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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Edward W. Miller, Circuit Court Judge

ORIGINAL

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APR 29 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RANDY HOWZE,

APPELLANT

APPELLATE CASE NO. 2014-000718

RECORD ON APPEAL

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State of South Carolina.,) In The General Sessions
) Court of York
)
) Case No.: 2012-GS-46-02944
 County of York.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Randy Howze.,)
)
 Defendant.)

October 17, 18, 2012
 York, South Carolina

B E F O R E:

The Honorable Edward Miller, Judge, and a jury.

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 To The Honorable John C. Hayes, III

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Court Reporter's Note: All Exhibits were filed with the
York County Clerk of Court's Office.

1 (COURT IN SESSION IN THE MATTER OF STATE VERSUS RANDY
2 HOWZE OCTOBER 17, 2012, AT 10:10 A.M..)

3 SOLICITOR MCNERNEY: Your Honor, the next matter
4 before the Court is the State of South Carolina versus
5 Randy Howe. That's Indictment No. 2012-GS-46-0-2-9-4-4
6 possession with intent to distribute crack cocaine for
7 cocaine base.

8 THE COURT: Okay.

9 MR. MCKINNON: I believe we're gonna need somebody
10 from the Court to call my client's name out in the hallway
11 as I have not had contact with him for some time.

12 THE COURT: He'S not here?

13 MR. MCKINNON: He does not appear to be here.

14 THE COURT: Well let's sound his name three times out
15 in the hallways. Who does that?

16 MR. MCKINNON: Randy Howze. How-ze.

17 THE COURT: Kind of like how's he doing. Doing good
18 right now but --

19 OFFICER WILLIAMS: Your Honor, no response after
20 three calls.

21 THE COURT: All right. We'll just move forward maybe
22 he'll show up. Tell us about notice given to him before
23 we proceed.

24 SOLICITOR MCNERNEY: All right, Your Honor.

25 Your Honor, the State - I specifically sent Mr.

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1 McKinnon an email on September 21st of 11:28 a.m., stating
2 that Randy Howe's case - the crack case would be called to
3 trial the week of October 15th and if for any reason it was
4 not reached this week it would be - subject to being
5 called any term thereafter. That was sent on September
6 21st, approximately a month ago. The State's position is
7 that Randy has had sufficient notice. With Mr. McKinnon I
8 will defer to him for the details but he would - also can
9 verify to the court that Mr. Howe was on notice that this
10 case was up for trial this week.

11 THE COURT: Okay. All right. Yes, sir.

12 MR. MCKINNON: Your Honor, that's correct. On
13 September 28th I conveyed the situation that Mr. Howe was
14 in that he would have to either plead guilty or go to
15 trial the week of the 15th. I again had the same
16 conversation with him on October 2nd. Both times he
17 indicated to me he did not want a trial and he wanted to
18 either plead guilty or hire a private attorney. Neither
19 one of those happened and as of last week I lost the
20 ability to contact him. The bondsman has been looking for
21 him but so far there has been no results.

22 THE COURT: Okay. So he's not at the location where
23 he listed - said he was gonna live on his bond?

24 MR. MCKINNON: No, sir.

25 THE COURT: All right. Anything before we pick this

1 jury?

2 SOLICITOR MCNERNEY: Your Honor, I would just like to
3 make Court's Exhibit his bond paperwork if I may.

4 THE COURT: Yeah.

5 SOLICITOR MCNERNEY: It states that - just signed by
6 Randy Howe on May 8th, 2012. Above his signature it states
7 I understand and have been informed that I have an
8 obligation to be present at trial and should I fail to
9 attend the court and the trial will proceed in my absence.
10 That was signed by Randy Howe.

11 MR. MCKINNON: No objection.

12 THE COURT: Okay.

13 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE IDENTIFIED AND
14 MARKED, RECEIVED INTO EVIDENCE.)

15 SOLICITOR MCNERNEY: I believe that's all for now.

16 THE COURT: All right. Then just put on the record
17 his name was sounded three times in the halls of the
18 courthouse with no response. I believe it was sure
19 sounded with plenty of volume. All right, you all,
20 anything else before we get a jury in here and state
21 picking 'em?

22 SOLICITOR MCNERNEY: Nothing from the State, Your
23 Honor.

24 MR. MCKINNON: Nothing from the Defense.

25 THE COURT: Do you want me to make any mention of the

1 fact that he's not here?

2 MR. MCKINNON: Your Honor, if you wouldn't mind I
3 guess as far as you're going to tell them the whole thing
4 but out front would not be considered inappropriate from
5 my perspective so I suppose -

6 THE COURT: Of course he might show up. I'd hate to
7 --

8 MR. MCKINNON: I guess that's possible.

9 THE COURT: You don't sound very confident about that
10 though.

11 MR. MCKINNON: I would have to be frank, hopeful but
12 not confident.

13 THE COURT: Okay. I'll tell 'em something. Okay.
14 What do we need to do to get 'em?

15 MADAM CLERK: I just need to call. You ready?

16 THE COURT: Yeah.

17 MR. MCKINNON: I just have a quick question. Will
18 the perspective jurors be brought up in front of us or
19 will they -

20 THE COURT: No. Yeah it goes a lot faster if they
21 stand in place.

22 MR. MCKINNON: Okay.

23 THE COURT: You all ask about the charge, possession
24 with intent. Partially it says in determining whether or
25 not he had the intent to distribute you could consider the

1 circumstances surrounding the possession. You can
2 consider the amount of the substance, the manner in which
3 it was possessed, the place it was possessed, and other
4 factors from which the jury could consider to be
5 important. You must find that the defendant did not
6 intend to have the crack solely for his own use and
7 possession of more than ten grains - is that right?

8 SOLICITOR MCNERNEY: It's been changed to one gram or
9 more.

10 THE COURT: To one. To one or more grams of meth
11 creates an inference that he possessed the crack with the
12 intent to distribute it.

13 SOLICITOR MCNERNEY: Would you say possession of one
14 or more grams of meth or cocaine base? Or crack?

15 THE COURT: If you wanted to. I don't care.

16 SOLICITOR MCNERNEY: To make sure that the jury
17 understands that one or more grams of this substance
18 involved is evidence of intent to distribute.

19 MR. MCKINNON: The meth could be confusing to the
20 jury
21 I suppose.

22 THE COURT: Well I'll just say - When I say meth this
23 is - Yeah, I'll interchange it. I won't mention meth.

24 SOLICITOR MCNERNEY: Okay.

25 THE COURT: If there is not the inference is not the

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1 State would need to prove beyond a reasonable doubt he had
2 intent to distribute it. Simply an evidentiary fact taken
3 into consideration along with all the other evidence.

4 MR. MCKINNON: That sounds great to me, Your Honor.
5 And can I go ahead and ask that we sedge way that into a
6 charge about a lesser included offense of simple
7 possession. It's kind of referenced in there but not - .

8 THE COURT: I might need a charge conference. Now
9 you want to --

10 MR. MCKINNON: I thought we were informally talking.

11 THE COURT: No. But you all ask in chambers about
12 what I said so I figured I'd just tell you. I thought you
13 were going to use it in your opening.

14 SOLICITOR MCNERNEY: Right.

15 MR. MCKINNON: Right.

16 THE COURT: Do we need an alternate?

17 SOLICITOR MCNERNEY: I'd prefer an alternate yes.

18 THE COURT: One. Just give me one.

19 (JURY ENTERS COURTROOM AT 11:18 A.M..)

20 THE COURT: All right, ladies and gentlemen, welcome
21 to the courtroom. I want to thank you for being here. I
22 recognize some of your faces, but I'm sure some of you may
23 not have been up here in this courtroom this week, so let
24 me introduce myself.

25 My name is Ned Miller. I am a Circuit Judge from

1 Greenville. Of course, all the circuit judges have state-
2 wide jurisdiction and the Constitution requires that we
3 ride the circuit so we move about the State. And your
4 local circuit judges, Judge Alford and Judge Hayes, who
5 are outstanding judges, we're fortunate to have them visit
6 Greenville from time to time.

7 Anyway, I'm very pleased to be here today and I'm
8 handling a term of criminal court, which is formally known
9 as General Sessions Court, and we are about to begin the
10 trial of the case and we need to - You all have been
11 qualified to serve generally under the law this week as
12 jurors and we'll need to qualify you specifically for this
13 case and so we are going to have to ask you a few more
14 questions to ensure that we can empanel a fair and
15 impartial jury.

16 So let me introduce the case to you. This is the
17 *State of South Carolina versus Randy Houze*. It's on
18 Indictment Number 2012-2-9-4-4. It's an indictment for
19 possession with intent to distribute cocaine base, and the
20 indictment alleges that on or about April 23 of 2012, the
21 defendant Randy Houze did in York County, South Carolina,
22 manufacture, distribute, dispense, deliver, purchase or
23 otherwise aid, abet, attempt, or conspire to manufacture,
24 distribute, dispense, deliver for purchase or possessed
25 with intent to distribute, dispense, or deliver, cocaine

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1 base in violation of the statutes and laws of this state.

2 I will tell you, ladies and gentlemen, that to this
3 indictment, Mr. Houze has pled not guilty and as such,
4 certain right attach which belong to each and every person
5 in this country who are charged with a crime, and that is
6 that any person charged with a crime is presumed to be
7 innocent, unless and until the charging body, which in
8 this case is the State, can prove to a jury beyond any
9 reasonable doubt each and every element of the offense
10 that a person is charged with.

11 Please keep that in mind throughout the course of
12 these proceedings.

13 Additionally, ladies and gentlemen, this document
14 which I published or read to you today, this indictment is
15 nothing more than it appears to be, and that is a piece of
16 paper. It is just the formal document which allows this
17 case to wind its way through our system to arrive here in
18 court for disposition, and you should take no inference or
19 make no presumption from the fact that this document as
20 issued with respect to the question of guilt or innocence.
21 That is determined solely from the evidence presented in
22 the court after applying the law as you will hear it in
23 the court, so please keep that in mind as well.

24 Now before I go any further, I would ask the
25 attorneys to stand and introduce themselves and their

1 office.

2 All right.

3 SOLICITOR MCNERNEY: Good morning, ladies and
4 gentlemen. My name is Rebecca McNerney. I work for Kevin
5 Brackett, the elected Solicitor for the Sixteenth Circuit.

6 THE COURT: All right.

7 SOLICITOR EPTING: Chris Epting. I'm also Assistant
8 Solicitor of the Sixteenth Circuit run by Kevin Brackett.

9 MR. MCKINNON: My name is Mark McKinnon. I'm
10 Assistant Public Defender and I am representing Randy
11 Houze, the defendant.

12 THE COURT: Okay. Thank you very much.

13 Ladies and gentlemen, is there any member of the
14 panel related by law or marriage, or who has a business,
15 personal or social relationship with any of the attorneys
16 involved in this case or any member of their office?

17 If so, please stand.

18 (NO RESPONSE.)

19 THE COURT: Okay. Is there any member of the jury
20 panel related by blood or marriage, or who has a business,
21 personal or social relationship with Mr. Randy Houze?

22 If so, please stand.

23 (NO RESPONSE.)

24 THE COURT: I'm going to read a list of potential
25 witnesses in the case. I need to know the same about

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1 these folks. Officer Jay Spencer, Officer W. Morales,
2 Officer M. Bryson, Officer Hope, Officer Sims, Linda Erby,
3 Ray Hamilton, Commander Marvin Brown, Cynthia Mitchum.

4 Is there any member of the jury panel related by
5 blood or marriage, or who has a business, personal or
6 social relationship with any of those potential witnesses
7 whose names I have just read?

8 If so, please stand.

9 (NO RESPONSE.)

10 THE COURT: Is there any member of the panel familiar
11 with any of the or have any knowledge about any of the
12 events that are alleged in the indictment?

13 If so, please stand.

14 (NO RESPONSE.)

15 THE COURT: Okay. Is there any member of the jury
16 panel, or any family member who has ever been charged with
17 this type of offense?

18 If so, please stand.

19 (NO RESPONSE.)

20 THE COURT: Is there any member of the jury panel or
21 who has a family member or a close personal friend who is
22 employed in law enforcement or connected with the Public
23 Defender's office?

24 If so, please stand.

25 (NO RESPONSE.)

1 THE COURT: Is there any member of the jury panel who
2 is a member of or a contributor to a group whose primary
3 concern is the promotion of law enforcement or victim's
4 rights such as MADD, SAD, or CAV?

5 If so, please stand.

6 (NO RESPONSE.)

7 THE COURT: Is there any member of the jury panel who
8 is aware of any bias or prejudice towards either the State
9 or the defense?

10 If so, please stand.

11 (NO RESPONSE.)

12 THE COURT: Is there any member of the jury panel who
13 knows of any reason whatsoever why you should not serve in
14 this case with particular emphasis on your ability to be
15 fair and impartial to both the State and the defense and
16 to judge the outcome of this case based solely on the
17 evidence presented in the courtroom and the law presented
18 in the court?

19 If you cannot do that, please stand.

20 (NO RESPONSE.)

21 THE COURT: Okay. Anything further from the State?

22 MS. MCMURRAY: Nothing, Your Honor.

23 THE COURT: From the defense?

24 MR. MCKINNON: No, Your Honor.

25 THE COURT: All right. Ladies and gentlemen, we are

1 about to strike the jury. Get ready. When they call your
2 name, just stand in place and await further instructions,
3 please.

4 MADAM CLERK: Number Thirty-two, Edward Boyd.

5 (WHITE MALE STANDING.)

6 MADAM CLERK: What say you for the State?

7 MS. MCMURRAY: Please present the juror.

8 MADAM CLERK: Defense?

9 MR. MCKINNON: Please swear the juror.

10 MADAME CLERK: Take a seat in the jury box.

11 Number One twenty-one, Johnny Jackson.

12 (BLACK MALE STANDING.)

13 MADAM CLERK: What say you for the State?

14 MS. MCMURRAY: Please present the juror.

15 MADAM CLERK: Defense.

16 MR. MCKINNON: Please swear the juror.

17 MADAM CLERK: Have a seat in the jury box.

18 Number One Forty-six, Stephen Long.

19 (WHITE MALE STANDING.)

20 MADAM CLERK: What say you for the State?

21 MS. MCMURRAY: Please present the juror.

22 MADAM CLERK: Defense?

23 MR. MCKINNON: Please swear the juror.

24 MADAM CLERK: Have a seat in the jury box.

25 Number One thirty-seven, Valerie Lawrence.

1 (WHITE FEMALE STANDING.)

2 MADAM CLERK: What say you for the State?

3 MS. MCMURRAY: Please present the juror.

4 MADAME CLERK: Defense?

5 THE COURT: Whoa. One second.

6 MR. MCKINNON: Please swear the juror.

7 MADAM CLERK: Number One Fifty-four, Misty Massey.

8 (WHITE FEMALE COMING FORWARD.)

9 MADAM CLERK: What say you for the State?

10 MS. MCMURRAY: Please present the juror.

11 MADAME CLERK: Defense?

12 MR. MCKINNON: Please swear the juror.

13 MADAME CLERK: Have a seat in the jury box.

14 Number Twenty-nine, Charlotte Bishop.

15 (WHITE FEMALE COMING FORWARD.)

16 MADAM CLERK: What say you for the State?

17 MS. MCMURRAY: Please present the juror.

18 MADAM CLERK: Defense?

19 MR. MCKINNON: Please swear the juror.

20 MADAM CLERK: Have a seat in the jury box.

21 Number One forty-eight, James Lynch.

22 (WHITE MALE STANDING.)

23 MADAM CLERK: What say you for the State?

24 MS. MCMURRAY: Please present the juror.

25 MADAM CLERK: Defense?

1 MR. MCKINNON: Please swear the juror.

2 MADAM CLERK: Have a seat in the jury box.

3 Number Forty-eight, Robert Cathcart.

4 (BLACK MALE STANDING.)

5 MADAM CLERK: What say you for the State?

6 MS. MCMURRAY: Please present the juror.

7 MADAME CLERK: Defense?

8 MR. MCKINNON: Please swear the juror.

9 MADAM CLERK: Have a seat in the jury box.

10 Number 211, Michael Sipes.

11 (WHITE MALE STANDING.)

12 MADAM CLERK: What say you for the State?

13 MS. MCMURRAY: Please present the juror.

14 MADAME CLERK: Defense?

15 MR. MCKINNON: Please swear the juror.

16 MADAME CLERK: Have a seat in the jury box.

17 Number Two Nineteen, Alexa Spratt.

18 (WHITE FEMALE STANDING.)

19 MADAME CLERK: What say you for the State?

20 MS. MCMURRAY: Please present the juror.

21 MADAME CLERK: Defense?

22 MR. MCKINNON: Please swear the juror.

23 MADAM CLERK: Have a seat in the jury box.

24 Number Two forty-eight, David Wolfe.

25 (WHITE MALE STANDING.)

1 MADAM CLERK: What say you for the State?

2 SOLICITOR MCNERNEY: Please excuse the juror from
3 service.

4 MADAM CLERK: You are excused in this case.
5 Number Twenty-one, James Beal.

6 (WHITE MALE STANDING.)

7 MADAM CLERK: What say you for the State?

8 SOLICITOR MCNERNEY: Please present the juror.

9 MADAM CLERK: Defense?

10 MR. MCKINNON: Please swear the juror.

11 MADAM CLERK: Have a seat in the jury box.

12 Number One Thirteen, Freddy Huston.

13 (WHITE MALE STANDING.)

14 MADAM CLERK: What say you for the State?

15 MS. MCMURRAY: Please present the juror.

16 MADAME CLERK: Defense?

17 MR. MCKINNON: Please swear the juror.

18 MADAME CLERK: Have a seat in the jury box.

19 This is for the alternate. Fifty-four, Ricky
20 Cloninger.

21 (WHITE MALE STANDING.)

22 MADAM CLERK: What say you for the State?

23 MS. MCMURRAY: Please present the juror.

24 MADAM CLERK: Defense?

25 MR. MCKINNON: Please seat the juror.

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1 MADAM CLERK: Have a seat in the jury box.

2 THE COURT: All right, ladies and gentlemen, my
3 apologies to you all for not getting an opportunity today
4 to serve in this courtroom. I know that you all are
5 disappointed and I hope and trust that you all get a
6 chance to do it again. I want to tell you, I really think
7 that the group that's been selected is a fortunate group
8 because it is a great privilege and honor and
9 responsibility to serve as a juror in court.

10 It is where we as citizens participate hands-on in
11 our - in a system of justice that belongs to each and
12 every one of us, so it's a vitally important service and I
13 hope that you all get the chance, if not this week, then
14 sometime in the future, but with that I'm pleased to
15 excuse you and ask you to call back tonight at seven.
16 Okay. Thank you very much.

17 (JURY DISMISSED AT 11:33 A.M..)

18 THE COURT: Let me talk to the lawyers for one second
19 up here please.

20 (BENCH CONFERENCE OFF THE RECORD AT 11:33 A.M..)

21 THE COURT: Okay, ladies and gentlemen, generally my
22 expression to those folks who I dismissed about how
23 important what you do is and I do think that you all are
24 the lucky ones to have been selected. It's not what you
25 might have sought out. It's not what you would have

1 volunteered for necessarily, but when you complete your
2 service, I hope you'll have a deep sense of satisfaction
3 and sense of reward for the service you performed for your
4 fellow citizens, not just in York, but around our state
5 and our country. It is that important.

6 I will tell you that we work with juries constantly
7 all the time. Not each and every week, but two or three
8 weeks out of the month and it's a rare event to speak with
9 someone who has served in a jury on a trial and have them
10 not express satisfaction. So you need to experience and I
11 hope I will conclude myself right after you concluded your
12 service.

13 We have a dispute about the facts in this case which
14 can't be resolved in any way other than to ask a jury to
15 come sit and listen to the evidence presented in the
16 courtroom and render a decision which resolves that
17 dispute and that's your job. And you might say, well, I'm
18 not qualified. I've got no training or experience. Well
19 each of you has unique training and experience from your
20 own life's experiences and that's what we ask you to
21 bring with you to serve as jurors.

22 But when you - There are certain rules and laws that
23 we go by and as I mentioned before, some of the vitally
24 important foundational parts of our system that ensure
25 that we all enjoy the freedoms, many freedoms that we do,

1 are that everyone who is charged with a crime is presumed
2 to be innocent unless and until the charging body can
3 prove them guilty beyond any reasonable doubt of each and
4 every element of the offense that they are charged with.

5 The burden is always on the State to prove someone
6 guilty and a citizen in this country charged with a crime
7 is never required to prove themselves innocent, so please
8 keep that in mind throughout the course of the
9 proceedings, throughout the course of the trial.

10 The indictment, the fact that an indictment is
11 issued; the fact that an arrest warrant was issued, you
12 are to take no inference or make any presumption from the
13 fact that those documents are issued because they really
14 are just pieces of paper that allow the case to wind it's
15 way here for disposition and resolution.

16 Now, you can break a trial into as many parts as you
17 like. I break trials into five parts for the jury. Their
18 sort of a procedural roadmap so you'll know what's coming
19 next.

20 The first part we are going to engage in after lunch,
21 and you might consider what I'm doing now to be part of
22 the first part, and that is the opening statements to you
23 from the attorneys and those are brief, non-argumentative
24 statements.

25 The second part of the trial is the meat and potatoes

1 of every case and that is the presentation of the
2 testimony and the evidence in the case. And I would tell
3 you that the evidence comes to you all in generally one of
4 three ways. The most common way is through oral
5 testimony; the second most common way is through the
6 introduction of tangible documents or items; and then the
7 third common way is when the parties agree that some fact
8 is so beyond dispute that you all should take it as true
9 or what we know as a stipulation of the parties.

10 I don't know what combination that the evidence will
11 come to you today, but those are generally the three ways
12 it comes to a jury in most every case.

13 The third part of the trial is that when all of the
14 evidence is in at the close of the evidence, the attorneys
15 then stand before you and make their closing arguments and
16 that is when they advocate their position to you and urge
17 you to resolve the dispute in their favor.

18 The fourth part of the trial is my charge to you on
19 the law. And the fifth part of the trial is when you all
20 retire to the jury room to deliberate and to resolve the
21 dispute.

22 The parts are not of equal length, but at least you
23 will kind of know what is coming next and I hope that's a
24 good, general roadmap for you.

25 I'll ask you to do probably a lot of things in the

1 course of the trial. There are three main things I ask
2 you to do.

3 The first one is to keep an open mind. We go through
4 all this questioning to ensure that we have a fair and
5 impartial jury that doesn't come in with a mind set one
6 way or another; a jury that will sit and listen to the
7 evidence presented and the law and make a decision in a
8 fair and impartial way at the close of the case, so I ask
9 you to keep an open mind.

10 Secondly, I ask you to pay attention. That seems
11 very simple and fundamental, and it is, but it's easy and
12 we all know we might let our minds wander off a little bit
13 and if you do that, you might miss an important piece of
14 testimony or perhaps the way a witness acts on the witness
15 stand which we call someone's demeanor, and that might
16 become important in your deliberations at the close of the
17 case and then you would be at a disadvantage if you had
18 let your mind wander off, so please pay attention.

19 The last thing I ask you to do, and this is vitally
20 important and I instruct you to do that, is to not talk
21 about the case with anyone until you are free to
22 deliberate at the end of trial.

23 So if you - That means you can't talk among
24 yourselves about the case until you are deliberating. You
25 can't talk with bailiffs. We are going to go to lunch in

1 just a few minutes and you know very little about the
2 case, but if you see someone on the street and they ask
3 what you are doing and you tell them and you start talking
4 about it, even an innocent comment from someone who you
5 like and trust could impact your state of mind and that
6 would not be fair to these parties. It wouldn't be fair
7 to your fellow jurors and most importantly, it wouldn't be
8 fair to yourself to allow someone who is not making the
9 sacrifices that each of you are making to have any input
10 into the outcome of the case.

11 They are not up here watching the testimony and
12 evidence. They're not listening to the law and they
13 shouldn't be allowed to have any input, so not only is it
14 not fair, it's also a requirement that you not talk about
15 the case. And all know it is human nature that you want
16 to do that and that's - but you're not going to do it just
17 like all the other jurors are going to do it, so.

18 I will tell you that you are the sole judges of the
19 facts of the believability, credibility of the witnesses
20 and the evidence that testifies. It is entirely up to
21 you. The law does not allow a trial judge to have any
22 opinion about the facts of the case, so please don't think
23 by anything I might say or do throughout the course of the
24 trial that I have an opinion. I'm not allowed to. I
25 don't. And it's entirely up to you to be the sole judges

1 of the facts.

2 That same law makes me the sole judge of the law, so
3 if you have any idea or opinion about what you think the
4 law is, or should be, and it differs from what I tell you
5 the law is then you are going to swear an oath in just a
6 second to set aside your own opinion and apply the law
7 precisely as I state it to you, which ensures that
8 everyone receives a uniformity of treatment under the law.

9 Now we are going - I've got some - I want to tell you
10 this. From time to time, I'll ask the lawyers to come up
11 and see me, or I might ask you all to go back to your jury
12 room; we need to discuss some legal matter out of your
13 presence. We are not trying to deceive you but we may be
14 trying to keep something from you.

15 If we talk about some piece of evidence for instance
16 that should not be admitted, then you can understand why
17 you all shouldn't be here to hear that, so that happens
18 from time to time. And that's what we're going to do and
19 why I'm going to dismiss you pretty - kind of early for -
20 I'm going to let you all go until about 1:30.

21 We have a number of issues we need to go over which
22 will in fact shorten the case and so I promise you this is
23 a beneficial, logistical event when I cut you loose for
24 lunch because we are going to be working after you go.
25 And then of course that means I have to keep all the court

1 personnel here and then you'd have an opportunity to have
2 lunch, so that's why I'm giving you all sort of an
3 extended lunch break.

4 With that, I'm going to ask you all to stand and ask
5 our fine Clerk of Court to swear you in and then we'll
6 excuse you for lunch.

7 MADAM CLERK: Please raise your right hand.

8 (WHEREUPON, PETIT JURY SWORN AT 11:41 A.M..)

9 MADAME CLERK: Let the record show all affirmed.

10 (ALL JURORS AFFIRMED.)

11 THE COURT: Okay. All right, ladies and gentlemen.
12 I'm going to cut you loose. I'm going to ask you to do
13 one thing when you come back and that is see if you can
14 elect a foreperson from among the first twelve, okay, and
15 the foreperson is the jury spokesperson in the courtroom,
16 if that becomes necessary, and the moderator of
17 discussions in your deliberations, so if you all could do
18 that, that would be great.

19 If not, I can do it for you. I have to tell all the
20 juries it is not a very scientific method. I put my hand
21 over my eyes and put my finger down on the list, so if you
22 all could do that, that would be great.

23 Yes, sir?

24 MR. CATHCART: Is notes allowed?

25 THE COURT: Yeah. Now, if you all want to take

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1 notes, we will make sure that each of you has an
2 opportunity to take notes and we will provide you with a
3 pad and a pencil.

4 I just want to caution you that if you are taking
5 notes and you're busy writing down, just remember that you
6 might miss someone's expression that could be important
7 and that sort of thing. And then I would also tell you
8 that if one person takes notes and the other one doesn't,
9 a person's notes carry no more weight in your
10 deliberations than another person's memory, but that's
11 fine. So with that they're gonna show you the back way
12 out. Thank you very much.

