

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MAJOR DONNARD DUBOSE III

APPELLANT

APPELLATE CASE NO 2017-002167

RECORD ON APPEAL

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2014-GS-21-00148
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	(DAYS 1 & 2 of 3)
	)	
Major Donnard Dubose III,	)	
	)	
Defendant.	)	
	)	

September 11-12, 2017
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge; and a jury

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

Angel Daniels, Esquire
Attorney for the Plaintiff

James T. McBratney Jr., Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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21

dashes -- intentional or purposeful interruption

22

or change in thought

23

ellipses . . . trailing off

24

[ph] phonetically written

25

[sic] written as said

1 SEPTEMBER 11, 2017

2 (WHEREUPON, the proceedings began at 11:55 a.m.)

3 MS. DANIELS: May it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. DANIELS: Judge, standing before you is Major
6 Donnard Dubose on Indictment 2014-GS-21-0148. He is on the
7 trial list for a date-certain trial to begin this week,
8 Judge.

9 The State has made an offer. Well, he's initially --
10 he's charged with trafficking in cocaine base between 28 and
11 100 grams, which carries from 7 to 25 years. The State has
12 made an offer to reduce it to trafficking between 10 and 28
13 grams, which carries between 3 and 10 years.

14 He has indicated he does not want to accept the offer.
15 So at this point, the State is revoking the offer, and we
16 will be ready for trial.

17 THE COURT: All right.

18 MR. JEPERTINGER: Tomorrow.

19 MS. DANIELS: Tomorrow.

20 THE COURT: Okay. Mr. McBratney, you represent Mr.
21 Dubose; is that correct?

22 MR. MCBRATNEY: Yes, sir.

23 THE COURT: And as far as in your representation with
24 him, do you feel that he fully understands the -- the State's
25 offers? Obviously, he's not bound to accept anything, but he

1 fully understands the offers?

2 MR. MCBRATNEY: Yes, sir.

3 THE COURT: Okay. Understands, in your opinion, that if
4 he were to be convicted at trial, what sentences he would be
5 -- sentencing he would be looking at if he were to be
6 convicted?

7 MR. MCBRATNEY: Yes, sir.

8 THE COURT: Okay. All right. Mr. Dubose, do you have
9 any question about any of the offers that the State has made,
10 sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. What -- what -- what are the
13 questions?

14 THE DEFENDANT: It's just that I don't feel like the
15 plea is suitable for me. I don't think it's violent and I
16 don't think that it -- I don't agree with the offer that
17 she's trying to give me, sir.

18 THE COURT: Okay.

19 THE DEFENDANT: That's it.

20 THE COURT: And you understand you're certainly not --
21 you're not obligated to accept any offer. You understand
22 that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. All right. But I just want to make
25 sure that you understand so that you're making a -- a

1 knowledgeable refusal of their offer. Okay?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So they're going to call your case for trial
4 tomorrow, is my understanding. And obviously, I mean it goes
5 without saying if you get acquitted, then -- then you'll just
6 go home, but if you were to be convicted --

7 THE DEFENDANT: Yes, sir.

8 THE COURT: -- the range that the Court could impose --
9 depending on the facts surrounding the case, the judge would
10 have to impose a sentence of not less than 7 years and no
11 more than 25 years. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And then obviously, if you're
14 acquitted, then you obviously receive no sentence.

15 Ms. Daniels has offered to allow you to plead to the
16 lesser charge. That would expose you to a mandatory 3 years,
17 but not less than 10, and you understand that offer?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. All right. Has anyone forced you or
20 coerced you in any way to make the decision you've made to
21 reject the State's offer? Has anyone put any pressure on you
22 to reject that?

23 THE DEFENDANT: No, sir. But as to the reason why I'm
24 here today is why I'm facing this case and they know that.
25 So that's why I refused their offer, sir.

1 THE COURT: Right. But that decision to refuse their
2 offer, that's your decision?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: No one is forcing you to make that decision,
5 are they?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. So that's something you're doing
8 based upon your understanding and your knowledge of
9 everything?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, sir. All right. Now, is there
12 --

13 MS. DANIELS: Yeah. One more thing too, Judge. Mr.
14 Dubose didn't show up at the roster meeting that we had two
15 weeks ago; so he currently has a bench warrant. I know that
16 Mr. McBratney was trying a case in, I think, Williamsburg
17 County, but Mr. Dubose did not show up at the roster meeting.

18 THE COURT: Okay.

19 MR. MCBRATNEY: And, Your Honor, it's my fault because I
20 was trying a murder case down in Williamsburg County and I
21 didn't notify him to be here. So, you know, I'm going to
22 fall on the sword for him, but we'll be here in the morning.

23 THE COURT: All right.

24 MR. MCBRATNEY: Ready to go.

25 THE COURT: Now, Mr. Dubose, based on what Mr. McBratney

1 has shared with me --

2 THE DEFENDANT: Yes, sir.

3 THE COURT: It appears that -- that it very well may not
4 have been a willful failure to appear on your part.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: So I'm inclined -- I'm inclined to lift the
7 bench warrant. Okay? But here's -- I want you to understand
8 something today so that we don't have any misunderstanding
9 later.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If the case -- if the State calls your case
12 tomorrow, they will be allowed to go forward whether you're
13 present or not. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I mean I just want to make it clear because
16 I believe -- and I haven't seen your bond paperwork, but most
17 bond paperwork says that your case can be tried in your
18 absence if you fail to appear.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: But I want to make sure there's no question
21 that you understand that so that you -- you have every right
22 to be present.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And to present whatever -- either present
25 whatever case you'd like to present or not present anything,

1 but you have the right to be present. And you also need to
2 understand though that if you decide to not return, then a
3 bench warrant will be issued for your failure to appear and
4 the case will go forward, whether you're present or not. Do
5 you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right, sir. All right. I'm going to
8 lift the bench warrant based on what Mr. McBratney has shared
9 with me, and you want them back for jury selection tomorrow
10 morning?

11 MS. DANIELS: Yes, sir.

12 THE COURT: All right. Jury selection is at 9:30.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: But you really need to just -- whenever Mr.
15 McBratney wants you to be present, you make sure you're here.
16 Okay?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Thank you, sir. Good luck to
19 you.

20 THE DEFENDANT: Thank you, sir.

21 (WHEREUPON, the proceedings adjourned for the day at
22 12:02 p.m.)

23 SEPTEMBER 12, 2017

24 (WHEREUPON, the proceedings resumed at 12:17 p.m.)

25 THE COURT: Thank you, folks. Please have a seat.

1 Ladies and gentlemen, I want to -- my name is Tommy
2 Russo. I'm a Circuit Court judge here. I'll be working with
3 those of you who may be involved in this next case.

4 I'm going to recognize -- I know y'all are getting ready
5 to get out of here and you're hungry; so I'm not going to do
6 a lot of pleasantries. It's a pleasure to work with you, but
7 we're going to get right on it in selecting this jury.

8 So, Madam Solicitor, you can call the next case, please.

9 MR. MCBRATNEY: Your Honor, may we approach?

10 THE COURT: Yes.

11 (WHEREUPON, a bench conference was held in the presence
12 of the jury panel but out of the hearing of the jury
13 panel as follows.)

14 MR. MCBRATNEY: Your Honor, I just, for the record, want
15 to make a motion to disqualify this jury panel. By my count,
16 there are 24 or 25 jurors, and there are only four African-
17 Americans on the jury. I don't believe it's representative
18 of the population or the voter registration rolls for
19 Florence County, and it's not going to give my client a jury
20 of his peers.

21 THE COURT: Okay. I'm going to respectfully deny that.
22 My -- and we'll go more into the record when we can do so,
23 but my understanding is the jury was selected -- the pool was
24 -- and, you know, we can get the clerk to testify to it, you
25 know, later, but it was pulled the same way all juries are

1 pulled throughout the county.

2 MR. MCBRATNEY: But we don't have opportunity to get the
3 whole pool because some of them were drawn on the other
4 trial.

5 THE COURT: Well -- and I understand that, but I'm going
6 to respectfully deny the motion and we'll flesh it out more
7 when we have the opportunity.

8 MS. DANIELS: Judge, while we're up here, I'm just going
9 forward on the trafficking charge, not the failure to stop
10 charge. So just so you don't --

11 THE COURT: Yeah. I think -- I think I knew that, but I
12 --

13 MS. DANIELS: Okay. Just -- yeah.

14 THE COURT: Okay.

15 (WHEREUPON, the bench conference ended, and the
16 proceedings resumed as follows.)

17 THE COURT: All right. Solicitor, I apologize. Go
18 ahead.

19 MS. DANIELS: The State calls the State versus Major
20 Donnard Dubose. That's Indictment 2014-GS-21-0148.

21 THE COURT: Thank you, ma'am. Ladies and gentlemen, you
22 heard Madam Solicitor call the case, 2014-GS-21-0148, State
23 of South Carolina versus Major Donnard Dubose III.

24 Mr. Dubose is charged under this indictment or this
25 document -- an indictment is simply a piece of paper that

1 brings the charge into this court, and he is charged with the
2 offense of trafficking in cocaine base, to which he has pled
3 not guilty. And that plea of not guilty places upon him the
4 presumption of innocence, and it is the State's burden to
5 prove the elements of this charge beyond a reasonable doubt.

6 But for purposes of the questions that I'm going to need
7 to ask you, I'm going to read to you the allegations
8 contained in the indictment. The indictment is just that.
9 These are allegations that have been made against Mr. Dubose.
10 This indictment and this information is in no way evidence
11 against Mr. Dubose and is not evidence in support of the
12 State's case. It is merely the allegations that have been
13 made against him.

14 The allegations are as follows:

15 That Major Donnard Dubose III did in Florence County on
16 or about June the 7th of 2011, knowingly sell, deliver,
17 purchase, or bring into this state or did aid, abet, attempt,
18 or conspire to sell, deliver, purchase, or bring into this
19 state, or was in actual or constructive possession or
20 attempted to become in actual or constructive possession of a
21 quantity of cocaine base in an amount of more than 28 grams
22 but less than 100 grams, the same being a controlled
23 substance, all within the meaning of Section 44-53-110, et.
24 seq. of the Code of Laws of South Carolina, as amended. Such
25 possession not having been authorized and in violation of

1 that Section 44-53-375(c) of the South Carolina Code of Laws,
2 as amended.

3 Those are the allegations made against Mr. Dubose. Is
4 there any member of the jury panel who knows anything about
5 this case at all? If so, please stand.

6 (WHEREUPON, no one stood.)

7 THE COURT: Thank you. There are none.

8 Folks, I'm going to ask the attorneys to introduce
9 themselves. If you'd please listen carefully.

10 MS. DANIELS: Thank you, Judge. My name is Angel
11 Daniels. I'm an assistant solicitor in the 12th Judicial
12 Circuit, which is Florence and Marion counties. Ed Clements,
13 who is here right here, is the solicitor.

14 MR. MCBRATNEY: My name is James McBratney. I practice
15 law here in Florence. I've been practicing since 1973 right
16 here in Florence. I'm from Florence and I went to high
17 school here. I went to The Citadel and then went to the
18 University of South Carolina Law School.

19 THE COURT: Thank you, sir.

20 Folks, is there any member of the jury panel who is
21 related by blood, connected by marriage, or who has any close
22 business or personal relationship with or who has ever been
23 either prosecuted by or represented by Ms. Daniels? If so,
24 please stand.

25 (WHEREUPON, no one stood.)

1 THE COURT: Thank you. There are none.

2 Is there any member of the jury panel who is related by
3 blood, connected by marriage, or who has any close business
4 or personal relationship with or who has ever been
5 represented by Mr. McBratney? If so, please stand.

6 (WHEREUPON, no one stood.)

7 THE COURT: Thank you. There are none.

8 Mr. McBratney, I'm going to get you to introduce Mr.
9 Dubose and have him stand briefly, sir.

10 MR. MCBRATNEY: This is Major Donnard Dubose.

11 THE COURT: All right. Thank you, Mr. Dubose. You may
12 have a seat, sir.

13 Is there any member of the jury panel related by blood,
14 connected by marriage, or who has any close business or
15 personal relationship with Mr. Dubose? If so, please stand.

16 (WHEREUPON, no one stood.)

17 THE COURT: Thank you. There are none.

18 Solicitor, do you have -- I need a list of witnesses.

19 MS. DANIELS: Judge, I've given a copy of my witness
20 list to Mr. McBratney.

21 THE COURT: All right. Ladies and gentlemen, I'm going
22 to call out the names that are on this list. These are
23 possible or potential witnesses. They may or may not testify
24 during the course of this trial.

25 If you hear a name on this list, the question that I

1 will be asking as it relates to these names is the same that
2 I asked as far as with Mr. Dubose, and that is if you're
3 related by blood, connected by marriage, or have any close
4 business or personal relationship. If you hear a name on
5 this list and that question applies to that individual for
6 you, I would ask that you stand when you hear that.

7 Now, I'm going to call out several names. So if you do
8 stand, please continue to listen because it may be that you
9 know more than one individual on this list.

10 The following are possible or potential witnesses that
11 may appear during the course of this trial and testify. And
12 if any of these witnesses are in the court, I would ask that
13 you stand and face the jury, please.

14 Ben Price.

15 Shane Keith.

16 Brad McDowell.

17 Larry Quick.

18 Lawrence -- is it Zivkovich? Zivkovich? Lawrence
19 Zivkovich.

20 Any member of the panel related by blood, connected by
21 marriage, or have any close business or personal relationship
22 with those individuals?

23 (WHEREUPON, no one stood.)

