Lewis, you wish to supplement? Again I assume a similar motion.

MR. LEWIS: Similar, Judge. And, again, procedurally not to sound like a broken record again at this stage bringing up the prior suppression arguments the Court ruled on in addition in regards to the directed verdict and on behalf of Mr. Holmes I am also moving that both the manufacturing and the possession with intent to distribute be dismissed for lack of substantial circumstantial evidence. I understand the Court has evidence that has been provided to suggest that they were engaged in this activity.

Specifically though in regards to possession with intent to distribute and it's possible that I missed something that was read into

the record. At this stage I don't know of any reason that they would be viewed as possessing with intent to distribute. If you find they are in constructive possession why are they intending to distribute to anybody?

THE COURT: I understand that. I don't quarrel -- and I will charge the lesser included offense because it could be just simple possession. The only thing that they have is the inference is over I think a gram is what it is for crack cocaine. And they have established five point whatever it was. So that would raise that inference. The jury can disregard that inference obviously, but it would have to be from that standpoint. There is nothing else to suggest for both of them arguendo, but they're not raising that for Mr. Holmes simple possession, the fact that he had two packages. They are not saying -- that's another indicia possibly, but that is I understand the basis of the charge of possession of crack cocaine which is attributed to only Mr. Holmes.

MR. LEWIS: In regards to the two baggies, that would actually been have a cocaine powder rather than a cocaine base. So thankfully in this case they didn't decide to go forward on

PWID for cocaine as well, but I certainly would ask that at that point once we get to charge conference for the lesser included in regards to --

THE COURT: We are in the middle of that.

MR. LEWIS: Then I am asking for that too. I just derailed myself.

THE COURT: That's all right, I am prone to do that. But you are not 70.

MR. LEWIS: Well, 35 and it's happening to me. Oh, yes, in regards to my in chambers comment on the motion to elect. As I said at the beginning of today I tend to agree with them up until that point where it goes to the jury itself. Without an instruction that says for this substance, for the 5.4 grams if you believe to be cocaine base you can find them guilty of one or the other. Reason there being is if to hold otherwise hypothetically speaking I could be facing 90 years for one Pyrex worth of crack. If I manufacture it that's 30 years. If I provide it to Mr. Smit that's 30 years and if I possess it before I hand it to Mr. Smit that's 30 years and they are all under the same subsection for that reason.

THE COURT: I wouldn't have any problem

if you sold it to Mr. Smit because that's a separate act from manufacturing. I don't know how -- I guess they don't bring manufacturing because they typically find it in their possession but don't know who manufactured it. But in this particular case I'm going to look at this Brown case, but you have got an act in and of itself is a criminal act. To manufacture. They could have manufactured it and dumped it down the drain, but they would have violated that section because it says -- I need to -- I looked at the definition of manufacture when we started. But I think it's just to create to make it and doesn't say for what purposes it is done. Just against the law to create it.

And so that crime was committed the minute it was made. If in your example if you then gave it to Mr. Smit and you committed another act in my opinion in addition to manufacturing. In one we don't have that. We have that they just simply were in possession and the only thing they have an indicia of with intent to distribute is the amount which gives me greater concern. But I am going to look at the case and see.

MR. LEWIS: Yes, Your Honor. And I

just wanted the Court looking at that through that lens or if you are willing to because specifically here the legislature could have decided how like meth or like other substances we are going to delineate or differentiate between manufacturing, possession with intent to distribute, conspiracy to possess with intent to distribute. Inside the statute is all this language that includes all of it under the same subsection.

THE COURT: Well, I know.

MR. LEWIS: And that's why it gives me pause on behalf of my client that they could be guilty for one Pyrex for 90 years worth of exposure which I don't think was the legislature's intent when drafting a single subsection.

THE COURT: Okay.

MR. LEWIS: Thank you, Judge.

THE COURT: You wish to be heard, Ms. Savas?

MS. SAVAS: Yes, Your Honor. Thank you. I would first like to address the issue of directed verdict. Your Honor, as Your Honor had stated, viewed in the light most favorable to the State --

THE COURT: Ms. Savage, let's don't

waste a lot of time on the directed verdict. Let's focus on one thing and one thing only. I have already indicated I think I articulated enough -- I mean you can keep talking, maybe you will talk me out of what I was prepared to rule. But if you want to talk me out of it feel free to continue.

I had already said there is sufficient evidence to deny the directed verdict because of what was there. I want to hear you how you get both charges, how you are entitled to have manufacturing and possession with intent to distribute for the same drug.

MS. SAVAS: Yes, Your Honor. And again, Your Honor, we had submitted that brief last week.

THE COURT: I read that. That didn't help me that much with that specifically.

MS. SAVAS: Well, Your Honor, in there there is case law, significant case law that actually distinguishes the two. And I would like to start with the statute. In the statute although they are the same code and there are different subsections and they had carved out a second subsection regarding the manufacturing and that's about the possession of the equipment used.

THE COURT: You haven't charged with possession of equipment.

MS. SAVAS: It is the prima facie evidence of the intent to manufacture.

THE COURT: Again I appreciate that. But okay. You really, really want to argue that as a basis, because I'm going to tell you something. That's a great thing. Let's frame everything we can in this case, Solicitor, because right now if they go in my trunk of my car and look in my car they can charge me with possession of burglary tools right now. Because I have a screwdriver in there and I have got a hammer. And I believe that's burglary tools because I have tried cases where they were charged with having a screwdriver was burglary tools.

So you really, really want to push this and that also creates a separate reason for you to be able to get manufacturing. What in the world is the State looking for here? I don't know why you want to complicate it, but go ahead and continue. Your argument is set forth in these cases. You don't need to reargue. I have read them. I don't agree with you, okay? I don't agree with you in your posture. I want to read this case to see if I

have got a legal basis to say no and because I think your argument is well, the judge takes care of that at sentencing. That's where that comes in. Is for the same thing. Basically that was the premise that you set forth. That's where I handle that. I have the right to run them concurrently. That's in essence what you argued. That the jury should decide and then the judge can take care of that. Is that not correct?

MS. SAVAS: In regard to Mr. Lewis's comment of the concern of the 90 years, absolutely sentencing can be run concurrent. That's not the objection the State would make.

In regards to the case State v. Brown that Ms. Seman had presented to us just now, that is different because it's discussing CI distribution and the PWID. And I agree with that ruling if you have in your possession and you're distributing at that point in time those are two different offenses. That's why there is the possession charge and then the distribution of course. I think that's very distinguishable here because again this case is actually, you know, the State's position and the officers and Ms. Denise's testimony is that they were in the act of making

crack which is the manufacturing. That is the process. It's the action. It's the equipment used as described by an officer that is how it is made. And the possession with intent to distribute does, Your Honor, as you had stated goes to the weight of the drugs.

As far as that inference may be made the jury wishes to do so or not, but we believe that there was sufficient case law that would be the distinguishable act. Even if they are in the same statute the courts have ruled that they may -- the State is not required to elect and that the defense must show prejudice and I have not -- the State's opinion is that there has not been argument regarding the prejudice it would make. All the arrest warrants were sworn out. In the directed verdict, Your Honor, we do feel that all the elements have been met to be presented to the jury and that is again argument for the defense as to which charges they want to argue.

However, we do not believe that it is required by -- the Supreme Court clearly laid out that the State needs to elect in instances, but again it is in the trial court's discretion.

THE COURT: Okay. Thank you. Anything

further?

MS. SEMAN: Just, Your Honor, for the record I just wanted to renew my earlier motion or our motion to suppress and I would ask you to read that case.

THE COURT: Thank you.