13 (JURY EXITS COURTROOM AT 11:43 A.M.)

14 MADAM COURT REPORTER: Judge, was that Mr. Cathcart
15 that spoke to you?

16 THE COURT: Mr. Cathcart.

17 MR. CATHCART: Yes.

18 THE COURT: Yes. Thank you.

19 Okay. What do we want to do?

20 SOLICITOR MCNERNEY: Your Honor, at this time we
21 would just move to amend the indictment on the record.
22 The indictment is written 2012-GS-46-0-2-9-4-4 has the
23 name Randy Houze on the indictment. Last name spelled
24 H-O-W-Z-E on the front and back of the indictment. We
25 would just move to amend that to include that name and

1 also add a/k/a Randy Houze, Houze spelled H-O-U-Z-E.
2 There is some differentiation in the spelling of his name
3 throughout his criminal history although both names are
4 used as his identifier. Same social security number,
5 which is [REDACTED], and same date of birth which is

6 [REDACTED].

7 THE COURT: Is there any objection to that?

8 MR. MCKINNON: Your Honor, I object to this. It does
9 show both spellings on his rap sheet although the
10 certified convictions show a H-O-W-U-Z-E. While I agree
11 the date of birth and - sorry Judge, H-O-U-Z-E. While I
12 certainly agree that his birth date and social security
13 number on all the certified convictions and the current
14 case are identical, I've never seen anything in any of the
15 current documentation where he is referred to as H-O-W-Z-E
16 or where he has admitted to being H-O-U-Z-E, Houze, so we
17 would object to the change.

18 THE COURT: I think we're suggesting is that his name
19 be H-o-u-z-e a/k/a H-o-w-z-e. Would that be right, Mr.
20 McKinnon?

21 MR. MCKINNON: Your Honor, I think that is the
22 State's position that he is also known as the two but
23 other than the rap sheet, I guess I don't see the
24 connection.

25 SOLICITOR MCNERNEY: Your Honor, for the record,

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1 several of his certified convictions do have the name
2 spelled H-o-w-z-e-.

3 THE COURT: Okay. I'm going to grant the motion.
4 I'm going to let you all do the - someone with a good
5 handwriting do it.

6 SOLICITOR EPTING: Thank you, Your Honor.

7 MR. MCKINNON: Your Honor, obviously there are some
8 prior convictions, certified convictions that show each of
9 those.

10 THE COURT: Okay. All right.

11 SOLICITOR MCNERNEY: Your Honor, briefly. Your
12 Honor, this may be better handled at the conclusion of the
13 State's presentation of evidence. I don't know how you
14 would prefer to handle it.

15 Your Honor, obviously this is a drug case. There is
16 a chain of custody issue. The chain of custody basically
17 goes from Officer Justin Spencer with the Rock Hill Police
18 Department, he drops it into evidence. It is checked in
19 by Linda Erby who is an Evidence Custodian of the Rock
20 Hill Police Department. She then turns it over to Ray
21 Hamilton, another Evidence Custodian at Rock Hill police,
22 who brings it to Cynthia Mitchum who is the chemist who
23 ultimately tests and confirms the drugs as cocaine base.

24 We have Justin Spencer. We have Ray Hamilton and we
25 have Cynthia Mitchum.

1 Your Honor, we do not have Linda Erby. I also did
2 not subpoena her. She has an exceptional hardship and it
3 would be incredibly difficult for her to be here today.

4 Under *State v. Taylor*, Your Honor, which I can hand
5 up, it's a South Carolina Court of Appeals case, if I
6 could hand that up to Your Honor, I've also given a copy
7 to Mr. McKinnon, allows the State to complete the chain of
8 custody without every member of the chain of custody
9 coming in to testify as long as one of the members of the
10 chain of custody can identify the missing link in the
11 chain and can testify to her identity as to the manner of
12 handling. It's my position - It's our understanding that
13 we able to testify to Linda Erby's identity and they know
14 that she would have handled the drugs while she was
15 employed.

16 THE COURT: What, is she in the evidence room or
17 something?

18 SOLICITOR MCNERNEY: Yes, Your Honor.

19 THE COURT: Just an evidence custodian?

20 SOLICITOR MCNERNEY: Yes, Your Honor.

21 THE COURT: All right.

22 MR. MCKINNON: Your Honor, I feel like I need to
23 object to this too. I think that - I have read the case
24 that she provided. I think there may be a difference
25 factually between the case here.

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1 I'm not sure what obviously the custodians are going
2 to say. However, I believe the - and correct me if I'm
3 wrong, this case, the chain of custody went off to hand
4 transfer and not just looking at a signature.

5 Is that the correct way?

6 SOLICITOR MCNERNEY: I'm not sure, Mark.

7 MR. MCKINNON: Your Honor, I guess what I'm saying is
8 I don't know if this chain is going to involve a personal
9 identity from one custodian to the next, i.e., seeing who
10 is giving me the package and going on to the next person
11 or whether it is going to be based on just looking at a
12 signature on a piece of paper.

13 THE COURT: Spencer gave it to Erby who was the
14 evidence custodian; she put it in the room and then
15 Hamilton removed it from the room and took it to Mitchum.

16 Is that right?

17 SOLICITOR MCNERNEY: Your Honor, we may have to wait
18 and see what Ray Hamilton testifies to. I don't know if
19 he took it directly from Linda Erby herself or if she put
20 it in a locker and he removed it from a locker. I don't
21 know.

22 THE COURT: Okay. Well, we'll just cross that bridge
23 when we come to it.

24 All right. If that's it, then we'll - what else did
25 you all have?

1 SOLICITOR MCNERNEY: Your Honor, I believe Mr.
2 McKinnon wanted a Jackson v. Denno hearing.

3 MR. MCKINNON: That's correct, Your Honor. If we
4 could see the video that the State would like to show the
5 jury. I guess I'd like to have a Jackson v. Denno hearing
6 and decide everything that is going to be shown.

7 THE COURT: What's on the video?

8 MS. MCMURRAY: Well be happy to proffer testimony -
9 well, the entire case is on video. I don't think it will
10 be necessary to play the entire video for this purpose,
11 but the statement the defendant made at the traffic stop
12 prior to any arrest, prior to any *Miranda*, we would be
13 seeking to admit two brief statements I believe we would
14 only have to play about five or ten minutes of video and
15 proffer testimony.

16 THE COURT: Okay. Is it a formal statement or is it?

17 SOLICITOR MCNERNEY: No, Your Honor. Just voluntary
18 statement.

19 THE COURT: So it's not pursuant to interrogation or
20 anything like that?

21 SOLICITOR MCNERNEY: No.

22 MR. MCKINNON: It appears pursuant to mere
23 investigation.

24 THE COURT: Okay, well let's just cue it out and
25 let's hear it.

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1 MR. EPTING: And Your Honor, it could save time, I
2 guess, if we did just play the video rather than having
3 Officer Spencer who was the recorder unless the defense
4 objects.

5 THE COURT: Okay.

6 (VIDEO PUBLISHED TO THE COURT AT 11:53 A.M..)

7 SOLICITOR EPTING: Your Honor, those would be the
8 substance of the statements that the State would seek to
9 introduce at trial.

10 THE COURT: Okay.

11 MR. MCKINNON: I've - Realizing this was not under
12 interrogation, not subsequent to Miranda warnings, I don't
13 really see any - any advantage of these statements in this
14 lead up to the arrest would give the jury any factual
15 determination of whether my client possessed crack with
16 intent to distribute it. In fact tends to characterize
17 him as I would say slow witted and a liar. Such as he is
18 not going to be testifying and not here I don't see how
19 this evidence or these statements are anything but
20 prejudicial to my client so we would ask that they be
21 suppressed.

22 THE COURT: Well that's generally not the standard we
23 go by cause quite often statements are prejudicial so
24 based on that I'm gonna let 'em in. Okay. All right.

25 SOLICITOR EPTING: Thank you, Your Honor.

1 THE COURT: Anything else?

2 SOLICITOR MCNERNEY: That's all from the State, Your
3 Honor.

4 MR. MCKINNON: Your Honor, that is all from the
5 Defense as well. We are ready to go.

6 THE COURT: You have these motions in liming. You're
7 not --

8 MR. MCKINNON: Well, I'm sorry, you're correct.

9 THE COURT: Have you all complied with Brady?

10 MR. MCKINNON: Your Honor, I think we've covered
11 everything either in chambers or in here. Let me make
12 sure.

13 (PAUSE.)

14 MR. MCKINNON: Maybe we want to put on the record if
15 the State has complied with Brady and Rule Five?

16 SOLICITOR MCNERNEY: I would prefer to put that on
17 the record, Your Honor.

18 MR. MCKINNON: All right.

19 THE COURT: Okay. You've complied with Brady and
20 Rule Five.

21 SOLICITOR MCNERNEY: Yes, Your Honor.

22 THE COURT: Are there any criminal records that could
23 be used for impeachment purposes?

24 SOLICITOR EPTING: Your Honor, I don't believe there
25 are any within the rules that should be testified that we

1 would use for impeachment.

2 THE COURT: Mr. Howze?

3 SOLICITOR EPTING: That is correct.

4 MR. MCKINNON: Just any other prior bad acts the
5 State would try to produce as evidence.

6 SOLICITOR MCNERNEY: No, Your Honor.

7 THE COURT: Okay. If that's the case I guess we'll
8 see you at 1:30.

9 MR. MCKINNON: Your Honor, one more thing. Issue
10 Number Seven, I'm not sure who the State would like to put
11 as their case agent but we would ask that any other
12 witnesses' other than the case agent be sequestered.

13 SOLICITOR MCNERNEY: We have no objection to that,
14 Your Honor.

15 THE COURT: Okay. Sounds good.

16 MR. MCKINNON: I believe that's it.

17 THE COURT: All right. We'll see you at 1:30 then.

18 SOLICITOR EPTING: Thank you, Your Honor.

19 THE COURT: Okay.

20 (MOTION TO RECONSIDER SENTENCE IN THE MATTER OF STATE
21 V. MARK THOR LEWIS WITH TOM ROPER.)

22 (COURT IN LUNCH RECESS AT 12:15 P.M..)

23 (COURT BACK IN SESSION AT 01:30 P.M..)

24 (WHEREUPON, STATE'S EXHIBITS ONE, TWO, THREE,
25 PREMARKED FOR IDENTIFICATION.)

1 THE COURT: You ready? Here we go.

2 (JURY REENTERS COURTROOM AT 01:38 P.M..)

3 THE COURT: All right. Welcome back, ladies and
4 gentlemen. Thank you very much for willing to serve. I
5 appreciate that.

6 All right, ladies and gentlemen, we're ready to begin
7 the trial of the case from the State.

8 MS. MCMURRAY: May it please the court, Your Honor?

9 THE COURT: Yes, ma'am.

10 MS. MCMURRAY: Good afternoon, ladies and gentlemen.

11 Back in the Spring of this year the defendant, Randy
12 Houze, was found to be in possession of three and a half
13 grams of cocaine base or what you may be more familiar
14 with as crack cocaine.

15 That number, three and a half grams, it's the weight
16 of the drugs, it's significant because while it may not
17 sound like much and may not look like much when you see
18 the actual substance, testimony will show that three and a
19 half grams of crack cocaine is a significant amount of
20 crack cocaine.

21 Back on April 23rd of 2012, specifically, around 9:30
22 p.m. that night, Officers Spencer, Morales and Bryson, all
23 from Rock Hill Police Department at the time, all from the
24 Rock Hill Police Department were on patrol in the area of
25 State Street and Saluda Street in Rock Hill, South

1 Carolina.

2 They were participating in something called directive
3 patrol, which is basically where law enforcement saturates
4 an area for one reason or another.

5 There was a lot of law enforcement present in that
6 area at this time of night on that date.

7 Officer Spencer is riding down Saluda Street at 9:30
8 at night and he sees in the oncoming traffic lane coming
9 towards him a vehicle approaching with a defective, front
10 left headlight, so he makes a quick U-turn and initiates a
11 traffic stop on the vehicle.

12 That vehicle yields a little further down Saluda
13 Street, yields to the law enforcement present and Officer
14 Spencer gets out of his vehicle and walks around to the
15 front driver's side window to engage in a conversation
16 with the driver of that car.

17 Officers Bryson and Morales immediately responded and
18 pulled up behind Officer Spencer to provide him any back
19 up he may need or any assistance he may need during the
20 incident and Officers Morales and Bryson walk around to
21 the passenger side to engage in a conversation with the
22 passenger, who is later identified as Randy Houze, the
23 defendant.

24 As is protocol for the Rock Hill Police Department
25 and most law enforcement agencies, the law enforcement

1 officers attempt to obtain the identification of the
2 occupants in the vehicle for several reasons.

3 One, being to confirm that they are not wanted
4 individuals. That there are not any outstanding warrants.
5 They are not wanted by *** other jurisdictions.

6 Another reason being to confirm that they are not
7 armed and dangerous individuals. The don't have a
8 violent, criminal past such that the officers might need
9 to exercise any extra degree of caution while engaging
10 with these individuals.

11 So Officer Spencer asked the driver of the car for
12 her identifying information. She responds and gives her
13 name as Frederica Archie. She gives her date of birth and
14 while she is attempting to find the insurance information
15 in the vehicle, which she is having a little difficulty
16 finding, Officer Spencer asked the passenger, who was
17 later identified as Randy Houze, for his name and date of
18 birth.

19 After a bit of hesitancy, Randy Houze gives the name
20 of Jeff Burris, which doesn't really seem that odd until
21 he is asked for his date of birth, to which he responds,
22 "March 6, 2000."

23 Then Randy Houze, being a man as testimony will show,
24 clearly above the age of 12, that sends up a red flag to
25 Officer Spencer.

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1 Officer Spencer then directs Officer Morales to ask
2 the passenger out of the vehicle to give him a chance to
3 be honest with officers, explain himself, get him one-on-
4 one separated from the other individual in the car and
5 just give him a chance to come clean.

6 They asked him to step out of the vehicle. Randy
7 Houze steps out of the vehicle. He is out of the vehicle
8 for approximately a half a second before he bolts.

9 Officers Morales and Bryson are able to grab a hold
10 of his windbreaker before he escapes completely and there
11 is a brief struggle.

12 During that struggle, Randy Houze sort of belts back
13 and allows his shirt to be removed from his body so that
14 he can continue running from the police. Officers Morales
15 and Bryson both were holding that windbreaker and they
16 toss it to the ground real quickly in order to engage in
17 the pursuit.

18 Officers Spencer and Morales pursue Randy Houze and
19 detain him a short distance later, a couple blocks away in
20 the area of Parks Drive. He is detained and immediately
21 taken into custody at that time.

22 Officer Bryson terminated his pursuit and came back
23 to the crime scene to secure the scene and to make sure
24 that the driver of the vehicle did not leave the scene.

25 After Randy Houze is detained and taken into custody,

1 Officers Spencer and Morales return to the scene with
2 Officer Bryson.

3 They engage in a conversation with Frederica Archie
4 and they secured the crime scene to do a little bit more
5 investigation and throughout their investigation, they
6 determine that the correct identifying information for the
7 passenger is not Jeff Burris, but that his name is Randy
8 Houze.

9 Throughout securing the scene, they start discussing
10 with one another and they are as law enforcement all they
11 know is that they have an individual who ran and they
12 don't know why. They are trying to figure that out. And
13 in the course of trying to figure that out, they decided
14 to start looking around the crime scene to see if they
15 could find any evidence of criminal activity, trying to
16 find some reason why this individual ran from them because
17 he is not wanted. There aren't any outstanding warrants.

18 Why did he run? And so they were looking and sure
19 enough, Officer Spencer looks in a grassy area on the
20 other side of the vehicle across the sidewalk, and he sees
21 a rock of what he believes to be crack cocaine. It's in
22 the area where the struggle occurred.

23 So he picks up the rock of crack cocaine, puts it in
24 an evidence bag and drops it off at the Rock Hill Police
25 Department in the evidence room and as you *** generally

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1 about this case, is that these events are recorded on
2 video tape.

3 Rock Hill Police Department has installed video
4 recording devices in their patrol vehicles so you will
5 have the luxury today of watching these events unfold on
6 videotape before your very eyes.

7 Officer Spencer went back to the police department.
8 He reviews the video tape and he notices that in the video
9 tape you can see when Officers Bryson and Morales are
10 tossing the windbreaker down onto the ground, you can see
11 a white substance, a rock of some kind of white substance,
12 fly out of the sleeve of the windbreaker and land on the
13 ground, landing in the exact location that Officers
14 Spencer retrieves the substance about 20 minutes after the
15 struggle.

16 He picks up that substance. Takes it around to the
17 front and puts it in the Rock Hill evidence department and
18 that substance is later transported to our chemist, who is
19 employed by York County Sheriff's Department. Her name is
20 Cynthia Mitchum who weighs that substance. It weighs out
21 at 3.51 grams and tests it. Confirms it to be cocaine
22 base or crack cocaine.

23 Ladies and gentlemen, Judge Miller told you earlier
24 that the charge in this case that Randy Houze is facing is
25 possessing with intent to distribute cocaine base or crack

1 cocaine.

2 There were basically three pieces to that crime and
3 the first obviously is that the substance is crack.
4 Obviously I would not be prosecuting Randy Houze for
5 possession of making *** or sugar or any other type of
6 white substance. He *** this has to be cocaine base. It
7 is. They confirmed it. That's the first part of the
8 crime.

9 The second part of the crime is that the individual
10 has to actually possess it. Yeah, you can't be convicted
11 of possession with intent to distribute crack if you don't
12 possess crack and you will watch a video tape which
13 clearly shows that Randy Houze was in possession of this
14 substance. So that's the second part of the crime.

15 And the third, that's the tricky part. That's the
16 intent element and that is doing something that we can't
17 capture on video tape. I can't capture the thoughts going
18 on in somebody's mind. I certainly cannot hand you the
19 mind of Randy Houze to take back in the jury deliberation
20 room with you to dissect and figure out what was going on
21 in his head, but in every day life, you guys I'm sure make
22 judgments all the time, make decisions all the time, about
23 an individual's thoughts; an individual's motives.

24 I'm asking you to apply those life experiences and
25 the common sense that you exercise every day outside of

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1 this courtroom, I'm asking you to apply those to the facts
2 of this case and to make a determination as to Randy
3 Houze's intent.

4 And you have a little bit of guidance under the law
5 in a case like this. Under South Carolina law, if a
6 person is found to be in possession of one gram or more,
7 one gram or more of cocaine base, the law says, the
8 legislature says you can infer that they didn't have it
9 for their own use; that they had it with the intent to
10 share with others.

11 Ladies and gentlemen, this is three and a half grams,
12 and in addition to the inference level and the authority
13 you have under the law to do that, we've also asked a man
14 named Marvin Brown to come give you a little bit more
15 foundation on narcotics and on cocaine base specifically
16 in order for you to base your decision on.

17 Marvin Brown is the Commander of our drug enforcement
18 unit here in York County. He has over 30 years of
19 experience in narcotics investigations and you will hear
20 from him probably late this afternoon. If not late this
21 afternoon, probably first thing in the morning. And he
22 will explain to you just how much three and a half grams
23 of crack is.

24 He will tell you what an individual dose unit of
25 crack is and the weight of that and he will explain to you

1 how many individual dose units of crack, how many
2 intoxicating doses of crack, are present in three and a
3 half grams.

4 He will explain to you the monetary value of three
5 and a half grams of crack. He will talk to you about
6 packaging and what, if any, paraphernalia, other than the
7 drugs themselves, you might expect to find on a drug user
8 versus a drug distributor, a drug dealer, among other
9 things.

10 I want to take a minute to thank you for your time.
11 I don't know about you guys, but this is my favorite time
12 of the year. The holidays are just around the corner.
13 It's fall and the air outside is fresh. It's cool and I'm
14 sure that being in a stuffy criminal courtroom is probably
15 not your place of choice but as Judge Miller told you
16 earlier, this is an honor for you to serve. It is a very
17 important duty that you have. We do recognize however
18 that you are a captive audience and that jury service does
19 take you away from your lives outside of this building.

20 It takes you away from your families and your jobs,
21 your home and your children, your social lives and I want
22 you to know that we recognize that and on behalf of the
23 State of South Carolina and the County of York, I want you
24 to know that we truly do value your service and your time
25 and your attention.

1 At the conclusion of the evidence and the
2 presentation of this case, I would just ask that you
3 remember three things.

4 One is the video tape that confirms that Randy Houze
5 was in possession of the substance.

6 The second is the inference level under the law that
7 gives you authority based upon the amount of drugs to
8 infer that he possessed it with the intent to distribute.

9 And the third is the testimony from Marvin Brown who
10 will give you the foundational better understanding of
11 crack cocaine.

12 I ask that you remember those three things and you
13 reflect back on them and that you use those as your basis
14 for coming back and giving us a verdict of guilty against
15 Randy Houze for possession with intent to distribute
16 cocaine base.

17 Thank you for your time.

18 THE COURT: Anything else?

19 MR. MCKINNON: Yes, sir.

20 Ladies and gentlemen, the Solicitor has described
21 what she intends to prove to you. How she intends the
22 facts of layout to you.

23 You will hear this in testimony from officers to
24 evidence that they may have used as tangible evidence, but
25 as you are going to do this afternoon and possibly

1 tomorrow, I want you to keep a few things in mind.

2 One, there are a few important legal concepts that
3 are involved here. You've probably heard them before,
4 something called a burden of proof. You may not know
5 exactly what that is. You've heard about it. It's very
6 important here.

7 Throughout this entire trial, Mr. Randy Houze is
8 entitled to a presumption of innocence. Not an inference
9 of innocence; distinction here, presumption. That means
10 he is innocent this entire trial until and if the State
11 proves beyond a reasonable doubt that he is guilty of each
12 and every one of those three elements that Ms. McMurray
13 told you.

14 That it is crack. Mr. Houze possessed it. That he
15 had that with an intent to actually distribute that crack
16 cocaine.

17 How will they prove that to you? The Judge will
18 explain this to you before you go back to deliberate but
19 I'd like to go ahead and go over it a little bit with you
20 now so you can think about it as you hear the testimony.

21 They have to prove to you each of these elements
22 beyond a reasonable doubt. And what does that mean?

23 Well, if you were called to court to serve as a juror
24 last week or maybe five weeks ago or something like that,
25 it may very well be what we call a Common Pleas court or

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1 lawsuits. That's something where one person obviously is
2 alleged to have pawned another involving money and that's
3 it. The stakes are money. Nobody can go to jail. It's
4 just one person trying to get a civil judgment against the
5 other person to address a wrongdoing.

6 And so the stakes in that case is called a
7 preponderance of the evidence. In a civil case, the
8 winning party, whether it is the plaintiff or defense, has
9 to prove just past 50 percent to win the case.

10 This is a criminal case. The stakes are a lot
11 higher. Possibly somebody's liberty. You are going to be
12 instructed to find Mr. Houze guilty, you must prove beyond
13 a reasonable doubt.

14 Now, that is much more than the preponderance of the
15 evidence in a civil case but what exactly is it? How do
16 you sink your teeth into it? I can offer you a few
17 suggestions.

18 One I've heard is that it is quite simply doubt
19 enough to make a reasonable person hesitate to act.
20 That's short and I think quite accurate, but I like to
21 kind of go over an act of that word that would I think
22 describes it a little bit better.

23 So if you kind of imagine a box. You have a paper
24 box that holds like ten reams of paper with a top. Maybe
25 about this big. This is a fictional story.

1 Let's say we threw an average house cat in that box
2 and then we throw a little mouse in the box. Close the
3 top, tape it up, seal it up and watch it. There's
4 screeching, clawing, the box moves around, it stops.

5 You unseal it and you open it up. We see a cat
6 sitting there and no mouse. The cat looks satisfied. He
7 is kind of smiling, sitting there, laying there or
8 whatever cats do and no mouse. Is there a reasonable
9 doubt that that cat ate that mouse?

10 Now, there may be some doubt that would involve
11 violating the laws of physics but practically there is a
12 reasonable doubt in your mind, you open it up and the
13 mouse is gone, that that cat ate it. Probably not.

14 Well, if we did the exact same thing and we put a
15 little hole in the corner of that box before we seal it up
16 so we put a cat, a little hole and a mouse and seal it up.
17 The exact same thing happens. Unseal it, open it back up
18 and you've got a smiling cat again and no mouse.

19 Now, can you say beyond a reasonable doubt that that
20 cat ate that mouse? I will submit to you that that is the
21 difference in a reasonable doubt. Now there is a
22 reasonable explanation for why there is no longer a cat -
23 I mean, no longer a mouse in that box and the cat.

24 So as you hear the testimony, I would kind of like
25 you to think about which version of that box story you are

1 hearing. Is the State actually proving beyond a
2 reasonable doubt each and every one of these elements.

3 Now, the State is going to harp on the *** She has
4 already mentioned that, that the chemist is going to come
5 in and say 3.5 grams of crack cocaine is enough to pass
6 the inference test, but that is just a piece of the
7 puzzle. Think about what else you are going to want to
8 know to decide when Mr. Randy Houze said that he actually
9 intend to distribute, give, sell or what have you, crack
10 cocaine to another person.

11 Think about what else you might want to know to
12 decide that beyond a reasonable doubt. Will it help you
13 decide if the States says, well he was also in possession
14 of scales. Some kind of scales he might weigh drugs on.
15 Would it help if they said he was in possession of a lot
16 of plastic baggies, the kind that you could put drugs in
17 to give to someone else or the little twisty ties. What
18 about that? Does that help you decide?

19 What if they have testimony that or they have
20 evidence that he had a cell phone that said I will meet
21 you at ten o'clock and I'll trade you ten dollars or
22 something along those lines and then so text messages,
23 phone, the phone calls to other people describing drug
24 transactions. Will that help you decide if he intended to
25 distribute?

1 What about the testimony that they saw him engage in
2 some sort of hand in hand interactions with another person
3 before they arrested him. That may help.

4 Well, that's the question. What if the State tells
5 you that Mr. Houze confessed to them that he was
6 supporting a family or something along those lines by
7 selling drugs. Would that help you decide that he
8 intended to sell?

9 So ultimately that's up to you to decide what is and
10 what isn't that is going to convince you beyond a
11 reasonable doubt that those drugs were one, crack; two, in
12 his possession; and three, he intended to distribute.

13 So as this case goes on, think about what it would
14 take to put you in a position to analogize the situation
15 to the box without the hole, beyond a reasonable doubt Mr.
16 Houze committed all three elements and I ask you please
17 consider this carefully.

18 Give your best attention and my client deserves this.
19 Every criminal defendant deserves your entire attention,
20 your best efforts and your common sense. I ask you to do
21 that.

22 Thank you.

23 THE COURT: Okay. Call your first witness.

24 SOLICITOR MCNERNEY: State calls Officer Justin
25 Spencer.

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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(WHEREUPON, JUSTIN SPENCER,
BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAME CLERK: Thank you. You may have a seat.