24 THE COURT: Thank you. There are none.

25 Ladies and gentlemen, is there any member of the jury

1 panel who either currently or in the past has ever provided
2 support, whether it be financial support or whether it be by
3 volunteering of your time, to any group or organization that
4 -- that is an organization established to support victims'
5 rights or some victim advocacy group, such as MADD, Mothers
6 Against Drunk Drivers, SADD, Students Against Drunk Drivers,
7 CAV, Citizens Against Violence, or any member of those types
8 of organizations? If so, please stand.

9 (WHEREUPON, no one stood.)

10 THE COURT: Thank you. There are none.

11 Is there any member of the jury panel who has ever
12 either volunteered by way of your time or given as money to
13 any organization that's main purpose is to support or advance
14 the -- the goal of law enforcement of any law enforcement
15 agency, things such as the Fraternal Order of Police, the
16 South Carolina Troopers Association, the South Carolina
17 Sheriffs Association, any of those types of organizations?
18 Is there any member of the panel who has been a contributor
19 by way of money or of donating of your time to any of those
20 organizations? If so, please stand.

21 (WHEREUPON, five people stood.)

22 THE COURT: All right. Ma'am, I'm going to start on the
23 front here.

24 JUROR NUMBER 43: Angela Godbold, 43.

25 THE COURT: All right. Ms. Godbold, the fact that you

1 -- was it yourself or a member of your family?

2 JUROR NUMBER 43: Myself.

3 THE COURT: The fact that you've been a contributor in
4 some way to any -- any organization such as that, would that
5 in any way affect your ability to give both the State and the
6 defendant a fair and impartial trial?

7 JUROR NUMBER 43: No.

8 THE COURT: Thank you, ma'am. You may have a seat.
9 Ma'am, your name, please?

10 JUROR NUMBER 132: Barbara Stinney, 132.

11 THE COURT: All right. Ms. Stinney, was it yourself or
12 a member of your family, ma'am?

13 JUROR NUMBER 132: Myself.

14 THE COURT: And, ma'am, would that in any way affect
15 your ability to give both the State and the defense a fair
16 and impartial trial if you were to be selected as a member of
17 this panel?

18 JUROR NUMBER 132: No, sir.

19 THE COURT: Thank you very much, ma'am. Sir, your name,
20 please?

21 JUROR NUMBER 45: Charles Goodale, Number 45.

22 THE COURT: All right, sir. And, Mr. Goodale, yourself
23 or a member of your family?

24 JUROR NUMBER 45: Myself.

25 THE COURT: And would that in any way affect your

1 ability to be fair and impartial?

2 JUROR NUMBER 45: No, sir.

3 THE COURT: Thank you, sir. Ma'am, your name, please?

4 JUROR NUMBER 153: Deborah White. I'm 153.

5 THE COURT: All right. Ms. White, ma'am, was it
6 yourself or a member of your family?

7 JUROR NUMBER 153: Myself.

8 THE COURT: Would that in any way, ma'am, affect your
9 ability to give both the State and the defense a fair and
10 impartial trial?

11 JUROR NUMBER 153: No, sir.

12 THE COURT: Thank you very much, ma'am. Yes, ma'am.
13 Your name, please?

14 JUROR NUMBER 144: Chasidy Ward.

15 THE COURT: All right.

16 JUROR NUMBER 144: 144.

17 THE COURT: 144. Ms. Ward, yourself or a member of your
18 family?

19 JUROR NUMBER 144: Myself.

20 THE COURT: Ma'am, would that in any way affect your
21 ability to be fair and impartial?

22 JUROR NUMBER 144: No, sir.

23 THE COURT: Thank you, ma'am. You may have a seat.

24 Ladies and gentlemen, as with all trials here in this
25 court -- criminal trials in this court, as I told you

1 earlier, the defendant in any case is presumed innocent and
2 it is the burden upon the State to prove the elements of the
3 crime that is charged and that a defendant does not have any
4 burden to prove anything.

5 Is there any member of the jury panel who does not
6 believe in the premise of our criminal justice system that
7 everyone who is accused of a crime is presumed innocent
8 unless proven guilty by the State? Is there any member of
9 the panel who would not be able to follow that premise of
10 law? If so, please stand.

11 (WHEREUPON, no one stood.)

12 THE COURT: Thank you. There are none.

13 Folks, I have -- obviously, any time we select a jury,
14 our goal -- you've heard me ask questions and those of you
15 who have responded to those questions, my follow-up question
16 is always would that in any way affect your ability to be
17 fair and impartial. That's what we're looking to do anytime
18 we select the jury in this courtroom, whether it's a civil
19 case or whether it's a criminal matter.

20 We're looking to impanel a group of folks that can set
21 aside anything that goes on outside this courtroom or
22 anything that goes on away from here. Forget that and just
23 focus your attention on the evidence that is presented during
24 the course of this trial, giving both the State and the
25 defense a fair and impartial hearing. That's our goal every

1 time we select a jury.

2 I could ask questions all morning or afternoon now to
3 try to determine if anyone has an issue with regards to that,
4 but maybe the easiest thing is to simply ask. Whether I've
5 asked the question or not, is there any member of the jury
6 panel who knows of any reason why you would not be able to
7 give both the State of South Carolina and the defendant at
8 the bar a fair and impartial trial? If so, please stand.

9 (WHEREUPON, no one stood.)

10 THE COURT: Thank you. There are none.

11 Any additional questions or voir dire from the State?

12 MS. DANIELS: No, Your Honor..

13 THE COURT: Anything further from the defense?

14 MR. MCBRATNEY: No, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, we're
16 going to go through the same process that we went -- that you
17 went through earlier with the case that was tried earlier.
18 Madam Clerk will -- have you already got your list?

19 THE CLERK: We're printing it now.

20 THE COURT: Okay.

21 THE CLERK: Yes, sir.

22 THE COURT: Their -- their computer is taking your list
23 of names and completely randomly reordering those names and,
24 when she gets that new list, she will then call the first
25 name on that list. If your name is called, if you would,

1 please come forward. We will ask you to stand by the
2 microphone and face the back of the courtroom.

3 She'll inquire first of the State words to this effect.
4 What say you for the State? The State has two options. They
5 can either excuse you and, if they do, you'll go back and
6 have a seat, or they can present you and, if they present
7 you, you'll remain standing and then she'll ask of the
8 defense words to the same effect. What say you for the
9 defense? The defense has two options. They can either
10 excuse you and, if they do, you'll go back and have a seat,
11 or they can seat you and, if they seat you, you'll come
12 around and have a seat in the jury box.

13 Now, there's no way of knowing whether or not your name
14 is going to be called at all or not, but when it is called,
15 there's still no way of knowing whether or not you're going
16 to be excused or seated. So if you would, if your name is
17 called, please bring with you any items you brought to the
18 courtroom with you today, any personal items you brought,
19 because it may be that you're going to have a seat here and
20 not return to your seat out there.

21 Okay? So we'll -- we'll proceed as soon as she's ready
22 with that list.

23 (WHEREUPON, there was a pause in the proceedings, after
24 which the proceedings resumed as follows.)

25 THE COURT: All right. Madam Clerk, are you ready?

1 THE CLERK: Uh-huh. Yes, sir.

2 THE COURT: Is the State ready to proceed to jury
3 selection?

4 THE CLERK: Yes, Your Honor.

5 THE COURT: Is the defense ready?

6 MR. MCBRATNEY: We're ready, Your Honor.

7 THE COURT: All right. Madam Clerk?

8 THE CLERK: Number 1, Ruth Williamson. Number 156.
9 (WHEREUPON, a white female came forward.)

10 THE CLERK: What say the State?

11 MS. DANIELS: Please present Ms. Williamson.

12 THE CLERK: What say the defendant?

13 MR. MCBRATNEY: We'll excuse Ms. Williamson from the
14 trial of this case.

15 THE CLERK: You're excused from this trial only. Number
16 43, Angela Godbold.

17 (WHEREUPON, a white female came forward.)

18 THE CLERK: What say the State?

19 MS. DANIELS: Please present Mrs. Godbold.

20 THE CLERK: What say the defendant?

21 MR. MCBRATNEY: Swear Ms. Godbold.

22 THE CLERK: Please be seated in the jury box. Number
23 49, Stephen Greenwood.

24 (WHEREUPON, a white male came forward.)

25 THE CLERK: What say the State?

1 MS. DANIELS: Please present Mr. Greenwood.
2 THE CLERK: What say the defendant?
3 MR. MCBRATNEY: Swear Mr. Greenwood.
4 THE CLERK: You can have a seat in the jury box, please.
5 Number 113, Christopher Robinson.
6 (WHEREUPON, a white male came forward.)
7 THE CLERK: What say the State?
8 MS. DANIELS: Please present Mr. Robinson.
9 THE CLERK: What say the defendant?
10 MR. MCBRATNEY: We'll excuse Mr. Robinson from the trial
11 of this case.
12 THE CLERK: Number 34, Pamela Evans.
13 (WHEREUPON, a white female came forward.)
14 THE CLERK: What say the State?
15 MS. DANIELS: Please present Ms. Evans.
16 THE CLERK: What say the defendant?
17 MR. MCBRATNEY: Swear Ms. Evans.
18 THE CLERK: You may have a seat in the jury box, please.
19 Number 144, Chasidy Ward.
20 (WHEREUPON, a white female came forward.)
21 THE CLERK: What say the State?
22 MS. DANIELS: Please present Ms. Ward.
23 THE CLERK: What say the defendant?
24 MR. MCBRATNEY: We'll excuse Ms. Ward from the trial of
25 this case.

1 THE CLERK: You're excused from this case only. Number
2 153, Deborah White.
3 (WHEREUPON, a black female came forward.)
4 THE CLERK: What say the State?
5 MS. DANIELS: Please present Mrs. White.
6 THE CLERK: What say the defendant?
7 MR. MCBRATNEY: Swear Ms. White.
8 THE CLERK: Have a seat in the jury box, please. Number
9 59, Sarah Hennings.
10 (WHEREUPON, a white female came forward.)
11 THE CLERK: What say the State?
12 MS. DANIELS: Please excuse Mrs. Hennings.
13 THE CLERK: You may have a seat. You're excused for
14 this jury only. Number 29, Victoria Donato.
15 (WHEREUPON, an Asian female came forward.)
16 THE CLERK: What say the State?
17 MS. DANIELS: Please present Ms. Donato.
18 THE CLERK: What say the defendant?
19 MR. MCBRATNEY: Swear Ms. Donato.
20 THE CLERK: Please have a seat in the jury box. Number
21 109, Darwin Pryor.
22 (WHEREUPON, a white male came forward.)
23 THE CLERK: What say the State?
24 MS. DANIELS: Please present Mr. Pryor.
25 THE CLERK: What say the defendant?

1 MR. MCBRATNEY: We'll excuse Mr. Pryor.

2 THE CLERK: You may have a seat. You're excused from
3 this trial only. Number 78, Ronald Justice.

4 (WHEREUPON, a white male came forward.)

5 THE CLERK: What say the State?

6 MS. DANIELS: Please present Mr. Justice.

7 THE CLERK: What say the defendant?

8 MR. MCBRATNEY: We'll excuse Mr. Justice from the trial
9 of this case.

10 THE CLERK: You may have a seat. You're excused from
11 this trial only. Number 133, Cathy Strawn.

12 (WHEREUPON, a white female came forward.)

13 THE CLERK: What say the State?

14 MS. DANIELS: Please present Mrs. Strawn.

15 THE CLERK: Does the defendant wish to challenge this
16 juror?

17 MR. MCBRATNEY: No, ma'am.

18 THE CLERK: You may have a seat in the jury box. Number
19 132, Barbara Stinney.

20 (WHEREUPON, a black female came forward.)

21 THE CLERK: What say the State?

22 MS. DANIELS: Please present Mrs. Stinney.

23 THE CLERK: Does the defendant wish to challenge this
24 juror for cause?

25 MR. MCBRATNEY: No, ma'am.

1 THE CLERK: You may have a seat in the jury box. Number
2 123, Kimberly Skipper.

3 (WHEREUPON, a white female came forward.)

4 THE CLERK: What say the State?

5 MS. DANIELS: Please present Mrs. Skipper.

6 THE CLERK: Does the defendant wish to challenge this
7 juror for cause?

8 MR. MCBRATNEY: No, ma'am.

9 THE CLERK: You may have a seat in the jury box, please.
10 Number 68, Jimmy Hughes.

11 (WHEREUPON, a black male came forward.)

12 THE CLERK: What say the State?

13 MS. DANIELS: Please excuse Mr. Hughes.

14 THE CLERK: You are excused from this trial only.
15 Number 13, Suzanne Browder.

16 (WHEREUPON, a white female came forward.)

17 THE CLERK: What say the State?

18 MS. DANIELS: Please present Ms. Browder.

19 THE CLERK: Does the defendant wish to challenge this
20 juror for this cause only?

21 MR. MCBRATNEY: No, ma'am.

22 THE CLERK: You may have a seat in the jury box, please.
23 Number 5, Lemuel Benjamin.

24 (WHEREUPON, a white male came forward.)

25 THE CLERK: What say the State?

1 MS. DANIELS: Please present Mr. Benjamin.

2 THE CLERK: Does the defendant wish to challenge this --
3 this juror for this cause?

4 MR. MCBRATNEY: No, ma'am.

5 THE CLERK: You may have a seat in the jury box. Number
6 52, Sondra Gripper.

7 (WHEREUPON, a black female came forward.)

8 THE CLERK: What say the State?

9 MS. DANIELS: Please present Mrs. Gripper.

10 THE CLERK: Does the defendant wish to challenge this
11 juror for cause?

12 MR. MCBRATNEY: No, ma'am.

13 THE CLERK: You may have a seat in the jury box, please.
14 Number 110, Penny Randall.

15 (WHEREUPON, a white female came forward.)