MR. LEWIS: Just joining in the last thing that I mentioned briefly, Judge, in addition to the statute as I'm sure you will review, the indictments are identical. Exactly identical. There's -- caption at the top, one says manufacturing, the other says possession with intent to distribute. They cite the exact same statute, use the same language mentioning manufacturing in both and mentioning possession with intent to distribute. They are in the same conduct from those charging documents. I know that's all they are, is charging documents. But it further goes to show you're dealing with the identical conduct. I feel stupid doing this, but I have to.

With regards to State v. Brown, I do think there is a little bit of difference and I have to share that which is in that case supposed to be a distribution for the full four ounces. And

law enforcement said oh, no, we are only going to buy two which then left two quantities of drugs. That said, here there's only one quantity to start with. And it still falls in my opinion under the same statute, same subsection, not two subsections, one subsection, dealing with PWID and manufacturing. Thank you, Judge.

THE COURT: Well, Mr. Grimes, that sounds like it would be one of the Anders entrapment which he was successful in prevailing in the case he tried before me. I thought it was crazy, the jury agreed. He filled in as I recall, but in this case the entrapment is they now we will only buy two and we have got him on the other.

MR. LEWIS: Exactly.

THE COURT: Let me read this. I will be back. We will be at ease for a few minutes. Thank you.

(A recess transpired.)

THE COURT: Thank you for the Brown decision. I have reviewed it and reviewed very quickly some of the cited decisions. And I agree with your argument that if they really are merged in some respects and I agree with you primarily it's the same section that we are talking about

that this case deals with, said there is nothing the legislature intended double punishment for the same act. And that's clearly what we have here because there's no way at least for the moment in what we are dealing with respect to the manufacturing and possession, it wasn't as though they came back and later had possession which would be a separate action altogether. That was all simultaneous when they came in. They were in the process of manufacturing and obviously be hard to not -- come in and catch someone manufacturing, hard not to have them in possession and the amount triggers the possession with intent to distribute.

But I agree with sort of the end of it, it seems they say we don't -- we are going to tell you to reverse the decision of punish him on both, but tell -- basically tell the jury they can convict him only on one. And I think that's what the instruction would be, that they either have to find him guilty of manufacturing or find him guilty of possession with intent to distribute. You can't find him guilty of both.

Now, that having been said, Solicitor, you have a trump card here. Because you can say I'm withdrawing the manufacturing which would

trigger the lesser included offense of being in possession because I'm going to have to charge that or just go with the possession, go with the manufacturing only because there wouldn't be any lesser included offense on manufacturing. It would be either guilty of manufacturing or not guilty.

If I charge with possession with intent to distribute, then I have got to charge the lesser included offense because they could say that he didn't intend to distribute. So now we have a dilemma that they can't find him guilty of the possession, any possession.

So however you want to do it, you have complicated something that really doesn't need to be complicated in my opinion, but whatever you want to do. That's what my ruling is going to be.

We are going to charge on all of it, but I'm going to tell the jury they cannot convict him on both of them. They have to pick.

MS. SAVAS: Beg the Court's indulgence. One moment.

(Off-the-record conference.)

THE COURT: I extra copies of Anatomy and Justice if anyone wants to read it.

MS. SAVAS: Your Honor, we would move

to charge the jury with all the indictments, yes.

THE COURT: That is fine. Okay. Thank you. That's what will be done. Okay. All right. My denial of the directed verdict is evidence as I said that he can't be convicted on both manufacturing and possession with intent to distribute.

With respect to the possession, that's the only thing I'm going to submit on that one as to Mr. Holmes.

All right. First, Mr. Boston, we had a conversation. First let me ask you, Ms. Seman, do you intend to present any witnesses?

MS. SEMAN: No, Your Honor.

THE COURT: And, Mr. Boston, you stand by your decision, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you so much. Mr. Lewis, do you intend to present any witnesses?

MR. LEWIS: I do not.

THE COURT: Very well. Then under the convoluted rule, the State will open in full and you will respond. There's no argument about that. There's two ways of construing that, but I think that's the old way and that's the simple way in

this case. One other theory we were all kicking around is since the State -- the Defendant would open and then the State and then you reply to the State's arguments, but that's really subsumed in what we are doing. So that's fine. We will just flip the roles.

MS. SEMAN: Your Honor, would now be the appropriate time to discuss jury charges?

THE COURT: Yes.

MS. SEMAN: We are requesting a charge on mere presence, just a normal.

THE COURT: I have got that in every drug charge I have ever given. So I agree. I am going to charge the lesser included offense, I'm going to charge possession with intent to distribute, I'm going to charge manufacturing and define manufacturing. I assume State wants me to charge the tools issue which is clearly set out in the statute and I will charge that. I will also say that's an inference to be drawn. You are entitled to accept it or reject it. But clearly that was the intent of the legislature to establish that. So that's fine. I will charge that as well. Anything else?

MS. SEMAN: And a charge on the

co-defendant issue, Your Honor, that the jury does not have to find both people guilty or both people innocent. It can be one or the other.

THE COURT: I appreciate that. I understand what you are asking me to do. But the problem I have, if we were in federal court I would do that in heartbeat. But we have a constitutional provision that prevents me from charging on the facts and now I am getting into that dangerous area of charging on the facts. So I can't do that.

MS. SEMAN: Yes, Your Honor.

THE COURT: Thank you. All right. You all need a few minutes or are you ready to go?

MS. SAVAS: Your Honor, just with regard to charges we would seek to admit the hand of one hand of all. I think that goes alongside.

THE COURT: Hand of one hand of all? No.

MS. SAVAS: In regards to them being joint in their actions, Your Honor.

THE COURT: You charged them both with being in possession. They could be in constructive possession. Somebody was in physical possession. No, I decline to charge that.

MS. SAVAS: Yes, sir.

THE COURT: Thank you. I decline to charge that.

MR. LEWIS: There's never a good time to go, but I am ready whenever the Courts wants.

THE COURT: I'm ready. We have got the verdict forms. What we need to do, give me the one on the -- we will have a manufacturing. I will tell them they can only fill out one of those. Okay. Let's bring in our jury then.

(Whereupon the jury entered the courtroom at 3:22 p.m.)

THE COURT: Ladies and gentlemen, thank you very much. Thank you for your patience. And if you recall when I spoke to you when we started this process, I mentioned to you that the Defendant of course in this case had no obligation to present anything, didn't have to say anything. They don't have any burden at all whatsoever. But they wouldn't have an opportunity to present any evidence until the State has completed its case. The State has now completed its case. And that brings us to the second part now.

So at this point, does Mr. Boston wish to present any additional witnesses for the jury's consideration?

MS. SEMAN: No, Your Honor.

THE COURT: Thank you. Does Mr. Holmes wish to present any additional witnesses for the jury's consideration?

MR. LEWIS: No, Your Honor.

THE COURT: Thank you. Then that would conclude this case. Typically what I would do is send you out and for the record we will -- with respect to the jury having to leave twice and we have already argued the motions. Motions have been argued and preserved as previously been on the record and rather -- just to accommodate the jury we are not going to send them out and go through that process. So that is protected for any purposes that may be necessary going forward.

So now we are at the last two stages of this process. As I mentioned to you, the attorney had two opportunities. Now they get to address you and discuss with you the evidence, suggest reasonable inferences that you may draw from that evidence. Their remarks, I think you will find them extremely helpful when you begin the process of resolving this case which will occur very shortly. So give them your attention. But remember their remarks, while extremely helpful and

very important, should never be considered evidence in this case.

After the attorneys argument I will then give you the instruction on the law and then you will be asked to retire and resolve the dispute. Thank you so much for your attention thus far. Please give your attention to the attorneys now as they make their closing argument. Solicitor, you may proceed.