DIRECT EXAMINATION

OFFICER JUSTIN SPENCER BY SOLICITOR MCNERNEY:

Q. Good afternoon, Officer.

A. Good afternoon.

Q. Could you please introduce yourself to the jury?

A. I'm Justin Spencer.

Q. And who are you employed by?

A. The Tega Cay Police Department.

Q. You are not with the Rock Hill Police Department
anymore?

A. No, I'm not.

Q. Why is that?

A. I voluntarily resigned at the end of May and gained
employment with Tega Cay.

Q. Okay. And how long have you been in law enforcement?

A. It will be five years next month.

Q. Okay. Officer, do you remember the evening of April
23rd 2012?

A. Yes, I do.

Q. Were you working that evening?

A. Yes, I was.

Q. Okay. What shift?

1 A. It's Rock Hill's mid shift. It's four p.m. to two
2 a.m.

3 Q. Did you have the opportunity to encounter the
4 defendant, Randy Houze?

5 A. Yes, I did.

6 Q. Tell the jury about that, please.

7 A. I was on routine patrol going down Saluda Street just
8 off S.C. 72. I observed a vehicle coming my direction on
9 the opposite side that had a front headlight out. When it
10 was safe to do, so I turned around in the vehicle and
11 ended up catching to it at Saluda and State Street and I
12 issued a traffic stop. By that I mean I turned on my
13 emergency blue lights is what I did. They knew it was a
14 police officer. The vehicle yielded and I approached the
15 vehicle to speak with the driver and get her information.

16 Mr. Houze was a passenger in the vehicle. During the
17 course of my investigation, I asked for his I.D. As Ms.
18 McMurray said, to identify if he is a wanted or missing
19 person. Mr. Houze did not act steady, he did not have one
20 on him. I asked for his name and date of birth and he
21 gave me a false name and date of birth.

22 I caught him in the lie and tried to get him to tell
23 the truth, at which time he again told me his name was
24 Jeff Burris.

25 Q. What date of birth did he give you?

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 A. March, I believe it was 6th, 2000.

2 Q. Let me ask you this. How did the occupants appear
3 when you approached the vehicle?

4 A. Excuse me?

5 Q. How did the driver and the passenger appear when you
6 approached the vehicle? Did they appear uneasy at all?

7 A. No. When I asked Mr. Burris for his identification,
8 he became real defensive and started asking a lot of
9 questions. The driver, she was cooperative. She gave me
10 her driver's license and was looking for her vehicle
11 paperwork.

12 Q. After you received the name of Jeff Burris and the
13 date of birth of March 6th 2000, what did you do at that
14 point?

15 A. Well, first I did the math and realized that he
16 wasn't 12 years old. Then I asked him again, you know, I
17 advised him not to lie to me; just to give me his real
18 name and date of birth and we'll go from there.

19 Q. What are you thinking as a law enforcement officer
20 when somebody blatantly lies to you? What is going on in
21 your mind?

22 A. That they are trying to hide something.

23 Q. Okay. Did you ever ask him to get out of the
24 vehicle?

25 A. Yes. I signaled to Officer Morales to have him step

1 out of the vehicle as I walked around the back of it.

2 Q. Now you - okay. Now, this is on Saluda Street in
3 Rock Hill?

4 A. Yes.

5 Q. Okay. Is that within the limits of York County?

6 A. Yes, it is.

7 Q. All these events that we're discussing, are they
8 within the limits of York County?

9 A. Yes, they are.

10 Q. All right. What time of night was this?

11 A. Nine-thirty at night.

12 Q. Okay. And who were the law enforcement officers out
13 there.

14 A. It was myself, Officer Morales and Officer Bryson.

15 Q. Okay. So you asked him to step out of the vehicle.
16 All right. What were you doing as you asked him to step
17 out of the vehicle?

18 A. I was coming around the back of the vehicle. I was
19 pretty much at the trunk when he was out and then started
20 to struggle with officers.

21 Q. Okay. And Officers Morales and Bryson, were they
22 near -

23 A. They were right next to the door. The passenger door
24 was open and Mr. Houze was standing inside the doorway and
25 the officers were standing behind him.

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 Q. All right. And what happens after he gets out of the
2 car?

3 A. I believe Officer Morales asked him to put his hands
4 on top of the vehicle to see to make sure he didn't have
5 any weapons. Once again, when somebody lies, we don't
6 know if they are trying to hide something, whether it be a
7 weapon or anything, so for officer safety issues, we are
8 going to pat him down for a weapon. At that time, he
9 pushed away from the officers and then the struggle
10 ensued.

11 Q. Okay. At some point during the struggle, did he
12 leave anything behind?

13 A. His shirt was ripped off of him.

14 Q. By who?

15 A. I believe it was when Officer Morales and Officer
16 Bryson had their hands on him. I'm not sure which one was
17 holding where.

18 Q. Okay. And is he walking away or running away?

19 A. No. Once he slipped out of his shirt, he ran towards
20 Arch Drive, which is the next street up.

21 Q. Okay. So he actually got away from you guys?

22 MADAME COURT REPORTER: I'm sorry. Was that a yes or
23 a no?

24 Q. Make sure you respond verbally to the question. She
25 has to take down everything that you are saying.

1 A. What was the question?

2 Q. Did he actually make - create a distance between
3 himself and the officers. Is that right?

4 A. Yes.

5 Q. Okay. About how long was the struggle in time?

6 A. Three to five seconds.

7 Q. Okay. Did you pursue him?

8 A. Yes.

9 Q. All right. About how far?

10 A. Quarter of a mile to half a mile.

11 Q. Must be in good shape. Was anyone pursuing him with
12 you?

13 A. Yes, Officer Morales and then as - really a directive
14 patrol, there is a night shift that comes on early and
15 they do directive patrol in the area which means there is
16 upwards to 10 to 12 officers in one designated area at a
17 time, so when Mr. Houze decided to run and we called it
18 out on the radio, there was already a significant amount
19 of officers in the area for assistance.

20 Q. All right. So you and Officer Morales were pursuing
21 him?

22 A. Yes.

23 Q. And about a quarter to a half a mile is what you
24 said?

25 A. Uh-huh.

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 Q. Did you eventually detain and catch up with him?

2 A. Yes.

3 Q. Where was that?

4 A. It was in the front yard of 438 Arch Drive.

5 Q. All right. At any point during the pursuit, did you
6 or Officer Morales do you know - well, you can just
7 testify - did you lose sight of him?

8 A. Yes.

9 Q. All right. For how long?

10 A. Couple seconds.

11 Q. Okay. And when did you see him again?

12 A. When he was in the front yard of the residence.

13 Q. Okay. Were you chasing him for like five minutes?
14 Ten minutes?

15 A. A couple minutes. It wasn't that long.

16 Q. All right. Let me ask you this. Before he ran,
17 okay, back at the scene when you were conversing with him
18 at the vehicle, did you get a good look at him?

19 A. Yes.

20 Q. All right. It was dark? Okay. Do you know if there
21 were lights on in the car?

22 A. I don't remember.

23 Q. Okay, but you did get a good look at him?

24 A. Yes.

25 Q. Do you know about how long you were conversing with

1 him?

2 A. A minute and a half, maybe.

3 Q. And when he stepped out of the vehicle, were you
4 closer to him at that point?

5 A. Yes.

6 Q. All right. Any doubt that the person that you found
7 in the front yard of 438 Arch Drive is the same individual
8 that ran from the scene?

9 A. There's no doubt.

10 Q. And at that time - at that time you were actually
11 physically touching him. Is that right?

12 A. Yes.

13 Q. So you got a look at him at that point as well?

14 A. Yes.

15 Q. Officer Spencer, I'm going to hand you what has
16 previously been marked as State's Exhibit Two. Take a
17 look at that and just tell me if you recognize it.

18 A. Yes.

19 Q. All right. What is it?

20 A. It's a picture of Mr. Houze.

21 Q. And that picture fairly and accurately represents Mr.
22 Houze as the individual that you saw that evening?

23 A. Yes.

24 SOLICITOR MCNERNEY: Your Honor, we would move to
25 admit State's Exhibit Two into evidence.

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 MR. MCKINNON: No objection.

2 THE COURT: No objection. Okay.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO, IDENTIFIED
4 AND MARKED, RECEIVED INTO EVIDENCE.)

5 Q. Officer Spencer, what happened after you and Officer
6 Morales detained Mr. Houze?

7 A. He was searched - he was placed into handcuffs,
8 searched, and placed in the back of a patrol vehicle and
9 taken to the Rock Hill City jail.

10 Q. All right. So he was taken into custody that night?

11 A. Yes.

12 Q. You said he was searched. What is important about
13 search?

14 A. Just make sure he is not concealing any weapons or
15 narcotics or anything of that sort.

16 Q. Anything at all found on him at that time?

17 A. No.

18 Q. Did you find - so no drugs found on him?

19 A. No.

20 Q. No crack found on him?

21 A. No.

22 Q. Did you find a crack pipe?

23 A. No.

24 Q. Did you find any type of anything that could be
25 classified as drug paraphernalia?

1 A. No.

2 Q. Okay. What did you do after he was taken into
3 custody?

4 A. He still would not give us his name at the time.
5 Myself and Officer Morales walked back to the original
6 scene of the traffic stop and spoke to the female driver.
7 She had stated that she didn't know who he was; that she
8 just picked him up from the store. There are several
9 inconsistencies with her story so I had gotten on the
10 radio -

11 Q. Let me just ask you this. You engaged in a
12 conversation with her?

13 A. Yes.

14 Q. And she was identified as Frederica Archie?

15 A. Yes.

16 Q. Okay. Were you also trying to secure the scene?

17 A. Yes.

18 Q. At some point during your investigation and while you
19 were securing the scene, did you come to find out the
20 individual's name that ran?

21 A. Yes.

22 Q. Okay. And that is what?

23 A. Um - Randy Houze.

24 Q. All right. I'm asking did you ultimately find out
25 the correct name of the individual who ran from the scene?

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 A. Yes.

2 Q. Okay. And that is?

3 A. Randy Houze.

4 Q. All right. At that time, Officer Spencer, after you
5 found out his name, did you know why he had run?

6 A. No.

7 Q. What were you thinking?

8 A. Thinking he possibly had a warrant or something to
9 that effect and we called his name, his real name and date
10 of birth and he came back clear.

11 Q. Okay. So were you confused?

12 A. Yes.

13 Q. All right. Do you recall speaking with the other
14 police officers and wondering, trying to figure out why he
15 may have run from the scene?

16 A. Yes.

17 Q. All right. Did you begin to search the area or try
18 and figure out why he had run?

19 A. Yes, I did.

20 Q. All right. Tell the jury a little bit about that.

21 A. There was a mid area in the front yard that is right
22 next to the traffic stop location where the struggle
23 ensued. I was just standing on the grass looking around
24 to see if anything had fallen, at which time I noticed the
25 plastic baggy on the ground containing the crack.

1 Q. About how long did you search before you found that?

2 A. A few minutes probably.

3 Q. Okay. And when you looked down, what did it appear
4 to be?

5 A. A bag of crack.

6 Q. All right. It was in a baggy?

7 A. Yes.

8 Q. What kind of baggy?

9 A. Clear, plastic one.

10 Q. All right. Was it tied at the top? Are we talking
11 about a sandwich baggy? A zip lock baggy? A grocery bag?
12 What?

13 A. It was like a little sandwich bag that was tied up.
14 Twisted.

15 Q. Ok, alright, And what did you do when you saw it?

16 A. I notified the other officers that where in the area.
17 I picked it up and secured it. Went back to my patrol car
18 and obtained a clear plastic zip lock bag. I put it in
19 there and I put it in my pocket so it wouldn't get lost.

20 Q. All right. What did you do with it next?

21 A. I secured it until I left the scene and then went to
22 the police department and put it in the Rock Hill
23 evidence.

24 Q. Did you give it to an individual at Rock Hill
25 evidence?

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 A. No, you - there's almost like a bank safe, you have
2 to pull down and drop it in there.

3 Q. So you put it in the evidence locker?

4 A. Yes.

5 Q. All right. Tell the jury a little bit about your
6 patrol vehicle. Is it equipped with video and audio
7 recording device?

8 A. Yes it is.

9 Q. So it's a camera?

10 A. Yes.

11 Q. All right. That records video and audio?

12 A. Yes.

13 Q. How does it record audio when you are outside the
14 vehicle?

15 A. I have a microphone that attaches to my belt.

16 Q. All right. So you can then - you can hear the
17 conversation you are engaged in with occupants of vehicles
18 when you are out of your patrol car. Is that right?

19 A. Yes.

20 Q. All right. Is that always running?

21 A. Yes. Technically, yes.

22 Q. So it has nothing to do with the initiation of blue
23 lights or anything like that?

24 A. It is. It is always recording and as soon as you hit
25 your blue lights, it records thirty seconds prior to you

1 hitting your blue lights.

2 Q. And you did have to initiate your blue lights in this
3 case?

4 A. Yes, I did.

5 Q. All right. To initiate the traffic stop?

6 A. Yes.

7 Q. In the area that you found the white substance, was
8 that in the immediate vicinity of where you guys were
9 struggling with Randy Houze?

10 A. Yes.

11 Q. So after you found this substance and you went back
12 to Rock Hill Police Department and entered the substance
13 into Rock Hill police evidence locker, what did you do at
14 that time?

15 A. Probably - I remember I typed a warrant for Mr.
16 Houze.

17 Q. Okay. Did you have the opportunity to review the
18 video from your car?

19 A. Yes, I did.

20 Q. Did anything stand out in that video?

21 A. During the - yes. During the struggle, you can see
22 Mr. Houze's shirt come off and you can distinctively see
23 the bag fly and hit the ground.

24 Q. Okay. Now where the bag landed, is that the same
25 location where you found something and retrieved

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 something?

2 A. Yes.

3 Q. Officer, I'm handing you what has been previously
4 marked for identification as State's Exhibit One. Take a
5 look at it and tell me whether you recognize it.

6 A. Yes.

7 Q. All right. How do you recognize the item handed you?

8 A. I watched it several days ago and signed it.

9 Q. So it has your signature on it?

10 A. Yes.

11 Q. And the date on it?

12 A. Yes.

13 Q. So you've had the opportunity to review that
14 videotape prior to your testimony today?

15 A. Yes.

16 Q. And it's a videotape of what exactly?

17 A. The entire traffic stop.

18 Q. Okay. Of what we've been discussing?

19 A. Yes.

20 Q. All right. Does the video recording fairly and
21 accurately represent the events that took place on that
22 evening?

23 A. Yes.

24 SOLICITOR MCNERNEY: Your Honor, at this time we
25 would move to admit State's Exhibit Two into evidence -

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 I'm sorry, State's Exhibit One. I'm sorry, State's
2 Exhibit One, I'm sorry, into evidence.

3 MR. MCKINNON: No objection.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, IDENTIFIED
5 AND MARKED, RECEIVED INTO EVIDENCE.)

6 SOLICITOR MCNERNEY: Your Honor, at this time I would
7 ask to show the video to the jury.

8 THE COURT: All right.

9 SOLICITOR MCNERNEY: Madame Clerk, would you mind
10 dimming the lights for us. Thank you.

11 (STATE'S EXHIBIT ONE - VIDEO - PUBLISHED TO THE JURY
12 AT 02:16 P.M..)

13 Q. One more time go over it for me, what just happened?

14 A. The point where he got out of the vehicle?

15 Q. Uh-huh.

16 A. I asked Officer Morales to have him exit the vehicle,
17 at which time Officer Morales opened the door. Mr. Houze
18 stepped out. I came around the backside to talk to him.
19 I believe Officer Morales asked him to put his hands on
20 the top of the vehicle so he could pat him down, at which
21 time Mr. Houze kind of ducked down, bull rushed him a
22 little bit and got taken out of his shirt and ran off.

23 Q. Okay. And did you see who had possession of the
24 shirt when he dropped it to the ground?

25 A. No, I did not.

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 Q. Okay.

2 (VIDEO RESUMES)

3 Q. Let me ask you this real quick. After you'd been
4 given some false information by the passenger of the
5 vehicle, are you frustrated at that point?

6 A. A little bit.

7 Q. Okay. Are you concerned about the officers safety
8 and all?

9 A. It raises a red flag because you don't know if they
10 are trying to hide something or who they might be.

11 Q. Okay. All right. Thank you.

12 (VIDEO RESUMES)

13 Q. Did you see who had possession of his shirt?

14 A. Yes. Officer Bryson did.

15 Q. Okay. And he dropped it on the ground?

16 A. Yes.

17 Q. And is that where you can see the substance fly out
18 of the sleeve of the windbreaker?

19 A. Yes.

20 Q. All right.

21 (VIDEO RESUMES)

22 Q. Right now is when you and Officer Morales - right now
23 is when you and Officer Morales would be pursuing Randy
24 Houze when he ran; is that right?

25 A. That's correct and there is no audio because it's out

1 of range of the video.

2 Q. All right.

3 (VIDEO RESUMES)

4 Q. I see from the video it doesn't seem to be
5 particularly busy this time of night. Is that right?

6 A. That's correct.

7 Q. There weren't many people walking around the area?

8 A. No. There is minimal foot traffic.

9 (VIDEO RESUMES)

10 Q. Officer Spencer, you're obviously engaged in a
11 conversation with this female; is that right?

12 A. Yes.

13 Q. Okay. Do you believe what she is telling you?

14 A. No.

15 Q. Why did you want to go in her car so bad?

16 A. To be sure that he didn't hide anything before he ran
17 when he stepped out to make sure he didn't hide anything.

18 Q. All right.

19 (VIDEO RESUMES)

20 Q. Officer Spencer, what did you place this female under
21 arrest for at this time?

22 A. Hindering police.

23 Q. All right.

24 (VIDEO RESUMES)

25 Q. That's when you found out it was Randy Houze?

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY

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1 A. Yes.

2 Q. She eventually decided to cooperate and tell you who
3 it was?

4 A. Yes.

5 Q. All right.

6 (VIDEO RESUMES)

7 Q. What is that banging - what's that sound?

8 A. When you run a name through our A Card computer, that
9 just means you are getting a return. A return can be
10 anywhere from four pages to a hundred pages based on the
11 page comes up the dates.

12 Q. The sound, the dings, is when they are running a name
13 in the system basically?

14 A. Yes. It just let's you know there is another page
15 that came up.

16 (VIDEO RESUMES)

17 Q. All right. Officer Spencer, we noticed you and some
18 of the other officers were looking inside the vehicle.
19 Why did you do that?

20 A. When we tow a vehicle, we have to do an in-tour sheet
21 to make sure there is nothing of high value in there. If
22 there is, we annotate it on our tow slip so that way if it
23 comes up missing, then it's not on us because we already
24 noted that it was in there and that it was in there at the
25 time of being towed.

- 1 Q. Liability purposes?
- 2 A. Yes.
- 3 Q. And this vehicle was in fact being towed?
- 4 A. Yes.
- 5 Q. Why is that?
- 6 A. Because the driver had been arrested.
- 7 Q. So you prepared the vehicle inventory sheet or did
- 8 the tow truck driver do that?
- 9 A. Officer Morales was doing that. He actually has the
- 10 form in his hand.
- 11 Q. Oh, he did it?
- 12 A. Yes.
- 13 Q. Okay. You did participate in the search of the car?
- 14 A. Yes.
- 15 Q. All right. Can you tell the jury whether you located
- 16 any drug paraphernalia in the car?
- 17 A. No, we did not.
- 18 Q. So you didn't locate a crack pipe?
- 19 A. No.
- 20 Q. You didn't locate any other paraphernalia that could
- 21 be used for smoking crack?
- 22 A. No.
- 23 Q. And certainly no drugs in the car?
- 24 A. No.
- 25 Q. Explain to the jury what happened when you were

OFFICER JUSTIN SPENCER: BY SOLICITOR MCNERNEY
BY MR. MCKINNON

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1 holding your flashlight, looking on the ground. What were
2 you doing?

3 A. Just look and see if anything had dropped, possibly a
4 gun or narcotics.

5 Q. And when you say "oh, oh, oh," what was it that you
6 found?

7 A. That's when I found the bag of crack.

8 Q. All right. Thank you, Officer Spencer.

9 SOLICITOR MCNERNEY: If you would please answer any
10 questions Mr. McKinnon has for you.

11 CROSS EXAMINATION

12 OFFICER JUSTIN SPENCER BY MR. MCKINNON:

13 Q. Officer Spencer, solely based on memory, you've been
14 in law enforcement for five years?

15 A. Five years next month.

16 Q. So that would be roughly a little over four years at
17 Rock Hill and one year Tega Cay?

18 A. Four and a half at Rock Hill and some change.

19 Q. Okay. Did you ever serve under Marvin Brown, Multi-
20 Jurisdictional Drug Enforcement Unit?

21 A. No. I did not.

22 Q. Did you ever apply for that position?

23 A. Yes, I have.

24 Q. And they did not hire you?

25 A. That's correct.

1 Q. But you have done in the course of being a Rock Hill
2 and/or Tega Cay officer, you have made arrests for drug
3 related offenses before?

4 A. Yes.

5 Q. Can you give me a rough estimate of how many you
6 made?

7 A. I could not.

8 Q. More than a few?

9 A. Yes. More than a few.

10 Q. Okay. Now, you also told Ms. McNERNEY that you
11 chased THE defendant for maybe a quarter a mile, maybe
12 half a mile?

13 A. Yes.

14 Q. You said you briefly lost sight of him?

15 A. That's correct.

16 Q. And you said you were quite confident it was the same
17 person?

18 A. Yes.

19 Q. And ultimately during the course of this
20 investigation, the driver, Ms. Archie, you also ended up
21 arresting. Correct?

22 A. That's correct.

23 Q. Now, partially you said you arrested her because you
24 found out that she was actually the girlfriend and mother
25 of the defendant's child?

OFFICER JUSTIN SPENCER: BY MR. MCKINNON

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1 A. That's correct.

2 Q. Suffice it to say, she was must more intimately
3 knowledgeable of the defendant than you were or the other
4 officers?

5 A. Yes.

6 Q. So you could have brought that person back and have
7 Ms. Archie I.D. that person; correct?

8 A. I could have.

9 Q. But you did not?

10 A. That's correct.

11 Q. Now, we saw - I'm sorry. You said you had seen this
12 video before today; right?

13 A. Yes, I have.

14 Q. So you knew that, I guess by you and was that Morales
15 with you chasing the defendant?

16 A. That's correct.

17 Q. That I guess Officer Bryson was rummaging through
18 things?

19 A. Yes.

20 Q. So between you, Morales and Bryson, you searched the
21 defendant, the person you arrested?

22 A. Yes.

23 Q. And his clothing?

24 A. Yes.

25 Q. You searched the ground around where you arrested

1 him?

2 A. Yes.

3 Q. You searched the ground around where he took off?

4 A. Yes.

5 Q. You searched the shirt that came off?

6 A. Yes.

7 Q. You searched, whatever that white stuff was on the
8 ground. Was that toilet paper?

9 A. I believe it was just miscellaneous paper.

10 Q. Just paper?

11 A. Just papers.

12 Q. Basically looked through that and made sure there was
13 nothing in that. Right?

14 A. Uh-huh.

15 Q. You searched whatever was in the passenger
16 compartment in the car. Right?

17 A. Yes, sir.

18 Q. You searched the trunk?

19 A. Yes.

20 Q. You searched, it looked like maybe the tire in the
21 trunk?

22 A. Yes.

23 Q. And you searched Ms. Archie?

24 A. Yes.

25 Q. For it looked like a pretty good while, or at least

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1 Officer Bryson was. Right?

2 A. Yes.

3 Q. And you made the arrest and this is your case?

4 A. Yes.

5 Q. You collected the evidence and submitted whatever
6 evidence you had in to the evidence custodian. Correct?

7 A. Yes.

8 Q. Now, did you submit anything other than the bag you
9 suspected to be crack cocaine?

10 A. No.

11 Q. So you had nothing else?

12 A. No, sir.

13 Q. No paraphernalia, phones, anything?

14 A. No, sir.

15 Q. Baggies? Twisty's?

16 A. No, sir.

17 Q. How much - well suffice it to say, if you had found
18 any of those items, would you have submitted them into
19 evidence?

20 A. Yes.

21 Q. Okay. How much time passed would you say between the
22 defendant running off and you finding the crack in the
23 grass or what was suspected to be crack?

24 A. Ten, fifteen minutes I guess. I wasn't really
25 watching my watch.

1 Q. Certainly you were off - obviously we've - I'm asking
2 I guess based on your recollection from watching this
3 video. Did you notice the gentleman in a blue track suit
4 walk by?

5 A. Yes.

6 Q. He walked by before you found the crack after the
7 events were - the defendant took off. Correct?

8 A. That's correct.

9 Q. Okay. Did you ever stop to find him?

10 A. No.

11 Q. And interview him?

12 A. No, sir.

13 Q. Is it possible anything could have come out of his
14 pocket while passing through?

15 A. After watching the videotape, no.

16 Q. Also while watching the video, you said that from
17 this video you were sure that was a bag of crack that you
18 saw kind of fling to the ground?

19 A. Yes.

20 Q. Is that a digital tape or was that a VHS?

21 A. It's digital.

22 Q. Digital. Do you know what the pixels are then?

23 A. I don't buy them. I just use them.

24 Q. You said you were accurate that you saw a white
25 object and later you found a bag of crack?

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BY SOLICITOR MCNERNEY

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1 A. Yes.

2 Q. Did you personally ever see Mr. Houze in possession
3 of the crack?

4 A. No, not during the struggle.

5 MADAME COURT REPORTER: I'm sorry?

6 A. Not during the struggle. No.

7 MR. MCKINNON: I have no further questions.

8 THE COURT: Any redirect?

9 MS. MCNERNEY: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 OFFICER JUSTIN SPENCER BY SOLICITOR MCNERNEY:

12 Q. Mr. McKinnon asked you about the female that you were
13 talking to and characterized her as someone who was
14 intimately involved with the passenger. Is that right?

15 A. Yes.

16 Q. And he suggested that perhaps you should have brought
17 Randy Houze back for her to identify him. Is that right?

18 A. Yes.

19 Q. But she had identified him already. Isn't that
20 right?

21 A. After we had already taken him into custody.

22 Q. And she gave you the name of Randy Houze?

23 A. Yes.

24 Q. After reviewing the videotape, any question at all
25 that that substance came from anywhere other than the

1 sleeve of Randy Houze's jacket?

2 A. No.

3 Q. Thank you.

4 MS. MCNERNEY: Nothing further.

5 THE COURT: All right. Thank you. You can step
6 down.

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: All right. Let's take just about a
9 ten minute break. Don't talk about the case.

10 (JURY EXITS THE COURTROOM AT 02:56 P.M.)

11 (COURT IN RECESS AT 02:56 P.M..)

12 (COURT BACK IN SESSION AT 3:08 P.M.)

13 (JURY RE-ENTERS COURTROOM AT 3:09 P.M.)

14 THE COURT: All right. You all ready to go?

15 SOLICITOR EPTING: State is ready.

16 SOLICITOR MCNERNEY: Yes, Your Honor. I apologize.
17 Yes.

18 THE COURT: Okay. Call your next witness.

19 SOLICITOR EPTING: Your Honor, the State calls
20 Officer William Morales.

21 MADAME CLERK: Please raise your right hand and put
22 your left hand on the Bible.

(WHEREUPON, WILLIAM MORALES,
BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAM CLERK: Thank you. You may be seated.

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OFFICER MORALES: Thank you.