16 THE CLERK: What say the State?

17 MS. DANIELS: Please present Mrs. Randall.

18 THE CLERK: Does the defendant wish to challenge this
19 juror for cause?

20 MR. MCBRATNEY: No, ma'am.

21 THE CLERK: You may have a seat in the jury box, please.

22 THE COURT: All right. We'll do one alternate. It will
23 be one and two on the strikes.

24 THE CLERK: Number 45, Charles Goodale.

25 (WHEREUPON, a white male came forward.)

1 THE CLERK: What say the State?

2 MS. DANIELS: Please present Mr. Goodale.

3 THE CLERK: What say the defendant?

4 MR. MCBRATNEY: We'll excuse this juror from the trial
5 of this case.

6 THE CLERK: You may have a seat. Number 56, Robin
7 Harrell.

8 (WHEREUPON, a white female came forward.)

9 THE CLERK: What say the State?

10 MS. DANIELS: Please present Mrs. Harrell.

11 THE CLERK: What say the defendant?

12 MR. MCBRATNEY: We'll excuse Ms. Harrell from the trial
13 of this case.

14 THE CLERK: You may have a seat, please. Number 72,
15 Monique James.

16 (WHEREUPON, a black female came forward.)

17 THE CLERK: What say the State?

18 MS. DANIELS: Please excuse Miss James.

19 THE CLERK: You're excused from this trial only. Number
20 148, Shannon Watt.

21 (WHEREUPON, a white female came forward.)

22 THE CLERK: Does the State wish to challenge this juror
23 for cause?

24 MS. DANIELS: No.

25 THE CLERK: Does the defendant wish to challenge this

1 juror for cause?

2 MR. MCBRATNEY: No, ma'am.

3 THE CLERK: You may have a seat in the jury box, please.

4 THE COURT: All right. Are there any motions regarding
5 jury selection from the State?

6 MS. DANIELS: No, Your Honor.

7 THE COURT: Any motions regarding jury selection from
8 the defense?

9 MR. MCBRATNEY: Just reserving the motion that I made
10 prior to the jury selection.

11 THE COURT: Yes, sir. Yes, sir. Okay. We'll certainly
12 note that and take care of that.

13 All right. Ladies and gentlemen, those of you that
14 remain in the jury pool, I'm going to ask you, if you would,
15 to -- you've got the number? Do they have the number?

16 When you leave here, they're going to give you a phone
17 number. If you would, call that number after 6:00 this
18 evening. There will be instructions on what you need to do,
19 whether or not you need to return in the morning or whether
20 or not you need to call back or whether or not you're going
21 to be excused. I don't know what the message will be, but if
22 you would, call that number after 6:00 and just follow the
23 instructions that you get on that recording.

24 Please do me a favor or do yourself a favor. Call that
25 number. Don't forget. Lately, we've had some folks in the

1 last couple months that have not been calling the number when
2 they've been asked to call back and we asked the jury to come
3 back in. They don't show up and what will happen is we're
4 going to then send a deputy out to find you. So you don't
5 want that. So if you would, just call that number after 6:00
6 this evening. Okay?

7 So everyone else remained seated. Folks, you're excused
8 to call that number after six this evening. Okay?

9 (WHEREUPON, the jury panel was released and exited the
10 courtroom at 12:52 p.m.)

11 THE COURT: And, folks, I'm going to send you to lunch,
12 but I need you back. Okay? It's about nine minutes to one.
13 I'm going to ask you, if you would, to please be back here in
14 the jury room at 2:30.

15 That gives you a little over an hour and a half, and I
16 don't -- I don't know if any of you had any difficulty with
17 parking. You probably won't this afternoon because we don't
18 have all these jurors here. So if you would, do that for me.

19 Now, I'm going to -- when I do excuse you, I'm going to
20 ask you to do me a favor. Throughout this trial, I'm going
21 to ask that you have no conversation with anybody about this
22 case, and that includes amongst yourselves. It's very
23 important that you keep an open mind and that you not -- you
24 do not make any decisions about anything until all of the
25 evidence is in and the case has been given to you for your

1 deliberations. So until that point, it's very important you
2 do not discuss this case with anybody, have any conversation
3 about the case.

4 When you return from lunch, you'll come up and there'll
5 be a bailiff that will direct you back into the jury room
6 and, when you get back there, if you need anything, we've got
7 drinks and snacks and stuff for you. If you need any of
8 that, just let the bailiffs know. And then when you
9 reconvene at 2:30, again throughout the course of the trial,
10 no conversation, even amongst yourselves, about the case at
11 all until -- until it's time for your deliberations. Okay?

12 Is the hallway clear? I don't know. It may take them a
13 while to get --

14 THE DEPUTY: Yes, sir. It's clear.

15 THE COURT: All right. Then if everyone else will
16 remain seated, ladies and gentlemen, we'll see you back here
17 at 2:30, please.

18 (WHEREUPON, the jury exited the courtroom at 12:54 p.m.)

19 THE COURT: Okay. Now, before we break for lunch --
20 because, Mr. McBratney, I'm not sure how much of your -- your
21 motion -- because we were kind of up here at the sidebar,
22 whether or not -- I want to make sure that the court reporter
23 got your motion for the record. So I'm going to ask you, if
24 you would, to restate that motion for the record, please.

25 MR. MCBRATNEY: Thank you, Your Honor. After the first

1 jury was struck, there were 25 jurors left from which to
2 select the jury in this case. Of that 25, according to my
3 count, only four were African-American, which amounts to,
4 again, according to my bad math --

5 THE COURT: I think there were five.

6 MR. MCBRATNEY: I beg your pardon? There were five?

7 THE COURT: I believe there were five.

8 MR. MCBRATNEY: Okay. A little over 16 percent. Your
9 Honor, according to the latest census, I think which was
10 taken in 2013, Florence County was made up of 42 percent
11 African-Americans.

12 It is our position that the makeup of the jury pool that
13 we had available from which to strike our jury did not
14 adequately represent a jury of my client's peers and, for
15 that reason, we would move to strike this jury, continue the
16 case to allow us to draw a jury from a more representative
17 jury pool.

18 THE COURT: All right, sir. Thank you. I'm going to --
19 as I said earlier, I'm going to respectfully deny the motion.
20 The jury pool from which these jurors were selected was done
21 in the same fashion as all juries are selected.

22 Madam Clerk, how many mailings were sent out, the
23 summons for jury service?

24 THE CLERK: 161.

25 THE COURT: 161 summons were sent out for jury service.

1 Of that number, how many --

2 THE CLERK: We had 41, I think, that were here today.

3 THE COURT: I think we had, like, 40 -- 40-some odd
4 jurors who responded to those summons. And so I think the
5 selection process for impaneling the pool was certainly done
6 according to statute and done appropriately, and I do -- I do
7 recognize that we have pulled two juries and that some of the
8 potential jurors in the pool were taken in the first case.

9 But in this case, as you pointed out, there were five
10 African-American jurors, which is the representative class of
11 Mr. Dubose, and of those folks -- let's see -- three are on
12 the jury panel. I don't -- I don't believe the law requires
13 that the pool -- if it's selected appropriately according to
14 state law, I don't think it requires that the percentages are
15 the exact same as the county makeup. I just think it's
16 required that the subpoenas are sent out randomly and enough
17 to impanel a jury.

18 And so I'm going to respectfully deny the motion, but
19 note your exception to that.

20 Is there anything that we need to take up before we
21 start back this afternoon?

22 MR. MCBRATNEY: The only other motion I have, Your
23 Honor, is to sequester the witnesses.

24 THE COURT: Okay. Ms. Daniels, you have -- you have
25 several folks here. Do you have a lead investigator on the

1 case?

2 MS. DANIELS: Yes, Your Honor. He's not present today.

3 THE COURT: Okay.

4 MS. DANIELS: So I would ask that he be able to remain
5 in the courtroom. But since he's --

6 THE COURT: Okay.

7 MS. DANIELS: -- not here today --

8 THE COURT: Okay.

9 MS. DANIELS: Tomorrow, I would ask that he --

10 THE COURT: Sure.

11 MS. DANIELS: -- be able to be present.

12 MR. MCBRATNEY: That's fine.

13 THE COURT: And so what we will -- we will sequester
14 those -- those remaining witnesses. Anything further?

15 MS. DANIELS: Judge, because the defense doesn't have a
16 witness list, I assume he has no witnesses. So I normally
17 would ask that the defenses witnesses also be sequestered,
18 but that would not be necessary.

19 THE COURT: Mr. McBratney, obviously, we'll -- we'll
20 deal with it when the time comes.

21 MR. MCBRATNEY: Yes, sir.

22 THE COURT: But other than that Mr. Dubose, would you
23 have any other witnesses?

24 MR. MCBRATNEY: I may, but we will make sure they are
25 outside of the courtroom, Your Honor.

1 THE COURT: All right. All right. Well, then if
2 there's not anything else, we'll be in recess. Oh, I'm
3 sorry.

4 MS. DANIELS: Judge, I do have one more issue. If Mr.
5 McBurney has any other witnesses, they weren't disclosed to
6 the jury.

7 THE COURT: Well, if he does, we'll certainly voir dire
8 the jury as to those folks or that individual. Okay?

9 MS. DANIELS: Thank you, Judge.

10 THE COURT: All right. Okay. Then if there's nothing
11 else, we'll just reconvene then at 2:30.

12 (WHEREUPON, there was a break in the proceedings from
13 1:01 p.m. until 2:52 p.m., after which the proceedings
14 resumed as follows.)

15 THE COURT: All right. Is there anything we need to
16 take up before we bring the jury out?

17 MR. MCBRATNEY: No, sir.

18 MS. DANIELS: No, Your Honor.

19 THE COURT: All right. Let's bring the jury out,
20 please.

21 (WHEREUPON, the jury entered the courtroom at 2:53 p.m.)

22 THE COURT: All right. Thank you, ladies and gentlemen.
23 Please have a seat.

24 All right. Folks, before we get started, I want to
25 share just a few things administratively with you.

1 If at any time during the course of the trial you have a
2 hard time hearing someone or hearing a witness's response or
3 the lawyer's question, let me know, if you will, and I'll
4 make sure that they repeat what they said and then I'll get
5 them to speak up. Okay? It's very important that you hear
6 everything that goes on.

7 So sometimes folks tend to be soft-spoken, and how are
8 we doing today as far as our equipment? Today, are we
9 working or are we not working? The microphone?

10 THE BAILIFF: I'm not sure.

11 THE COURT: Some days, it works. Some days, it doesn't.
12 I just don't know if we got a good day here today. It's
13 working?

14 THE BAILIFF: It's working.

15 THE COURT: So you may have no problem hearing
16 witnesses, but we'll -- we'll see. Just -- but if you have
17 any difficulty hearing anybody, let me know.

18 The other thing is if at any time anyone of you needs to
19 take a break, don't hesitate to get my attention, or get the
20 bailiff's attention and let me know. We can stop at any
21 time, take a break, and we can pick up where we left off.
22 Okay?

23 I would rather that we take a break rather than you --
24 for example, if you need -- think you might need to use the
25 restroom, but you're going to wait until maybe the witness

1 gets to the end of their testimony, the witness may go long
2 and rather than you sitting there wondering, my goodness,
3 when is that witness going to end, I'd rather you be
4 focusing on their testimony rather than your comfort.

5 So I'd rather you just say, Judge, we need a break.
6 We'll take that break and we'll start back. Even if it's
7 right the middle of the testimony, we can pick up where we
8 left off. It's not a problem. Okay?

9 All right. Folks, before I address you with a couple of
10 opening remarks, I'm going to ask you to give Madam Clerk
11 your attention. She's going to place you under your oath for
12 your role as jurors in this matter. Okay?

13 THE CLERK: Members of the jury, please stand and raise
14 your right hand to be sworn in. Okay.

15 You shall well and truly try and a true deliverance make
16 between the State of South Carolina and the defendant, at
17 whom you shall have in your charge, and a true verdict render
18 according to the law and evidence, so help you God.

19 THE COURT: All right.

20 THE CLERK: You may be seated.

21 THE COURT: Thank you, folks. Ladies and gentlemen, we
22 are about to begin the trial of the case of the State of
23 South Carolina versus Major Dubose.

24 More than likely -- I don't know how many of you have
25 ever served on a jury before. Most people don't have the

1 opportunity that you're going to have this week to do this.
2 Most folks' experience or exposure to jury trials is simply
3 the things that they've seen in the movies, read in books or
4 seen on television, and we all know that those trials are
5 always full of high drama and intense action. Those -- those
6 trials are to entertain you. That's Hollywood's way of
7 entertaining you.

8 During the course of this trial, while any number of
9 those things could occur, the important thing to remember
10 throughout this case is that this trial is not for your
11 entertainment. This trial is a fundamental part of our
12 democracy and, unlike TVs, movies and books, this trial may -
13 - it may be slow; it may be quick. It may be very
14 deliberate. It may be repetitive. In other words, it's very
15 -- it'll be very different from what you've seen in books,
16 TVs, and movies more than likely.

17 This courtroom is a place of honor that is dedicated to
18 the protection and to the preservation of citizens' rights
19 through what many have called the greatest justice system
20 ever created. The attorneys that appear before you are
21 advocates for their -- for the parties that they represent,
22 but, first and foremost, they are officers of the Court sworn
23 to uphold the integrity and the fairness of our judicial
24 system. You should expect them to be professional,
25 competent, and ethical in the performance of their duties.

1 Now, you've just taken an oath to try this case and to
2 reach a fair and a just verdict, and so you are also expected
3 to be professional, reasonable, and ethical in the
4 performance of your duties. I have absolutely no doubt you
5 will do that, and I want to thank you for your contribution
6 to our system of justice here in Florence County.