MS. SAVAS: Thank you, Your Honor. May it please the Court, over the course of these two days you all have heard what has happened through the eyes of the officers that were there, through Ms. Denise herself and also the chemist about the drugs that were tested.

On March 6th, 2015, Sergeant Sherwood had lawfully approached the door of Ms. Denise's home. And when they gained access and she gave that consent very willingly he literally caught Mr. Boston and Mr. Holmes in the middle of making crack. And as he stated, that is rare. They even use this case as a training exercise about the manufacturing and the same situations. You heard from Ms. Denise who it is so rare to come across someone like her in our line of work. It truly is.

That has realized that she needs to change her life. But not only that, that she actually had to move and she said because she needed to get away from the people and from the drugs themselves.

And the judge will charge you on the law and about witnesses. And you can believe some testimony, all the testimony or none of the testimony. But you want to think about where it's coming from and the honesty behind Ms. Denise who was in there that day that literally said Bubba had called her to come over to her house and they are going to make crack because she was hoping for a piece.

As a result of everything that he found that day, right there in plain view in the kitchen, the Defendants were charged in this case. The first charge was manufacturing of cocaine base.

Now, again, the judge will charge you on the law and he will present that to you at the close of all of our arguments. But in manufacturing it's as simple as it sounds. Cooking of crack. And they were charged with the possession and intent to distribute the cocaine base which arises from the actual five grams of crack that was found on the scene. And Mr. Holmes

was additionally charged with the possession of cocaine from those two baggies, one found at the scene and in his pocket with a scale, the other in the strip search at the jail.

These Defendants were literally caught in the act. It's plain and simple. Before I go into the explanations and to break some things out for you, I want to go over the juror's roles and the judge will charge you on that as well. As we mentioned, your responsibility, you are the finders of the facts. And just as they had stated in opening, facts don't change, the truth doesn't change. And it takes common sense. There are maybe different perspectives about how the door was approached or who went first or what the situation was from each person's perspective. As you know, you can tell the same story three ways with three different people standing there. But what never changed was that all of these items, Pyrex, the scales, the crack, that never changed. That was always in the kitchen and the bathroom from where the only two people, the Defendants, ran from. That's never changed. And it's common sense. Just as they implied. That is what we have today. There is 12 jurors. It's common sense. Where else

could they have possibly come from? There was no one else in that apartment except for three people there. And Ms. Denise was brave enough to share her story and humble herself and say yeah, I was a crack addict and yeah, I was getting my crack. I wasn't making it. They were.

And in their opening they discussed access, opportunity and ability. Access. They were at the house. They knew each other. Bubba called Denise to come over. They had access to her house in the kitchen. Opportunity. Same thing. Denise stated she was never even in the kitchen. She was so honest she even goes I mean I'm not really sure what was going on, but I knew why they were there that day. I was playing video games on my couch in the living room. And I asked did you ever go to the kitchen? No. Okay. And ability. All of these items were here at their disposal to make the crack. You can see from Ms. Denise that she is a very humble person and she's not really going to argue and put up fights and quite frankly --

MR. LEWIS: Objection, Your Honor.

THE COURT: What's the objection?

MR. LEWIS: In regards to whether she's

going to argue and put up a fight. It's character.

THE COURT: I overrule the objection. I will remind the jury that you're -- that I will charge you that you take the evidence and you reach the conclusion based on your analysis. You are not bound by any of the statements of the lawyers. You will make the final judge of that. But you may continue.

MS. SAVAS: Thank you, Your Honor. I don't think she had the ability to make the crack because she didn't even have any of the cocaine to do it. That's why she let them come over is because she didn't have even the money to buy it herself. The access, the opportunity, the ability. It was Bubba and his friends. The fact didn't change. This is all the same. It is a great common theme. It really is a great way to explain things. And in regards to the jury's role Judge Dennis has several times explained he rules on the law. There is reasons why you have to get up and down and there's matters of law we take up. In trial there's a lot of rules of what is able to be presented, what is admissible, different things like that and sometimes unfortunately it leaves you all with extra questions.

And so as the officer stated, there were several reasons why they had approached that door.

MS. SEMAN: Objection.

THE COURT: What's the objection?

MR. LEWIS: Objection. She's now alluding to the other reasons they approached the door.

THE COURT: Move on, Solicitor. Stay away from that. I have ruled on that. That's as a matter of law the Court has addressed and not a matter for the jury's concern. Thank you.

MS. SAVAS: Yes, Your Honor. And in that context y'alls responsibility is the facts, okay? We don't have to agree with however things are done. We don't have to like everybody. You don't have to like my officers. You don't have to like me or care for the situations in general. But your responsibility and oath you took is to find out what actually happened that day and through the officer's lawful actions.

I want to also briefly touch about some distractions that we heard, okay? The defense can bring into question a lot of things to try to make you distracted. That's a common theme, okay? So

if you're looking over here about why every single word wasn't in his summarized incident report you know what that takes the focus off of? Their actions. Okay? That is just a basic thing. That's not something that really is that important, nor is it really relevant, nor does it change the facts and the truth that day. So it's very simple things that they can make into a bigger issue that necessarily isn't one, nor is it one for you to actually focus on.

Also the issue of not charging Ms. Denise. That was sort of made clear not through just the officer's action, but Denise's actions that day. These Defendants are charged with making the crack. They were the only ones making the crack. She is a user. She admits that. If she was in the act of making the crack that day she would have been charged. When they walked in quite frankly she just didn't get around to it. It wasn't done cooking. They had a few seconds left on the microwave. And that's their explanation and regardless what happens with Ms. Denise that's not to cloud your judgement what happens here today with the two Defendants. That is not something for you to focus on. What your concern with again is

finding the facts in regards to just these two people and what happened elsewhere happens elsewhere and will be dealt with in time. But as Ms. Denise stated, I didn't promise her anything to come here. You know there is no script on what we give people. For goodness sake, there is going to be times that I know I paused to sort of clear my thoughts after an answer because it is, this is their truth. This is their statements.

And manufacturing cocaine base. There are several reasons in this case and y'all will be able to actually take these back and look at them in the jury room. It's the Pyrex measuring cup here from the kitchen, it's the Pryex cup with the residue from the bathroom, it is the extra whisk in the cabinet. And it's the whisk with the residue from the crack. It's the scales that are used to weigh drugs to sell them. It's the actual use of the microwave that has and you will take these pictures back you with 59 seconds left on it. That they popped open and slammed the door when the officers came in.

It's the baggies of cocaine residue. The same baggies that matched the baggies that were on Mr. Holmes's person in his pocket. He just used

these and those were empty. This was just left there for himself and his possession. And of course the baking soda. All of this is very easy. It's used to make crack. And it's the 5.83 grams of crack. Now, you heard Ms. Sorrells, is the drug expert, the last witness testify that sometimes the weight can be a little bit different from what the police had initially weighed it.

And in this case you heard them say the seven grams of crack. That's the 5.83 grams and actually indicated it's heavier when it's wet. Makes sense, right, like flour and thicker consistency. And I asked her that would be because it's freshly made and without her really knowing the situation not being there she said yes.

So again another piece that yes, it did weigh a little more because it was in their bag and packaged in of course, but also because it was wet and they had to paste it and was bubbling. It was hot and it was steaming.

This statute, and it will be provided by the judge, said possession of equipment or paraphernalia used in the manufacturing of cocaine base is prima facie evidence of intent to manufacture. Basically what that means is all of

these items used to make crack is evidence of the intent to make the crack. Here you don't have the intent. We also have actually in the act of making it. Therefore, you should find them guilty of manufacturing cocaine base.