DIRECT EXAMINATION

OFFICER WILLIAM MORALES BY SOLICITOR EPTING:

Q. Good afternoon. Would you please state your name and spell your last name for the record?

A. My name is Officer Morales, last name spelled M-o-r-a-l-e-s.

Q. And this may be an obvious question given your attire, but what is your occupation?

A. I'm a patrol officer with the City of Rock Hill.

Q. Okay. And were you so employed in April of 2012?

A. I was.

Q. Could you briefly describe some of the duties that a patrol officer in Rock Hill do?

A. For the patrol officer in the City of Rock Hill, some of my duties is to answer calls, traffic - patrol areas for any traffic infractions. Also, any type of proactive actions within the community, just driving around. Sometimes people just waves us down needing some help. Sometimes even some of my duties will include just giving directions, which is normally not I would say a duty of a police officer but I do it anyways so just actual duties, I would say.

Q. That's good; That's good, Were you working in that capacity on April 23rd 2012?

1 A. I was.

2 Q. At some point on that night did you become involved
3 in a case involving Randy Houze?

4 A. Yes, I was.

5 Q. Would you please tell this jury your involvement in
6 this case?

7 A. On that night I was actually backing Officer Spencer
8 on a traffic stop. He stopped a vehicle on Saluda which
9 is within the City of Rock Hill, city limits of Rock Hill,
10 and I saw him stop a vehicle and I went to back him up
11 because in the City of Rock Hill, there is only one
12 officer per vehicle and it was nighttime so I just went to
13 go see whether or not he needed any assistance.

14 Q. Okay. So you were his backup?

15 A. Yes. He also came up on the radio and said he had
16 two people in the car and he is only one officer.

17 Q. Okay. As you arrived on the scene, what did you do?

18 A. I immediately went to the passenger side because he
19 was on the driver's side talking to the driver.

20 Q. Okay. And what, if anything, did you observe or hear
21 from Officer Spencer or anybody inside the car?

22 A. When I had got there it was pretty early in the
23 traffic stop, so I asked - I heard Officer Spencer asking
24 the driver for her regis - I heard him explaining why he
25 stopped them. Then I heard him asking for a registration,

OFFICER WILLIAM MORALES: BY SOLICITOR EPTING

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1 a driver's license, proof of insurance, which is pretty
2 standard of what we ask when we stop a vehicle but I heard
3 him asking for that. And then I observed the passenger
4 digging through the glove box looking for paperwork. The
5 driver said something about just purchasing the vehicle or
6 something like that to that matter and the passenger was
7 just searching through the glove box so what my attention
8 was just looking at the glove box just making sure that
9 that is all he was doing, just looking for paperwork.

10 Q. Okay. And as you are observing him looking for
11 paperwork, are you able to speak with the passenger?

12 A. No. The window was either up or cracked. I don't
13 remember, but I wasn't interacting in any way with the
14 passenger.

15 Q. How close away were you from the passenger?

16 A. Less than a - I was standing right there next to the
17 car. Maybe a foot away from the car.

18 Q. Approximately how long?

19 A. The whole entire vehicle stop.

20 Q. Were you able to see this individual's face?

21 A. Yes, sir. I saw the side of his face. He was
22 wearing a hat if I remember but most of the time I seen
23 the side of his face but my full attention I would say was
24 more towards his hands and what he was doing in the glove
25 box and what he was doing in front of me. That's where my

1 attention was more than anything else.

2 SOLICITOR EPTING: If I could have State's Exhibit
3 Two.

4 Your Honor, may the record reflect I am handing
5 Officer Morales what has been marked and entered into
6 evidence as State's Exhibit Two.

7 Q. Officer Morales, if you would, take a look at that
8 picture, please.

9 A. Yes, sir.

10 Q. Do you recognize the individual in State's Exhibit
11 Two?

12 A. Yes, sir.

13 Q. Who do you recognize that as?

14 A. This is Mr. Randy Houze.

15 Q. Okay. If you would set that to the side.

16 A. Okay.

17 Q. So I believe when I was last asking questions, you
18 stated that you were observing his hands in the glove box
19 to see what he was doing?

20 A. Yes, sir.

21 Q. At some point did you hear Officer Spencer speak with
22 anyone in the car other than the driver?

23 A. Officer Spencer did most of the - actually he did
24 pretty much all the talking to the driver and the
25 passenger. Now, I did say that I was paying attention to

OFFICER WILLIAM MORALES: BY SOLICITOR EPTING

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1 them in the vehicle and what he was doing inside the
2 vehicle. What I failed to mention is that I did see his
3 face of course when I pulled him out of the vehicle. We
4 did come about this far away from each other and I had
5 seen his face, the front of his face, so it's not like I
6 only saw the side of his face the whole entire time.

7 Q. So if I understand you correctly, you saw him both
8 when you were standing at the vehicle assisting with the
9 traffic stop and also subsequently when he got out?

10 A. Yes, because I was the one that told him - you know,
11 I was standing right there when he got out of the vehicle.
12 Yes.

13 Q. Did you hear Officer Spencer ask Mr. Houze, who has
14 been so identified, about his identity, his name, his date
15 of birth?

16 A. I heard him ask him about his name and date of birth.
17 I heard more - I could hear more of his side of what he
18 was saying more than what the passenger was saying.

19 Q. Were you able to hear anything that the passenger was
20 saying that night?

21 A. I could hear some of what he was saying. I couldn't
22 tell you a hundred percent I heard exactly what he was
23 saying.

24 Q. If you would, could you tell the jury what you
25 actually understood him to say?

- 1 A. I know the response they gave back to him in regard
2 of his name and his date of birth. I know his date of
3 birth he gave was something in regard of he was born in
4 2000, which didn't make sense because I'm looking at a man
5 that's full grown and doesn't look like he is 12 years
6 old, but I wasn't sure about the name that he gave. I
7 don't remember what name he gave. I know it was -
8 eventually it came out that it wasn't his proper name.
- 9 Q. Okay. So when he gave that date of birth, according
10 to your testimony, it was obviously false?
- 11 A. Yes, sir.
- 12 Q. What did that tell you as a police officer.
- 13 A. That automatically what I would say is my spiny
14 senses would go off. It automatically, you know - red
15 flags right there. Something is going on, that obviously
16 the math that he was trying to do in the head. You know,
17 normally when somebody is not telling the truth, something
18 is going on. Like I said, it just - if you're telling a
19 lie, normally they can't keep track of the lie they
20 telling and something like that where you are trying to
21 make up some numbers, might not come out as truthful as
22 you think and you might come out with a date saying you
23 are only 12 years old.
- 24 Q. And at some point after that, was Spencer Houze (sic)
25 asked out of the vehicle?

OFFICER WILLIAM MORALES: BY SOLICITOR EPTING

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1 A. Yes.

2 Q. Do you recall who asked him out?

3 A. Officer Spencer did.

4 Q. All right. And tell the jury what transpired after
5 that.

6 A. Officer Spencer motioned to me to go ahead and get
7 him out of the vehicle. I told him, all right, let's come
8 on step out of the vehicle. I opened the door and as he
9 stepped out of the vehicle, he looked at me. Officer -
10 there was a second or third officer, Officer Bryson
11 started walking towards me. Officer Spencer started
12 walking around the vehicle and he was out of the vehicle
13 no less than three seconds, if that, when he basically
14 ducked his head down, went at me, in the attempt to
15 escape. I grabbed his shirt. We got into a little bit of
16 a tussle. Well, I grabbed his sweatshirt he had on. Got
17 in a little bit of a tussle. He was able to get loose and
18 slip out of his shirt and we took off running after him
19 and then Officer Spencer and myself ended up chasing after
20 him.

21 Q. Now you said you grabbed his shirt -

22 A. I grabbed his sweatshirt.

23 Q. Who else grabbed him?

24 A. Officer Bryson grabbed his sweatshirt. He was next
25 to me when he saw us starting to struggle.

1 Q. Do you recall who ultimately ended up with the shirt?

2 A. I think Officer Bryson I think was the last person
3 who had the sweatshirt.

4 Q. Okay.

5 A. After I let go of it because by that time he was, Mr.
6 Houze was already gone.

7 Q. So if I'm hearing you right, you all grabbed his
8 shirt. He is trying to get away. He slips out of it?

9 A. Yes, sir.

10 Q. Bryson throws it away?

11 A. Yes, sir.

12 Q. And then what happens?

13 A. All three of us take off running after him. Officer
14 Bryson turned around and goes back towards the vehicle and
15 then Officer Spencer and myself take off after Mr. Houze.
16 We had radio's on us so we started quickly communicating
17 with other officers in the area that we have somebody
18 running, trying to get backup so that we could get him,
19 try to capture this fellow that is running as soon as we
20 can because we don't know who he is right now. We don't
21 know if he is wanted. We don't know why he is running at
22 that time.

23 Q. Do you remember the name of the street he ran to?

24 A. At that time he was just running into the woods.
25 Eventually what he did is he ran towards Arch - Arch - I

OFFICER WILLIAM MORALES: BY SOLICITOR EPTING

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1 think it's Arch Drive. I can't remember right now. He
2 went running to Arch. I can't remember whether it is Arch
3 Street or Arch Drive.

4 Q. And that's okay. At some point did you all catch up
5 with him?

6 A. Yes. What happened was there is a wooded area in
7 there. It's kind of like a creek that cuts through there.
8 There is also a park on the other side of that wooded
9 area. Some officers ended up going into the park. They
10 had flashlights. Turned on their flashlights and
11 basically what he did was he saw those officers and maybe
12 he thought those were us and he ran back towards us. We
13 were on - Officer Spencer was running maybe, I'd say five
14 to six feet ahead of me on Arch, and I saw Mr. Houze come
15 around the house. I had my flashlight off. I saw him. I
16 don't think he saw me. He might have saw Officer Spencer.
17 Quickly laid down on the ground. I stepped over a white
18 picket fence that is about this high off the ground and
19 ran towards him. I yelled out to Officer Spencer, "there
20 he is. There he is." We ran over there. Got on the
21 radio and the next thing you know the other officers in
22 the area came towards us to - and we arrested him.

23 Q. Okay. Did you ever lose sight of him during that
24 chase?

25 A. We did lose sight of him for a short period when he

1 was running in the woods.

2 Q. Do you have any doubt in your mind the person you
3 placed handcuffs on is the same person who ran from the
4 car?

5 A. No, I don't have a doubt in my mind.

6 Q. What was the dress of the person?

7 A. At that time he had no shirt on. I don't remember
8 the - whether he had - what color jeans he had or pants.
9 That I definitely recognized his face and he - this is the
10 fellow that was running from us. I definitely recognized
11 him from the features above, because that's where I got
12 the best view from him because that's where I - when I
13 pulled him out of the car, that's the best view I got from
14 him.

15 Q. So you all get him under control?

16 A. Yes, sir.

17 Q. Was he handcuffed at this time or not?

18 A. Yes. We got him handcuffed because he was ready -
19 when he saw us, he laid down on the ground and what we
20 did, we ran up there. We handcuffed him on the ground and
21 picked him up. By that time, like I said, other officers
22 came to the area. It was a - a vehicle came up, Officer
23 Sims, first vehicle there so we searched him and we put
24 him in that vehicle.

25 Q. And what, if anything, does Officer Sims do with Mr.

OFFICER WILLIAM MORALES: BY SOLICITOR EPTING

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1 Houze after placing him in the car?

2 A. He transported him to the jail.

3 Q. Okay. To your knowledge was he booked in?

4 A. What's that?

5 Q. To your knowledge, was he booked into the detention
6 facility at Rock Hill?

7 A. Yes, sir.

8 Q. Okay. Was there a subsequent search of the area
9 around the vehicle or even the vehicle itself?

10 A. Yes. We went back to the area. We searched the
11 area. I know at one time, because I've watched the video
12 one time, I walked some of the path of where we followed
13 him or where he ran through just to see if he dropped
14 anything. We went back and we searched the vehicle. We
15 got consent from the driver to search the area where Mr.
16 Houze was sitting at, because according to the driver, she
17 didn't know who he was or why he was in the vehicle during
18 that time. Officer Spencer also picked up all the stuff
19 that Mr. Houze - when I say all the stuff, it's the
20 sweatshirt, his hat and then just started searching the
21 area around there and that's when Officer Spencer found
22 the small bag - small, clear bag of what he said was
23 crack.

24 Q. Okay. To your knowledge, did the search of that
25 vehicle yield any crack pipes?

1 A. Not to my knowledge I didn't see any crack pipes.

2 Q. Did it yield any contraband used to smoke crack with?

3 A. No. Not to my knowledge.

4 Q. Did a search of the area reveal any contraband or
5 crack pipes or anything that could be used to smoke crack?

6 A. No.

7 Q. What about the area where he was actually located and
8 arrested? Did you all go around there and see if he might
9 have dropped anything?

10 A. We looked in there and I didn't see anything besides
11 him. He didn't have anything else on him. Like I said,
12 we tried to check as much area that we knew he ran through
13 because, like I said, for a short time we did lose him.
14 We don't know that particular area he ran through so we
15 couldn't search where we didn't know where he ran to.

16 Q. Have you reviewed a copy of the in-car video in
17 Officer Spencer's?

18 A. No.

19 Q. Okay.

20 SOLICITOR EPTING: Thank you, Officer Morales.

21 A. The in-car video. Which in-car video? I'm sorry.

22 Q. Officer Spencer's in-car video.

23 A. From the stop?

24 Q. That's correct.

25 A. Yes. Yes. I'm sorry.

OFFICER WILLIAM MORALES: BY SOLICITOR EPTING

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1 Q. Okay.

2 A. I thought you meant like afterwards or something.

3 Q. At some point post-arrest, did you review a copy of
4 it?

5 A. Yes. I seen - I seen the video. Yes.

6 Q. Were you able to determine where the crack cocaine
7 fell?

8 A. Yes actually because I saw the video. I saw where it
9 actually came from the sweatshirt. You actually could see
10 it in the video.

11 Q. Okay. When you say the sweatshirt, is that the
12 sweatshirt that is being taken off of him in the struggle.

13 A. The black sweatshirt that Officer Bryson had last.
14 You could see something that eventually - when Officer
15 Spencer checked the area, where you can see something
16 coming off the sweatshirt. You can actually see the
17 color. You see something coming out of there. When
18 Officer Spencer came back to check the area, that's when
19 he found the crack. Later when we checked the video is
20 when we said, look. Where he found the crack is also
21 where - in the video in the beginning you will see so we
22 didn't see the video first and then find the crack. We
23 actually found the crack first; then saw the video and
24 said, look this is where the crack was found. In the
25 video you could see where it came from.

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1 Q. Okay.

2 SOLICITOR EPTING I beg the Court's indulgence. I
3 have no further questions for you at this time. Please
4 answer any questions that Mr. McKinnon might have for you.

5 CROSS EXAMINATION

6 OFFICER WILLIAM MORALES BY MR. MCKINNON:

7 Q. Officer Morales, I just have a few questions. You
8 said that you were with Officer Spencer in the chase.
9 Right?

10 A. We were running after the - yes.

11 Q. Right. You were five or six feet behind but you were
12 chasing as well?

13 A. I only at the end when he ended up running back
14 towards us. Like I said, at the end; not the beginning.

15 Q. At the beginning, you weren't in pursuit of him?

16 A. No, no, no. When he came running back towards us, I
17 was - like I said, when he came back towards us, I was
18 about five or six feet behind Officer Spencer.

19 Q. Okay.

20 A. At the beginning of the chase we were both running at
21 about the same pace.

22 Q. Okay. But then after that, you said you went back I
23 guess as best you can remember looking for --

24 A. From the beginning from the car to where we lost
25 sight of him, if you watch the video you will see me

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1 walking from the car with my flashlight to a wooded area
2 and then you'll see me walk back to the car.

3 Q. You made a video of the pursuit?

4 A. No. In the video of the pursuit and you watch it in
5 the beginning - I'm sorry, in the end when we come back to
6 the car right before the crack is found and you watch in
7 the background, you actually will see me walking around
8 with my flashlight as Officer Spencer is checking the area
9 around the car, I'm also checking the area in the
10 background. If you focus on Officer Spencer because
11 that's what you are looking at the time when he finds the
12 crack, you would not notice me in the background looking
13 around the area also.

14 Q. Okay. Well, based on your recollection, do you
15 remember going back over the path that you could remember,
16 recall at the time and searching?

17 A. Yes, sir.

18 Q. And were you searching for contraband and evidence of
19 contraband?

20 A. I was looking for contraband, evidence of contraband,
21 guns, anything that could be thrown out. I don't know why
22 like I say he ran. At that time I had no idea why he ran.
23 He could have tossed anything from drugs to guns to
24 anything. I had no idea. As far as I knew at that time I
25 don't know this guy is. I don't know why he is running.

1 He could have done nothing and could just be scared of the
2 police or he could have just robbed the store down the
3 street and is trying to get rid of the money he had just
4 stolen. I have no idea who he is and I have no idea why
5 he is running so I am looking for anything and everything
6 that doesn't belong in the area.

7 Q. Certainly, and did you find anything?

8 A. I did not. Officer Spencer did.

9 Q. Okay. Before Officer Spencer found what he says is
10 this alleged crack, had you I guess Bryson and Spencer
11 were all engaged in a search of the surrounding area, of
12 the car, of the co-defendant, all that?

13 A. Yes, sir.

14 Q. Do you remember a lengthy conversation with the
15 driver trying to get permission or elicit permission from
16 her to search her vehicle?

17 A. Officer Spencer had the conversation with the driver.

18 Q. But ultimately was successful and she gave
19 permission?

20 A. Yes, sir.

21 Q. Okay. And you participated in the search of the
22 trunk and the car and all that?

23 A. I believe so, yes.

24 Q. And you did not find anything?

25 A. I did not find anything.

OFFICER WILLIAM MORALES: BY MR. MCKINNON

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1 Q. No cell phone?

2 A. I didn't find anything. If I would have found
3 something I would have either given it to Officer Spencer
4 or I would have put it in evidence myself but I didn't
5 find anything.

6 Q. So there was nothing else? No cash? Anything else?
7 Absolutely nothing?

8 A. I don't remember finding anything. If I found
9 anything, I would have passed it on to him.

10 MR. MCKINNON: That's all the questions I have.

11 THE COURT: All right. Any redirect?

12 SOLICITOR EPTING: No redirect.

13 THE COURT: All right. Thank you. You can step
14 down. Call your next witness.

15 SOLICITOR EPTING: Your Honor, may we approach very
16 briefly?

17 THE COURT: Okay.

18 (BENCH CONFERENCE OFF THE RECORD AT 03:30 P.M..)

19 SOLICITOR MCNERNEY: Your Honor, the State would
20 recall Officer Justin Spencer.

21 THE COURT: All right. Come on up. You are still
22 under oath.

23 REDIRECT EXAMINATION

24 OFFICER JUSTIN SPENCER BY SOLICITOR MCNERNEY:

25 Q. Officer Spencer, I'm going to hand you what has

1 previously been marked as State's Exhibit Three for
2 purposes of identification. Take a look at it and tell me
3 whether you recognize it.

4 A. Yes, I recognize it.

5 Q. Does your name appear anywhere on that Exhibit?

6 A. Yes it does.

7 Q. Where does your name appear?

8 A. On the front where it says "recovered by" and also on
9 the chain of custody portion.

10 Q. All right. And that piece of evidence that you are
11 looking at, tell us what it is, please.

12 A. It's the bag of crack I had found on the ground.

13 Q. All right. And does it appear to be in the same
14 condition today as it was when you recovered it from the
15 scene on April 23rd?

16 A. Yes, ma'am

17 SOLICITOR MCNERNEY: Your Honor, we would move
18 State's Exhibit Three into evidence at this time.

19 MR. MCKINNON: No objection.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE IDENTIFIED
21 AND MARKED, RECEIVED INTO EVIDENCE.)

22 SOLICITOR MCNERNEY: Thank you. Please answer any
23 questions Mr. McKinnon has.

24 MR. MCKINNON: No questions.

25 THE COURT: All right. Thank you. You may step

OFFICER RAY HAMILTON: BY SOLICITOR MCNERNEY

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1 down.

2 (WITNESS LEAVING WITNESS STAND.)

3 SOLICITOR MCNERNEY: Your Honor, at this time the
4 State would call Ray Hamilton.

5 THE COURT: All right.

6 (WHEREUPON, RAY HAMILTON,
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 MADAM CLERK: Thank you. You may be seated.

9 DIRECT EXAMINATION

10 OFFICER RAY HAMILTON BY SOLICITOR MCNERNEY:

11 Q. Good afternoon, Officer. Would you please introduce
12 yourself to this jury?

13 A. Yes. My name is Officer Ray Hamilton with the City
14 of Rock Hill Police Department.

15 Q. How long have you been employed with the Rock Hill
16 Police Department?

17 A. On February 1st, I'll be nine years police office
18 with Rock Hill.

19 Q. Do you have any law enforcement experience prior to
20 that?

21 A. No, ma'am. I retired from the military after 20
22 years in the Air Force and came to work for Rock Hill
23 Police Department.

24 Q. Okay. And you're employment status currently with
25 Rock Hill Police Department is in what capacity?

1 A. I am currently the Evidence Technician. I am over
2 the evidence room and all the evidence that comes into our
3 department, I am responsible for.

4 Q. And how long have you been doing that?

5 A. I went into that position about the middle of March
6 of last year.

7 Q. Of 2011?

8 A. Yes, ma'am.

9 Q. All right. And so your law enforcement experience
10 prior to March of 2011 was being a road officer?

11 A. Yes, ma'am. I was - before I went into the evidence
12 room, for three years prior to that I was a traffic
13 officer and prior to that from the time that I started I
14 was what we call a Zone Officer, a regular patrol officer.

15 Q. Could you tell this jury please what your duties and
16 responsibilities are as an evidence custodian at Rock Hill
17 Police Department?

18 A. As the evidence custodian in our department, we - I
19 am responsible for everything that comes in there. Any
20 kind of evidence, whether it be guns, drugs, money,
21 jewelry. Anything that is turned into us. What happens
22 is we have a row of lockers that is external in the
23 hallway, back hallway of our police department and the
24 opposite end is inside our office where the officers can
25 put the evidence into the lockers and lock it up with a

OFFICER RAY HAMILTON: BY SOLICITOR MCNERNEY

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1 lock and we can get it out from the back-end. The
2 opposite office that we have is secured and it's also
3 secured with an alarm system. We also have what we call a
4 drug drop box which works just like a bank depository box.
5 You can pull the handle down. It drops down and you put
6 the evidence in and when you push it back up, the evidence
7 drops into a safe that we have in the evidence room.

8 Q. So who has access to the drug locker after drugs are
9 put in?

10 A. There is essentially myself and my co-worker are the
11 only two people that have access to that. My Captain also
12 has access to the room. Anyone that comes into the room
13 asides myself or my co-worker, they have to sign into the
14 room and they are not allowed to be in the room unless one
15 of us is in there.

16 Q. Who is your co-worker?

17 A. The lady who works with me now, her name is Rebecca
18 Prior. She has been in this job for about two months.
19 Prior to that was Ms. Linda Irby and she has since
20 retired.

21 Q. And your Captain is who?

22 A. I'm sorry?

23 Q. Who is your Captain?

24 A. Captain Chris Watts.

25 Q. All right. Linda Irby no longer - isn't that what

1 you said?

2 A. Yes, ma'am.

3 Q. Okay and why is that?

4 A. Back in June, July, somewhere around there, her
5 husband has had Alzheimer's for years. He finally passed
6 away and then her sister got sick and she retired and the
7 unfortunately her sister passed away and now she is taking
8 care of her 92 year old mother by herself with no help.

9 Q. All right. Will you give - help the jury understand
10 exactly what - I know you explained the lockers and who
11 has access to the evidence and so forth, but if you will
12 help the jury understand exactly what do you do as an
13 Evidence Custodian when you retrieve evidence out of one
14 of the lockers.

15 A. What we do is any time during the day or night
16 officers can drop evidence, whether they put it in the
17 locker or whether they put it in the drug locker and there
18 is no external access to that once it is dropped into that
19 or the lock is locked. We work strictly eight to five
20 unless there is a special reason that we have to come in.
21 Generally what we do, we come in first thing in the
22 morning is we pull all the evidence from the drug locker,
23 which is like the bank depository, or the lockers. And we
24 take that evidence and we have a bar code system that we
25 use. It works like a scanner that you have at the grocery

OFFICER RAY HAMILTON: BY SOLICITOR MCNERNEY

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1 store. We put those on there. We fill out the paperwork
2 and we actually enter this into a system that there is a
3 back up with the - that the City has in their main
4 computer and we keep track of all the evidence that comes
5 in. That's the process of it coming in to us and then
6 there are some other steps after that, but that is the
7 initial process of bringing it in, signing it into the
8 system and scanning it into the system.

9 Q. So that's what you do?

10 A. Yes, ma'am.

11 Q. All right. Is that also what Linda Irby would have
12 done?

13 A. That is also what Linda Irby does.

14 Q. All right. I'm going to hand you what has been
15 marked as State's Exhibit Three. Take a look at that.
16 Take a look at the signature blocks and tell me whose
17 signature you see first, please.

18 A. The very first signature that I see on the chain of
19 custody here is Officer Justin Spencer.

20 Q. All right. Now who is the second signature that you
21 see?

22 A. The second signature shows me that it came from the
23 locker to the evidence room which is what the ER says and
24 then L.I. L.I. is Linda Irby. We use our initials after
25 we sign it in.

1 Q. Okay. And you had worked with Linda Irby for how
2 long?

3 A. I worked with her for just a little over a year
4 before she retired.

5 Q. Okay. And it was just the two of you basically in
6 the evidence room or was it more?

7 A. No. It was just the two of us in the evidence room.
8 I had one day with the person whose place that I replaced.
9 I had one day with him, but other than that, it was just
10 Linda and myself for most of that time.

11 Q. And seeing the L.I. on that bag of evidence right
12 there, that means that who removed the bag from the
13 evidence locker?

14 A. That would have been Linda Irby. She removed it and
15 entered it into our computer system.

16 Q. Okay. So it wasn't you?

17 A. No, ma'am.

18 Q. All right. How many times would you say you have
19 seen Linda Irby's initials or signature on a bag of
20 evidence?

21 A. Thousands. We normally on a normal day could get 20,
22 30 pieces of evidence so over a weekend we could get -
23 we've gotten as many as close to a hundred pieces of
24 evidence. And each piece of evidence is signed in.
25 Typically, Linda did most of it because I have other

OFFICER RAY HAMILTON: BY SOLICITOR MCNERNEY

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1 responsibilities, but always on a Monday I was responsible
2 for helping her because we would get so much in,
3 especially if it was a long weekend.

4 Q. Is there any doubt in your mind that the L.I. that
5 you see on that package is the initials or signature of
6 Linda Irby?

7 A. No, ma'am. No doubt whatsoever.

8 Q. All right. Who is the third signature that you see
9 on there?

10 A. The third signature on there is an ER, Evidence Room,
11 and R.H., which is my initials, Ray Hamilton.

12 Q. Okay. And your initials on there, what does that
13 represent?

14 A. That represents me taking the actual evidence, the
15 bag that is within this bag, and bringing it here to the
16 County for this to be tested and bringing it to the
17 technician that tests it here at the County.