7 Now, I'm going to share a few things with you over the
8 next minute or two. This is not a charge on the law. I will
9 give you the law that is applicable to this case at the close
10 of the evidence, but what I'm going to go over right now is
11 just kind of basically the procedures that we're going to
12 follow as we go through the case so that you will better be
13 able to follow along with how things are going.

14 Now, Mr. Dubose is charged, as I indicated to you when
15 we started this case, under this indictment or this document,
16 and he's charged with the crime of trafficking in cocaine
17 base or what is commonly referred to as crack cocaine. The
18 elements of that charge I will explain to you when I give you
19 the charge on the law, but I want to emphasize to you that
20 the indictment is simply the charge which -- which by the
21 case -- whereby this case is brought into this court. It is
22 not in any sense evidence of the allegations that it
23 contains.

24 To this indictment, to this charge, Mr. Dubose has pled
25 not guilty, and that plea of not guilty places the burden of

1 proof upon the State to prove the elements of this charge
2 beyond a reasonable doubt. It will be your duty, ladies and
3 gentlemen, to determine whether or not the State has met that
4 burden.

5 Your purpose as jurors is to find and to determine the
6 facts of this case. You are the sole judges of the facts in
7 this case. If at any time I make any comment about the
8 testimony or the evidence, you must disregard those comments
9 because only you, the jury, can determine the facts of any
10 case.

11 Now, in determining the facts, you do that from the
12 testimony that you hear, as well as any other evidence that
13 may be introduced during the course of the trial. It is
14 going to be up to you to determine what inferences that you
15 feel can properly be drawn from the evidence. It is
16 especially important that you determine -- that you determine
17 the facts diligently and conscientiously because ordinarily
18 there is no way that I can correct an erroneous determination
19 of facts by a jury.

20 Now, with the same emphasis, the same law that makes you
21 the judges of the facts makes me the judge of the law. The
22 law as given to you by the Court is the only law that you may
23 consider. You must accept it and you must follow it, even
24 though you may disagree with it.

25 I'm not allowed to tell you what I think about the facts

1 of this case and you're not allowed to disagree with me about
2 what the law is or what you think the law should be. Your
3 job is to take the law as I give it to you and apply it to
4 the facts as you find the facts from the testimony that has
5 been presented throughout the course of the trial.

6 Now, until I tell you it's appropriate to begin your
7 deliberations, you must not have any conversation with anyone
8 about this case at all. It's important throughout this trial
9 that you keep an open mind and that you do not decide any
10 issue in this case until all of the evidence has been
11 presented, the parties have made their closing arguments, and
12 I have instructed you on the law.

13 It is going to be your solemn responsibility to
14 determine the guilt or innocence of the defendant, and your
15 verdict must be based solely upon the evidence as it is
16 presented to you during the course of this trial and on the
17 law as I give it to you at the end of the trial.

18 Now, in just a moment, I'm going to recognize the
19 solicitor on behalf of the State and she's going to make what
20 we refer to as an opening statement. Folks, that's her
21 opportunity to tell you what she believes the evidence in
22 this case is going to show or what she intends to present.)

23 Once she concludes her opening remarks, then Mr.
24 McBratney will have an opportunity to make an opening
25 statement, if he chooses to do so. He's not required to, but

1 he will have that opportunity.

2 An important thing to remember and to know about the
3 opening statements of the attorneys is this. It is not
4 evidence. They are not under oath. They're not testifying.
5 It is merely their contention as to what they believe the
6 evidence in this case will show. The evidence in this case
7 will be presented to you by witnesses who are placed under
8 oath and take the witness stand and testify, and then any
9 other exhibits that may come in during the course of the
10 trial.

11 During the course of the trial, ladies and gentlemen,
12 one of the attorneys may come forward and say, Judge, we have
13 a matter of law we need to take up or may we approach the
14 bench. If I can resolve an issue up here at the bench and
15 allow you to remain where you are, I'll do that, but
16 sometimes I have to ask you, if you would, to step back into
17 your jury room while I take up a matter of law.

18 If I do that, the only reason I would do that is simply
19 this. As I told you earlier, I'm not to have any influence
20 over you about the facts of this case. Sometimes when
21 dealing with an issue of law, it requires me to make some
22 comment about the testimony or the evidence that was
23 presented in connection with a ruling that I'm required to
24 make. So to protect you from those comments, I may ask you
25 to step back into the jury room, let me resolve the issue of

1 law, and then bring you back out and pick up where we left
2 off.

3 In determining what the true facts are in this case, you
4 are going to have to decide whether or not the testimony of a
5 witness is believable. It's going to be my job as a matter
6 of law to determine whether certain testimony is allowed into
7 this record at all or not, but once testimony is allowed into
8 this record, whether or not you believe it is solely up for
9 you to decide.

10 In deciding whether to believe a witness, you have the
11 right to consider the interest of a witness, the bias of any
12 witness, the opportunity for that witness to have seen the
13 matters and the things about which they testified, the way
14 the witness acts on the witness stand. You have the right,
15 ladies and gentlemen, to consider anything in this record
16 that will help you to evaluate the testimony of the
17 witnesses.

18 That means that it is important that you pay close
19 attention to the witnesses, listen carefully to their
20 responses, listen carefully to the attorneys, as well as to
21 the Court. Try not to let your thoughts wander, but pay
22 strict attention to all of the evidence in this case so that
23 once all of the evidence has been presented, the attorneys
24 have had an opportunity to address you with their closing
25 remarks, and I have given you the charge on the law, then you

1 will be in a position to go back into your jury room and
2 begin your deliberations in deciding this case.

3 Now, before I turn it over to the attorneys for their
4 opening statements, let me first inquire from the State are
5 there any objections or exceptions to the Court's opening
6 remarks?

7 MS. DANIELS: No, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. MCBRATNEY: No, Your Honor.

10 THE COURT: Thank you, folks. All right. Ladies and
11 gentlemen, if you would, please give the attorneys your
12 undivided attention as they address you with their opening
13 statements. Ms. Daniels.

14 MS. DANIELS: Thank you, Your Honor. May it please the
15 Court.

16 THE COURT: Yes, ma'am.

17 MS. DANIELS: Mr. McBratney.

18 OPENING STATEMENT ON BEHALF OF THE STATE

19 MS. DANIELS: Ladies and gentlemen of the jury, as thick
20 as thieves, as tight as drug dealers. This is a case about
21 trafficking a large amount of crack cocaine, between 28 and
22 100 grams, and the State today will prove beyond a reasonable
23 doubt that Major Donnard Dubose trafficked approximately 38
24 grams of crack cocaine into the county of Florence in the
25 state of South Carolina.

1 Now, this case is a little bit unusual for a drug case.
2 It began back in 2011 when a man by the name of Cedric Shaw
3 was charged with the same crime, trafficking in crack
4 cocaine, and he went to trial on those charges. Now, during
5 the course of that trial, the defendant here today, Mr.
6 Dubose -- he took the witness stand and he swore to tell the
7 truth, the whole truth, and what he told twelve members of
8 the jury, much like yourselves, was that those drugs belonged
9 to him. They were his. He was selling those drugs and
10 that's what he told during Cedric Shaw's trial.

11 Now, Cedric Shaw was found not guilty and we are here
12 today because the defendant, Mr. Dubose, has said that those
13 drugs belonged to him. Now, I'd like to take this
14 opportunity to preview just a little bit of the evidence that
15 you're going to have a chance to hear today.

16 You'll have a chance to hear from several of the
17 arresting officers, as well as the chemist about the drugs,
18 and the main investigator. And what they'll tell you is that
19 back on or about June 7th, 2011, there were several officers
20 who were actually off duty that day and they were going on a
21 break sort of to go to the lake to ride around in their boat.

22 And as they were driving to the lake in Florence County,
23 they noticed that an individual pulled up next to him and it
24 looked like he was smoking some marijuana. Because they were
25 off duty, that officer called an officer who he knew was on

1 duty and who happened to be very close by.

2 Now, where these officers saw the individual smoking the
3 marijuana was around 77 [sic] and I-95 in that area, and they
4 called the officer who was on duty. He happened to be at the
5 very same similar area and he was able to stop the vehicle.
6 Eventually, the vehicle stopped and what that officer will
7 tell you is that, after he activated his blue lights, they
8 went on a several-mile chase before the vehicle then went
9 into a cornfield.

10 And when the officer was able to approach that car that
11 went into the cornfield was when he found the drugs, which
12 were just several feet away from the car. Now, Cedric Shaw
13 was originally charged because the officer who saw him
14 smoking the marijuana was able to identify him, and you will
15 hear testimony about that.

16 Furthermore, you will also hear the testimony itself
17 from the defendant in this case when he took the stand and he
18 swore to tell the truth, the whole truth, and nothing but the
19 truth, and he said that he was driving that car and he said
20 that those drugs were his. You'll have an opportunity to
21 hear that he was friends with Cedric Shaw, that, in fact,
22 they were cousins, they were related in some fashion, and he
23 will tell you that those drugs were his. That's what you
24 will hear from that testimony.

25 As thick as thieves, as tight as drug dealers. I ask

BEN PRICE - DIRECT BY MS. DANIELS

1 that you listen closely to all the evidence that's presented
2 and, after you do, I'm confident that you will find the
3 defendant guilty of trafficking in cocaine base. Thank you.

4 THE COURT: Thank you, Ms. Daniels. - Mr. McBratney?

5 MR. MCBRATNEY: I'm going to waive opening, Your Honor.

6 THE COURT: All right, sir. Thank you. Ms. Daniels,
7 you may call your first witness.

8 MS. DANIELS: The State calls Ben Price.

9 THE COURT: All right. If we'd have Mr. Price come
10 forward.

11 THE CLERK: Please place your left hand on the Bible and
12 raise your right hand. Do you swear to tell the truth, the
13 whole truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: You may be seated in the witness box.

16 THE WITNESS: Thank you.

17 THE CLERK: State your name for the record, please.

18 THE WITNESS: Robert Benjamin Price.

19 BEN PRICE, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. DANIELS:

23 Q: How are you doing today?

24 A: Good. Thank you.

25 Q: Where do you currently work?

BEN PRICE - DIRECT BY MS. DANIELS

- 1 A: The Florence County Sheriff's Office.
- 2 Q: How long have you been working there?
- 3 A: Since 2008.
- 4 Q: What is your current position there?
- 5 A: I am the financial crimes investigator for the Florence
- 6 County Sheriff's Office.
- 7 Q: Back in 2011, what was your position then, if it was any
- 8 different than it is now?
- 9 A: Yeah. I was a -- I was a field training officer for the
- 10 Sheriff's Office, basically a patrol deputy that trained new
- 11 officers that came in.
- 12 Q: I'd like to take you back to June 7th, 2011. Were you
- 13 working that day?
- 14 A: I was not.
- 15 Q: What were you doing that day?
- 16 A: Myself and Brad McDowell, who is an investigator with
- 17 the Sheriff's Office, and Levi Dyun, who was a deputy at the
- 18 time -- we were on our way to Lake Robinson in Hartsville or
- 19 outside of Hartsville.
- 20 Q: About what time of day was it that y'all were on your
- 21 way to Lake Hartwell?
- 22 A: It was midmorning. It was before lunchtime, but it was
- 23 -- the sun was up and it was -- it was daytime.
- 24 Q: What county were you in?
- 25 A: We started in Florence County, headed over to Darlington

BEN PRICE - DIRECT BY MS. DANIELS

1 County.

2 Q: And on the drive there, did you notice anything unusual
3 happen?

4 A: I did.

5 Q: What did you notice?

6 A: I was sitting in the passenger seat of Brad McDowell's
7 Tahoe, in the front passenger seat, and we pulled up at the
8 stoplight on Highway 76, which is West Palmetto. We were
9 heading towards I-95. We stopped at Ebenezer Road and, as we
10 were sitting there at the stoplight, I looked over. There
11 was a car next to me, a Crown Victoria car. I looked over.
12 It was an African-American male sitting there and it appeared
13 that he was smoking a marijuana cigarette by the way that it
14 looked. And I jokingly told Brad McDowell, who was a
15 narcotics investigator, look at this guy next to us. It
16 looks like he's --

17 MR. MCBRATNEY: Objection, Your Honor. That's hearsay.
18 Anything that McDowell told him.

19 THE COURT: Well, he can testify what he said, but he
20 can't testify to what McDowell said.

21 MR. MCBRATNEY: Okay.

22 THE COURT: Overruled.

23 BY MS. DANIELS:

24 A: What I was telling Mr. McDowell was that it appears that
25 this guy's smoking a marijuana cigarette.

BEN PRICE - DIRECT BY MS. DANIELS

1 Q: What did -- what did Inv. McDowell do after you said to
2 him it looks like that guy is smoking a marijuana cigarette?

3 A: He looked over where I was in the passenger seat. He
4 was in the driver seat. He looked over where I was sitting
5 at the individual that was next to us in the vehicle.

6 Q: Which side of your car did that individual pull up on?

7 A: He was on the right side. So if I were in the passenger
8 side, he would be in the right-hand lane and we were in the
9 left-hand lane.

10 Q: So it was closer to your side?

11 A: That's correct?

12 Q: Okay. So what did you do after? What did Brad McDowell
13 do after you mentioned that he was smoking a marijuana
14 cigarette?

15 A: He picked up the phone and he called a deputy that he
16 knew was working that day, Deputy Shane Keith, who was a
17 patrol deputy at that time, to find out if he possibly was in
18 the area so that he could investigate further to see if the
19 person was or was not engaging in smoking a marijuana
20 cigarette.

21 Q: And what area were you in, if you can recall -- as
22 precisely as you can recall, when that individual drove up
23 next to you?