The next charge is possession with intent to distribute. This comes from the actual possession of that drug, again of the 5.83 grams that was tested. Now, there's different ways to get possession. The judge will explain that actual so that's like Mr. Holmes. If he had it actually in his pocket. Then constructive possession which means legally dominion or control. So I am over here. I have control what's going on because I am here, but I am not actually holding everything, okay? Same situation. And possession can be shared. So in this case they were jointly doing the same actions, making the crack, so it is okay that they are both charged and found guilty of sharing that possession of drugs.

Also, this statute again says for possession of intent to distribute possession of one or more grams of cocaine base is prima facie evidence of violation of the subsection. That means their 5.83 grams obviously is more than one

gram. So they can be found guilty of that because of the weight.

Again, the actual possession is them both making crack, they ran from the microwave to the bathroom. Both attempted to conceal something. Even if you found that it is constructive, again the dominion and control, they were both there at the microwave with the drugs and they could be found guilty of possession with intent to distribute cocaine base.

Clearly Mr. Holmes is found in possession of the cocaine, the .57 grams of cocaine that Sergeant Hoose had found in the intake from the jail. The defense admitted that in their opening and I mean rightfully said that he was breaking the law. Mr. Holmes was breaking the law and he is guilty of possession of cocaine.

Now, the reason they also do that is another distraction in trial. When someone is charged with multiple charges they try to say just do this one and ignore the others. If you feel like you have to choose or do one or the other, again it's a distraction, okay? He can still be guilty of possession of cocaine and the other charges as he is. So they think they will just

take the fall for the basic one. But it doesn't make him any less culpable of the other charges. He was still there making the crack from the cocaine.

Again, the baggies matched and they had admitted that Holmes is breaking the law. Therefore he should be found guilty of possession of cocaine. Again, the direct evidence in this case, they will charge you on the law, direct and circumstantial evidence. Direct evidence is testimony that we heard from our witnesses. That's the officers saying I went in as I saw them they were in the kitchen or Sergeant Hoose said I saw them both run from the bathroom. He did not have a clear view. He wasn't going to make up what was going on. They ran to the bathroom.

Most importantly is Ms. Denise. Again, she admitted she's a crack user. She admitted she was getting her crack from Mr. Holmes and Mr. Boston. And it was a very important point and strategic move. A lot of times they kept saying was her items, it was her microwave, it was her house. That does not take away from the guilt of the Defendants. Okay? And when Mr. Lewis was sort of pounding her about that, she very naturally

replied well, I mean they were in my house, but they brought them over and left them there and they would use them, but I didn't pay for it. Those are their's. She knows that's the arrangement that's made. She doesn't have money for food, y'all. There was no food, there was no flour. There was no baking. I asked her if she had food and she said well, I got some plates. Okay?

And she is important to discuss because she is also a victim in this case. These crimes are not victimless crimes. They feed and they prey on these vulnerable addictions and they say I will give you a piece.

MR. LEWIS: Objection, Your Honor.

THE COURT: What's the objection?

MR. LEWIS: Vulnerability.

THE COURT: Sustained. That's argumentive and it's improper. It's inconsistent with the law. Appealing to the passion and prejudice of the jury. Improper. Thank you.

MS. SAVAS: She had stated very clearly what was going on in her apartment that day. And she was very honest about it. And circumstantial evidence is also indicating the existence of a fact, right? So the fact that the two Pyrex and

the whisk were found in the tub and they just came from the bathroom and there was no one else in there, they had possession of that. They were the ones that put it there. They just ran from the microwave. Denise was playing games on her phone. It's kind of like, you know, if you leave your little kid unattended and they run into your pantry and eat all the chocolate and there is chocolate all over their face and hands, it's the same thing. Common sense. They ate the chocolate. They were using it. You don't have to see them specifically holding it or eating the cookie, but you know that's what happened.

They are going to charge on mere presence. This does not apply in this case because they weren't just standing around a four story apartment. It's a tiny apartment smaller than that area here. They were the only two people in the kitchen. They weren't standing there watching Denise. They were the ones doing the actions. So because they were both at the microwave, they both hid the drugs and the evidence in the bathroom, and Denise literally says they were both making the crack, they were both cooking the crack in this case.

And lastly, it's a burden that I have to prove, right? The State's responsibility. Which is why I take the time to thoroughly explain things and present everything to you. And they are going to -- the judge is going to charge you on beyond a reasonable doubt. And it's a very difficult thing to sort of grasp, okay? Most importantly there is some things you need to understand about it.

You don't actually have to overcome all doubt. There's very few things that we actually know for certain. You just have to be firmly convinced yes, it is more than a hunch and it's more than a guess. But you don't have to be absolutely 100 percent positive. You just have to be firmly convinced by the evidence and the testimony presented to you.

And given the insurmountable amount evidence before you today, and the testimony of the witnesses and Ms. Denise herself, the State believes and respectfully asks that you do find them guilty of these charges. You can find Mr. Holmes guilty of possession of cocaine. And you can find them both either guilty of manufacturing the cocaine base or the possession with the intent

to distribute cocaine base in this case which is again the making of the crack.

THE COURT: Ms. Seman.

MS. SEMAN: Yes, Your Honor, may it please the Court. Members of the jury, we are here today because Sergeant Sherwood and the State of South Carolina have manufactured a case against Darell Boston. They targeted Darell Boston on March 6th.

MS. SAVAS: Objection, Your Honor.

THE COURT: What's the objection?

MS. SAVAS: In regards to the prior objections of --

THE COURT: I will sustain the objection. Refrain from that statement.

MS. SEMAN: Yes, Your Honor. Mr. Boston was minding his own business when officers approached Denise Holman's apartment. He was doing nothing wrong. By now you have heard all the evidence in this case. The evidence that the State says proves that Mr. Boston is guilty of manufacturing crack and possession of crack with the intent to distribute. So what is that evidence? Sergeant Sherwood, the chief investigating officer, wrote a report. You heard

him tell you about the importance of that report. He then told you about some big, huge, colossal problems in that report. He testified on the stand, on that witness stand that he had literally caught Mr. Boston and Mr. Holmes in the middle of making crack cocaine. He told you this case is a slam dunk. It was open and shut. He saw them do it.

Sergeant Sherwood then told you that he left this most important fact out of his incident report. His supervising officer, Sergeant Hoose, told you that these facts would be essential to write down. Sergeant Hoose also told you he approved that report without editing it. He didn't include that most important fact that Mr. Boston and Mr. Holmes were allegedly in the process of cooking crack when this happened. That is not a small detail. This is not a distraction. This is the entire case.

Members of the jury, the fact that it wasn't in the report shows one thing clearly and that is Sergeant Sherwood made it up. The only thing being manufactured here is Mr. Boston's guilt. Also, according to Sergeant Sherwood's report no one claimed those drugs. After multiple

meetings with the solicitor when they were scrambling to make a case Sergeant Sherwood put those drugs in Mr. Boston's hands.

And if Mr. Boston and Mr. Holmes really had drugs and paraphernalia in their hands it would have been written down. But it wasn't. Manufactured guilt. Beyond that Sergeant Sherwood told you about his investigation. Investigation meaning a couple of pictures and one lab report. In fact, Sergeant Sherwood suggested that basic investigatory processes like taking pictures, taking statements from witnesses are things that he rarely does as a patrol officer.

The witness from the South Carolina Law Enforcement Division, she told you they only analyze what was sent to her. She told you that there were other departments at the South Carolina Law Enforcement Division that can analyze drugs, for fingerprints and analyze drugs and their containers for DNA. There wasn't any of that done in this case.