18 Q. When you retrieved that piece of evidence from
19 evidence locker, did it at that time appear to have been
20 tampered with in any way?

21 A. No, ma'am.

22 Q. For what purpose did you retrieve it from the
23 evidence locker and bring it here to Moss Justice Center?

24 A. The evidence that - this piece of evidence that we
25 have here - we have capabilities to test marijuana our

1 self in our department, however, any other drugs, whether
2 it be synthetic marijuana, crack, any kind of pills, hash,
3 heroine, we don't have those capabilities, so the County
4 tests them for us. So what I'll do is I will sign this
5 out and this says assign it to the drop box, drug locker
6 here at York County, for the testing to be done by the
7 technician here.

8 Q. And now looking at that evidence here today, that
9 substance, is it in any way different now than it was when
10 you locked it into the evidence locker here at the Moss
11 Justice Center?

12 A. Yes, ma'am. When I bring it over, it is just the bag
13 that you see within the plastic bag. It's our chain of
14 custody. That's what I bring over. Once it has been
15 opened and tested, it is resealed in another plastic bag
16 and this is what I take back from the testing facility
17 back to be stored in our evidence room.

18 Q. Looking at it, do you recognize any other signatures
19 on the evidence log?

20 A. Yes, ma'am. I recognize C. Mitchum, which is Cynthia
21 Mitchum, the person that tests drugs here for the County.

22 Q. And where does her name appear on the evidence log?
23 Is it immediately following your's or is there any one in
24 between?

25 A. No. It's immediately following mine.

OFFICER RAY HAMILTON: BY SOLICITOR MCNERNEY
BY MR. MCKINNON

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1 Q. Thank you, Officer Hamilton. I'll take that from
2 you. If you would please answer any questions Mr.
3 McKinnon has.

4 A. Yes, ma'am.

5 CROSS EXAMINATION

6 OFFICER RAY HAMILTON BY MR. MCKINNON:

7 Q. Mr. Hamilton, you said there are two people that have
8 access to the safe, you and your associate?

9 A. Yes, sir. That's correct.

10 Q. But in this case, I guess over the course of time
11 between May and now, that would be three people; right?

12 A. At the time, I'm not - I don't remember exactly what
13 the date was on that, whether Rebecca Prior had come into
14 the office at that time or not, but essentially it could
15 have been. Yes, sir.

16 Q. Essentially - Okay. I got you. Now, did your
17 Captain have access?

18 A. He - like I stated, he has access to the evidence
19 room because he is our boss and he is overall responsible
20 for that, but because of policy that we have in our
21 general orders, no one is allowed in the evidence room
22 unless myself or my co-worker is in that room at any given
23 time.

24 Q. And you talked about the initials, I guess. It was
25 J.S. and L.I. and R.H., for you, and then C.M. Is that

1 correct?

2 A. Actually in this case, Ms. Mitchum put C. Mitchum.

3 Q. So you testified that that indication should say -
4 should mean that Linda Irby was the preceding person to
5 you that handed it to you?

6 A. Well, she didn't actually directly hand it to me.
7 What she did was she filed it into our system. We have a
8 lot of different bins for different kind of evidence. She
9 placed it in that and I retrieved it from that to bring it
10 here to the County to be tested.

11 Q. Okay. Is that bin separate from the safe?

12 A. Yes, sir. It is.

13 Q. Okay. Who has access to the bin?

14 A. It's in the same room and it's just the three of us
15 essentially that have access to that.

16 Q. Okay.

17 MR. MCKINNON: That's all the questions I have.

18 THE COURT: Anything else?

19 MS. MCNERNEY: No redirect, Your Honor.

20 THE COURT: All right. Thank you, sir. You can step
21 down.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: Okay. Call your next witness.

24 SOLICITOR MCNERNEY: Your Honor, the State would
25 call Cynthia Mitchum.

CYNTHIA MITCHUM: BY SOLICITOR MCNERNEY

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1 THE COURT: All right.

2 (WHEREUPON, CYNTHIA MITCHUM,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 DIRECT EXAMINATION

5 CYNTHIA MITCHUM BY SOLICITOR MCNERNEY:

6 Q. Could you please introduce yourself to the jury?

7 A. I'm Cynthia Mitchum.

8 Q. All right. And who are you employed by?

9 A. I'm employed with the York County Sheriff's Office in
10 the Drug Analysis Laboratory.

11 Q. What do you do in the Drug Analysis Laboratory?

12 A. I analyze substances that come in for controlled and
13 non-controlled substances.

14 Q. All right. Tell the jury a little bit about your
15 education and training in chemical analysis, please.

16 A. I have a Bachelor of Science degree in chemistry
17 which I received in 1990 from Winthrop University and I
18 have worked at South Carolina Law Enforcement Division,
19 commonly known as SLED, in Columbia, South Carolina. I
20 worked there for seven and a half years in their Drug
21 Analysis Laboratory. And I've been here at the Sheriff's
22 office in their Drug Analysis Laboratory for 12 and a half
23 years.

24 Q. So close to 25 years in chemical history. Is that
25 right?

1 A. Nineteen.

2 Q. Nineteen, okay. As part of your -- is it fair to
3 classify you as a chemist?

4 A. Correct.

5 Q. Okay. And as part of your duties as a chemist, do
6 you have the opportunity to regularly identify and weigh
7 substances in narcotic cases?

8 A. Yes, I do.

9 Q. All right. Do you have the opportunity to test those
10 substances to see if they are -- test positive for illegal
11 drugs or narcotics?

12 A. Yes.

13 Q. All right. How many times have you done that, you
14 think?

15 A. I've done this for 19 years. I usually average about
16 21 items of evidence -- 2,100 items of evidence a year, so
17 multiply that by 19 years. A lot.

18 Q. Have you ever been qualified as an expert in the area
19 of chemical analysis and identification in the courtroom?

20 A. Yes, I have.

21 Q. And how many times?

22 A. In excess of 200 times.

23 SOLICITOR MCNERNEY: Your Honor, at this time we
24 would offer Ms. Mitchum as an expert in the area of
25 analysis and weighing of illegal drugs and illegal

CYNTHIA MITCHUM: BY SOLICITOR MCNERNEY

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1 substances.

2 MR. MCKINNON: Without objection.

3 THE COURT: Okay.

4 Q. Ms. Mitchum, I'm handing you what has already been
5 marked and admitted into evidence as State's Exhibit
6 Three. If you would please look at that and tell me,
7 based upon your training and experience, if you recognize
8 that?

9 A. Yes, I do.

10 Q. Do you have an opinion of, as to what that substance
11 is?

12 A. Yes.

13 Q. What was that?

14 A. This is State's Exhibit Number Three which is Item
15 Number One in this case which is a rock substance and I
16 found it to be cocaine base, also known as crack, in the
17 amount of 3.51 grams or 54.15 grains, controlled two
18 substance.

19 Q. Can you tell me when you first saw that exhibit?

20 A. I received this on April the 24th of 2012.

21 Q. Where did you get it?

22 A. I received this from the Moss Justice Center drop
23 box, which is just basically - it looks like a mailbox.
24 It's over at the Moss Justice Center in the basement. I
25 have the only keys to the bottom of it to receive the

1 evidence out of it and there is a lock on the top of it
2 where the officers can drop the evidence in it and they
3 can't get to it once they have dropped it in there.

4 Q. Does it appear to be in the same condition today as
5 it was the day you received it?

6 A. The only difference is, what I received first was
7 this blue, this bag here inside, with the blue filigree
8 across it and that was intact and I know this because I
9 put O.K. and the date I received it here. When I did the
10 analysis on it, I removed the evidence from the bottom and
11 then put it in this heat seal bag, which is intact today.
12 That's the only difference in it.

13 Q. And I know you already hinted at this because you
14 stated what you found the substance to be, but what did
15 you do with that substance when you retrieved it from the
16 locker?

17 A. Once I retrieved it, I signed it and I put it into a
18 lockbox that I have again at the drug laboratory which I
19 have the only keys to until I had the chance to be able to
20 do an analysis on it. And once I got it, I cut it open at
21 the bottom, got the substance out, did my analysis for it,
22 and then made the report and then returned it back to Rock
23 Hill once I finished with it.

24 Q. And it is now sealed up the same way that you sealed
25 it up when you returned it back to evidence?

CYNTHIA MITCHUM: BY SOLICITOR MCNERNEY

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1 A. Yes. It's got sealed, the date I sealed it, and my
2 initials and the heat seal at the bottom.

3 Q. After you tested the substance, did you write up a
4 report on your findings?

5 A. Yes, I did.

6 Q. All right. Do you have that with you today?

7 A. I do.

8 Q. All right. And is that your signature at the bottom
9 of that document?

10 A. Yes, it is.

11 Q. All right. And what does that report state?

12 A. This report just states what I found the evidence to
13 be.

14 Q. And which is what?

15 A. It was cocaine base, also known as crack, in the
16 amount of 3.51 grams or 54.15 grains, control two
17 substance.

18 SOLICITOR MCNERNEY: Your Honor, at this time we
19 would move State's Exhibit Four into evidence.

20 MR. MCKINNON: Without objection.

21 THE COURT: Okay.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR IDENTIFIED
23 AND MARKED, RECEIVED INTO EVIDENCE.)

24 Q. Thank you. Please answer any questions Mr. McKinnon
25 has for you.

CYNTHIA MITCHUM: BY MR. MCKINNON

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CROSS-EXAMINATION

CYNTHIA MITCHUM BY MR. MCKINNON:

Q. Ms. Mitchum, what analysis technique did you use to determine your results?

A. The first thing I used was what is known as a spot test and I will drop the agent on the substance to look for a color change and that gives me an idea of the compound I'm looking at. Then I'll take another sample and run what is called short for GC masspect. It's an instrument which then will print out what it thinks it is by the compound and then I'll compare it to knowns and then do my results from there.

Q. This is a Maspectometry device you are using?

A. That's correct.

Q. So that would give you a paper spread, Is that how it works?

A. Basically, yes.

Q. Okay.

MR. MCKINNON: Your Honor, may we approach?

THE COURT: Yes.

(BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF THE JURY AT 03:53 P.M..)

MR. MCKINNON: I have no further questions for Ms. Mitchum.

THE COURT: All right. Any redirect?

MARVIN BROWN: DIRECT BY SOLICITOR EPTING

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1 MR. MCKINNON: No redirect, Your Honor.

2 THE COURT: Thank you, ma'am. You may stand down.

3 (WITNESS LEAVING WITNESS STAND.)

4 THE COURT: Okay. Call your next witness.

5 SOLICITOR EPTING: State calls Marvin Brown to the
6 stand.

7 THE COURT: All right.

8 (WHEREUPON, MARVIN
9 BROWN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
10 SWORN:)

11 MADAM CLERK: Thank you.

12 DIRECT EXAMINATION

13 COMMANDER MARVIN BROWN BY SOLICITOR EPTING:

14 Q. Good afternoon, Commander Brown. If you would, state
15 your full name for the record.

16 A. Marvin Brown.

17 Q. And Commander Brown, again how are you employed?

18 A. I'm employed by the Solicitor's office but I'm
19 assigned to the Drug Enforcement Unit as a supervisor.

20 Q. Okay. You say Drug Enforcement Unit and for those on
21 the jury who might not be aware of what that is, could you
22 briefly explain what the Drug Enforcement Unit is and what
23 they do?

24 A. Yeah. The Drug Enforcement Unit here in York County
25 is made up of the eight police agencies, including the

1 Solicitor's office. We came together as one as a unit 14
2 years ago, so instead of each individual agency in York
3 County working drugs, we all work drugs together and I'm
4 the supervisor over the operation. I believe there are 25
5 narcotic agents, a couple clerical people and the chemist
6 is semi attached to us but she is independent since she
7 tests drugs.

8 Q. And just so we're clear, did the Drug Enforcement
9 Unit have anything to do with investigating this case that
10 is at trial right now?

11 A. No. I haven't even looked in the file.

12 Q. Commander Brown, how long have you been doing law
13 enforcement?

14 A. Thirty-six years.

15 Q. And how much of that 36 years dealt with
16 investigating narcotics or drugs?

17 A. Most of it. I believe I did my first search warrant
18 was 1977.

19 Q. Please tell the jury what, if any, formal training
20 you have in the area of narcotics.

21 A. Well, I'm certified by the South Carolina Criminal
22 Justice Academy in 1976. I attended Level I Narcotics,
23 Level II Narcotics, Basic Commander, schools of -
24 Commander Level II school. That's the DEA Two state
25 courses; two DEA courses. Many various narcotic courses

MARVIN BROWN: DIRECT BY SOLICITOR EPTING

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1 over the years and actually sometimes I'll speak at the
2 Commander's school now. And I do three hour - I'm sorry,
3 three one hour training blocks, search and seizure, asset
4 forfeiture and basic narcotics.

5 Q. When you say you do those blocks, do you take them or
6 you have another role?

7 A. No. I instruct new officers about asset forfeiture,
8 search and seizure and basic narcotics. It's like just a
9 one hour block I do for the new officers to try to teach
10 them.

11 Q. In courses that you are either training, by taking or
12 that you are either teaching, do those involve identifying
13 narcotics?

14 A. Yes.

15 Q. Do they involve identifying drug paraphernalia?

16 A. Yes.

17 Q. Do they involve learning the street value of drugs?

18 A. Yes.

19 Q. And do they involve narcotics transactions?

20 A. Yes, it does.

21 Q. Over the course of your law enforcement career, if
22 you could approximate, how many drug arrests have you
23 either made or been involved in?

24 A. I'm not sure. Thousands. We - right now, the drug
25 unit is averaging about 185 charges a month, so you base

1 that on so many years, thousands and thousands. I made
2 the first crack case back in 1990 in York County.

3 Q. You made the first crack case in York County?

4 A. Yes. It was 2 guys from New York.

5 Q. If you could narrow that broad area of drug arrests
6 down to just arrest investigations involving crack
7 cocaine?

8 A. It's got to be in the thousands. We formed the
9 original - I worked at Rock Hill Police Department for 21
10 years and I helped form the original Drug Enforcement Unit
11 there in 1987. I worked drugs for 10 years and then we
12 formed the drug unit in '87 and I worked there until '96
13 and I went to work for Tommy Pope and as soon as I went to
14 work for Tommy Pope, they turned me right around and sent
15 me right back running the drug unit, so I've been involved
16 in drug activity enforcement for over 30 years.

17 Q. And in those 30 years of drug enforcement experience,
18 have you had opportunity to interview crack users?

19 A. We try to interview every single person we arrest.
20 Believe it or not, we try to. That's one of our strong
21 points. Every person we arrest, even if the drugs are in
22 their pocket, we try to interview them and find out where
23 the drugs came from and go from there.

24 Q. If you could guesstimate, how many interviews of drug
25 users would you say you've done?

MARVIN BROWN: DIRECT BY SOLICITOR EPTING

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1 A. Users? Hundreds. Thousands.

2 Q. And now let's move on to crack dealers. How many of
3 those - number one, have you interviewed crack dealers in
4 the course of your law enforcement career?

5 A. Yes. We actually - we go after the dealers, so to
6 speak. We target dealers instead of the users but
7 sometimes we run across the users in doing this, but I've
8 interviewed crack dealers probably more than I have users
9 but as much. Hundreds of times.

10 Q. Hundreds of times?

11 A. Yes.

12 Q. Have you ever been qualified as an expert federal
13 level?

14 A. Twice.

15 Q. And at state level?

16 A. Half a dozen times. I'm not sure exactly. Four,
17 five, six times.

18 Q. Okay.

19 SOLICITOR EPTING: Your Honor, at this time I would
20 ask that Commander Brown be admitted as an expert in how
21 crack cocaine is packaged, sold, going price, the typical
22 intoxicated dose and the different habits between the
23 typical addict, the user, and the typical drug dealer.

24 THE COURT: Voir dire?

25 MR. MCKINNON: Your Honor, I would admit that I would

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1 like to voir dire Mr. Brown.

2 THE COURT: Okay. Go ahead.

3 CROSS-EXAMINATION

4 COMMANDER MARVIN BROWN BY MR. MCKINNON:

5 Q. Mr. Brown, you're a - you said the supervisor of the
6 Drug Enforcement Unit?

7 A. Yes, sir. We have four supervisors. I'm the overall
8 supervisor and there are three under me.

9 Q. When is the last time you actually have made a bust
10 yourself undercover?

11 A. I work on undercover deals pretty much every day
12 because I work out in the field with the guys and we made
13 some cases yesterday, but actually working undercover
14 myself?

15 Q. Yes, sir. Where you were handling the cash and you
16 were getting the drugs in your hand.

17 A. It's been a long time. Most of our narcotic agents
18 don't work undercover anymore because of the technology.
19 But it's been a long time. To answer your question, it's
20 been a long time since I actually worked undercover.

21 Q. Your information is essentially gathered after
22 arrests are made or your dealings, I guess, with the
23 defendants?

24 A. No. We - most of us now, we deal with confidential
25 sources and we bring in a source. We interview them.

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1 Wire them up. We put videos on them. They go out and
2 make the drug buys. They come in and yes, we have a video
3 of the transaction and we go out and arrest the person
4 that made the sale and then we interview them. Very few
5 police officers do undercover work anymore. Because of
6 the video technology, there are usually cooperating
7 sources working for law enforcement.

8 Q. So essentially you are getting your information I
9 guess secondhand through a video or through your
10 underling's work?

11 A. Well, we interview people who are arrested and it
12 leads us up the chain, so we are getting it first hand
13 interviewing them. Then the video I guess you would
14 consider secondhand because the deal happens and we arrest
15 that person and bring them in. We interview them and then
16 we try to take it up the chain and it's like - so we're
17 directly involved and then we do the video and then we're
18 directly involved with interviewing and we do the video
19 and it's a never-ending cycle.

20 Q. So you are claiming to be an expert in the price and
21 dosage of the effect?

22 A. When I started, heroine was the drug of choice in
23 Rock Hill in the '70's and then it turned to cocaine in
24 the '80's and then it went to free base. In June of 1990,
25 crack cocaine came to Rock Hill. I made the first crack

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1 cocaine case - all through the '90's we made hundreds of
2 crack cocaine cases and yes, I've interviewed hundreds of
3 people about how crack cocaine is sold, used, the
4 intoxicating dose, how it is packaged, the scale - type of
5 scales you might use. Hundreds of people so yeah, I'm
6 pretty well versed on crack cocaine.

7 MR. MCKINNON: Your Honor, --

8 THE COURT: You all come up here for a second.

9 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
10 OF THE JURY AT 04:05 P.M..)

11 THE COURT: Mr. Foreman, and ladies and gentlemen of
12 the jury, this is one of those times I need to have a
13 discussion with the attorneys about a legal issue and I
14 have to do that out of your presence, so it won't be long
15 and we'll be right back with you. Don't discuss the case.
16 All right. Thank you very much.

17 (JURY EXITS COURTROOM AT 04:05 P.M..)

18 THE COURT: I don't have any problem. It's just the
19 last part of what you want to qualify - be qualified as an
20 expert, something about the - it sounded more like a
21 psychologist than a on-the-street drug enforcement
22 officer.

23 What was that last thing you -

24 SOLICITOR EPTING: It is on- it is the specific
25 language used on Page Two in the second to last paragraph

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1 from the bottom, that was used by the solicitor.

2 THE COURT: Page Two, where?

3 SOLICITOR EPTING: Page Two right below the footnote
4 that says, The paragraph begins that the State called
5 Commander Marvin Brown.

6 THE COURT: I really - I've done it frequently
7 before - qualify officers, but that seems - again, I'm
8 just not sure it is within his field of expertise. Where
9 was it?

10 SOLICITOR MCNERNEY: Do you want me to point it out
11 to you, Your Honor?

12 THE COURT: Well I found it and I lost it. Here it
13 is. I've got it. It is Page Two, second from the bottom?

14 SOLICITOR EPTING: That's correct. The State called
15 Commander Brown and they qualified him as an expert and
16 verbatim the language that I request of the court. How
17 crack cocaine is packaged, sold, going prices, typical
18 intoxicating dose and the different habits between a
19 typical addict user and a typical drug dealer.

20 Your Honor, I think that testimony would largely
21 limited to essentially whether you would expect to find a
22 crack pipe on a dealer or a crack pipe on a user.

23 THE COURT: And another thing, The Court of Appeals
24 went as far as packaging, sold, going price, typical
25 intoxicating dose. I think that is what he testified to.

1 Commander Brown?

2 COMMANDER BROWN: Yes, sir.

3 THE COURT: What do you know about the different
4 habits between a typical addict, a user, and a typical
5 drug dealer?

6 COMMANDER BROWN: A typical drug user normally has a
7 small amount of drugs, three to five rocks. He usually
8 has a crack pipe on him. Yesterday we got a guy with
9 three crack pipes, but the typical drug dealer normally
10 doesn't have crack pipes on him. He has a large amount of
11 drugs. Sometimes he has pills. And --

12 THE COURT: You know, I don't have -- I don't want to
13 over extend. The Court of Appeals does not in their --
14 they didn't go to that last part and I'm not sure that
15 that qualifyies an expert in the habits. I think if he is
16 qualified as an expert in how it is sold, packaged,
17 intoxicating dose, going price, and I just don't want to
18 stretch it so thin that it could be questioned on appeal.
19 Do you understand what I'm saying?

20 SOLICITOR EPTING: I do, Your Honor.

21 THE COURT: I think if he is qualified as an expert,
22 he can certain testify to what his experience has been
23 with respect to, you know, what he has just told me in his
24 experience as an officer. He doesn't even have to be an
25 expert for that but I will qualify him if you leave off

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1 that last --

2 MR. MCKINNON: What part are you trying to or asking
3 to leave off?

4 THE COURT: The different habits -- the quote from
5 the case is the different habits between the typical
6 addict or user and the typical drug dealer. I have
7 absolutely no hesitancy in qualifying as an expert with
8 respect to how crack cocaine is packaged, sold, going
9 price, typical intoxicating dose. That might even be sort
10 of a medical question, but that's -- I guess his experience
11 he would know what they buy and use to get high.

12 SOLICITOR EPTING: I'm sorry, Your Honor.

13 THE COURT: No. That's fine. Go ahead.

14 SOLICITOR EPTING: Just so I don't run afoul with the
15 court order, what Commander Brown testified to as far as
16 not expecting to find a crack pipe on a dealer and find a
17 large amount crack on a dealer and find a small amount of
18 crack on a user and a pipe. Would I be able to elicit
19 those questions?

20 THE COURT: Yeah, I think so. It's just of a common
21 every day experience.

22 MR. MCKINNON: All that type of testimony to me
23 sounds like they are trying to attempt to shift the burden
24 of proof on the defense to prove that the defendant is a
25 drug addict, not a drug salesman. I think any sort of

1 testimony saying that a drug user is going to have a glass
2 pipe and brillo pads and --

3 THE COURT: Well, that's sort of common sense too, I
4 believe.

5 MR. MCKINNON: But it's common sense of the expert
6 testimony -

7 THE COURT: Actually, it is more like jury argument.
8 It's reasonable efforts to be drawn from the fact that,
9 you know, he didn't have a pipe. I mean, how is -

10 SOLICITOR EPTING: Your Honor, in my opinion it to
11 some degree reply because Mr. McKinnon has asked several
12 of our officers, you didn't find packing material. You
13 didn't find, you know, twistie ties. You didn't find
14 scales. Well, if we didn't find evidence of a drug
15 dealer, isn't it fair game for any of us to say well he
16 didn't find evidence?

17 THE COURT: Yeah. I don't have a problem with that.
18 I just didn't want to stretch the expert qualifications so
19 thin that - and, you know, I guess - I don't know if this
20 has been taken up or --

21 SOLICITOR EPTING: I think rehearing was denied by
22 the Supreme Court.

23 THE COURT: Okay. So I don't have any problem with
24 that. It just seems that you're asking to get into things
25 that kind of involves more of an academic -

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1 SOLICITOR EPTING: Pharmacology. And I agree with the
2 court on that and I will limit my questions to those two
3 issues that Commander Brown testified to in response to
4 the court --

5 THE COURT: You know, I don't think there's -- I don't
6 have any problem with him testifying to what -- in his
7 experience which is lengthy and distinguished, what the --
8 what he sees with known drug dealers and drug users. I
9 don't think you need to have him qualified as an expert in
10 that, for that specific language. Okay, and this is all
11 subject to Mr. McKinnon's objection.

12 SOLICITOR EPTING: Thank you, Your Honor.

13 THE COURT: Am I right about that?

14 MR. MCKINNON: Yes, Your Honor.

15 SOLICITOR EPTING: Your Honor, if I could beg the
16 court's indulgence.

17 THE COURT: Yes.

18 (PAUSE.)

19 SOLICITOR EPTING: Your Honor, would I have leave to
20 ask him other questions, not necessarily related to his
21 expertise, but to his experience as a police officer
22 dealing with drug dealers --

23 THE COURT: Yeah. Sure.

24 All right.

25 MR. MCKINNON: Now just to be clear. I thought I was

1 up on that but what exactly is Mr. Brown going to be
2 qualified for as an expert?

3 THE COURT: He is being qualified as an expert on how
4 cocaine is packaged, sold, the going price, typical
5 intoxicating dosage. That does not limit his - he can
6 testify in his experience what he has seen.

7 SOLICITOR EPTING: Thank you.

8 MR. MCKINNON: Your Honor, I appreciate the typical
9 intoxicating dose. It seems to me that's a bit of a
10 pharmacological issue.

11 THE COURT: I suspect what they are driving at is how
12 much is in a hit to get somebody high. I would think that
13 is where they are going with it and I don't even think he
14 - he doesn't have to be qualified as an expert. He just
15 can say in his experience this is what I know to be the
16 case but I'll stretch that expertise that far.

17 SOLICITOR EPTING: Thank you, Your Honor.

18 THE COURT: All right. Let's see if they are ready.

19 (JURY RE-ENTERS COURTROOM AT 04:18 P.M..)

20 THE COURT: All right, ladies and gentlemen, for the
21 record I have qualified Commander Brown as an expert in
22 how cocaine is packaged, sold, the going price, and the
23 typical intoxicating dosage. All right.

24 SOLICITOR EPTING: Thank you, Your Honor.

25 DIRECT EXAMINATION

MARVIN BROWN: DIRECT BY SOLICITOR EPTING

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1 COMMANDER BROWN BY SOLICITOR EPTING:

2 Q. Commander Brown, could you briefly describe what
3 cocaine is for the jury for those that may not be familiar
4 with it?

5 A. Cocaine is a powdery substance that comes from the
6 coker plant from South America that people normally snort
7 cocaine and back in '80's I think they had some free base
8 going on where they put some flames to it, some alcohol,
9 but it's a stimulant. It's powdery. And then in the
10 '90's, crack cocaine actually is one step - is cocaine in
11 it's purest form because they cook out the impurities and
12 leave crack cocaine normally come out and sold in small
13 rocks.

14 Q. Okay. What does it look like?

15 A. Depending on - it looks like peanut brittle but maybe
16 a little bit lighter. Sometimes it looks the color of
17 peanut brittle and crack cocaine can be as hard as peanut
18 brittle. It can be very hard because they put it on a
19 stem or a crack pipe and smoke it with the flame directly
20 to the crack so it looks like peanut - like a small little
21 rock that you would see in the driveway but the color of
22 peanut brittle.