24 A: It was at Highway 76, W. Palmetto, around Ebenezer Road
25 at the stoplight.

BEN PRICE - DIRECT BY MS. DANIELS

1 Q: And did you find out that Deputy Shane Keith was nearby
2 in the area?

3 A: I couldn't hear the other side of the phone call what
4 Deputy Keith said.

5 Q: Did you ever see Deputy Keith drive by at any point?

6 A: I did not.

7 Q: Okay.

8 A: It's my understanding that he was located at Bancroft
9 Road, which is very close to 76 and 95 at the interstate
10 where the little grouping of gas stations are. That's where
11 he was sitting, but I never saw him.

12 Q: Okay. As far as the individual smoking the marijuana
13 cigarette, how well were you able to see him?

14 A: Very well. When I looked down at him -- since we were
15 in a vehicle not marked as law enforcement, he actually
16 looked up because we were in a Tahoe and he was in a Crown
17 Victoria; so we were a little above him. He actually looked
18 up at me. The windows that were on his vehicle were not
19 tinted; so I could see him. He looked up at me and kind of
20 smiled; and I looked back at him and the light turned green
21 and we both drove away.

22 Q: Were you -- were you ever able to identify him?

23 A: Later on, I was shown a picture that resembled the
24 person that I saw in the car, and that person was Cedric
25 Shaw.

BEN PRICE - DIRECT BY MS. DANIELS

1 Q: And what -- where was the picture from? Who showed you
2 the picture?

3 A: Inv. McDowell showed me the picture. It was from the
4 South Carolina Department of Motor Vehicles of his driver's
5 license photo.

6 Q: Did you testify in the trial of Cedric Shaw?

7 A: Yes, I did.

8 Q: And what happened at that trial?

9 A: Mr. Shaw was subsequently found not guilty.

10 MS. DANIELS: No further questions at this time, Your
11 Honor.

12 THE COURT: Okay. Cross?

13 MR. MCBRATNEY: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. MCBRATNEY:

16 Q: Inv. Price, on June the 7th, 2011, you said you were in a
17 Tahoe?

18 A: Yes, sir.

19 Q: And were you pulling a boat?

20 A: That's what -- Brad McDowell was pulling the boat.

21 Q: Okay.

22 A: But yes, sir. We had a boat behind us.

23 Q: Was it just you and Brad McDowell in the vehicle?

24 A: No, sir. Levi Dyun was also in the vehicle.

25 Q: Dyun?

BEN PRICE - CROSS BY MR. MCBRATNEY

- 1 A: Yes, sir.
- 2 Q: Levi Dyun was also? And I don't think he's with the
- 3 police -- or the Sheriff's Office anymore, is he?
- 4 A: No, sir. He's moved.
- 5 Q: Okay. So you got a good look at Cedric Shaw?
- 6 A: Yes, sir.
- 7 Q: And you got a good look inside the Crown Vic?
- 8 A: Yes. Well, I could see -- since we were a little higher
- 9 than the Crown Vic was, I wouldn't say my area of purview was
- 10 the entire inside of the vehicle, but I could see down to the
- 11 person that was driving the vehicle.
- 12 Q: Did you see anybody else in the car?
- 13 A: No, sir.
- 14 Q: Okay. And in fact, Ms. Daniels asked you about the
- 15 trial?
- 16 A: Correct.
- 17 Q: And you said prior to that that you had identified
- 18 Cedric Shaw as the individual from his motor vehicle ID
- 19 picture?
- 20 A: Yes, sir.
- 21 Q: And in the courtroom when you testified, Mr. Ozment, who
- 22 at that time was the prosecutor, asked you if you saw the
- 23 person driving the car in the courtroom, didn't he?
- 24 A: Yes, sir.
- 25 Q: And you said yes?

BEN PRICE - CROSS BY MR. MCBRATNEY

- 1 A: Yes, sir.
- 2 Q: And you identified the defendant, Cedric Shaw, as the
3 person in the car, didn't you?
- 4 A: Yes, sir.
- 5 Q: Okay. Have you -- other than what you've recounted here
6 today, did you have any further part in this investigation?
- 7 A: No, sir. It was just the -- mainly there at the
8 stoplight.
- 9 Q: Okay. You weren't involved in any chase or anything of
10 that nature?
- 11 A: No, sir, I was not.
- 12 Q: You were not involved in any arrest later on on Cedric
13 Shaw?
- 14 A: No, sir, I was not.
- 15 Q: Were you already at the intersection when the Crown Vic
16 pulled up beside you?
- 17 A: I can't remember the exact order, if we pulled up beside
18 him or if he pulled up beside us.
- 19 Q: And when the Crown Vic pulled off, did it pull off ahead
20 of you?
- 21 A: Yes, sir. It left faster than we did, and I'm thinking
22 probably because we were pulling a boat.
- 23 Q: Okay. And then when it pulled away, did you -- you had
24 an opportunity to see inside the vehicle, didn't you?
- 25 A: I wouldn't say a very good opportunity to see inside

BEN PRICE - CROSS BY MR. MCBRATNEY

1 exactly other things. If there was another person in the
2 vehicle, I would've saw that person.

3 Q: You only saw one person?

4 A: Correct.

5 Q: Okay.

6 MR. MCBRATNEY: That's all the questions I have. Thank
7 you.

8 THE COURT: Anything on redirect?

9 MS. DANIELS: Briefly, Your Honor.

10 THE COURT: All right.

11 REDIRECT EXAMINATION

12 BY MS. DANIELS:

13 Q: Are you aware of any familial relationship between
14 Cedric Shaw and the defendant, Major Donnard Dubose?

15 A: I don't have any awareness of how they're related, if
16 any.

17 Q: Okay.

18 MS. DANIELS: Thank you. No further questions, Your
19 Honor.

20 THE COURT: All right. Thank you very much, sir. You
21 may step down.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: You may call your next witness.

24 MS. DANIELS: The State calls Shane Keith.

25 THE COURT: Yeah. If you would, have somebody go get

SHANE KEITH - DIRECT BY MS. DANIELS

1 him.

2 MS. DANIELS: And, Your Honor, may Ben Price be released
3 from his subpoena?

4 THE COURT: Any objection?

5 MR. MCBRATNEY: No objection, Your Honor.

6 THE COURT: Thank you very much. You're free to go,
7 sir. Thank you.

8 (WHEREUPON, there was a pause in the proceedings until
9 the witness entered the courtroom, after which the
10 proceedings resumed as follows.)

11 THE CLERK: Please place your left hand on the Bible and
12 raise your right hand. Do you swear to tell the truth, the
13 whole truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Please be seated in the witness box and
16 please state your name for the record.

17 THE WITNESS: Shane Keith.

18 SHANE KEITH, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. DANIELS:

22 Q: How are you this afternoon?

23 A: I'm good. How are you?

24 Q: Good. Where are you employed?

25 A: Florence County Sheriff's Office.

SHANE KEITH - DIRECT BY MS. DANIELS

1 Q: How long have you been working there?
2 A: Eight years.
3 Q: How long? Say again?
4 A: Eight years.
5 Q: Eight years?
6 A: Yes.
7 Q: What's your position there now?
8 A: I'm a corporal on the Criminal Enforcement Unit now.
9 Q: And back in 2011, did you have the same position?
10 A: No, I did not.
11 Q: What was your position then?
12 A: I was a deputy on the road.
13 Q: And as a deputy on the road, what were your primary
14 duties?
15 A: Primary duties were to answer calls and check property.
16 Q: Now, I'd like to bring your attention back to June 7th,
17 2011. Were you working on that day?
18 A: I was.
19 Q: What were you doing or where were you patrolling?
20 A: I was on the west side of Florence, close to 76 and 95.
21 At that time, I was stationary at the -- I couldn't remember
22 exactly what I was doing. I know I was sitting there close
23 to Bancroft.
24 Q: And that morning, do you remember receiving any calls
25 from Inv. McDowell?

SHANE KEITH - DIRECT BY MS. DANIELS

1 A: I did.

2 Q: Do you remember about what time it was? Just an
3 approximation.

4 A: Maybe 10:30, maybe.

5 Q: Okay?

6 A: It was midmorning maybe.

7 Q: And without saying exactly -- without saying what Inv.
8 McDowell said in the call, what did you do after you received
9 the call from him?

10 A: I immediately left the location I was at to try to make
11 contact with the vehicle.

12 Q: What vehicle were you trying to make contact with?

13 A: A silver-in-color Ford Victoria.

14 Q: And did it -- did you have a license plate number for
15 that?

16 A: I did not.

17 Q: Were you able to find a silver --

18 A: I was.

19 Q: -- Ford Crown Victoria?

20 A: I was.

21 Q: About how long did it take you after you left your
22 location to locate it?

23 A: Seconds to a minute. It wasn't long. The location I
24 was at is very close to where I was called from and he was
25 at.

SHANE KEITH - DIRECT BY MS. DANIELS

1 Q: Okay. So what did you do after you found -- after you
2 were able to locate the car?

3 A: I had to follow it because I had numerous cars in
4 between me and it, but I could see it.

5 Q: About how long would you say that you followed the Crown
6 Victoria?

7 A: Before making the initial --

8 Q: Yes.

9 A: -- contact?

10 Q: Yes. Before making any contact. Sure.

11 A: I had to follow it through town because cars were in
12 between me and it.

13 Q: Okay?

14 A: So from 76 and 95 to Timmonsville is approximately four
15 miles maybe.

16 Q: Okay. And did you observe any sort of traffic
17 violations when you were following the Crown Vic?

18 A: Not in between me and Timmonsville, but once we got just
19 on the other side of Timmonsville, I did. I did see a
20 traffic infraction.

21 Q: And what traffic infraction did you see?

22 A: Improper lane use. Driving left of center.

23 Q: After you saw the driving left of center, what did you
24 do?

25 A: I initiated my blue lights. After I -- I had another

SHANE KEITH - DIRECT BY MS. DANIELS

1 car in between me and it. I rounded the car and then I
2 initiated my blue lights and siren.

3 Q: Did the vehicle stop?

4 A: It did not.

5 Q: About how long did you follow that vehicle for?

6 A: With lights and siren on?

7 Q: Yes. With lights and siren on.

8 A: Maybe a mile -- mile and a half. They took a left on
9 another road.

10 Q: How fast approximately was the car traveling?

11 A: I believe he stayed right about in the same as the speed
12 limit, around 55 -- 60 miles an hour, until he turned on that
13 road.

14 Q: And what happened after he turned on that road?

15 A: He sped up. Now, he was in between -- whenever I --
16 whenever I initiated my blue lights and that road, St. Paul
17 Road, which was the left, he did continue to drive into
18 oncoming traffic. There was no vehicles coming, but he -- it
19 was in the other lane.

20 Q: Okay. What happened after he turned onto the road?

21 A: What happened after that? He sped up obviously.

22 Q: Yes.

23 A: He failed to stop for my blue light and then a short
24 time later he went to take a right on Quietude Dirt Road,
25 which is just into -- East St. Paul is just into Darlington

SHANE KEITH - DIRECT BY MS. DANIELS

1 County and then Quietude Dirt Road actually turned onto the
2 right and that's in Darlington County a little.

3 Q: Okay. Now, while you were following him and then
4 chasing him with your blue lights activated, were you able to
5 see who was driving the car?

6 A: No, I was not.

7 Q: Okay. After he turned onto Quietude Road, what happened
8 to the car at that point?

9 A: The car actually spun out into a cornfield, which is
10 taller than the vehicle, and the way he actually -- the way
11 the vehicle actually spun was it was making a right towards
12 the dirt road and, as it was going towards the dirt road, I
13 stopped to see if he was going to come back out on the dirt
14 road.

15 Q: Could you -- could you see anything at that point once
16 the car went into the cornfield?

17 A: Once the car went into the cornfield, I lost contact
18 with the vehicle.

19 Q: So what did you do? Did you move?

20 A: I stopped.

21 Q: Okay.

22 A: I thought he was -- I thought he was going to come back
23 out onto the dirt road the way the vehicle was pointed, and
24 he never did; so I stopped and waited on another unit to get
25 there.

SHANE KEITH - DIRECT BY MS. DANIELS

1 Q: About how long did you wait would you say?

2 A: Just a few minutes. It wasn't long.

3 Q: Sure. And once the other unit got there, were you able

4 to approach the car?

5 A: I did approach the car.

6 Q: Okay.

7 A: We did approach the car and -- would you like me to tell

8 you what --

9 Q: Sure. What did you see when you approached the car?

10 A: Nobody was there. Nobody was there at the time of the

11 vehicle. The driver door was left open. We -- we both

12 approached the car because the reason why I did not go up

13 there was I didn't know where he was in that cornfield. I

14 didn't know if he -- if the person in the vehicle had any --

15 any weapons. So I waited for another backup and then we

16 approached and nobody was there at the time.

17 Q: What was the visibility like in the cornfield? Could

18 you describe it?

19 A: The corn was -- if I remember correctly, it was green

20 turning to brown, you know, six-foot tall maybe.

21 Q: So it was really tall?

22 A: Yeah. It's tall.

23 Q: Yeah.

24 A: It was taller than the vehicles.

25 Q: Sure.

SHANE KEITH - DIRECT BY MS. DANIELS

1 A: Yeah.

2 Q: And would it be hard to see somebody in a cornfield
3 running off?

4 A: Running? Yes. Well, if I -- if I didn't keep eye
5 contact with the vehicle, yes.

6 Q: Sure. Okay.

7 A: So I wasn't directly behind it.

8 Q: Now, when you got to the vehicle and you saw the door
9 open, did you see anything else that stands out in your mind?