No witness statements from the supposed witness either. And about that witness. Ms. Holman, she did tell you about her history of drug use. Her history of crack use. She then told you

about that aneurysm. She said on the witness stand that she has a memory problem. She said that. She said I had an aneurysm so I do not have a lot of memory left.

But after talking with the solicitor she remembers. Until recently Ms. Holman was still using crack, the drug in question. The State wants you to believe that she has a perfect memory of this day almost three years ago. Mr. Boston had no contraband on him, no paraphernalia, no drugs, no weapon because he didn't do it.

So if Mr. Boston didn't do it then who did? Let's talk about the contraband. It was found in Ms. Holman's house, in Ms. Holman's cabinets, in Ms. Holman's microwave and rooms in Ms. Holman's house. It was found on the Defendant Mr. Holmes. Found in that bathroom. Forgotten perhaps by Ms. Holman. Found in the home of a person with a history of drug use who was not arrested. That's because it took Sergeant Sherwood at least three meetings with Ms. Savas to get his story straight. First he said Mr. Boston had the drugs. Then he said Mr. Holmes. Then he said it was both, but he did not see their hands. His story was designed and created and manufactured to

make Mr. Boston and Mr. Holmes look guilty.

At least three different stories from one day. He wanted you to believe this now almost three years later that he is remembering these most important details to support a conviction. And you heard him on the stand. He classified objectifiable facts like what's in that report as opinions. He backed up on important details like whether that Pryex would have been too hot for anyone to touch. He backed up on forensic and DNA saying they were too expensive to test. And then you had a witness from the South Carolina Law Enforcement Division saying that her agency does that. Mr. Boston went from not guilty to guilty in three visits. Sergeant Sherwood's job is to police, to prosecute crime, to gather facts, evidence and witnesses and to decide whether a person's actions violate the law. Sergeant Sherwood was not doing his job. He manipulated the facts to fit the crime. This system manufactured guilt.

The State has the burden of proof in this case as Ms. Savas just told you. That's a fancy way of saying that it's their job to convince you that Mr. Boston is guilty. The burden of proof

in a criminal case is the highest burden in this country. That means that the prosecution has to be more convincing in a criminal case than in a civil case, more convincing than a family law case, because criminal cases are just that important. The prosecution has to convince you to the extent that you are firmly convinced of Mr. Boston's guilt. If you are not firmly convinced Judge Dennis will tell you that Mr. Boston deserves a verdict of not guilty.

Judge Dennis will also instruct you about something called mere presence. He will tell you that if you find that Mr. Boston was just there just merely present during illegal drug activity he is not guilty. Additionally, finding Mr. Boston's co-defendant guilty does not require you to find Mr. Boston guilty. Their guilt is separate. You can find Mr. Holmes guilty and still find that Mr. Boston had nothing to do with anything illegal. That he was merely present.

The State has not met its burden. There's uncertainty all over this case. Uncertainty all over that incident report. Uncertainly all over that investigation. We believe that you will see through the State's

attempt to manufacture a case against Darell Boston. That is why we are confident that when you go back to the jury room and you take with you your common sense and the evidence that you have heard and seen in this case and the law as the judge instructs you that you will find Mr. Boston not guilty. Thank you.

THE COURT: Thank you, ma'am. Mr. Lewis.

MR. LEWIS: Thank you, Judge. Good afternoon. The truth doesn't change isn't some sort of phrase that we throw out lightly. It meant something when Mr. Smit said it at the beginning of the trial. It meant something because I could be sitting right there. If Officer Sherwood said it then you are going to believe it? No. You are going to do your jobs as jurors and think critically and see what should have actually been there if this was true. Because the truth does not change.

His original incident report does not talk about any of the things that actually show what they claim they were doing. Manufacturing crack cocaine. In a manufacturing crack cocaine incident report someone should say they were

manufacturing crack cocaine. Write that down. Never seen it before, not in his entire career has he walked in on that, right? He trains about it, right? Very rare. But not important enough to write that down to let us know how to defend our clients? To let us know what the claims are against us? Of course this is back in 2015 before body cameras so there is no other evidence. You just have to trust them, right? No. You have a duty that's higher than that. You have to think critically about the evidence that you have and the evidence that you don't have.

If someone saw it, especially someone who claims they were a professional, he said so, I'm a professional, you would have written it down had you seen that. His own words that Ms. Seman brought out, if you don't tell the whole truth that would be a lie. Sherwood said that himself and then clearly he is not telling the whole truth. He did not write it down. He did not document it. But after meeting with them his story gets better. It changes. Now, oh, yeah, walked in, they were manufacturing crack. Was really easy to see. Guess who didn't say that? Hoose. His supervisor. Who approved the report did not talk about walking

in on someone manufacturing crack cocaine. Did not talk about someone slamming a microwave door. Did not talk about someone running or doing a football carry with boiling crack cocaine.

How is somebody without any gloves going to carry a boiling pot of crack cocaine? Nobody had any gloves. Burns on their hands? We had a camera. We could have documented that. Was that done? No.

He did not want to use own phone, I guess that's a decent explanation as to why you didn't do your job. The forensics in this case are not something that we can gloss over either. The one scientist, the one person who is trained in crime scene and things related to that who came here said just yesterday she got a case where they did look for fingerprints on a baggie like this. Sherwood said no, it's not possible, we don't do that. Too much money, too expensive. We don't do that. Yesterday they did it. It's common.

It's important to fingerprint in cases where you're trying to prove identity. Who touched what. Who interacted with what. These men deserve that. They deserve to be considered, that evidence and not just say well, he said it happened so we

will believe him. That's not fair. It is not how our system is designed to work. We are supposed to require more than just a claim of one officer.

I want to talk to you a little bit about how he said you make crack. There were several steps that he talked about. But one of them was boiling it up, right? You then have to whisk it. Ms. Savas even made a hand motion. You have to whisk it to take out the air bubbles. So when exactly were they doing the whisking to take out the air bubbles to make that beautiful cooking is what he calls it that's in this Pryex when they were supposedly running after just having slammed shut the microwave?

Not possible. That's scientifically not possible. Couldn't happen. Didn't think about that before making up this manufacturing guilt where he gets to say they were doing it right when I walked in. Not true. I don't know who manufactured it. I don't know. Could have been someone who was in Ms. Holman's house before. Could have been Ms. Holman. The Ms. Holman that was in front of us today is not the same Ms. Holman that existed before her aneurism. She has been using drugs for 13 years and was still using up to

that point.

I know she's sympathetic. I represent people like her. I'm a public defender. But that doesn't mean that she can't make her own crack. That doesn't mean that it wasn't already sitting there when Mr. Holmes and Mr. Boston visited her house that day.

I ask that you hold them to a higher standard than just saying believe Sherwood. They love to put all this stuff out here for you. What on any of this can they say was touched by Mr. Holmes or Mr. Boston? What did someone see in their hands? I will correct that. The scale that was in my client's pocket, the cocaine that was on his person, that's his. We talked about that. It's not a trick. It's honesty. We know that you all have common sense to make your decisions. We are not going to say oh, yeah, they planted that on him. No. That was his. What they can't say is that they know who was manufacturing. If they rely on Sherwood that's unfair to this entire system.

I'm a little bit of a nerd when it comes to forensics. I think that should be there. I think that's important. Because if I were sitting where they are or he is I would want people

to base their decisions about my future on evidence. On the science. Not just based on claims that change over time, but get better? Your memory gets better, right? Everyone's memory gets better? At least Mr. Sherwood's does. That's why it was so important he should have written that down because people's liberty are at stake. Didn't even take the time to call crime scene. I guess it is not important. We won't take pictures other than the four that he took. Not significant enough to actually do your job as law enforcement to see what you can show happened.