23 Q. Okay. What are the units of sale at street level?

24 A. Street level, it's a twenty dollar rock. That's what
25 we hear all day long, a twenty dollar rock. Twenty dollar

1 rock. That an intoxicating dose is a twenty dollar rock.

2 Q. And briefly, how is crack cocaine used?

3 A. Crack cocaine, you can take a coca-cola can and make
4 it flat on the top, put holes in it and then put the crack
5 cocaine on top of the coca-cola can and put flames
6 directly to the crack and smoke - suck the fumes through
7 the spout that you normally would drink from, but more
8 often than not, they use a crack pipe, which is a round
9 glass tube and they put some steel wool in the top and
10 they put the crack rock, twenty dollar rock, right on top
11 of that little steel wool, it's a little small round pipe,
12 and they put flame directly to the crack and they hold the
13 crack pipe up and they suck the fumes down through the
14 pipe. You can actually use - sometimes you can use an ink
15 pen to - they take the inside of an ink pen out and use it
16 to suck the fumes down through it if it is hard enough.
17 Plastic pens have a tendency to melt, so it's not uncommon
18 to see a crack user with two or three lighters because he
19 would be constantly lighting that rock.

20 Q. Okay. And from a sales standpoint, is there any
21 typical way that crack cocaine is packaged when it is
22 sold?

23 A. Cocaine is placed into plastic because it is powdery.
24 Crack cocaine, the bigger it is it can be placed in
25 plastic but twenty dollar rocks oftentimes are sold -

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1 since it's hard like peanut brittle, they cut a piece off
2 the larger piece and sell it without even baggies. In the
3 old days it was in baggies and little vials, but the last
4 five, ten years they just sell it straight out. Just hand
5 you - cut it and hand it to you, two rocks or three rocks
6 and it's not packaged in anything.

7 Q. Now when you were indicating with your hands, you
8 were indicating - well, let me ask you this so not to lead
9 you. In your experience, is it common or uncommon for
10 them to break small pieces off a larger rock?

11 A. Yes. They actually - you can break it off and
12 they've gotten so good with it, you can cut it with a
13 razor blade but you can chip it off and I can almost look
14 at crack cocaine rocks and tell you how much it weighs up
15 to a certain point but they chip it off either with their
16 fingernails or they can take a razor and cut it off and
17 they sell these small rocks and it comes off the bigger
18 piece. They buy a bigger piece and they cut it off and
19 sell it in smaller pieces out on the street.

20 Q. Okay. Does that give them more control over how much
21 they sell?

22 A. Yes, and the more you buy the cheaper it is. But you
23 buy a certain amount and then you cut it off and it gives
24 them control of how much they sell so they can make money.
25 That's what it is all about.

1 Q. So your testimony if I understand it right is that it
2 is common for them to chip smaller rocks off of a bigger
3 rock?

4 A. Yes.

5 Q. Would that involve packaging that smaller rock into
6 something like a sandwich bag or do you hand it straight
7 over?

8 A. No. The larger rock depending on how big it is can
9 be oftentimes put in plastic. The smaller rocks, they
10 just lay it out on the table and cut a piece and sell it;
11 cut a piece and sell it. They don't go through the
12 trouble of putting that little small twenty dollar rock,
13 which is a tenth of a gram, that's how small it is. It's
14 an intoxicating dose which costs twenty dollars, they
15 don't go through the trouble of placing those twenty
16 dollar rocks in baggies. They just sell them straight
17 out.

18 Q. Okay. And when you say sell them straight out, in
19 your experience as a police officer, selling twenty dollar
20 rocks at the street level, are those commonly weighed out
21 by the buyer?

22 A. The more you get - the more you buy, the more it's
23 weighed, but twenty dollar rocks generally are not
24 weighed. They are eyeballed because you can pretty much
25 look at it. You get a tenth of a gram and once in a while

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1 it ends up being two tenths of a gram, but it's not - it's
2 common for crack dealers not to have scales and baggies
3 and that type thing. It's common for them to have a bag
4 in their pocket and they pull it out and they chip a piece
5 off and sell it.

6 Q. All right. And you already said this I think
7 piecemeal, but you mentioned something about intoxicating
8 dose. Could you explain that a little bit for the jury?

9 A. Twenty dollar rocks are intoxicating dose and that's
10 a tenth of a gram, so for one gram, you can get 10 rocks
11 out of a gram. So it's \$20 for a rock, so a gram can
12 actually sell for \$200. You normally buy a gram for a
13 hundred dollars as one gram and you sell it for a tenth of
14 a gram each. You can make a hundred dollars off a gram.
15 So you can make a good bit of money off of crack cocaine
16 but an intoxicating dose is a twenty dollar rock which is
17 a tenth of a gram and we buy these every single day
18 almost.

19 Q. And that's .1?

20 A. .1 grams. A tenth of a gram.

21 Q. What does that look like? Could you analogize it
22 somewhat maybe a more common lot?

23 A. Yes. It's - I'm trying to think of something it's
24 size. It's probably about half the size of an Altoid or
25 if you cut the little square out the center of a Altoid.

1 I'm trying to think of a pill that is about that size but
2 it's maybe a fourth of an Altoid or closer to a half -
3 it's that small because it fits on top of a little glass
4 stem.

5 Q. In your experience of an officer, are there items you
6 would expect to find on a crack user?

7 A. A crack user, we normally find crack pipes and
8 oftentimes lighters and I don't know why, I guess because
9 they're brave, but many times we will find more than one
10 crack pipe on a user. We'll find two or three. We found
11 three on a crack user yesterday.

12 Q. But again, a user in your opinion as a law
13 enforcement officer you will crack but not a crack pipe on
14 a crack user. Correct?

15 A. It's about fifty-fifty. If they are taking it home,
16 sometimes we - crack users will not have a crack pipe on
17 them but oftentimes they do, because they go behind
18 buildings. They go wherever they are at and smoke it.
19 They don't walk around with it that often, but if they are
20 trying to take it home with them, they may not have a
21 crack pipe, but probably more so than not, they - I said
22 it was fifty-fifty, but we probably get crack pipes more
23 so than not on a user.

24 Q. Let me change gears. On a person who is distributing
25 crack cocaine, would you expect as a police officer in

MARVIN BROWN: DIRECT BY SOLICITOR EPTING

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1 your 30 some odd years of experience to find a crack pipe
2 on a distributor?

3 A. No. We don't -- crack pipes aren't on the dealers.
4 If the dealer is a user and a dealer, which you get that
5 once in a while, but they are still a dealer, but dealers
6 we normally don't get crack pipes. I can't remember
7 getting a crack pipe on a dealer in the last few years.

8 Q. All right. And in your experience as a law
9 enforcement officer all those years in narcotics, would
10 you expect to find three and a half grams of crack cocaine
11 on a user?

12 A. No. Three and a half grams is \$700 worth of cocaine,
13 sold by the twenty dollar rock. A crack user usually buys
14 one to three rocks. You can get three rocks for fifty;
15 six rocks for a hundred. Crack users normally have
16 between one to six. Normally it's six rocks at a time, so
17 3.5 grams is 35 rocks, so you are not going to have a user
18 -- it's like 35 beers. You're not going to have a dealer --
19 a user walking around with that much crack on him in my
20 experience.

21 Q. And could you analogize the intoxicating dose of
22 crack to something more common like alcohol?

23 A. Well, a twenty dollar rock, which is kind of high,
24 you know, a beer is a dollar, but it's kind of like a --
25 it's more like a bottle of liquor than a bottle of beer

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CROSS BY MR. MCKINNON

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1 because it's intoxicating dose where the beer might not be
2 an intoxicating dose so it would be like having 35 bottles
3 of liquor as opposed to 35 cans of beer, but still I don't
4 know of users walking around with 35 rocks on them.

5 Q. All right. That's all the questions I have for you
6 at this moment. Please answer any questions Mr. McKinnon
7 may have for you.

8 A. Yes, sir.

9 CROSS-EXAMINATION

10 COMMANDER BROWN BY MR. MCKINNON:

11 Q. Commander Brown, you said that finding a user with or
12 without a pipe is about fifty/fifty?

13 A. Yeah, and then I come back - we probably find users
14 with crack pipes more so than not. It's probably more
15 than fifty-fifty. We find that when we arrest users more
16 often than not that's got a crack. When they take it home
17 they may not.

18 Q. Right. It depends on what they are currently doing;
19 right?

20 A. Right. That's correct.

21 Q. And you said that sometimes dealers will have a pipe;
22 sometimes they won't. It depends on whether they are also
23 a user.

24 A. And I can't remember getting a dealer with a crack
25 pipe in many years other than the dealer who is selling

MARVIN BROWN: CROSS BY MR. MCKINNON

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1 clean crack pipes along with his crack cocaine, which that
2 doesn't happen that often. The answer to your question
3 is, no, we rarely find dealers with crack pipes. Rarely.

4 Q. Unless they are also a user?

5 A. Yes and they do use on occasion but most of them are
6 not - they don't use their own product but most of them
7 that sell are dealers.

8 Q. So wouldn't it be fair to say that in a general
9 sense, the presence or absence of one of these pipes does
10 not determine of whether somebody is a dealer or a user or
11 both?

12 A. No, but it's a good indicator because users usually
13 have crack pipes and dealers almost never have crack
14 pipes.

15 Q. Except as you just said, if they are not currently
16 smoking or taking it out.

17 A. I'm just saying based on my experiences, most users
18 have crack pipes and dealers do not.

19 Q. Now, you said that generally looking at what one gram
20 is a dose for a user?

21 A. It's a twenty dollar rock.

22 Q. So, you know, obviously, 3.5 grams would be 35 uses
23 for anybody. Is what you are saying?

24 A. Yes. Thirty-five dosage units would come up with one
25 gram. There's ten rocks in a gram, so that would be three

1 and a half grams. If my math is correct, it's about 35
2 rocks.

3 Q. Right. So you seem to be talking in generalizations.
4 I mean, can't people have varying tolerances as to how
5 much they need to be high or how long it lasts?

6 A. Yes. That's why they buy a rock, go smoke it. Come
7 back and buy another rock and go smoke it. I don't know
8 why but most users will buy one or two rocks and go smoke
9 it and come back and buy one or two more. They won't buy
10 several at one time. It's like back and forth to the
11 store; back and forth to the store, so - I'm not sure if I
12 answered your question.

13 Q. I'll ask again, essentially how often someone is
14 going to use a .1 gram rock or other amount may depend on
15 their weight; their temperance to the substance; and
16 perhaps even the purity of the substance that they get at
17 that time. Right?

18 A. Yes, but we do undercover deals ever day where we buy
19 twenty dollar rocks and it's common to buy one, two or
20 three rocks. Go back an hour later and buy another rock.
21 Go about an hour later and buy another rock. The users
22 don't go out and buy 35 rocks at one time. They buy two
23 or three at a time.

24 Q. Perhaps I'm not being clear.

25 A. Okay.

MARVIN BROWN: CROSS BY MR. MCKINNON

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1 Q. I'm asking if there are variables as to those and how
2 much one dose is to one person. Variables such as -

3 A. Yes. The average intoxicating dose is .1 grams.
4 With a tolerance, it might take .2 on a bigger person, but
5 what we buy are twenty dollar rock is .1.

6 Q. Okay. Now you also testified that sometimes you
7 cannot find a crack dealer with scales and baggies and
8 twisty's. Is that correct?

9 A. Street dealers. Higher level dealers normally have
10 scales but the people who deal in eight balls - I'm sorry,
11 3.5. Three point five is an eighth of an ounce so they
12 call them eight balls. That's a common amount to buy, is
13 an eight ball, and resell. It's very common. Actually
14 that's the most common street amount is an eight ball,
15 which is 3.5, so it -

16 Q. I mean, you kind of inferred that sometimes you may
17 have scales and baggies.

18 A. Yes. Especially when you start dealing with ounce
19 dealers and kilo dealers, we have scales because we want
20 to get it right and they want to get it right. We even
21 take the scales to drug deals, but for street level, for
22 an eight ball of crack cocaine you rarely have scales
23 because you've got three and a half grams and they chip it
24 off unless they are at home and sometimes they want to get
25 it just right, but for street level rock dealers, they

1 usually eye ball them. We don't find scales that often
2 when it comes to crack cocaine, street level.

3 Q. Do you typically find any people that purchase on
4 layaway?

5 A. Yes. Sometimes they -- not -- well. Not on crack
6 rocks because they are users and abusers. They normally
7 don't get their money out of it. What you are saying is
8 on a front. The bigger dealers might front thousands of
9 dollars worth of cocaine to somebody they trust and then
10 get their money on the backside but crack ----

11 Q. The street level is the eight ball you are talking
12 about?

13 A. No. They're not going -- normally they are not going
14 to front that to someone.

15 Q. So typically somebody that would be selling \$20 at a
16 time unless they had not sold any that day, they are going
17 to have some denominations of cash on them, twenties,
18 tens, fives, ones. Correct?

19 A. If it's like an unusual number like 2.1 grams, yeah
20 because an eight ball is a very popular amount so if
21 somebody has got 3.5 grams, which is an eight ball, it
22 wouldn't be that uncommon for them not to have any money
23 on them because they probably bought that as an eight
24 ball. If you only had like 2.1 grams, then I would expect
25 to find some money because crack cocaine is brought in

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1 rocks, grams, eight balls, half ounces, and so an eight
2 ball is what it is normally purchased as. I understand
3 what you are saying. Yes, I would expect to find money if
4 it was an odd weight, but that's an eight ball so it would
5 not be uncommon for a street level dealer to buy an eight
6 ball and spend all his money on that 3.5 grams.

7 Q. That uncommon but - And certainly you can buy it in
8 other denomination. Right? You sound like you said you
9 could break things off with your fingernails, so I mean,
10 essentially you could craft any size you wanted. Right?

11 A. You can but when we go in on search warrants, it's
12 rocks, grams, eight balls, quarter ounces, half ounces and
13 ounces. It's like - It's pre-packaged and people know
14 that so when they walk in they know what they gonna buy.
15 It's hard to buy an odd size. An eight ball is the most
16 common street level amount purchased ---

17 Q. Eight balls is the most common purchased amount?

18 A. --- for dealers. For dealers. Yeah.

19 Q, Now can you get a more accurate cut when you are
20 trying to get these denominations you are talking about
21 with some sort of cutting implement other than a
22 fingernail?

23 A. Yes. Sometimes they use straight - similar as razor
24 blades. Sometimes they use those razor blades and they
25 get on a kitchen counter or table and they cut it, but if

1 they are in a car or out on the street, and I don't have
2 any idea of anything about this case, but in a car out on
3 the street in their pocket, oftentimes instead of carrying
4 a razor blade they break it with their fingernail. But
5 now if you catch them inside their homes, usually there is
6 a straight edge razor blade somewhere nearby.

7 Q. Certainly, correct me if I'm wrong here, but breaking
8 it with your fingernail or your fingers, you have a higher
9 risk of crumbling it in the wrong amount than if you used
10 a razor blade. Right?

11 A. Yes. That's why they got it in the plastic bag and
12 again I don't know if this was even in a plastic bag, and
13 in the end they have something called shake or crumbs
14 that's left over, and then they kind of dump it out. When
15 it's all said and done when they break it off, little
16 pieces will break off like peanut brittle falling to the
17 bottom of the bag so you end up with a little bit of shake
18 or a little bit of crumbs at the end and they actually
19 sell that too but it's a little bit hard to smoke, so it's
20 sold cheaper. But yeah, they'll break it off. And it's
21 pretty hard.

22 Q. Right. If I bought like .1 grams and a little bit
23 crumbled off, wouldn't I kind of expect to get the part
24 that crumbled off as part of my .1 grams and you put into
25 a bag for me?

MARVIN BROWN: CROSS BY MR. MCKINNON

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1 A. No. The .1 grams is sold to you. The crumbled off
2 part falls back into the bag.

3 Q. Well let's say the crumble comes from the .1. Right?

4 A. It can but crack is pretty hard. You can actually
5 put it in your mouth and hold it in your mouth for a
6 period of time and it won't dissolve. It's common for
7 street drug dealers to put two or three rocks along their
8 jaw line. It's that hard where it will not dissolve in
9 your mouth. It takes a while for it to dissolve. So when
10 you break it off with your fingernail, it's pretty hard
11 and you can hand it off to somebody and they can actually
12 put it - oftentimes they put it in their watch pocket and
13 when you pull it out, it's still --

14 Q. You're saying when somebody breaks off .1 gram, the
15 crumble always comes from the left over and never from the
16 .1? Never from the small piece?

17 A. No. I'm not saying that. I'm saying it's so hard
18 when they break it off and sell the .1, when the buyer
19 gets the .1, normally the shake is already off. That's
20 correct. If they step on it or push it hard enough, yeah,
21 I'm assuming they could break it. I've seen them walk
22 around with it in their watch pocket. We reach in and
23 pull it out and we've still got the full twenty dollar
24 rock. It's not that easy to break a twenty dollar rock.
25 That's why at home they use that razor blade. You can

1 pinch it off, but it's not that easy to break a - you can
2 break it. I mean, it's like me breaking peanut brittle,
3 but if you put it in a watch pocket it normally doesn't
4 crunch up. You would think it would just crunch up but it
5 don't.

6 Q. Just to clarify, a razor blade is more accurate?

7 A. Absolutely.

8 Q. Okay. And one final question. You said that you are
9 employed by the Solicitor's office. Are you referring to
10 the same solicitor's office that Mr. Epting, and Ms.
11 McNerney are employed by?

12 A. Yes. In 1996 Tommy Pope hired me. I work for the
13 Solicitor's office but I have an office at Rock Hill
14 Police Department downstairs in the sheriff's office and
15 one in Fort Mill. I get up here about once a week, but I
16 am employed at the same office that they are employed in.
17 Under South Carolina law an investigator, I'm an
18 investigator for the Solicitor's office, I'm not an
19 attorney. An investigator for the solicitor's office has
20 authority and powers of arrest as a deputy sheriff, so
21 even though I work at the same office, I'm not stationed
22 here. I'm stationed out with law enforcement, but I do
23 work in the same office.

24 Q. Your boss is the same boss as the two of them.
25 Correct?

MARVIN BROWN: CROSS BY MR. MCKINNON

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1 A. Kevin Brackett is my boss. That is correct.

2 MR. MCKINNON: That's all the questions I have, Your
3 Honor.

4 THE COURT: Any redirect?

5 SOLICITOR EPTING: I beg the court's indulgence.

6 (PAUSE.)

7 SOLICITOR EPTING: Nothing further from the State.

8 THE COURT: All right. Thank you, sir. You may step
9 down.

10 (WITNESS LEAVING WITNESS STAND.)

11 COMMANDER BROWN: Thank you, Your Honor.

12 THE COURT: Call your next witness.

13 MS. MCNERNEY: Your Honor, may we approach briefly?

14 THE COURT: All right.

15 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
16 OF THE JURY AT 04:30 P.M..)

17 THE COURT: All right. Mr. Foreman, ladies and
18 gentlemen of the jury, it's 4:25 and we're going to break
19 for the evening. Okay. Now, you all have sworn an oath
20 and I've talked to you about it but I'm going to remind
21 you the importance of not discussing this case with anyone
22 else and don't do any independent research. Don't go
23 visit the scene or don't go online and look at - you know,
24 look anything up. Don't go to the library and look
25 through the encyclopedia. Anybody remember what that is?

1 But you understand what I'm saying. Everything you need
2 to know to decide this case, you will hear in this
3 courtroom and I've been involved in some cases where some
4 jurors go home at night and they get on social media and
5 I'm telling you, if you check that, it messes up the whole
6 case, okay.

7 And I also know as human nature that when you go
8 home, whoever you spend your time with is going to want to
9 talk to you about this and you are going to want to talk
10 to them about it as well because that's someone who you
11 probably bounce your ideas off of to make your decisions,
12 but that person and those people are not here and have not
13 seen what is going on and it would not be fair to any of
14 the people involved in the case, it wouldn't be fair to
15 your fellow jurors, it wouldn't be fair to yourself and it
16 would also violate your oath. So, after that stern
17 warning, I know you will adhere to your obligations. Have
18 a pleasant evening. We'll see you back about ten o'clock
19 in the morning.

20 Thank you very much.

21 (JURY EXITS COURTROOM AT 04:43 P.M..)

22 THE COURT: All right, any objection to the bond of
23 Randy's? All right. Anything before we go? Let me -
24 let's just sort of have a brief little charge conference.

25 Anything you are requesting?

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1 SOLICITOR MCNERNEY: No, Your Honor.

2 MR. MCKINNON: Your Honor, we would be asking for you
3 to charge the less included obviously simple possession.
4 Also a charge on actual possession but not *** I don't
5 think that's appropriate here, he is actually in
6 possession or he is not.

7 THE COURT: Okay.

8 MR. EPTING: I'm asking for some type of charge about
9 him not holding his absence.

10 MR. MCKINNON: Yes, thank you.

11 THE COURT: I've got the absence defendant --

12 MR. MCKINNON: Absence and silence. That's two
13 different things I suppose.

14 THE COURT: You want something about the failure of
15 your client to testify? Is that what you are --

16 MR. MCKINNON: As I say the typical charge as this is
17 my first case without my client so I guess one charge
18 incorporating his absence and his silence would be
19 appropriate.

20 THE COURT: All right. Well let's look at these.
21 What's your position on a lesser included?

22 MR. EPTING: I think we have to agree that there is
23 sufficient evidence to find - that the jury could find him
24 guilty of a lesser included and the court instruct the
25 jury --

1 THE COURT: All right. Well, if you dream anything
2 else up tonight let me know.

3 MR. MCKINNON: Thank you.

4 MR. EPTING: Ten o'clock?

5 THE COURT: Yeah. I do - In my charge I do talk
6 about constructive possession.

7 MR. MCKINNON: I'm just to me that it could
8 potentially confuse jurors and in a case where it doesn't
9 seem to be alleged any constructive possession it would
10 seem to be there in his pocket and then on the ground or
11 was just on the ground.

12 SOLICITOR EPTING: I think that throughout the cases
13 there is case law that indicating that might be a
14 reversible error since it's either actual or it's nothing.

15 THE COURT: All right. We'll see you in the morning.

16 SOLICITOR EPTING: Thank you, Your Honor.

17 MR. MCKINNON: Thank you.

18 (COURT IN RECESS AT 04:45 P.M..)

19 (COURT BACK IN SESSION THURSDAY, OCTOBER 18, 2012 AT
20 10:25 A.M..)

21 THE COURT: Please be seated. All right.

22 Okay, where are we?

23 SOLICITOR MCNERNEY: Your Honor, the State is ready
24 to rest on the record when we bring the jury out. I
25 believe that

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25 when we broke, we were discussing jury charges so we're
1 prepared to ---

2 THE COURT: Talk about that?

3 MS. MCMURRAY: --- finalize a decision on that.

4 THE COURT: What are you going to do?

5 MR. MCKINNON: Your Honor, I thought about this and I
6 think I do need to ask for both constructive possession
7 and a mere presence charge, but I'm certainly not married
8 to them. I'm not fond of wasting a lot of time arguing
9 for them, so I'll just do that in your discretion.

10 THE COURT: All right. Are you asking for the lesser
11 included?

12 MR. MCKINNON: Yes.

13 THE COURT: Possession?

14 MR. MCKINNON: Yes, I certainly want to do that. I
15 went over that yesterday, but yes, I would like if I could
16 a lesser included charge as well as a charge discussing my
17 client's absence and silence. And I asked you this
18 yesterday but I'm not quite sure if there is any charge
19 that incorporates both of those together, I don't know. A
20 charge discussing my client's both silence and absence.

21 THE COURT: Well, now I could -

22 MR. MCKINNON: And I don't mean to like repeat
23 anything obviously but as long as the -

24 THE COURT: No. I think there - it's pretty easy to

1 charge both of those and you are certainly entitled to it.
2 Okay.

3 What - From the State what ya'll got?

4 SOLICITOR EPTING: Your Honor, as to the mere
5 presence charge, we believe that case law is on point in a
6 case like this where the drugs were thrown down where it
7 is an actual possession case that a mere presence charge
8 would be inappropriate. I've handed up the case of *State*
9 *v. Lee* for Citation 298, S.C. 362, as well as *State v.*
10 *Burgess*, Citation 393 S.C. 396. We believe both of those
11 could speak to and indicate that a mere presence charge
12 facts similar to this were inappropriate and therefore we
13 would ask that you not put the mere presence charge. I
14 believe Ms. McNerney has an argument as to constructive
15 possession with less.

16 THE COURT: Okay. Yeah, go ahead.

17 SOLICITOR EPTING: Your Honor, as for the
18 constructive possession charge, you have two cases before
19 you with a sticky note on the front that says,
20 "constructive possession," one that is *State v. Pae*.

21 Your Honor, basically in that case, the defendant was
22 a passenger in a car driven by a co-defendant. The co-
23 defendant, they pull up next to an undercover officer who
24 is posing as a drug dealer. The driver, the co-defendant
25 gets out of the car and gets in the car with the

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1 undercover officer; comes back and then the actual
2 defendant at hand who is in the passenger seat, then gets
3 out and goes and sits in the seat of the car with the
4 undercover officer who the under cover officer then gives
5 the drugs to him. And testified at trial that that is who
6 he gave the drugs to.

7 The officers then initiate a traffic stop on that
8 vehicle and find the drugs, not in the actual custody of
9 the defendant, but in the vehicle, but it was still
10 considered an actual possession case because it didn't
11 necessarily turn on where the drugs were found but instead
12 turned on whether there was any evidence presented as to
13 whether at any time the defendant had been in actual
14 custody of the drugs. And so they considered it an actual
15 possession case, Your Honor.

16 The labors of the court says, providing instructions
17 to the jury which do not fit the facts of the case may
18 tend to confuse the jury says a charge on mere presence is
19 necessary on when the State intends to establish
20 constructive possession of contraband where the State
21 alleges and proves actual possession which we have here,
22 Your Honor. The court may not give a constructive
23 possession or a mere presence charge. It cites State v.
24 Lee which is the case that Mr. Epting is referring to.

25 THE COURT: Which one are you talking about?

1 SOLICITOR MCNERNEY: Your Honor, this is State v. Pai
2 and I'm reading from page 6.

3 THE COURT: Don't they say Pe, P-e. Isn't that how
4 it's pronounced.

5 SOLICITOR MCNERNEY: Perhaps. I have no idea.

6 THE COURT: Okay.

7 SOLICITOR MCNERNEY: But it says the trial judge did
8 not err in refusing --

9 THE COURT: Where are you? What page are you on?

10 SOLICITOR MCNERNEY: Page 6.

11 THE COURT: Okay.

12 SOLICITOR MCNERNEY: Accordingly the trial judge did
13 not err in refusing Pe's request to charge constructive
14 possession or mere presence and that was because there was
15 evidence presented that the defendant at one time had been
16 in actual possession of the drugs, although that they were
17 not found on his actual possession. That's a Court of
18 Appeals - South Carolina Court of Appeals Case, 321 S.C.
19 405.

20 THE COURT: Okay. I couldn't see - I mean in all
21 honesty just for your - I can't see the video from sitting
22 up here. I don't know what happened. You all both - It
23 seems that everybody's acknowledged you can see him throw
24 the drugs down all right.