10 A: It's been a while. If I remember correctly, the door
11 was open. I think there was a -- I'm pretty sure there was a
12 marijuana cigar --

13 Q: Uh-huh.

14 A: -- in there, some marijuana in the door, and then a few
15 feet later -- that was just in the car. Now --

16 Q: Okay. Sure. What did you see outside of the car?

17 A: Now, outside of the car, the dirt was not where you
18 could actually make a footprint in it, but from being on the
19 tracking team and stuff like that, I've seen where you can
20 make a heel print and toe digs, where you couldn't see the
21 shape or the -- or you couldn't tell what kind of shoe it
22 was, but you could tell someone had been running or moving in
23 a quick manner. And I could tell where, you know, somebody
24 took off that way. So I kind of followed a few feet and then
25 from there on I found a large amount of crack cocaine.

SHANE KEITH - DIRECT BY MS. DANIELS

1 Q: Where was the crack cocaine in -- in reference to the
2 vehicle?

3 A: Just a few yards. Exactly, I can't --

4 Q: Sure.

5 A: -- quite remember.

6 Q: But not exceedingly far away from the car?

7 A: No, not too far. I mean it wasn't a football field
8 length.

9 Q: Okay.

10 A: No. It was very short.

11 Q: Maybe about the distance between you and me right now?

12 A: Possibly, yeah.

13 Q: Okay. Sure. What did you do when you found the crack
14 cocaine?

15 A: Well, at that time, I mean we took pictures or I took
16 pictures of it and then I bagged -- I bagged it up for the --
17 to be placed into evidence.

18 Q: Uh-huh. What kind of bag did you put it in?

19 A: I put it in the paper bag that I had at the time, which
20 was a paper bag that was out of the vehicle.

21 Q: Uh-huh.

22 MS. DANIELS: Your Honor, at this time, I'd like to show
23 the witness what's been pre-marked for identification as
24 State's Exhibit 4 and, Your Honor, Mr. McBratney and I did
25 review the exhibits earlier --

SHANE KEITH - DIRECT BY MS. DANIELS

1 THE COURT: All right.

2 MS. DANIELS: -- before we started the trial. May I
3 approach?

4 THE COURT: Yes, ma'am.

5 BY MS. DANIELS:

6 Q: Without taking it out of the envelope, can you tell me
7 if you recognize what's in the envelope? If you can look in
8 there, peer in there.

9 A: It appears to be a BEST kit.

10 Q: Did you put the crack cocaine in the BEST kit?

11 A: I don't recall me putting the --

12 Q: Okay.

13 A: -- crack cocaine in the BEST kit.

14 Q: Okay. But it -- it -- you recognize that as a --

15 A: As a BEST kit.

16 Q: -- as a BEST kit?

17 A: Yes.

18 Q: Okay. Sure. Now, after you found the crack cocaine,
19 did you do a full search of the vehicle?

20 A: I did a -- a -- would you like me to put it right here?

21 Q: Sure. You can leave it right there. That would be
22 great.

23 A: I did an inventory. I inventoried the vehicle for, you
24 know, more drugs, weapons, expensive things like computers or
25 anything. Anything to, you know, basically notify me of

SHANE KEITH - DIRECT BY MS. DANIELS

1 whose vehicle it was or anything like that.

2 Q: What did you find when you inventoried the vehicle?

3 A: Really, I can't -- I can't recall the details -- a lot
4 of details.

5 Q: Did you find --

6 A: I think a cell phone.

7 Q: Okay.

8 A: A bill of sale.

9 Q: You did find a bill of sale?

10 A: If I recall that, I believe I did find a bill of sale I
11 recall.

12 Q: Okay. Sure.

13 MS. DANIELS: Your Honor, at this time, I'd like to show
14 the witness what's been marked as State's Exhibit 1. May I
15 approach?

16 THE COURT: Yes, ma'am.

17 BY MS. DANIELS:

18 Q: Can you look at that and tell me if you recognize it?

19 And you can take it out.

20 A: This is a bill of sale.

21 Q: And do you recognize it?

22 A: I do recall that it's the -- it's the same one I found.

23 Q: Sure. And what does the bill of sale indicate who the
24 vehicle belongs to?

25 A: License number two, Cedric Antoine Shaw.

SHANE KEITH - DIRECT BY MS. DANIELS

1 Q: Okay.

2 A: Is that what you look for as far as the name?

3 Q: Yes.

4 A: Okay.

5 MS. DANIELS: Your Honor, at this time, the State would
6 move into evidence what's been marked for identification
7 purposes as State's Exhibit 1.

8 THE COURT: Any objection?

9 MR. MCBRATNEY: No objection.

10 THE COURT: All right. Without objection, State's 1 is
11 in evidence.

12 (WHEREUPON, State's Exhibit Number 1, bill of sale, was
13 admitted into evidence.)

14 BY MS. DANIELS:

15 Q: After you inventoried the vehicle, what did you do with
16 the vehicle?

17 A: It was towed by a tow company. I do not recall which
18 tow company.

19 Q: Okay. And where was it towed to?

20 A: To the Florence County Sheriff's Office impound, if I --
21 if I recall correctly, yes.

22 Q: Okay. And at any point during the chase or during the
23 traffic stop, were you able to see who was driving the car?

24 A: I was not. I could -- I could tell it was a -- a black
25 male with short hair. That's about it. It may have been a

SHANE KEITH - DIRECT BY MS. DANIELS

1 -- a black female with short hair. It was a -- a darker
2 person with short hair. I could not tell who it was.

3 MS. DANIELS: Thank you. Please answer any questions
4 that Mr. McBratney may have for you.

5 THE WITNESS: Yes, ma'am.

6 MR. MCBRATNEY: Thank you.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. MCBRATNEY:

10 Q: Inv. Keith, as a result of the telephone call from Inv.
11 Brad McDowell, you were looking for a silver Ford Crown Vic?

12 A: I was.

13 Q: Okay. And did you see -- as soon as you received that
14 call, did you see Inv. McDowell and Inv. Price?

15 A: If I recall, I think they were turning into a store, a
16 nearby store.

17 Q: And at that same or approximately at that same time, did
18 you see the Crown Vic?

19 A: It was a -- it was a little farther ahead of them, but I
20 could see it, of the description of the vehicle they were
21 talking about. Yes, sir.

22 Q: Okay. At any time, could you tell how many occupants
23 were in that vehicle?

24 A: Not at that time. I could not tell, not until I got
25 behind it --

SHANE KEITH - CROSS BY MR. MCBRATNEY

1 Q: Okay.

2 A: -- or closer to it. Excuse me.

3 Q: And what did you determine then?

4 A: Whenever I got closer to it, I could see one person in
5 the vehicle.

6 Q: Okay. Could you tell what kind of clothes that
7 individual was wearing?

8 A: I could not, sir.

9 Q: Okay. Could you tell whether they had a hat on or
10 anything like that?

11 A: It didn't appear that he had a hat on or the person had
12 a hat on.

13 Q: Okay. After the vehicle stopped in the cornfield and
14 you went up to the vehicle and you made a determination it
15 was a vehicle registered to Cedric Shaw, what, if anything,
16 did you do further in investigating Cedric Shaw?

17 A: I did not.

18 Q: You didn't do anything else?

19 A: As far as investigating Cedric Shaw, I did not.

20 Q: Okay. Did you -- you didn't check to see if he had a
21 prior criminal history or anything of that nature?

22 A: No. I don't know. I can't recall that. I may have
23 done a criminal history, but I may have turned it over to the
24 investigator. But I don't recall.

25 Q: Okay. Are you the lead investigator on this case?

SHANE KEITH - CROSS BY MR. MCBRATNEY

- 1 A: I'm not.
- 2 Q: Okay. And that would be Brad McDowell?
- 3 A: Inv. McDowell, yes, sir.
- 4 Q: Okay. Would it be up to him to do that?
- 5 A: Yes. I would say, yes, sir.
- 6 Q: Okay. And this vehicle, the Crown Vic, did it have
- 7 South Carolina tags on it?
- 8 A: No, sir.
- 9 Q: It had -- what kind of tags did it have?
- 10 A: Paper. I believe it was a paper plate. I'm sorry. A
- 11 paper tag. I believe, if I remember correctly, it was a wax
- 12 paper tag, a wax --
- 13 Q: Is that what we refer to as a dealer tag?
- 14 A: Yes, sir. I'm sorry.
- 15 Q: Did you find any other identification in the vehicle
- 16 besides the bill of sale with Cedric Shaw's name on it?
- 17 A: Not that I recall.
- 18 Q: Okay. Did you prepare a summary or report of evidence
- 19 that was taken from the vehicle?
- 20 A: Did I prepare a -- did I --
- 21 Q: A list of stuff that was taken.
- 22 A: I placed items into evidence. I did.
- 23 Q: And you would've prepared a list?
- 24 A: Yes, sir. An evidence -- evidence log sheet. Yes, sir.
- 25 Q: Okay.

SHANE KEITH - CROSS BY MR. MCBRATNEY

- 1 A: Placing them into evidence.
- 2 Q: And I believe you found a clear plastic bag containing a
3 green leafy substance?
- 4 A: Yes, sir.
- 5 Q: And that was marijuana?
- 6 A: Believed to be.
- 7 Q: Okay. And it was in a plastic bag?
- 8 A: Yes, sir, if I recall correctly.
- 9 Q: And there was a box of baking soda in a bag with a
10 lighter?
- 11 A: Yes, sir.
- 12 Q: And a clear plastic bag with crack cocaine?
- 13 A: Yes, sir.
- 14 Q: But that wasn't in the car, was it?
- 15 A: The crack cocaine, no, sir.
- 16 Q: And I think you testified it was a few yards away from
17 the vehicle?
- 18 A: Yes, sir.
- 19 Q: The marijuana -- was it in the car?
- 20 A: If I recall correctly, yes, sir. I think it was in
21 there.
- 22 Q: Okay. You found a digital scale and a box of plastic
23 bags. Was that in the car?
- 24 A: I believe that was possibly in the -- I cannot -- I
25 don't want to answer incorrectly. I believe so.

SHANE KEITH - CROSS BY MR. MCBRATNEY

1 Q: You found a Motorola cell phone and a charger?

2 A: Yes, sir. I think it was in a paper bag or close to, if
3 I remember correctly.

4 Q: Did you make any effort to run the cell records on that
5 car?

6 A: Did I at that time? No, sir.

7 Q: Okay. Do you know if Brad McDowell did?

8 A: I do not know.

9 Q: Okay. But you personally didn't make any effort to
10 identify who the owner of the cell phone was?

11 A: No, sir, I did not.

12 Q: Okay. And there was some -- I think about 77 digital
13 photographs?

14 A: Possibly. I don't recall exactly how many digital
15 photographs.

16 Q: Okay. Do you know if any tests of any type were run on
17 any of these items?

18 A: As far as forensics, fingerprints --

19 Q: Yes.

20 Q: -- DNA, anything like that?

21 Q: Yes.

22 A: Is that what you're asking? No, sir. I do not know.

23 Q: All right. You found a -- what's commonly referred to
24 as a blunt, I believe, in the car also?

25 A: I believe so.

SHANE KEITH - CROSS BY MR. MCBRATNEY

- 1 Q: And what is a blunt?
- 2 A: From -- I've been in the Sheriff's Office for 8 years.
- 3 From my training experience, that is marijuana rolled up into
- 4 a cigar leaf or a cigar.
- 5 Q: Had it been partially burned?
- 6 A: If I recall correctly, I think so.
- 7 Q: So somebody had been smoking it?
- 8 A: If I recall, yes, sir.
- 9 Q: And may have had it in their mouth?
- 10 A: That would be believable, if they had been smoking it.
- 11 Yes, sir.
- 12 Q: And that kind of confirms what -- what you have been
- 13 told that there was somebody that Ben Price had seen that
- 14 appeared to be smoking a marijuana blunt?
- 15 A: Ben Price? Inv. Price?
- 16 Q: Yes.
- 17 A: He did not call me.
- 18 Q: What did --
- 19 A: Inv. McDowell. Yes, sir.
- 20 Q: Didn't he tell you that someone --
- 21 A: Yes, sir.
- 22 Q: -- had been seen smoking a blunt --
- 23 A: Yes, sir.
- 24 Q: -- that was --
- 25 A: Absolutely.

SHANE KEITH - CROSS BY MR. MCBRATNEY

1 Q: -- believed to be marijuana?

2 A: Yes, sir.

3 Q: So they had it in their mouth?

4 A: I'm guessing. I didn't see it.

5 Q: Okay. I know you didn't see it.

6 A: Yes, sir.

7 Q: But did it appear to have been smoked?

8 A: Yes. Assumed to be smoked.

9 Q: Okay. You have to put in your mouth to smoke it, don't

10 you?

11 A: I guess so.

12 Q: Okay. Was any search conducted of the area around the

13 cornfield to see if you could find the individual that had

14 been driving the car?

15 A: Not at that time or that day, and I can explain why. On

16 patrol, after stopping that vehicle and having some backup

17 come to me, we didn't have many to create an area search or

18 anything like that. So it was not conducted at that time.

19 Q: It was not conducted?

20 A: No, sir.

21 Q: That's a sizable drug bust though, isn't it?

22 A: That is a pretty hefty weight in crack cocaine. Yes,

23 sir.

24 Q: Did the Florence County Sheriff's Office have a

25 helicopter at that time?

SHANE KEITH - CROSS BY MR. MCBRATNEY

1 A: No, sir.

2 Q: They did not?

3 A: No, sir.

4 Q: Could you call SLED?

5 A: That's not my call. That would have to be a supervisor

6 or captain. That would be way above my pay grade.

7 Q: Now, this cornfield -- is it out in the middle of

8 nowhere or is it near a residential section?