I want to talk to you about something I'm sure you have heard about from watching TV, presumption of innocence and the burden of proof. Ms. Seman went over that as well. These things are not insignificant. They are not just things on TV. Presumption of innocence is incredibly important. When people are sitting at our tables and someone comes in, you're the juror, probably the first thing that comes to our head is I wonder what they did. That's wrong. It is supposed to be I wonder what they said he did. Because each person that comes in here is presumed to be innocent until they are proved guilty, proven guilty beyond a

reasonable doubt, firmly convinced beyond a reasonable doubt.

I want to talk to you about the level, what that really means. You sue somebody. You want to take some money. That's down there. That's preponderance of the evidence, 51 percent. You want to take somebody's kids away from them? Clear and convincing. That's right here. You want to take somebody's liberty from them, proof beyond a reasonable doubt. That is the highest standard that exists in the law. That's what these men are entitled to. Not a changing story, not a narrative that gets better as time passes, not an oops, I forgot to say they were manufacturing, not an oops I forgot to say it was this guy or that guy. You can't make up the stories as you go along. That's what North Charleston did and that's what the State of South Carolina has adopted. It is not fair.

The other way that I look at this when I imagine the presumption of innocence is if someone told my mom I was manufacturing crack cocaine and they said it was based on the words of Sherwood. What sort of evidence would I need to believe that? Because you can't know these guys. Otherwise you wouldn't be allowed to be on here.

They are entitled to that level of protection. They deserve that and I ask that you demand that with your verdict.

My client had cocaine on him. Please convict him of that. Weird for a defense attorney to say, but please convict my client for possession of cocaine not because of some threat, but because he did it. Find him not guilty for manufacturing crack because there's no evidence that he did that. The word of Sherwood is worthless. Because he can make up a story as he goes along and there is no one else who supports him. Hoose didn't support him. Etminan didn't even know what was going on. But any of them would have written that down had they seen someone manufacturing drugs. That's as basic as it gets.

Please find him not guilty, ladies and gentlemen, except on the charge of possession. Thank you.

THE COURT: Thank you. Ladies and gentlemen, thank you very much for your attention. Now we move into the final portion of this process. It becomes my responsibility to give you the law which you have of course promised that you will accept and apply fairly and impartially to the

facts that you will determine very shortly when I instruct you to begin your deliberations in this case.

I'm going to tell you that you and you alone have the exclusive duty to determine the effect, value, weight and truth of the evidence. And both Defendants and the State have a right to expect that you will very shortly conscientiously consider and evaluate the evidence, then apply the law to those facts that you determine to be true and report a decision. And once you have done that, then -- Mr. Pryor, let me ask you to move those. That is distracting to me. I don't know about you. Thank you so much.

Sorry to bother you, sir. If I could have easily gotten off here I would have done it. But once you have done that, then you would have honored the oath that you made when you started this process. During this instruction from time to time I may use the term Defendant and that's a term that we use simply to designate the party against whom a claim is made. It has no other significance other than that just, another way of identifying the person. Please know that I am referring to Mr. Boston and to Mr. Holmes when I use that term.

was either in actual or actual constructive possession to others.

The verdict form, you see this is captioned and it simply says we the jury by unanimous consent, as I mentioned to you all 12 of have you to agree, 11 and 1 is not sufficient, but your choices and the order in which they are placed means absolutely nothing. I had to put it in some order. One guilty and the other not guilty. There's a place that says presiding juror and a line for your signature. Whatever the decision of the jury if you will check in the line that precedes it, that choice, and circle it and then sign it and date it. You will have completed it. What will you be saying if guilt is your choice? You will be saying that all 12 of you the State has met its burden of proof to establish each element beyond a reasonable doubt and therefore as instructed you are returning a verdict of guilty.

Not guilty says you have found the State has failed to meet one -- meet its burden of proof of one or more and therefore you are returning a verdict of not guilty. Again, whatever it is all 12 have to agree.

Now, you have two verdict forms for

each Defendant. One is for a manufacturing and one with possession to intent to distribute crack cocaine. I will tell you that you are to consider this, but you have to make the choice. You can't find them guilty of both of them. Find them guilty of one if you are satisfied the evidence convinces you that the State has met its burden as to that particular crime.

But you can't find them guilty on both. So you will have to make a choice of which one you want to proceed. The one that has been charged with manufacturing crack cocaine because they arise out of the same activity. So you have to decide which one it is. The choices on possession -- excuse me -- manufacturing there are the two choices. Guilty or not guilty. That's your choice.

Again, as I defined manufacturing, we have given you the definition what that means. If you find that either or both of the Defendants manufactured the drug and you found that beyond a reasonable doubt the State met its burden of proof, and you elect that one you simply check guilty. If you find that they failed to meet one or more of the elements then you simply check not guilty and

Please, when you get it consider the charge as a whole. You may retire and resume your deliberations.

(Thereupon, the jury exited the courtroom at 10:05 a.m.)

THE COURT: Any exceptions or additions from the State?

MS. SAVAS: No, Your Honor.

THE COURT: Exceptions or additions from Mr. Boston?

MS. SEMAN: No, Your Honor.

THE COURT: Exceptions or additions from Mr. Holmes?

MR. LEWIS: No, Your Honor.

THE COURT: Mr. Boston, good morning, sir. I understand you have had a delay. That's all right. Thank you very much. I will allow Mr. Boston to remain out with his lawyers. Please stay in touch. Do not leave the building. Thank you. We will be at ease.

(COURT'S EXH. 3 was marked for identification.)

(Whereupon the jury continued deliberating and reached a verdict at 11:25 a.m.)

THE COURT: I have been advised the

jury has reached a verdict. Is the State ready to receive the verdict?

MS. SAVAS: Yes, Your Honor.

THE COURT: Mr. Boston ready?

MS. SEMAN: Yes, Your Honor.

THE COURT: Mr. Holmes is ready?

MR. LEWIS: Yes, Your Honor.

THE COURT: Okay. Let's bring in our jury. Mr. Boston, when we publish the jury I will ask you to rise, please.

(Whereupon the jury entered the courtroom at 11:37 a.m.)

THE COURT: I understand the jury has reached a verdict; is that correct?

THE FOREPERSON: Yes.

THE COURT: If you would pass the verdict form, please.

(Handing.)

THE COURT: The verdict forms have been properly completed. If you will publish the verdict. I would ask Mr. Boston to please rise.

THE CLERK: State of South Carolina versus William Holmes, case number 2015-GS-10-06090. We the jury by unanimous consent find the Defendant William Holmes on the charge of

possession of cocaine guilty. State of South Carolina versus William Holmes. Case number 2015-GS-10-06091. We the jury by unanimous consent find the Defendant -- case 2015-GS-10-06087. We the jury by unanimous consent find the Defendant Darell Boston on the charge of manufacturing crack cocaine guilty.

State of South Carolina versus William Holmes, case number 2015-GS-10-06088. We the jury by unanimous consent find the Defendant Williams Holmes on the charge of manufacturing crack cocaine guilty. All signed by the presiding juror dated February 7th, 2018.

THE COURT: Thank you. Ladies and gentlemen, if the clerk has published your verdict to each Defendant correctly please raise your right hand. Let the record reflect that each juror raised his or her right hand in response to the Court's questions. And, furthermore, consistent with my instruction the verdict forms dealing with possession with intent to distribute have not been executed because the jury decided to find the guilt as to the manufacturing. If that is correct please raise your right hand. Let the record reflect that each juror raised their right hand in compliance

with the Court's instructions. Anything further from the State from the jury?