25 SOLICITOR MCNERNEY: Well, you can see the drugs.

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1 There is a struggle where the defendant sort of slips out
2 of his shirt.

3 THE COURT: Okay.

4 SOLICITOR MCNERNEY: He is wearing a shirt but then
5 during the struggle with law enforcement, he slips out of
6 his shirt. Law enforcement is left holding the shirt for
7 a second. They throw it down on the ground in order to
8 continue to pursue the defendant. As the shirt is being
9 throw on the ground, you see the crack rock slide out the
10 sleeve and land on the ground.

11 So we are alleging and have proven that it's an
12 actual possession case; not a constructive possession case
13 because at one time, while the drugs were not found in his
14 actual possession, they were at one time in his actual
15 possession which makes it an actual possession case,
16 similar to State v. Pe.

17 MR. MCKINNON: Your Honor, just a part established
18 just a hair I think that characterization is most accurate
19 but my question, on the video you see a white object
20 coming out of the shirt and then twenty minutes later an
21 officer looks basically in that exact same spot, picks
22 something up, a white object, and then subsequently
23 obviously it's tested.

24 THE COURT: The camera was on the whole time. Right?

25 MR. MCKINNON: Yes.

1 THE COURT: So the white object is on the camera the
2 whole time?

3 SOLICITOR MCNERNEY: Yes, Your Honor.

4 MR. MCKINNON: Its sort of on the grass what's in
5 there. You can't see it but --

6 THE COURT: Well there's no one else that goes near
7 that location; is that right?

8 MR. MCKINNON: They got the blue track suit guy.

9 THE COURT: Well what does he do?

10 MR. MCKINNON: He just walks by.

11 SOLICITOR MCNERNEY: Your Honor, the drugs are found
12 and tested. According to Officer Spencer and Officer
13 Morales' testimony they testified that they find the rock
14 of crack in the exact location that it falls from the
15 sleeve of the shirt. And the video tape confirms that
16 it's very well in the same location.

17 MR. MCKINNON: That's an accurate characterization I
18 would say.

19 THE COURT: All right. And you don't want
20 constructive possession?

21 SOLICITOR MCNERNEY: No, sir. Nor mere presence.

22 THE COURT: And you do want it? You want
23 constructive possession?

24 MR. MCKINNON: I feel like I have to ask for them
25 even though I'm not certainly married to either one. Your

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1 Honor, I - I mean certainly it can be --

2 THE COURT: Normally --

3 MR. MCKINNON: It can be reversible error.

4 THE COURT: --- it's the State that it warrants
5 instruction constructive possession. Normally the State
6 wants every possible inference that the guy had the drugs.

7 MR. MCKINNON: I say I don't actually want them. I'm
8 just trying to avoid reversible error.

9 THE COURT: Okay. We will actually not charge
10 constructive possession.

11 MR. MCKINNON: Yes, Your Honor, I just was concerned
12 about the reversible error in possible PCR.

13 THE COURT: Well yeah. You ask for it but it's not
14 like Toyota you're not gettin it. All right.

15 MR. MCKINNON: All right.

16 THE COURT: Can I see you all up here for a second.

17 (BENCH CONFERENCE OFF THE RECORD AT 10:34 A.M..)

18 THE COURT: All right, Ms. Nelson, are you ready?

19 MADAM COURT REPORTER: Absolutely.

20 THE COURT: All right. All right, at bench
21 conference we've discussed logistics and the State has
22 announced that they are gonna formally rest so is there
23 anything from the Defense?

24 MR. MCKINNON: Your Honor, we would like to make a
25 Motion for a Directed Verdict.

1 THE COURT: Okay. Based on?

2 MR. MCKINNON: Your Honor, in looking at the facts in
3 light most favorable to the State we feel that the State
4 has failed to prove the element of the intent to
5 distribute and ask for a directed verdict of not guilty.

6 THE COURT: Okay. Well I will deny that motion. Now
7 I also understand that you intend to rest as well?

8 MR. MCKINNON: Yes, sir, that's correct. The Defense
9 will rest.

10 THE COURT: And we can do all this, we'll do it in
11 front of the jury but I do - everyone has agreed that in
12 order to save time and energy that we're doing it for the
13 record at this time but we'll do it with the jury when
14 they come back in. Do you want to formally rest in front
15 of the jury?

16 MR. MCKINNON: I will if you want me to.

17 THE COURT: Okay. All right. So what we'll do is
18 we'll bring 'em back go through that and then we'll go
19 right into arguments. Are you all ready for that?

20 SOLICITOR EPTING: The State's ready, Your Honor.

21 MR. MCKINNON: Yes.

22 THE COURT: Okay. Go get 'em.

23 (JURY REENTERS COURTROOM AT 10:39 A.M..)

24 THE COURT: All right, ladies and gentlemen, welcome
25 back. I hope you all had a pleasant evening, and I'll

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1 turn it over to the State.

2 SOLICITOR MCNERNEY: Your Honor, at this time the
3 State rest.

4 THE COURT: Okay. Thank you very much.

5 All right, Mr. Foreman, ladies and gentlemen of the
6 jury, if you remember my little procedural road map, the
7 five parts of a trial, the first part were the opening
8 statements, the second part the presentation of the
9 testimony and the evidence. All the testimony, all of the
10 evidence that's gonna come into this case is now in the
11 case and so we're gonna move now into the third part of
12 the trial which if you will remember is the closing
13 arguments of the attorneys where they abdicate their
14 position.

15 You all have paid close attention throughout the
16 course of the trial so far and I ask you to continue to do
17 so in the arguments of these fine attorneys.

18 SOLICITOR EPTING: Thank you, Your Honor, may it
19 please the Court.

20 THE COURT: Yes, sir.

21 SOLICITOR EPTING: Madam Clerk, could we have the
22 lights?

23 Good morning, ladies and gentlemen. Pretty soon the
24 case will be in your hands. As the judge said all the
25 testimony is in, all the exhibits that are going to be

1 entered are in evidence. You will have those - You will
2 have some of those to review in the jury room. The video
3 will be available to you to re-review upon request. All
4 you have to do is ask one of the bailiff to re-see it and
5 we'll put it on the screen.

6 Ladies and gentlemen, during the defense opening and
7 a little bit in prosecution you heard a lot about
8 reasonable doubt. You heard one definition of what it is
9 but lawyers being what they are like to define the same
10 phrase five different ways. And Mr. McKinnon was correct
11 when he said reasonable doubt is a doubt that causes you
12 to hesitate to act. Not much more guidance beyond that.
13 That's a pretty vague statements in and of itself is it
14 not?

15 You will notice when you went to the jury room that
16 there were chairs there. You also heard over and over
17 again that this case you have a very important decision in
18 front of you both for the State and for the Defense. I
19 don't want you going in there thinking that if you
20 hesitate to act to make a decision in this case that you
21 must find the Defendant guilty. That is not what hesitate
22 to act means.

23 A prudent person, an intelligent person, hesitates
24 before making an important decision like the one that you
25 all are about to make. If you are about to buy a new

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1 house you don't go rush in and buy it. You research the
2 area, you look at the schools, you see if you can afford
3 it. You see even if you can sell your old house if you
4 need to sell it. You look at all of those things before
5 you come to this very important decision. We want you to
6 hesitate. We want you to go into that jury room share
7 whatever doubts you have, share what the strengths of the
8 case are, talk, and ultimately come to the right
9 conclusion.

10 Another way to define proof beyond a reasonable doubt
11 is proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the defendant's guilt. And,
13 ladies and gentlemen, I would submit to you that after
14 hearing the actual testimony, after seeing the exhibits,
15 after hearing from the officers; after seeing the video at
16 this point you should be firmly convinced that this
17 defendant possessed that crack cocaine with intent to
18 distribute.

19 One of the problems in the jury system is that a lot
20 of times jurors roles are not defined. You all are the
21 finder of facts. That makes you all the most important
22 people here in this courtroom. Nobody but you guys can
23 say what actually happened that night. We can argue and
24 we can present evidence but ultimately you all decide.

25 And when you've been doing that the justice system

1 trust that you will use your common sense. You will use
2 the skills and the things that you know and all the things
3 that you use to decide matters on a daily basis. You are
4 the best finders of fact because you have all those
5 skills.

6 I've often heard jurors described as the umpire of
7 the judicial system. It sounds a little bit strange but
8 think of this scenario. If any of you all are familiar
9 with baseball, an umpire in a baseball game has to make
10 calls. Some will come to the plate and maybe the ball
11 comes there pretty close to when he slides in, he has to
12 decide if that person's out or if that person's safe like
13 kind of what you all are doing here.

14 That umpire is not thinking about whether he likes
15 this player. He's not thinking about this is gonna affect
16 his stats in the season or even the outcome of the game.
17 Is he out or is he safe? We're not here to judge Mr.
18 Howze's soul. We're here to determine the sole question
19 of whether he violated the law that night. As far as what
20 happens after that, as far as the repercussions of a
21 guilty or not guilty plea - of a not guilty verdict on his
22 life its up to the judge, he's the master of that. That's
23 beyond me, that's beyond you guys, that's the judge's
24 call.

25 We're not here to judge his soul. We're not here to

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1 say he's a good or bad person just is he guilty; have we
2 met our burden.

3 Well what must we prove beyond a reasonable doubt?
4 This was touched on a little bit in openings. We have to
5 prove that the incident occurred in York County.
6 Obviously it has to occur in York County or a Greenville
7 jury would be trying it or an Anderson jury or some other
8 jury would be trying this case.

9 We have to prove that the substance that was in fact
10 in question here is in fact crack cocaine. We have to
11 prove that he possessed it. We have to prove that he
12 intended to distribute it. And this goes without saying
13 but we also have to prove that he was in fact the one who
14 did it. But you heard testimony from the officers that
15 initially they didn't know who he was or even why he ran.
16 But later they got his name, they ran it through their
17 system and they confirmed that that was in fact Randy
18 Howze. That was the testimony of the officers.

19 The first two questions obviously those two are easy.
20 Did it occur in York County? You saw on the video, you
21 heard that it occurred on Salida Street. Obviously it
22 occurred in York County so you can check that one off.

23 Was the object that was recovered crack cocaine?
24 Well you heard from Cynthia Mitchum up there on the
25 witness stand, our expert witness, who applied scientific

1 methods, several scientific methods to determine
2 scientifically if it's crack. Absolutely she did. And I
3 don't think anybody's contesting that.

4 Was it crack cocaine? Yes indeed it was. Did it
5 occur in York County? Yes indeed it was. These were the
6 final two elements. Did the defendant possess crack
7 cocaine? Ms. McNerney stood in front of you today and
8 told you that we have a benefit here. Nine times out of
9 ten in a trial we rely on witnesses. We have to rely on
10 testimony coming from that stand. And in this case we
11 have a video. You all saw it for yourselves exactly what
12 happened that night. And you all will have the ability as
13 I said before to see for yourselves if you wish to see it
14 again.

15 It happened kind of fast and the context of a much
16 longer stop so lets slow it down. I've slowed down a clip
17 of when the crack cocaine fell. I ask you to watch the
18 sleeve of his shirt.

19 (VIDEO PUBLISHED TO THE JURY.)

20 SOLICITOR EPTING: The shirt is off, the sleeve moves
21 up, and wouldn't you know it a white bag falls right by
22 the sleeve. And just so there's no confusion I'll play it
23 again.

24 (VIDEO PUBLISHED TO THE JURY.)

25 SOLICITOR EPTING: Watch the sleeve, ladies and

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1 gentlemen. Just like an elephant trunk it goes up, the
2 crack falls out, falls on the ground. You may be asking
3 yourself how are we sure that the crack that fell on that
4 location is the same crack cocaine that was recovered by
5 officers. Well, look to that circle.

6 (VIDEO PUBLISHED TO THE JURY.)

7 SOLICITOR EPTING: Play that again.

8 (VIDEO PUBLISHED TO THE JURY.)

9 SOLICITOR EPTING: I played it two times cause it's
10 fast. Now look where it's recovered from.

11 (VIDEO PUBLISHED TO THE JURY.)

12 SOLICITOR EPTING: Ladies and gentlemen, I would
13 submit to you that that crack cocaine was recovered from
14 the exact location it fell out of that defendant's sleeve;
15 out of the shirt that he was wearing not ten seconds
16 before it was pulled off of him as he attempted to flee
17 further in the neighborhood away from the police. So
18 beyond a reasonable doubt he possessed that crack cocaine.
19 It's in his shirt, it came from his shirt, and you can see
20 it with your own two eyes.

21 So the next element intent to distribute. Anytime
22 you are dealing with intent as Ms. McNerney indicated in
23 opening you have a more difficult job because until
24 technology progresses to a certain point we can't see
25 inside somebody's head. We can't peer inside your

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1 thoughts and see what you're intending to do. But that
2 doesn't mean that we can't infer your intent. You know
3 infer your intent from what people do. Sometimes what
4 they have in their hands. Imagine hypothetically I'm
5 parked at a bank and I'm walking in the bank and I have a
6 check in my hand. You all know what I'm going to do. I'm
7 going to walk in the bank. How can you tell? Cause I
8 parked in front of the bank and I'm walking inside.

9 And you all know I probably have the business to
10 either deposit or cash the check with that bank because
11 number one I'm at a bank and number two I'm walking inside
12 and number three I have a check in my hand, you can see
13 it. You can't peer inside my mind and tell what I'm doing
14 but because of what I'm doing and because of things that I
15 have that you can see, you can beyond a reasonable doubt
16 indicate what I'm about to do.

17 Let's look at the Defendant's actions. What did he
18 do? Well, that night he lied about his name. His name
19 wasn't Jeff Burris. He lied about his date of birth. He
20 is certainly not a twelve year old. He runs from the car.
21 Flight, ladies and gentlemen, is an element that you can
22 take into consideration as to his guilt.

23 (VIDEO PUBLISHED TO THE JURY.)

24 SOLICITOR EPTING: We know he lied about his name, we
25 know he lied about his date of birth, we know he ran from

CLOSING ARGUMENT: BY SOLICITOR EPTING

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1 police that night and that's a factor in determining your
2 decision of his guilt.

3 We had Marvin Brown's testimony, personally over
4 thirty years of experience in investigating every type of
5 drug crack cocaine in particular. He made the first crack
6 cocaine case in York County. He's been dealing with it
7 for along time. What did he testify about? He testified
8 about the weight. You remember what he said when I ask
9 him if he thought it would be and his expert opinion
10 unusual for a crack user to have this amount of crack in
11 his pocket. And what did he say? He said he thought it
12 would be very unusual for him to have that.

13 He talked about the fact that this little bag of
14 crack, this little tiny white bag that you saw bouncing
15 out that to a lay person looks like nothing is in fact
16 worth Seven Hundred Dollars. He talked about the fact that
17 the weight was extremely significant. 3.5 grams is what
18 is on the street is known as an eight ball. And remember
19 what he testified about that that that is an extremely
20 common amount for a street level buyer to have on his
21 person.

22 He testified about intoxicating doses. He analogized
23 it to either a six pack of beer or a bottle of liquor. He
24 went into intoxicating doses. He ask - He did the simple
25 math and I confirmed it. That individual had thirty five

1 intoxicating doses on his person but no pipe. No pipe in
2 the car, no pipe on the path where he ran. No pipe in the
3 other side of the street where he laid down. No pipe in
4 his pockets. No pipe anywhere. What did Marvin tell us
5 about that? He said that more often than not a user would
6 have a pipe on his person. A dealer? Never.

7 Let's talk about intoxicating doses for a minute.
8 And since we're getting towards ----- we can use that as
9 an example. Imagine that somebody has five bags of candy.
10 That person probably like candy. Imagine they have ten
11 bags of candy. Well that person's like me, they are what
12 some people might refer to as chocoholic like candy a lot.
13 What about fifteen bags? Twenty? Twenty-five? Thirty-
14 five? Do you honestly believe, does it not stretch reason
15 to believe that a person with that much candy is keeping
16 it all for himself or is it more likely they are going to
17 give it out, distribute it. Cause under the law it makes
18 no difference if you sell it, if you give it, if you hand
19 it over distribution is distribution.

20 Intoxicating doses. A little bit closer to what
21 we're talking about here. What if a person has five, six
22 bags. Well they may be stocking up for a game, for the
23 football games over the weekend. They have ten six packs
24 you see in their car at the grocery store. They might
25 have a problem. Fifteen, twenty, twenty-five, thirty,

CLOSING ARGUMENT: BY SOLICITOR EPTING

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1 thirty-five six packs. Thirty-five intoxicating doses.
2 That is not all for that person. They're having a party
3 and they're gonna be handing it out. They're going to be
4 distributing it and that's just common sense.

5 Playing devil's advocate. After Mr. McKinnon gets up
6 and he does his closing I'm not going to have a chance to
7 get up and address you unless I object, unless I think
8 he's making an improper argument or for improper evidence
9 so this will be my last say. But based upon some things
10 that we've heard on cross examination to our officers
11 let's look. He had no packaging material or baggies and
12 therefore its not a deal, right? Well not so fast.
13 Marvin Brown testified about that.

14 Street level crack dealers often break off a piece
15 from a larger rock with their hands. That gives them the
16 ability I guess if they want to short you they could break
17 you off a smaller piece and make more money. So of course
18 they don't have any baggies except for the one that the
19 crack rock is in. But you know what? That seven hundred
20 dollar crack rock that's in evidence is one piece and it's
21 in a baggie.

1 He had no cash on him. Obviously he's not selling
2 drugs, right, cause if he's selling drugs he had a bunch
3 of twenty dollar bills from a twenty dollar rock. Well
4 actually he still had his eight ball eight point five

1 grams of crack. He hadn't sold any that night. He still
2 had the most common street level dealer weight on his
3 person that's why he didn't have any cash. And the cash
4 he would have had he spent on that. He had no scales.
5 Had no scales and therefore couldn't be a drug dealer
6 cause drug dealer's have scales, right? Well not
7 necessarily. Particularly small, particularly twenty
8 dollar rock seller's eyeball it. They break it off they
9 know what it looks like. They don't need scales for that.
10 They only need scales once they're buying ounces and the
11 amount of crack that's worth a whole lot more than seven
12 hundred dollars.

13 He had no razor to cut the crack. Well what did he
14 say? He not knowing anything about our case, not knowing
15 anything about the facts of our case, he said well if
16 they're in a car someplace it would be hard to cut off a
17 piece of crack with a razor; you might cut yourself with
18 that, use your fingernails. They're in a car of course
19 they don't have a razor.

20 Go back to Mr. McKinnon's example at the beginning of
21 the trial. He gave you one case where a mouse was in a
22 box which was a cat. Close the box, mouse is gone, beyond
23 a reasonable doubt that mouse - that cat ate that mouse.
24 Then he gave you another one. What if there is a hole in
25 that box and there is no mouse but a satisfied looking

CLOSING ARGUMENT: BY SOLICITOR EPTING

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1 cat? In his mind it's not equally likely he ran out of
2 the hole as it is that the cat ate him. But, ladies and
3 gentlemen, in this case is it equally likely that he was a
4 crack user or a crack dealer? Let's look at what evidence
5 we have.

6 We have the inference level. Ms. McNerney indicated
7 - she hinted at that in her opening, it is one gram. That
8 is the level that the legislature says that you are
9 allowed but not required to infer that if a person is
10 caught with one gram or more, then you can infer whether
11 it was for their own use that it was to be distributed.
12 This individual has three point five times that inference
13 level. Three point five times.

14 We know through Marvin Brown's testimony exactly how
15 many intoxicating doses this is. Thirty-five. The
16 significance of it being an eight ball. Remember what
17 Marvin Brown said? What does that mean? That is a common
18 - that is a very very common weight for street level crack
19 dealers to buy. And wouldn't you know it, that's what the
20 defendant was caught with.

21 He had no pipe or any paraphernalia to use it. Not
22 in his car, not on his person, not in the areas where he
23 ran because you remember Morales and Spencer both
24 testified they checked and they couldn't find it. He has
25 no lighters to smoke it, he fled from the scene, he lied

1 about his identity.

2 What evidence do we have that he's a crack user only?
3 He has crack. Is that an equal scenario? Ladies and
4 gentlemen, I would submit that under Mr. McKinnon's using
5 his paragon what if you had a hole in a box and a cat and
6 a mouse you open the box and there's blood everywhere?
7 That's not it. In that situation you know that cat ate
8 that mouse. The only reasonable conclusion given what we
9 know about his possession of those drugs, what we've been
10 instructed on by Marvin Brown and the guidance the
11 legislature has given us is that he intended to distribute
12 it.

13 Every sign points to intent to distribute. Every
14 sign. Thirty five intoxicating doses and the inference
15 level. He lies and runs from the police. No signs of
16 crack user whatsoever. The inference level he's three
17 point five times over in the possession of an eight ball.

18 Ladies and gentlemen, the evidence is clear, its in.
19 I urge you to use your common sense. Remember the
20 evidence that was given on the stand. And if you want to
21 rehear any of that you have the ability to ask to rehear
22 parts or the entire testimony so certainly set down and
23 hesitate, share your concerns, share what you think the
24 strengths of the case are but in the end come to the only
25 conclusion that speaks the truth. Don't cut him a break,

CLOSING ARGUMENT: BY SOLICITOR EPTING
BY MR. MCKINNON

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1 don't give the lesser offense of possession of crack.

2 Find him guilty to possession with intent to distribute.

3 I thank you for your time and I look forward to your
4 verdict, ladies and gentlemen.

5 THE COURT: Mr. McKinnon.

6 MR. MCKINNON: Ladies and gentlemen, obviously this
7 is the end. After my closing you get to go back and
8 decide everything. We've already gone over how that works
9 but I still want to reiterate a few points with you.

10 The legal terms I talked about in opening, burden of
11 proof and beyond a reasonable doubt are still entirely
12 applicable here and that is exactly what the judge is
13 going to tell you do in a little bit is apply this
14 principle to the facts and reach your verdict. Okay.

15 Mr. Epting addressed this first, gave you a story a
16 few minutes ago - well an antidote I guess - if you was to
17 walk into a bank with a check well obviously he's gonna
18 cash it cause he's walking into the bank, he's got a check
19 in his hand, he's in the bank parking lot. Well that's
20 exactly the point here. He could go into the bank and
21 instead of cashing it he could deposit it. He can go in
22 and open a new account. He could trade it in for a money
23 order. He could have kept it. It could be his own check
24 he can be cancelling it and trying to put a stop pay on
25 it. We don't know. You can't just jump to a conclusion

1 based on a few facts.

2 As he said you can't get into somebody's head. You
3 have to go by what facts you see in front of you.

4 Now in this case the State has their expert that says
5 it's crack. The next element possession. You saw the
6 video. Is there a reasonable doubt? Is there a hole in
7 the box that Mr. Howze possessed the crack. That's for
8 you to decide. I mean you get to see the video as he said
9 but there are a few other facts you probably want to keep
10 in mind.

11 The officer said they lost sight of Mr. Howze for a
12 few seconds. There was a man in a blue track suit that
13 walked by right through the crime scene. Is it reasonable
14 doubt he possessed it? Is it possible the crack was
15 already on the ground and something else came out of his
16 pocket? Ultimately that will be up to you to decide that.
17 But the most interesting point in all of these things the
18 State has to prove is the intent to distribute.

19 If you decide that this was in fact crack, that Mr.
20 Howze did in fact possess it, did he intend to distribute
21 it. Right? The State gives you this weight, this
22 inference level. Again, that's only an inference level,
23 it's only a piece of the puzzle. They have no other
24 tangible evidence to give you about his intent to
25 distribute so what do they do? They bring in their co-

CLOSING ARGUMENT: BY MR. MCKINNON

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1 worker, Marvin Brown, give his opinion on what generally
2 crack users and crack dealers deal with. You know
3 paraphernalia, the size of doses, number of doses they
4 typically have on them. And his testimony varied a little
5 bit but ultimately what does he say? It's not dispositive
6 whether they have a crack pipe or not. Some dealers also
7 smoke. They may have a pipe they may not. Some users who
8 are not actually smoking at the time might not have a
9 crack pipe on them. They might just have it in their car
10 and they're going home. Who knows. It's not dispositive.

11 What about the weight, the number of doses?
12 Certainly he did say that doses can vary based on you know
13 the size of the person, how much their used to smoking
14 crack. How often they smoke it. All these things can
15 vary. It's not a cut and dry point one grams all the time
16 one dose therefore equals sixty beers. All right.

17 I can give you a few analogies, just things that
18 other ring of folks can think about. What about
19 industries like Cosco, Sam's Club, Walmart as we're all
20 familiar with those places, businesses who entire business
21 model is selling items, consumer products, in bulk. You
22 know they're consumer products like crack but they are
23 legal. People go in there buy massive size packages of
24 diapers for their children. Twenty-four packs of Coke.
25 Massive packs of toilet paper, paper towels. Does that

1 mean when they walk out of that store that we
2 automatically assume they're gonna go resale those
3 products? Do you think its equally likely they're gonna
4 resale it as they use it on their own. That's fine that
5 scenario but coming back to this case, this criminal case,
6 the State has the burden of proving beyond a reasonable
7 doubt. Not that its more likely than not that he intended
8 to sell that crack but beyond any reasonable doubt that he
9 was in fact intending to sell that.

10 Again all they have is weight. That's it. Again the
11 State's trying to say by trying to prove a negative to you
12 here. They're trying to muddy the waters. There is no
13 paraphernalia, there is no gauze or other lighters, things
14 like that that users would typically have to smoke at that
15 time. Its just that they're mudding the water. It's not
16 the Defense's burden to prove that he is a crack user.
17 It's their burden to prove that he is a crack dealer.

18 The absence of one does not mean that the other is
19 true. If I'm trying to argue to you the sky is red and I
20 say and my argument is that well it's not blue does it
21 automatically make it red? No. All I've done is try to
22 argue that it's not blue by telling you that its red.
23 Makes no sense.

24 Let me give you a few more examples. What about - I
25 guess we can keep doing this all day with consumer

CLOSING ARGUMENT: BY MR. MCKINNON

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1 products, but what if we see a kid with a big bag of
2 lemons. Does he automatically go make a lemonade stand
3 and start selling it? Maybe, maybe not. Maybe his mom
4 wants to make lemonade. Maybe they're making lemon
5 meringue pie. Who knows. Just because he's got a large
6 amount of something does not give you automatic decision
7 as to what they intend to do with it. Ultimately that's
8 what the State is trying to tell you. They're trying to
9 say okay we got three point five one grams of crack,
10 therefore he intends to distribute.

11 They're saying that my argument that there are no
12 other usual trappings of a drug dealer doesn't matter. A
13 lot of times drug dealers are selling as Marvin Brown was
14 telling you yesterday in his opinion that a lot of times
15 the crack there are not extra baggies, there are not
16 twisty ties, there are no scales. Maybe, maybe not.

17 He did not say all the time. He didn't even say most
18 of time. Just sometimes at the street level he said they
19 do not have all of the usual things. But even if you jump
20 over that and just completely agree that well I'm thinking
21 he's a drug dealer. What else have you got? What kind of
22 a drug dealer does not have a phone, a cell phone, as he
23 makes these deals? They say well no cash obviously he
24 hasn't made any sells yet. Okay. Yeah, so how does that
25 make him a drug dealer? They want to muddy the waters

CLOSING ARGUMENT: BY MR. MCKINNON

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1 again and say three point one grams is likely starting
2 point. Just make you assume that he has bought one point
3 three five grams because a lot of people have that amount
4 that he's definitely gonna sell it and therefore hasn't
5 made any sells yet.