9 A: It's -- it's pretty rural.

10 Q: Pretty rural?

11 A: I mean it has some houses close to, but it's pretty

12 rural around there.

13 Q: Okay. Is it a wooded area or is it farmland?

14 A: Farmland, from what I recall. I haven't been out there

15 lately, but . . .

16 Q: Okay. Other than the cornfield, were there any woods or

17 anything around?

18 A: I couldn't tell you the truth about it. I don't have a

19 clue if there was any woods directly close to it. I don't

20 know if they've logged any lately or not.

21 Q: You took possession of the crack cocaine though, didn't

22 you?

23 A: I did. Yes, sir.

24 Q: But you don't recall putting it in the BEST kit?

25 A: I do not recall putting it in the BEST kit. I do recall

SHANE KEITH - CROSS BY MR. MCBRATNEY

1 placing it into evidence, but not placing it into the BEST
2 kit.

3 Q: Okay. Where did you place it into evidence?

4 A: At the Florence County Sheriff's Office.

5 Q: Okay. So you physically took it to the Sheriff's
6 Office?

7 A: Yes, sir.

8 Q: And logged it in?

9 A: Yes, sir.

10 Q: Okay. And you did the same thing with the cell phone,
11 the charger, the scales, and everything else that you took
12 out of the vehicle?

13 A: Yes, sir.

14 Q: Did you find any evidence in the vehicle that Major
15 Dubose was in the car?

16 A: I did not.

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

18 THE COURT: All right. Anything further?

19 MS. DANIELS: No redirect, Your Honor.

20 THE COURT: All right, sir. You may step down. Yeah,
21 you can leave it.

22 All right. You may call your next witness.

23 MS. DANIELS: The State calls Larry Quick. And, Your
24 Honor, may Inv. Keith be released from his subpoena?

25 MR. MCBRATNEY: No objection.

1 THE COURT: All right. Without objection.

2 Ms. Daniels, Mr. McBratney, while we're waiting on that
3 next witness --

4 (WHEREUPON, a bench conference was held in the presence
5 of the jury but out of the hearing of the jury as
6 follows.)

7 THE COURT: Do you want that handwritten note on there?

8 MS. DANIELS: It was like that in evidence. I didn't --

9 MR. MCBRATNEY: That's --

10 THE COURT: Okay.

11 MS. DANIELS: Yeah.

12 MR. MCBRATNEY: It looks like instructions from the
13 dealer --

14 MS. DANIELS: Yeah.

15 MR. MCBRATNEY: -- about what he's supposed to do.

16 THE COURT: I thought so.

17 MS. DANIELS: So that's why that's on there.

18 THE COURT: That sounds good.

19 (WHEREUPON, the bench conference ended, and the
20 proceedings resumed as follows.)

21 (WHEREUPON, there was a pause in the proceedings until
22 the witness entered the courtroom, after which the
23 proceedings resumed as follows.)

24 THE CLERK: Please place your left hand on the Bible and
25 raise your right hand. Do you swear to tell the truth, the

LARRY QUICK - DIRECT BY MS. DANIELS

1 whole truth, and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: You may be seated in the witness box.

4 Please state your name for the record.

5 THE WITNESS: My name is Larry Howard Quick.

6 THE COURT: Yes, ma'am.

7 LARRY QUICK, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. DANIELS:

11 Q: How are you doing this afternoon?

12 A: Good.

13 Q: Where are you currently working?

14 A: I am -- I went out of work on disability.

15 Q: Okay. Back in 2011, where were you working?

16 A: Florence County Sheriff's Office..

17 Q: How long did you work for the Florence County Sheriff's
18 Office?

19 A: Fourteen years.

20 Q: Fourteen years? Is that what you said?

21 A: Yes, ma'am.

22 Q: Okay. What was your position there in 2011?

23 A: I was the evidence custodian.

24 Q: As the evidence custodian, what were some of your
25 primary duties?

LARRY QUICK - DIRECT BY MS. DANIELS

1 A: I would -- in the mornings, I would pick up the evidence
2 that the deputies or investigators had left. They had put
3 them in a locked box, and I was the only one that had a key
4 to that box to go into it to get the evidence out. Then I
5 would take it to the evidence room and log it in.

6 Q: Would you ever take evidence anywhere else?

7 A: Yes, ma'am. I had to -- sometimes I would have to take
8 it to SLED.

9 Q: How often would you say you took evidence to SLED?

10 A: When I first started the job, it was probably two times
11 a week.

12 Q: Okay.

13 MS. DANIELS: Your Honor, at this time, I'd like to show
14 the witness what's been marked for identification as State's
15 Exhibit 2. May I approach?

16 THE COURT: Yes, ma'am.

17 BY MS. DANIELS:

18 Q: Mr. Quick, I'd like you to take a look at this and let
19 me know -- tell me if you recognize it?

20 A: Yes, ma'am, I do.

21 Q: How do you recognize it?

22 A: Well, it was on the 23rd, 2011, it said I picked up a --
23 goodness. I'm sorry. I can't think what it's called.

24 Q: Okay.

25 A: Anyway, a pack that had some cocaine or supposed to be

LARRY QUICK - DIRECT BY MS. DANIELS

1 cocaine in it.

2 Q: Okay.

3 A: And I took it and logged it in in the evidence room and
4 then later took it to SLED.

5 Q: Sure. And what is that document that I just handed you?

6 A: This is just saying that what the drug analysis found
7 out to be. It was found to be, like, 38.6 grams of crack
8 cocaine.

9 Q: Sure. And on what date did you take the drugs --

10 A: It says --

11 Q: -- to the analyst at SLED?

12 A: It says on the 23rd of June.

13 Q: Of what year?

14 A: 2011.

15 Q: Okay. And do you see on that report where your name is
16 mentioned?

17 A: Yes, ma'am.

18 Q: For taking -- taking the drugs to SLED?

19 A: Yes, ma'am.

20 MS. DANIELS: Your Honor, at this time, I'd like to show
21 the witness what's been marked as State's Exhibit 3 for
22 identification purposes. May I approach?

23 THE COURT: Yes, ma'am.

24 BY MS. DANIELS:

25 Q: And, Mr. Quick, if you'd take a look at this and let --

LARRY QUICK - DIRECT BY MS. DANIELS

1 and tell me if you recognize it?

2 Q: Yes, ma'am. This has got the time that I took it to
3 SLED, the time that the --

4 Q: When you say it, what are you referring to?

5 A: Talking about the -- the BEST pack.

6 Q: Okay.

7 A: That's what -- I'm sorry. I was trying to think of it.

8 Q: That's okay.

9 A: It was in a BEST pack. It's been a while since I've
10 done it. But I took it to SLED and the forensics technician.
11 She logged it in. She's got the time down and the exact date
12 that she logged it in, and then it's got the record times
13 that people picked it up to test it and stuff --

14 Q: Sure.

15 A: -- up there.

16 Q: And what -- what's the date and time that that report
17 shows that you took the drugs to SLED?

18 A: 6/23/2011 at 12:35.

19 Q: Okay.

20 MS. DANIELS: Your Honor, at this time, I would move
21 what's been marked for State's identification purposes as
22 Exhibit 2 and 3 into evidence.

23 THE COURT: Any objections to State's 2 and 3?

24 MR. MCBRATNEY: I just want to make sure --

25 THE COURT: Yeah.

LARRY QUICK - DIRECT BY MS. DANIELS

1 MR. MCBRATNEY: -- I'm looking at the right thing, Your
2 Honor.

3 THE COURT: Sure.

4 THE WITNESS: Okay. There you go, sir.

5 MR. MCBRATNEY: No objection, Your Honor.

6 THE COURT: All right. State's 2 and 3 are in evidence
7 without objection.

8 (WHEREUPON, State's Exhibit Number 2, SLED drug report,
9 and State's Exhibit Number 3, SLED chain of custody,
10 were admitted into evidence.)

11 MS. DANIELS: Your Honor, I'd like to show the witness
12 what's been marked for identification purposes as State's
13 Exhibit 4. May I approach?

14 THE COURT: Yes, ma'am.

15 BY MS. DANIELS:

16 Q: Mr. Quick, I'd ask you to open up that envelope and look
17 inside and tell me if you recognize what's inside? And if
18 you need to look at any identifying numbers or whatnot, take
19 your time.

20 A: This is where the BEST pack was taken to SLED.

21 Q: If you could, just hold that. Keep it and hold it down
22 a little bit? Yes. Thank you. Good job.

23 A: Okay. It was taken to SLED and was sent back. They
24 always send it back in a sealed envelope.

25 Q: And how do you recognize it?

LARRY QUICK - DIRECT BY MS. DANIELS

1 A: Basically, just from the name and stuff on it.

2 Q: Sure. And what's the name on it?

3 A: It's got Brad McDowell was the officer that picked it
4 up, and it's covered up. I can't see my name, but my name
5 would have been on there.

6 Q: Okay. And any other identifying numbers that you can
7 see that are on there?

8 A: Yes, ma'am. The number where they logged in, putting on
9 the -- it's, like, a little yellow tag they put on the BEST
10 kit, and that's how they keep record of it.

11 Q: Okay. Thank you. And if you'd just put that back in
12 the envelope and you can put the envelope right on the desk
13 in front of you. That would be good.

14 MS. DANIELS: Thank you.

15 THE WITNESS: Yes, ma'am.

16 MS. DANIELS: I have no further questions for you at
17 this time. If you would, please answer any questions that
18 Mr. McBratney has.

19 THE WITNESS: Thank you.

20 THE COURT: All right. Cross?

21 CROSS-EXAMINATION

22 BY MR. MCBRATNEY:

23 Q: Mr. Quick, when you got the drugs, did you put them in
24 the BEST pack?

25 A: No, sir. They were already placed in there.

LARRY QUICK - CROSS BY MR. MCBRATNEY

1 Q: Who gave you the BEST pack with the crack cocaine in it?

2 A: This came from narcotics. So it was locked up in a
3 safe.

4 Q: You don't remember who gave it to you?

5 A: It had Brad McDowell was the one that turned it into
6 their safe, but I was the only one that had a unlocking key
7 to get into their safe to get the stuff.

8 Q: But you didn't put it in the BEST pack?

9 A: No, sir. He did.

10 Q: How do you know that?

11 A: Because it had his name on it.

12 Q: Okay. But you didn't see him do it?

13 A: No, sir.

14 Q: Okay. Thank you.

15 THE COURT: All right. Anything further?

16 MS. DANIELS: No redirect, Your Honor.

17 THE COURT: Thank you very much, Mr. Quick.

18 THE WITNESS: Thank you.

19 THE COURT: Any objection to this witness being excused?

20 MR. MCBRATNEY: No, Your Honor.

21 MS. DANIELS: No, Your Honor.

22 THE COURT: All right.

23 MS. DANIELS: May we approach --

24 THE COURT: Yeah.

25 MS. DANIELS: -- for scheduling?

1 THE COURT: Come on up.

2 (WHEREUPON, a bench conference was held in the presence
3 of the jury but out of the hearing of the jury off the
4 record, after which the proceedings resumed as follows.)

5 THE COURT: Ladies and gentlemen, the State's next
6 couple witnesses were not available today; so we're going to
7 adjourn a little bit early this afternoon and pick back up in
8 the morning.

9 Now, I'm getting ready to excuse you for the balance of
10 the day and you're going to head back to your respective
11 homes, and I'm sure you probably have friends, family, and
12 loved ones who will be curious as to how your day went and
13 were you selected to be on a case and what's it about and all
14 those types of questions.

15 What I need you to do is you can tell them, if anyone
16 asks, that you have been selected to be on a case and that
17 you have to be back tomorrow, but that's where you kind of
18 need to leave it. Saying something as innocent or as simple
19 as it's a drug case or it's a case that involves a young man
20 by the name of Dubose or something just innocent could
21 possibly elicit a response that may compromise your ability
22 to remain fair and impartial.

23 So what I always tell juries is just to let them know
24 that you are on a case. You're not allowed to discuss it.
25 You're not allowed to discuss what it's about or what kind of

1 case it is, but that once the case is concluded that you can
2 -- that you'll be able to share all of it with them, but they
3 need to just be patient and just respect the fact that you're
4 not allowed to discuss the case. Okay?

5 If you can, get a good night's rest tonight. Try to do
6 that. Jury service can be physically taxing from a mental
7 standpoint, and our minds -- they operate more efficiently
8 and better when they're well rested. So if you can do that
9 this evening, please try to do that.

10 Now, because of our witness schedule and the situation
11 that causes us to have to take this early recess, we're also
12 going to start later in the morning. Okay? So we're going
13 to -- I'm going to ask you, if you would, to be in the jury
14 room ready to go at 11:30. Okay?

15 Now, around my house, if you tell somebody, my kids or
16 my wife, that they need to be somewhere at 11:30, they think
17 they're doing good if they leave the house at 11:30. If you
18 need to be somewhere at 11:30, you need to be there at 11:30,
19 which means you've got to leave your house a little early.
20 So plan on travel and parking and stuff, and please adjust
21 your time so that you're back here at 11:30 and we'll get
22 started at that point.

23 Now -- and I think the lawyers would agree with me on
24 this. Even though we're starting a little bit later, I would
25 anticipate that you will probably get the case at some point

1 tomorrow for your consideration. So you can let your family,
2 friends, and loved ones know that, if they'll be patient and
3 not discuss the case tonight, probably tomorrow you'll be
4 able to tell them all they want to know. Okay?

5 So everyone else please remain seated. Folks, we'll see
6 you back here at 11:30 tomorrow morning.

7 (WHEREUPON, the jury exited the courtroom at 3:56 p.m.)