MS. SAVAS: No, Your Honor.

THE COURT: Anything further from Mr. Boston?

MS. SEMAN: No, Your Honor.

THE COURT: Anything further from Mr. Holmes?

MR. LEWIS: Ask they be polled.

THE COURT: Ladies and gentlemen, the request for polling is merely the clerk will ask you a question and -- two questions. Was that your verdict and we will be polling only as to Mr. Holmes. We do not have to poll as to the -- you don't request a verdict --

MS. SEMAN: Your Honor, I would ask that we poll as well.

THE COURT: We will poll as to each of the Defendants. Then you will ask -- we will ask it -- since we have two verdicts, do we need to separate them? Can we just say that they are collective verdicts? Because they are not inconsistent.

MS. SEMAN: I would ask they be separately, Your Honor.

THE COURT: Fine. All right. So we are going to have three pollings?

MR. LEWIS: Definitely don't need to poll in regards to my --

THE COURT: First of all, folks, they have already been polled. You all witnessed that. I polled. That's what holding your hand up is. I'm going to -- not withstanding your request, for convenience of the jury, we are going to ask them if that's their verdict as to the Defendant Holmes, the verdict as to Defendant Holmes and their verdict as to Defendant Boston. Thank you. Okay. Let's do Mr. Holmes first since he requested it first.

THE CLERK: I will call you out by your juror number. I need you to stand at that time and then I will ask you two questions. Is this your verdict, you need to answer yes or no. The second will be is this still your verdict, yes or no. We will start with Mr. Holmes. Defendant Holmes.

Juror No. 260, please stand. Is this your verdict?

JUROR NO. 260: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 260: Yes.

THE CLERK: Thank you, ma'am. Juror No. 212, please stand. Is this your verdict?

JUROR NO. 212: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 212: Yes.

THE CLERK: Thank you, ma'am. Juror No. 86, please stand. Is this your verdict?

JUROR NO. 86: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 86: Yes.

THE CLERK: Thank you. Juror No. 278, please stand. Is this your verdict?

JUROR NO. 278: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 278: Yes.

THE CLERK: Thank you, ma'am. Juror No. 131, please stand. Is this your verdict?

JUROR NO. 131: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 131: Yes.

THE CLERK: Thank you. Juror No. 60, please stand. Is this your verdict?

JUROR NO. 60: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 60: Yes.

THE CLERK: Juror No. 81, please stand. Is this your verdict?

JUROR NO. 81: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 81: Yes.

THE CLERK: Thank you. Juror No. 54, please stand. Is this your verdict?

JUROR NO. 54: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 54: Yes.

THE CLERK: Thank you. Juror No. 310, please stand. Is this your verdict?

JUROR NO. 310: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 310: Yes.

THE CLERK: Thank you. Juror No. 47, please stand. Is this your verdict?

JUROR NO. 47: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 47: Yes.

THE CLERK: Juror No. 117, please stand. Is this your verdict?

JUROR NO. 117: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 117: Yes.

THE CLERK: Thank you. Juror No. 280, please stand. Is this your verdict?

JUROR NO. 280: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 280: Yes.

THE CLERK: Thank you.

THE COURT: We will not -- since they have stood once, they don't need to stand again. We can just call them out, just ask them the questions. You can remain seated. Thank you. Now you're polling as to Mr. Boston.

THE CLERK: Yes, sir. Juror No. 260, is this your verdict?

JUROR NO. 260: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 260: Yes.

THE CLERK: Thank you, ma'am. Juror No. 212, is this your verdict?

JUROR NO. 212: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 212: Yes.

THE CLERK: Thank you, ma'am. Juror No. 86, is this your verdict?

JUROR NO. 86: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 86: Yes.

THE CLERK: Thank you. Juror No. 278, is this your verdict?

JUROR NO. 278: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 278: Yes.

THE CLERK: Thank you, ma'am. Juror No. 131, is this your verdict?

JUROR NO. 131: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 131: Yes.

THE COURT: Thank you. Juror No. 60, is this your verdict?

JUROR NO. 60: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 60: Yes.

THE CLERK: Juror No. 81, is this your verdict?

JUROR NO. 81: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 81: Yes.

THE CLERK: Thank you. Juror No. 54, is this your verdict?

JUROR NO. 54: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 54: Yes.

THE CLERK: Thank you. Juror No. 310, is this your verdict?

JUROR NO. 310: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 310: Yes.

THE CLERK: Thank you. Juror No. 47, is this your verdict?

JUROR NO. 47: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 47: Yes.

THE CLERK: Juror No. 117, is this your verdict?

JUROR NO. 117: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 117: Yes.

THE CLERK: Thank you. Juror No. 280, is this your verdict?

JUROR NO. 280: Yes.

THE CLERK: Is this still your verdict?

JUROR NO. 280: Yes.

THE CLERK: Thank you. The jury has been polled.

THE COURT: Thank you very much. The jury has been polled and the verdict stands.

Anything else from the jury from Mr. Boston?

MS. SEMAN: No, Your Honor.

THE COURT: Anything else from Mr. Holmes?

MR. LEWIS: No, Your Honor.

THE COURT: Ladies and gentlemen, thank you very much. I appreciate it very much as I have indicated throughout the service you have rendered to your state and county. You have performed your duties very adequately and I'm not commenting on the verdict. You had a job and you responded and you were the judge with me. I commented about the manner in which you approached your duty and the method that you employed. Very, very complimentary to the system and I thank you. I am pleased to inform you this will conclude your services this week. You have earned your exemption for the next three years.

If any of you have any questions or concerns that you wish to express I'm going to excuse you now and let you retire to the jury room. If you will wait a moment I will be happy to step back and try to address those. If you have none you are free to leave and have a great day. Thank you so much.

And also now let me say this. You now are free to talk about this case if you wish. And sometimes I know I did this when I was practicing law, I would contact jurors to find out, get some pointers, see what maybe I could have done, anything I did wrong or that sort of thing. And that's -- I don't know whether it is going to happen, but it if does you are free to talk to them or not talk to them. And if the person persists in asking you a question and you choose not to talk to them, let Ms. Armstrong know and she can make me aware of that and we will take care of it for you. Thank you. You are free to leave.

(Thereupon, the jury exited the courtroom at 11:45 a.m.)

THE COURT: Anything from the State at this point?

MS. SAVAS: No, Your Honor.

THE COURT: Anything from Defendant? Any motions at this point?

MS. SEMAN: Your Honor, we just want to renew all of our earlier motions and objections. Thank you.

THE COURT: Very well. The rulings previously given will stand and that would be the

pretrial motions that were heard, the reasons for that. Your memorandums are of course incorporated. Your arguments are incorporated fully. And those made during the trial, all of those are incorporated and I will stand by my previous rulings with respect to Mr. Boston.

MR. LEWIS: Same motions, Judge.

THE COURT: And I would again incorporate any memorandum, all of your arguments made previously pretrial and during the trial fully and my rulings stand as previously articulated. Thank you so much. You want to prepare the sentencing sheets?

MS. SAVAS: I do have them here, Your Honor.

THE COURT: Okay.

THE COURT: Are you ready?

MS. SEMAN: Yes, Your Honor.

THE COURT: All right.

MS. SAVAS: Just beg the Court's indulgence.

(Brief pause.)

THE COURT: All right. Let's do Mr. Boston first. What's the State's position? Anything you wish to add on Mr. Boston, Ms. Savas?

MS. SAVAS: Yes, Your Honor. Briefly. Your Honor, I would like to read the Defendant's prior record.

THE COURT: Sure.