6 Again that's just muddying it. They have to prove he
7 intended to sell it. By making all these negative counter
8 arguments they're not doing that they're just muddying it.
9 Ultimately you guys have to go back there when you talk
10 about this think did the State prove beyond a reasonable
11 doubt Randy Howze intended to sell crack? The burden of
12 proof is on the State.

13 Mr. Epting also in his presentation slipped a few
14 things in there about why Mr. Howze would be guilty of
15 intending to distribute. Things like running, lying about
16 his birth date. Does that logically mean that he intended
17 to distribute? Where does that logic come from? If you
18 believe he possessed crack whether it's to sell or to use
19 or to throw away he'd be guilty of a crime, right? Why
20 would he not run if he possessed it to use or not lie
21 about that but would lie if he was the seller. They are
22 both illegal acts that has no bearing on whether he's
23 guilty of intent to distribute.

24 Also think about this. The officers testified that
25 this car was stopped because a light was out. This was

CLOSING ARGUMENT: BY MR. MCKINNON

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1 not a drug investigation. Marvin Brown wasn't involved in
2 it. This was a regular police officer pulling somebody
3 over for violating a head light ordinance, city ordinance.
4 A traffic violation is why they're pulled over, no phone,
5 no cash, whether you believe the importance of no baggies,
6 twisty's, scales; all those things, the fact remains there
7 are none of those. There is no testimony that Mr. Howze
8 engaged in any sort of hand to hand transaction. Nobody
9 saw him come up to somebody else in a dark alley and
10 exchange something, nothing like that. He was merely a
11 passenger in a car. Not even his car. Was he going
12 home? Was he going to sell crack? Was he going to use
13 crack? Is he going to the movies? Only he can tell you
14 that. The State hasn't proven he's done any of these
15 options.

16 Again, the State doesn't have to prove its more
17 likely than not that one of these outcomes is what he's
18 doing. Beyond a reasonable doubt. Have they done that?

19 Ladies and gentlemen, I know you want to be done but
20 I just leave you at this. Please don't take the easy way
21 out and say this looks like a bad person or whatever
22 you're thinking. He lied, he ran. Think about the
23 elements of the case and how the State needs to prove
24 those elements. The intent to distribute, did they prove
25 beyond a reasonable doubt that he intended to distribute

1 it? I'm confident you will come to the conclusion they
2 did not. Thank you.

3 THE COURT: All right, ladies and gentlemen, during
4 this trial you and I have certain duties to perform. And
5 as the trial judge it is my responsibility to preside over
6 the trial of the case and to rule on the admissibility of
7 the evidence offered. It is also my duty to charge you
8 the law applicable to the case and it is your duty as
9 jurors to accept and apply the law as I now state it to
10 you.

11 If you think you have any ideas what the law is, or
12 what the law ought to be, and it disagrees with what I now
13 tell you the law is, you have sworn an oath - Excuse me -
14 to set aside your own idea and apply the law precisely as
15 I state it to you. And I would remind you you are the
16 sole and exclusive judges of the facts.

17 I also instruct you that the fact that the Defendant
18 was arrested, charged, and indicted in the case is not
19 evidence of guilt. Nor does it create any presumption or
20 inference of guilt. And these documents are simply the
21 formal written instruments which contain the charge made
22 against the Defendant and they serve as the formal
23 documents by which the case is processed and brought into
24 court.

25 Now necessarily you must determine the credibility,

CHARGE ON THE LAW:

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1 or believability, of the witnesses' who have testified and
2 it becomes your duty as jurors to evaluate the evidence
3 and determine which evidence convinces you that it is
4 true. And in determining the believability of the
5 witnesses' you may believe one witness over several or
6 several over one. You may believe a part of the testimony
7 of a witness and reject the remaining part. You may
8 believe the testimony of a witness in it's entirety or
9 reject that same testimony in it's entirety. And you may
10 consider whether the witness has an interest in the result
11 of the trial, whether the witness is prejudiced towards
12 either the State or the Defendant, the opportunity for the
13 witness to have seen the matters and things about which
14 the witnesses' testified and the way a witness acts on the
15 witness stand or what we call a witnesses' demeanor.

16 Now under the laws of this state a defendant may be
17 tried even if the defendant does not attend the trial.
18 But the fact that the defendant is not present may not be
19 considered against the defendant in any manner whatsoever.

20 I would also instruct you and emphasize that the fact
21 that the defendant did not testify is not a factor to be
22 considered by you in any manner whatsoever in your
23 deliberations on the question of guilt or innocence. It
24 must not be considered by you in any manner whatsoever.

25 Every citizen has the constitutional right to remain

1 silent and the assertion of this right must not be
2 considered by you in your deliberations.

3 The burden of proof always remains on the State and
4 the Defendant is never required to prove their innocence.

5 Now the Defendant has pled not guilty to the
6 indictment and that plea puts the burden on the State to
7 prove the Defendant guilty. A person charged with
8 committing a criminal offense in South Carolina is never
9 required to prove themselves innocent. And I charge you
10 that it is a cardinal and a signal rule of the law that
11 the Defendant in a criminal trial will always be presumed
12 to be innocent of the crime for which an indictment has
13 issued unless and until guilt has been proven by evidence
14 satisfying you of guilt beyond a reasonable doubt.

15 Now a reasonable doubt is the kind of doubt which
16 would cause a reasonable person to hesitate to act. And
17 reasonable doubt may arise from the evidence which is in
18 the case or from the lack or absence of evidence in the
19 case and you the jury must determine whether or not
20 reasonable doubt exist as to the guilt of this defendant.

21 The State has the burden of proving each and every
22 element of a crime beyond a reasonable doubt and any
23 reasonable doubt that you have in your deliberations
24 should be resolved in favor of the defendant.

25 Now the defendant has been indicted and is charged

CHARGE ON THE LAW:

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1 with possession with intent to distribute crack cocaine.
2 And the State must prove beyond a reasonable doubt that
3 the Defendant possessed the crack cocaine with the intent
4 to distribute it. To prove possession the State must
5 prove beyond a reasonable doubt that the Defendant had
6 both the power and the intent to control the disposition
7 or the use of the crack cocaine. And actual possession
8 means that the crack cocaine was in the actual, physical
9 custody of the Defendant.

10 The State must also prove beyond a reasonable doubt
11 that the Defendant intended to distribute the crack
12 cocaine. And distribute means to deliver other than by
13 administering or dispensing a drug

14 Intent may be shown by acts and conduct of the
15 Defendant and other circumstances from which you may
16 naturally and reasonably infer intent. And in determining
17 whether the Defendant had the intent to distribute the
18 crack cocaine you may consider the circumstances
19 surrounding the defendant's alleged possession.

20 You may consider the amount of the substance alleged
21 to have been possessed, the manner in which it was
22 allegedly possessed, the place where it was allegedly
23 possessed, and other factors which you consider to be
24 important. You must find that the Defendant did not
25 intend to have the crack cocaine solely for his own use.

CHARGE ON THE LAW:

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1 Possession of more than one gram of crack cocaine
2 creates an inference that the Defendant possessed the
3 crack cocaine with the intent to distribute it. This
4 inference is not relieve the State from proving beyond a
5 reasonable doubt that the Defendant had the intent to
6 distribute. It is simply an evidentiary fact to be taken
7 into consideration by you along with all the other
8 evidence in the case and to be given the weight that you
9 the jury thinks it should receive.

10 Now if you find that the State has failed to prove
11 beyond a reasonable doubt that the Defendant is guilty of
12 possession with intent to distribute crack cocaine, you
13 may consider whether the State has proved beyond a
14 reasonable doubt that the Defendant is guilty of simple
15 possession of crack cocaine.

16 Simple possession does not require an intent to
17 distribute the drug. The State must prove beyond a
18 reasonable doubt that the Defendant knowingly or
19 intentionally possessed crack cocaine.

20 Knowingly means with knowledge consciously and not
21 accidentally. Intentionally means willfully intending the
22 result which actually occurs not accidentally or
23 involuntarily. Intent may be shown by acts and conduct of
24 the Defendant and other such circumstances from which you
25 may naturally and reasonably infer intent.

CHARGE ON THE LAW:

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1 Now, Mr. Foreman, and ladies and gentlemen of the
2 jury, we prepared a verdict form which we will send back
3 into the jury room with you and I think it's pretty self
4 explanatory. But there are two verdicts you must consider
5 with respect to possession with intent to distribute. No
6 importance in the order in which I state them, one has to
7 be stated first. They are guilty or not guilty.

8 If you find that the - beyond a reasonable doubt that
9 the Defendant is guilty of possession with intent to
10 distribute cocaine, crack cocaine, then you should cease
11 your deliberations, indicate on the form, and sign it, Mr.
12 Foreperson, and signal to the bailiff's we'll receive you
13 back. If you find him not guilty of possession with
14 intent to distribute crack cocaine, then you should - you
15 must consider whether or not the Defendant is guilty of
16 simple possession of crack cocaine.

17 And, ladies and gentlemen, I want to tell you all
18 twelve of you must agree on your verdict. And your
19 verdict must be unanimous. You should weigh the evidence
20 calmly and reasonably and your verdict cannot be based on
21 sympathy, passion, prejudice, emotion, bias, or any other
22 consideration not in evidence in the case. You have no
23 friends to reward, you have no enemies to punish.

24 Now, Mr. Foreperson, after you all have reached a
25 unanimous decision, indicate to the bailiffs and we'll

1 receive you back into the courtroom to take the verdict.

2 I'm gonna ask you not to get started yet on your
3 deliberations when you go back until the evidence comes
4 back with the verdict form. I have to go over my charge
5 on the law with the lawyers, make sure I didn't misstate
6 something or omit something; when all this comes back to
7 you then you can begin your deliberations. So at this
8 time I would excuse the jury to their jury room with the
9 exception of Mr. Cloninger. You all wave good bye.

10 (JURY EXITS COURTROOM FOR DELIBERATIONS AT 11:22
11 A.M..)

12 THE COURT: Mr. Cloninger, I can't - You've done just
13 as good a job, you're just as qualified but the law only
14 allows twelve to deliberate so it's kind of like being the
15 brides maid or kissing your sister or something like that,
16 but I thank you for your service. I hope it's been a good
17 rewarding experience for you and I'm happy to tell you
18 that you're excused for the week. So thank you very much.

19 (ALTERNATE EXCUSED AT 11:22 A.M..)

20 THE COURT: Any exception or objections to the
21 charge?

22 MR. MCKINNON: No, Your Honor.

23 SOLICITOR MCNERNEY: No, Your Honor.

24 THE COURT: Okay. Will you all make sure all the
25 evidence is there? This is the verdict form if you want

1 to take it with you.

2 That looks good. Do you all want to look at it?

3 THE BAILIFF: Do you want me to tell them to start
4 deliberating?

5 THE COURT: Yes, sir.

6 (COURT IN RECESS IN THE MATTER OF STATE V. RANDY
7 HOWZE AT 11:22 P.M..)

8 (MISTY PHARR PLEA WITH ATTORNEY MARK SIMPSON, CASIER
9 GIZZARD PLEA WITH ATTORNEY JUDAH VANSYCLE HEARD AT 11:30
10 A.M..)

11 (COURT IN RECESS AT 12:02 P.M..)

12 (COURT BACK IN SESSION IN THE MATTER OF STATE V.
13 RANDY HOWZE AT 12:09 P.M..)

14 THE COURT: All right, you all ready? They want to
15 hear Marvin Brown's testimony.

16 MADAM COURT REPORTER: Let me load it up, Judge.

17 THE COURT: Okay.

18 MADAM COURT REPORTER: All if it, I'm assuming.

19 THE COURT: Well the note says Marvin Brown's
20 testimony. How long is that?

21 MADAM COURT REPORTER: Forty-eight point fifty six
22 seconds.

23 THE COURT: Seconds?

24 MADAM COURT REPORTER: Forty-eight minutes and fifty-
25 six seconds. But now that - Yeah, with about five minutes

1 of it winding the day down.

2 THE COURT: Well, so forty three?

3 MADAM COURT REPORTER: Approximate.

4 THE COURT: Okay.

5 (PAUSE.)

6 THE COURT: All right; I'm gonna send a note back in
7 that says, "would the jury like to hear the entire
8 testimony or just portions?" The entire testimony is
9 forty-three minutes, signed and dated.

10 Would you give that - Let her put a sticker on it,
11 Court's.

12 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED
13 AND MARKED, RECEIVED INTO EVIDENCE.)

14 THE COURT: They have written the cross examination.

15 (PAUSE.)

16 THE COURT: Well let's go ahead and play --

17 Just bring them on back.

18 MADAM COURT REPORTER: What do they want to hear,
19 Judge?

20 THE COURT: Just the cross.

21 (JURY REENTERS COURTROOM AT 12:20 P.M..)

22 THE COURT: All right, ladies and gentlemen, we're
23 gonna play the cross examination.

24 Okay. Here we go.

25 (CROSS TESTIMONY OF COMMANDER MARVIN BROWN, PUBLISHED

RECHARGE REASONABLE DOUBT:

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1 TO THE JURY AT 12:20 P.M..)

2 THE COURT: All right. You all retire to your room.

3 Let us know what you want to do about lunch.

4 (JURY EXITS COURTROOM AT 12:32 P.M..)

5 THE COURT: Okay, let's be at ease. Don't go

6 anywhere. Let's see what they want to do.

7 (COURT AT EASE AT 12:40.)

8 (COURT BACK IN SESSION AT 01:27 P.M..)

9 (JURY REENTERS COURTROOM AT 01:28 P.M..)

10 THE COURT: Mr. Foreman, I understand you all would
11 like me to recharge you on intent to distribute and
12 reasonable doubt.

13 MR. FOREMAN: Right.

14 THE COURT: All right. Reasonable doubt is the kind
15 of doubt which would cause a reasonable person to hesitate
16 to act. Reasonable doubt may arise from the evidence
17 which is in the case or the lack or absence of evidence in
18 the case and you the jury must determine whether or not
19 reasonable doubt exist as to the guilt of this defendant.

20 The State has the burden of proving each and every
21 element of a crime beyond a reasonable doubt and any
22 reasonable doubt that you may have in your deliberations
23 should be resolved in favor of the defendant.

24 And the Defendant is charged with possession with
25 intent to distribute crack cocaine. The State must prove

RECHARGE REASONABLE DOUBT:

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1 beyond a reasonable doubt that the Defendant possessed the
2 crack cocaine with the intent to distribute it. To prove
3 possession the Stat must prove beyond a reasonable doubt
4 that the Defendant had both the power and the intent to
5 control the disposition or use of the crack cocaine.

6 Actual possession means that the crack cocaine was in
7 the actual physical custody of the Defendant. The State
8 must also prove beyond a reasonable doubt that the
9 Defendant intended to distribute the crack cocaine.

10 Distribute means to deliver other than by
11 administering or dispensing the drug. Intent may be shown
12 by acts and conduct of the defendant and other
13 circumstances from which you may naturally and reasonably
14 infer intent. And in determining whether the Defendant
15 had the intent to distribute the crack cocaine you may
16 consider the circumstances surrounding the Defendant's
17 alleged possession. You may consider the amount of the
18 substance alleged to have been possessed, the manner in
19 which it was allegedly possessed, the place where it was
20 allegedly possessed and other factors which you consider
21 to be important.

22 You must find that the Defendant did not intend to
23 have the crack cocaine solely for his own use. Possession
24 of more than one or - Excuse me, possession of more than
25 one gram of crack cocaine creates an inference that the

RECHARGE REASONABLE DOUBT:

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1 Defendant possessed the crack cocaine with intent to
2 distribute it. This inference does not relieve the State
3 from proving beyond a reasonable doubt that the Defendant
4 had the intent to distribute it. It is simply an
5 evidentiary fact to be taken into consideration by you
6 along with the other evidence in the case and to be given
7 the weight you decide it should have.

8 Does that complete what you all want to hear?

9 Okay. If you need more please let me know,
10 otherwise, I'll let you retire to your jury room and have
11 some pizza.

12 (JURY EXITS COURTROOM AT 01:30 P.M..)

13 THE COURT: Okay, any exception or objection?

14 SOLICITOR MCNERNEY: No, Your Honor.

15 MR. MCKINNON: No, Your Honor.

16 THE COURT: Okay. You all just be at ease. I
17 wouldn't go too far.

18 (COURT IN RECESS AT 01:30 P.M..)

19 (COURT BACK IN SESSION AT 02:16 P.M..)

20 (JURY REENTERS COURTROOM AT 02:18 P.M..)

21 THE COURT: All right, Mr. Foreman, I understand
22 you've reached a verdict.

23 MR. FOREMAN: Yes, sir.

24 THE COURT: All right, if you would please hand it to
25 the Bailiff.

VERDICT:

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1 (VERDICT RECEIVED UP BY THE COURT.)

2 THE COURT: All right, Madam Clerk, if you would
3 please publish the verdict.

4 MADAM CLERK: In the State of South Carolina versus
5 Randy Howe with the Indictment No. 2012-GS-46-2-9-4-4 as
6 to the charge of possession of crack cocaine with intent
7 to distribute we the jury find the Defendant guilty,
8 signed by the Foreperson this day.

9 If this so be your verdict so say you all by raising
10 your right hand.

11 Let the record show all affirmed.

12 (ALL JURORS AFFIRMED VERDICT.)

13 THE COURT: All right. Anything further of the jury
14 from the State?

15 SOLICITOR EPTING: Nothing from the State, Your
16 Honor.

17 THE COURT: From the Defense?

18 MR. MCKINNON: Nothing, Your Honor.

19 THE COURT: All right, Mr. Foreman, ladies and
20 gentlemen of the jury, I want to thank you very much for
21 your service in this case and also all week.

22 A number of matters were moved that would not be
23 moved otherwise without your help and without you all
24 coming up to do your civic duty and serve as jurors. So I
25 hope I didn't make a liar out of myself when I told you

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1 you would find this to be a rewarding experience. I think
2 I told you it was an honor and a privilege and it was not
3 easy and you all have done an outstanding job and I thank
4 you again for your service.

5 And I am happy and pleased to tell you that you have
6 completed your service for the week so you're free to go.
7 And when you go home tonight you can talk to whoever you
8 want to about it. Or if - I always like to tell juries
9 that if someone approaches you and you don't want to talk
10 about it and you just tell them to back away and they
11 persist then you just let the Clerk of Court know cause
12 we're not gonna have jurors be harassed or bothered in any
13 way. So you all have a great weekend and thank you very
14 much for your service.

15 (JURY DISMISSED AT 02:21 P.M..)

16 THE COURT: All right, you all got any motions?

17 SOLICITOR MCNERNEY: None from the State, Your Honor.

18 MR. MCKINNON: None from the Defense, Your Honor.

19 I will make a motion to set aside the verdicts. I
20 make a motion I suppose for a new trial when my defendant
21 is located.

22 THE COURT: Okay. Well I'm gonna respectfully deny
23 that motion and this will be a sealed sentence. All
24 right, thank you very much.

25 SOLICITOR MCNERNEY: Your Honor, if I may, may I make

1 his prior drug convictions Court's Exhibits please?

2 THE COURT: Oh, you've got priors.

3 SOLICITOR MCNERNEY: And you may want to know his
4 criminal history I suppose before you do sentence him.

5 THE COURT: Yeah, I need to know it. Was this
6 treated as a what, first, second, third?

7 SOLICITOR MCNERNEY: Third offense.

8 MR. MCKINNON: Third offense but I believe his prior
9 convictions were all simple possessions, if I'm correct.

10 SOLICITOR MCNERNEY: Yes. Would you like for me to
11 read the entire criminal --

12 THE COURT: Yeah, just let me have his record.

13 SOLICITOR MCNERNEY: His record, Your Honor, goes
14 back to 1988 conviction for assault and battery high and
15 aggravated nature. '89 resisting arrest with violence,
16 possession of - I'm sorry, public disorderly conduct, a
17 strong armed robbery for which he received an eight year
18 prison sentence, malicious injury to personal property.
19 In 1990 another strong armed robbery conviction, simple
20 possession of cocaine, assault upon a police officer of
21 which he got another eight year prison sentence. 1996
22 possession of crack cocaine first offense. '97 petit
23 larceny. '98 DUS second and failure to stop for a blue
24 light. 2000 driving under suspension. 2003 possession of
25 marijuana --

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1 THE COURT: 2000 what?

2 SOLICITOR MCNERNEY: 2003 possession of marijuana
3 second offense and DUI first offense.

4 THE COURT: Did you have something in 2000?

5 SOLICITOR MCNERNEY: DUS.

6 THE COURT: DUS. Okay. And go ahead, 2003; I'm
7 sorry.

8 SOLICITOR MCNERNEY: That would conclude his criminal
9 history, Your Honor. I would just like to make this - -

10 THE COURT: I didn't get the 2003. What was that?

11 SOLICITOR MCNERNEY: 2003 possession of marijuana
12 second offense.

13 THE COURT: Okay.

14 SOLICITOR MCNERNEY: And DUI first offense.

15 THE COURT: Okay. All right, yes, ma'am.

16 SOLICITOR MCNERNEY: I would like to make this prior
17 drug convictions Court's Exhibits if I may?

18 THE COURT: Okay.

19 SOLICITOR MCNERNEY: Your Honor, that is a possession
20 of crack cocaine, possession of marijuana, and a
21 possession for unlawful drugs.

22 THE COURT: Okay.

23 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE IDENTIFIED
24 AND MARKED, RECEIVED INTO THE RECORD.)

25 THE COURT: Do you have a sentencing sheet for me?

1 SOLICITOR MCNERNEY: I do, Your Honor.

2 MR. MCKINNON: Do you need me to sign that?

3 THE COURT: You don't have to sign it.

4 Well go ahead and get him to sign it that way we will
5 know to pick him up, who to come get.

6 Do you all have an agreement on what the maximum
7 possible sentence is?

8 SOLICITOR MCNERNEY: Thirty years, Your Honor.

9 MR. MCKINNON: I believe it's ten to thirty but parole
10 work credits and all that and I guess - -

11 SOLICITOR EPTING: Your Honor, I believe that since
12 his priors is possession there is no mandatory minimum.

13 SOLICITOR MCNERNEY: Right.

14 MR. MCKINNON: Minimum of ten can be suspended.

15 SOLICITOR EPTING: That's correct.

16 THE COURT: You got an envelop?

17 MADAM CLERK MEANS: I'll go get you one. Be right
18 back.

19 THE COURT: Do we need to get that foreperson to sign
20 this?

21 MADAM CLERK CHILDERS: Lord, yes.

22 ATTORNEY PHIL SMITH: They may still be in the back
23 hall?

24 THE COURT: Would you check please?

25 MADAM CLERK CHILDERS: Boyd, Edward Boyd. He's left,

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1 Cindy. She's gonna dial his cell phone.

2 MADAM CLERK CHILDERS: Okay. She's calling him so
3 he'll be back down.

4 THE COURT: Okay. That's great.

5 (COURT ADJOURNED IN THE MATTER OF STATE VERSUS RANDY
6 HOWE AT 02:30 P.M..)

7 (END OF TRANSCRIPT OF RECORD.)

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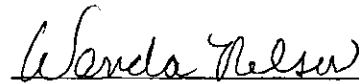
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 York County, South Carolina, on the 17th and 18th days of October 2012.

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



Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: May 22 / 2014

County: York
Date: October 17-18, 2012

VOIR DIRE/BATSON SHEET

Case No.: 2012- GS-46-02944

Judge: Honorable Edward Miller

Pl./State: State of South Carolina

Pl./State Atty's.: Solicitor Rebecca McNerney
Solicitor Chris Epting

Defendant: Randy Howze

Defense Atty: Mr. Mark McKinnon

Court Reporter: Wanda Nelson

<u>Juror No.</u>	<u>Name</u>	<u>Sex</u>	<u>Race</u>	<u>STRIKES</u>			
				<u>*Court</u>	<u>Plaintiff</u>	<u>Defense</u>	<u>Accept</u>
32**	Edward W. Boyd	M	W				X
121	Johnnie M. Jackson	M	B				X
146	Steven S. Long	M	W				X
137	Valerie M. Lawrence	F	W				X
154	Misty B. Massey	F	W				X
29	Charlotte E. Bishop	F	W				X
148	James M. Lynch	M	W				X
48	Arthur B. Cathcart	M	B				X
211	Michael A. Sites	M	W				X
219	Alexa H. Spratt	F	W				X
248	David E. Wolfe	M	W		X		
21	James E. Beal	M	W				X
113	Freddy A. Houston	M	W				X
54	Ricky W. Cloninger	M	W				X

*For the Court column, indicate who made the motion to strike the jurors for cause.

C-Court, P-Plaintiff, D-Defense

** Foreperson

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2014 APR 12 AM 10:02

At a Court of General Sessions, convened on August 16, 2012, the Grand Jurors of York County present upon their oath

CLERK OF COURT
YORK COUNTY, SC

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

Aka: Randy Houze

On or about April 23, 2012, the Defendant, Randy Howze, did in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver cocaine base in violation of the provisions of Section 44-53-370 and 44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

197
WITNESSES

RHPD / Spencer

adm

ARREST WARRANT NUMBER

N180638

ACTION OF GRAND JURY

TRUE BILL

Paul V...
Foreperson of Grand Jury

Date: 8/16/12

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: 10/18/12

DOCKET NO. 2012-GS-46-02944

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 16, Term 2012

THE STATE

vs.

RANDY HOWZE

AKA: Randy Houze

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE BASE

SC Code: 44-53-375

CDR Code: 3039

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

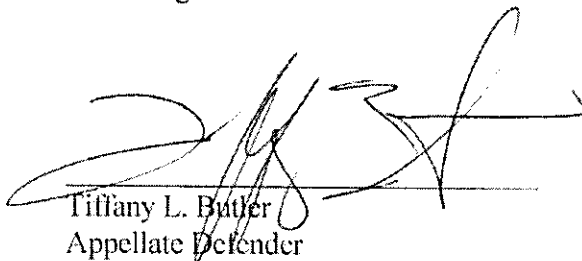
Witness:

C.C.C. PLS. AND G.S.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

April 29th, 2015



Tiffany L. Butler
Appellate Defender

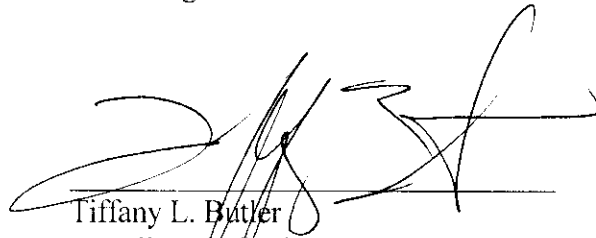
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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

April 29th, 2015



Tiffany L. Butler
Appellate Defender

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

ATTORNEY FOR APPELLANT

5

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RECEIVED

APR 29 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

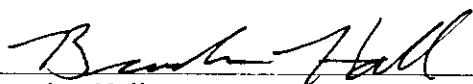
RANDY HOWZE,

APPELLANT

APPELLATE CASE NO. 2014-000718

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of April, 2015.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 29th day of April, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.