MS. SAVAS: Your Honor, in 1998 he was convicted of possession of marijuana first offense. In 2003 possession cocaine first, in 2009 two counts of a PWID cocaine first where he was sentenced to 15 years suspended upon two years probation by Judge Young. And in 2009 DUS charge. In 2010, Your Honor, the Defendant was convicted of trafficking crack 8 to 28 grams first offense, trafficking cocaine, 10 to 28 grams first offense, and the PWID cocaine first. He was sentenced to ten years on the trafficking charges and 15 years concurrent on the PWID charges. Your Honor, in the --

THE COURT: That was what year?

MS. SAVAS: 2010, Your Honor, and he was released from prison I think in 2014. And these actions occurred in March of 2015. There's a clear and consistency that Mr. Boston not only manufacturers the drug and crack, but also is trafficking.

And, Your Honor, in regards to his

sentence the State had made multiple reasonable offers.

THE COURT: I am aware of that.

MS. SAVAS: Which they are entitled to reject and exercise their right to trial. And those offers were under this ten-year frame for him. And he still does have another pending distribution charge with the solicitor's office for crack as well. And, Your Honor, given the repetitive nature and his knowing of the system and already serving prison, it had no effect on his lifestyle or his desire to change his criminal activity and his actions. And also the impact that's left on Ms. Denise, our witness in this case, and the severity of that and that she had testified that this was repetitive nature and this is what did they continually, come in there and take advantage of these vulnerable addicts and feed that addiction for them which causes a grand problem for the community beyond just the selfish act of the making and the dealing of the crack themselves.

Therefore, Your Honor, the State would respectfully request a sentence in the mid to upper range of this third offense, Judge. These are

strike offenses. And, Your Honor, there was a possibility of with these strikes potentially even being an LWOP sentence. And given the nature of these crimes, Your Honor, the Court or the State would respectfully request something in that area as he has already been previously sentenced to 10 and 15 years on prior charges.

THE COURT: Thank you. Be happy to hear from you, Ms. Seman.

MS. SEMAN: Thank you, Your Honor. Mr. Boston has served 62 days in jail from March 6, 2015 to May 6, 2015. I want to briefly address a few of the things that the solicitor said.

The ten-year sentence he did receive on the trafficking back in 2010, that was a 65 percent offense. He did serve four years which I do think tells you a little bit about his conduct when he was in prison on those charges. He was working. He was obviously not getting into any trouble or he would have served more time than that.

As far as the earlier trafficking, that was based on weight, not conduct. Obviously we don't have anything close to a trafficking weight here. As far as the verdict being on the manufacturing, Your Honor, I don't believe there's

anything about that verdict that suggests that the jury believed that he intended to distribute the items that were involved in this case.

And as far as pending distribution charge, that was from before this case and I do think it says something that the solicitor decided to try this case first. Mr. Boston, Your Honor, has been represented by several attorneys in our office. We were kind of put in a difficult position of being acquainted as this case was being called for trial as I know Your Honor is familiar. I am honored to have represented him through the process. Though it doesn't matter of course for purpose of sentencing, for purposes of the record Mr. Boston has always maintained his innocence. He has been here. He has shown up every day for this trial knowing what he's facing. He has been very motivated to defend himself and we understand that the jury has spoken.

Sentencing after trial of course puts defense attorneys in a weird position because we don't want to say anything that might prejudice the appeal. However, Your Honor, if he was culpable at all he was absolutely less culpable. No contraband was found on him. No drugs found on him. No

scales. And he has been here. Compared to his co-defendant, Your Honor, I do believe that he deserves a lesser sentence. As you have discussed with us throughout this case I do think that this case will be an opportunity for us to make some law. That's great. But right now we are here about Mr. Boston.

Mr. Boston is 41. He's from San Diego, California originally. He's been in the Charleston area for about 20 years. Apparently I misquoted that. He did live in San Diego for a while. He is the father of four children ranging from 23 to 12, three of whom live here. His oldest son just had his first grandchild. He's seven months old. He is still here to support his children. He is employed at Toast of Charleston. He's been working there for almost a year. He's a line cook. He loves cooking. He's an animal lover and he served three months in the Persian Gulf in the Navy. It's been three years since this charge. My understanding is no charges since then, certainly nothing significant. He does have family support in the community. Most of his family is here. His mother Janet and his Aunt Sadie are both here in the courtroom today. They wanted to be present for

the entire trial. Mr. Boston told them not to come. He thought it would be too difficult for them. It's been very stressful for their family to go through this.

Your Honor, based on the conduct that is at issue in this case, we have to request the minimum ten-year sentence. We ask you to allow him to be part of his grandchild's childhood once he is released and we believe that a ten-year sentence is appropriate especially considering that it's an 85 percent offense. Thank you.

THE COURT: Thank you so much. Mr. Boston, anything you wish to add, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Happy to hear from you, sir.

THE DEFENDANT: First of all, thank you for hearing my statement. Like my lawyer said, I've pled guilty to everything I have been guilty of. I wouldn't have taken it this far if I figured I would be found guilty. I only had one offer from the solicitor's office. That was an eight-year sentence. That's like eight years to me. I am not trying to make my momma cry. She cried for four years straight while I was in prison just because.

This time around they know I'm not guilty but the jury found me guilty. I understand that. I understand the prison system. I understand the streets. I understand the court system. My past has anything to do with what makes me now. The things I have done in the past, that makes me who I am right now, but it doesn't dictate what I am going through, what I am doing because she never asked me if I still sell drugs. I don't. I would be a fool to say I never sold drugs. My record isn't all that bad. But on paper it looks bad, looks really, really, really bad.

Other than that, I mean I don't understand why I am being found guilty because I didn't do anything. Wrong place, wrong time, wrong person. I didn't do anything, anything at all and I am about to get time again for nothing. I can have a hundred thousand character, a whole neighborhood of character witnesses in here right now. They wasn't there, but they know because the streets talk. Everybody talks. I don't understand. I love my parents. I love my kids. I don't want to see -- if I would have known this I would have taken a plea. Nothing I can do or say now it is over with.

THE COURT: Thank you so much, sir. Mr. Boston, I appreciate what you said. And I think the fact that you haven't had any further charges speaks volumes about you. I wish you had made some decisions -- better decisions earlier when you were released than you did on that particular day. The solicitor asked for hand of one hand of all. The reason I didn't charge that is if you read what constructive possession is, if you read that in conjunction with the mere presence charge which talks about you have to be an active participant. That incorporates hand of one and hand of all. The principle is there. So I understand that. What you should have done given the facts and I understand you have every right to say I didn't do any of that. The jury believed that there was crack cocaine manufactured there.

And that's an unusual one. It's the first one I have had in 24 years charging manufacturing. I never had to create a charge for manufacturing. Possession with intent to distribute sure, but not manufacturing. Frankly with the evidence they had and the jury believed it that was a slam dunk.

That's what I said what I said in

ruling on it. That was all the State had to prove. Testify to what he found, testify to the drugs in the Pyrex container, it is done. That's over with. That matched in every way the description.

And the problem is you had some risk involved. And listen, I understand about risk/reward. Well, you had your chance. I think your lawyer did a good job in representing you. It was a tough case all the way around, but now I am faced with it.

I understand you paid your debt to society, but obviously I can't ignore the fact for this conduct occurring very shortly after you were released from prison. And I have to take that into consideration in fashioning a sentence. Sentence of the Court is that you be comitted to the Department of Corrections. You understand that you will serve 85 percent of this sentence and there's a two-year community supervision. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Sentence of the Court is you be committed to the Department of Corrections for a term of 17 years. Give you credit for 62 days. Good luck, sir.