8 THE COURT: All right. Is there anything else that we
9 need to deal with today? We'll start back at 11:30 and,
10 Angel, if you're -- you know, however you're running, we'll
11 --

12 MS. DANIELS: Sure.

13 THE COURT: We'll work around your schedule.

14 MS. DANIELS: Thank you.

15 THE COURT: Okay.

16 MR. MCBRATNEY: That's fine, Your Honor.

17 THE COURT: All right. All right. Well, then we'll be
18 in -- John, anything you need for us this afternoon?

19 MR. JEPERTINGER: The clerk has my umbrella.

20 THE COURT: Yeah. My understanding is she's not
21 returning it.

22 MR. JEPERTINGER: I'm concerned about it.

23 THE COURT: All right. We'll be in recess then until
24 11:30 tomorrow.

25 (WHEREUPON, the proceedings adjourned for the day at

1 3:58 p.m.)

2

3 --- CONTINUED ON DAY 3 IN SEPARATE TRANSCRIPT ---

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1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 88, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 11th and 12th days of September, 2017.

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

Kristal J. Smith

Court Reporter

20	Florence, South Carolina
----	--------------------------

21 March 18, 2018

1 State of South Carolina) Court of General Sessions
2 County of Florence) Twelfth Judicial Circuit

3

4 State of South Carolina,) Transcript of Record
5 vs.) 2014-GS-21-00148

6 Major Donnard Dubose, III,)

7 Defendant.)

8

9 September 13, 2017

10 Florence, South Carolina

11 B E F O R E:

12 The Honorable Thomas A. Russo, Judge; and a Jury.

13

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

15 Angel I. Daniels, Assistant Solicitor
16 On behalf of the State of South Carolina

17 James T. McBratney, Jr., Esquire
18 Attorney for the Defendant

19

20 Stacy S. Johnson
21 Circuit Court Reporter

22

23

24

25

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E X H I B I T S

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1 (Whereupon, the following proceedings were held
2 September 13, 2017, beginning at 11:39 AM.)

3 (State's Exhibit Number 5 and 6 were marked for
4 identification.)

5 **BAILIFF:** Order in the court. All rise.

6 **THE COURT:** Thank you, folks. Please have a seat.

7 All right. Anything we need to take up before we get
8 started?

9 **MR. McBRATNEY:** No, sir.

10 **MS. DANIELS:** Judge, just one issue I've already
11 touched on with Mr. McBratney. I've got the transcript
12 from his prior trial -- Mr. Dubose's testimony and I've
13 redacted the portions that we discussed. I didn't know if
14 you wanted to take a look at that or --

15 **THE COURT:** You might -- you might want to let
16 Mr. Dubose do it. You might want to let Emily look it
17 over --

18 **MS. DANIELS:** Absolutely.

19 **THE COURT:** -- so she can familiarize herself with the
20 transcript.

21 **MS. DANIELS:** Sure.

22 **MR. McBRATNEY:** Judge, can I ask your permission for
23 something?

24 **THE COURT:** Yes, sir.

25 **MR. McBRATNEY:** I've been having some back problems.

1 If from time to time I need to stand up -- I'll raise my
2 hand if it's an objection.

3 **THE COURT:** I understand.

4 **MR. McBRATNEY:** I'd like to just stand up and stretch
5 my back.

6 **THE COURT:** We'll -- we'll do that. We'll use the
7 hand motion for an objection.

8 **MR. McBRATNEY:** I hurt it lifting water bottles for
9 the hurricane.

10 **THE COURT:** That's good. That's a good reason. But,
11 no, that's fine. I'll be happy to let you.

12 **MR. McBRATNEY:** If I happen to stand up, I'm not
13 making an objection unless I wave at you.

14 **THE COURT:** That sounds good. Okay.

15 **MS. DANIELS:** May I approach?

16 **THE COURT:** Angel, do you want to go ahead and let
17 Emily look at that?

18 **MS. DANIELS:** Sure. I'll mark this.

19 **THE COURT REPORTER:** A Court's exhibit or --

20 **MS. DANIELS:** Court's exhibit. Would it be Court's
21 exhibit or State's exhibit? State's Exhibit, right? I
22 intend to move it into evidence.

23 **THE COURT:** Oh, well, it would be a State's exhibit.
24 I'm sorry. What number are we at?

25 **THE COURT REPORTER:** We premarked 5 and 6 already and

1 so this will be 7.

2 **THE COURT:** All right.

3 (State's Exhibit Number 7 was marked for
4 identification.)

5 **THE COURT:** All right. Are we ready then to bring the
6 jury out?

7 **MS. DANIELS:** Yes, Your Honor.

8 **MR. McBRATNEY:** Yes, sir.

9 **THE COURT:** All right. Bring them out.

10 (Whereupon, the jury enter the courtroom at 11:50 AM.)

11 **THE COURT:** Good morning, ladies and gentlemen.

12 Apparently myself and the jury's on a good mental frame
13 here because I was gonna ask Mr. Greenwood to serve as the
14 foreman of the jury. He didn't know that, no one knew
15 that, but when he came out he naturally came out and he sat
16 right there in the foreman's seat, so it was meant to be.

17 Folks, any time we deal with a panel of folks, we have
18 found it's just more efficient and easier to deal with
19 one person on behalf of the group, so the foreperson of a
20 jury is basically the communicator between the jury panel
21 and the Court. If at any time you have a question about
22 anything, if you'd just let Mr. Greenwood know, he'll write
23 it out and pass it out to me. Depending on the question, I
24 may just respond by writing back my answer or I may bring
25 you out and respond to it. But that's the main role of the

1 foreperson is to be the communicator between the jury panel
2 and the Court.

3 I will tell you this now. Your verdict in this case,
4 whatever it may be, must be unanimous. You must all agree
5 on the verdict and that's the way it is in all -- all
6 cases. And so I tell you that to say this; that since your
7 verdict must be unanimous, you must all agree on the
8 verdict, the foreperson's thoughts or opinions or vote
9 carry no more weight than anyone else. You are all equal
10 members of the jury. So that any time you go back and you
11 begin your -- when the time comes for you to begin your
12 deliberations, I encourage the jury -- juries to always be
13 open minded, listen to each other, be willing to listen to
14 other folks and then to exam your position based upon other
15 people's positions and be open minded about the process.
16 So the foreperson's thoughts and opinions are the same as
17 everyone else's, so I wanted to share that with you to let
18 you understand the role of the foreperson. And when you
19 begin your deliberations, you'll have a verdict form that
20 the Court will prepare and, Mr. Greenwood, you'll have that
21 in your care and whatever the verdict of the jury would be,
22 then you would just reflect that on that verdict form,
23 okay?

24 Now if you recall yesterday, the State was in the
25 process of presenting their case and so we're gonna pick up

1 where we left off and we recognize Ms. Daniels for the
2 State's next witness.

3 Are you ready?

4 **MS. DANIELS:** Ready. Thank you, Your Honor.

5 Your Honor, at this time before I call my first
6 witness, the State would move what's been marked as State's
7 Exhibit 7 into evidence.

8 **THE COURT:** All right.

9 **MS. DANIELS:** And it's the prior trial transcript of
10 the testimony of Major Donnard Dubose.

11 **THE COURT:** All right, ma'am.

12 Any objection?

13 **MR. McBRATNEY:** No objection, Your Honor.

14 **THE COURT:** All right. That is evidence.

15 **MS. DANIELS:** Thank you, Your Honor.

16 (State's Exhibit Number 7, Defendant's prior
17 testimony, was admitted into evidence.)

18 **MS. DANIELS:** The State calls Larry Zivkovich to the
19 stand.

20 **THE COURT:** All right, sir. If you'd please come
21 around to be sworn.

22 **THE CLERK:** Place your left hand on the Bible and
23 raise your right hand, please.

24 (Whereupon, Lawrence Zivkovich was duly sworn by the
25 Clerk of Court.)

1 **THE CLERK:** Please be seated and state your name and
2 spell your last name for the record.

3 **THE WITNESS:** Lawrence Zivkovich, Z-I-V-K-O-V-I-C-H.

4 LAWRENCE ZIVKOVICH,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. DANIELS:

8 Q. How are you this almost afternoon?

9 A. I survived the storm.

10 Q. Very good. Where are you employed?

11 A. I'm employed with State Law Enforcement Division,
12 commonly known as SLED.

13 Q. How long have you been employed there?

14 A. A little over eleven years.

15 Q. And what's your position there?

16 A. I'm a forensic chemist and my specialty is controlled
17 substances.

18 Q. Could you describe for the jury what that position
19 entails?

20 A. What we do is we take substances that are submitted
21 from outside agencies and determine whether there is or is
22 not the presence of controlled substances in them.

23 Q. What type of education do you have to have a position
24 like that?

25 A. I received a bachelor of science in chemistry from the

1 University of South Carolina and then when I was hired on
2 at SLED, I received a course in forensic science controlled
3 substances technology and I received a course from the Drug
4 Enforcement Administration and also the University of West
5 Virginia.

6 Q. Do you have any certifications?

7 A. It's not certified per se. It's just a course offered
8 through SLED to meet their policies and procedures.

9 Q. Have you ever testified in court before?

10 A. I have.

11 Q. Have you ever testified as an expert in court before?

12 A. Yes, ma'am.

13 Q. Do you know approximately how many times?

14 A. About forty-two.

15 Q. Okay.

16 **MS. DANIELS:** Your Honor, at this time I move to
17 qualify Mr. Zivkovich as an expert in forensic sciences
18 and chemical analysis.

19 **THE COURT:** Any objection?

20 **MR. McBRATNEY:** No objection, Your Honor.

21 **THE COURT:** Thank you, sir.

22 BY MS. DANIELS:

23 Q. Okay. As part of your being a forensic scientist for
24 SLED, do you ever analyze any substances to determine if
25 they're illegal controlled substances?

1 A. Yes.

2 Q. What type of substances would you analyze in that
3 respect?

4 A. Anything that an outside agency would provide to SLED
5 that's not a biological material.

6 Q. Could you explain for the jury kind of in laymen's
7 terms how you analyze substances?

8 A. Generally the outside agency will drop it off and it
9 will be logged in by the technicians down in our login
10 department and they determine who needs to do the analysis
11 on the particular item that's been dropped off. Once we've
12 been notified that we've been assigned a particular case,
13 we will go down and pick it up and we'll do an inventory of
14 the items in the case, then for our particular discipline
15 what we'll do is usually a preliminary test and then a
16 confirmatory test to decide whether there are or are not
17 controlled substances.

18 Q. Okay. Do you ever test for cocaine base?

19 A. Yes, ma'am.

20 Q. And that's also known as crack cocaine; is that right?

21 A. That's correct.

22 Q. Could you explain to the jury what the difference is
23 between cocaine base and powder cocaine?

24 A. Cocaine base is just a different form of cocaine.
25 Cocaine hydrochloride, which is commonly just known as

1 cocaine, has a much higher melting point so it can't be
2 smoked and efficiently absorbed by the body, so what they
3 will do is they will combine it with a base substance to
4 make cocaine into crack which is about a hundred degrees
5 lower on the boiling point and can be smoked.

6 Q. What test would you use to determine if something is
7 cocaine base?

8 A. We'll do a couple of different things. One of the
9 things that's used by our laboratory is also used by police
10 officers out in the street, which is a spot test. And they
11 call that a preliminary test because it's not definitive,
12 but it's just an indicator of the presence. And we'll do
13 a spot test for it and then we'll do an extraction in a
14 solvent that's specific to cocaine base and once we do
15 that, then we run it on our instrumentation for confirmation.

16 Q. Okay.

17 **MS. DANIELS:** Your Honor, I'm showing the witness
18 what's been marked as State's Exhibit 2. May I approach?

19 **THE COURT:** Yes, ma'am.

20 BY MS. DANIELS:

21 Q. Can you tell the jury what this exhibit is?

22 A. It's a report that I issued for SLED Lab Number
23 L11-07259 and the pre-log paperwork for submitting the
24 case to SLED.

25 Q. And what did you determine in your report?

1 A. I found that the case consisted of a rock substance,
2 which I found to be cocaine base, with a weight of
3 38.6 grams.

4 Q. How certain of you -- were you of that result?

5 A. I'm a hundred percent certain.

6 Q. Okay.

7 **MS. DANIELS:** Your Honor, at this time I'd like to
8 show the witness what's been identified as State's Exhibit
9 Number 4. May I approach?

10 **THE COURT:** Yes, ma'am.

11 BY MS. DANIELS:

12 Q. If you would, open that envelope and just look inside
13 and kind of hold what's inside down below the bar and just
14 tell me what it is or if you recognize it.

15 A. It's SLED Case L11-07259 that I analyzed and it is
16 still in the plastic K-Pack with my initials and date that
17 I sealed it on the outside.

18 Q. Is that the substance that you analyzed that you
19 referenced in your report that you just looked at?

20 A. Yes, ma'am.

21 Q. And on that report, what Defendant did those drugs
22 belong to?

23 A. My report has Cedric Shaw as the subject.

24 Q. Now as far as the package, can you describe the
25 contents of the package in the envelope that you just

1 looked at? What was in the plastic?

2 A. When it was submitted to me, I wrote down that it was
3 a Ziploc bag containing a plastic bag that contained rock
4 substance.

5 Q. Does the substance look the same now as it did when
6 you first received it?

7 A. No, it's sealed with the heat seal intact, but the
8 substance looks a little different and this is usually
9 contributed to the fact that when you convert cocaine
10 hydrochloride into cocaine base what you do is you cook it
11 in a solvent and they'll usually use like an ammonia to
12 cook it with and then an ether to get your cocaine base out
13 and a lot of times if they either don't cook it completely
14 or they don't dry it out properly, then what happens is it
15 would be no different than if you took a bar of butter out
16 of the freezer and it's really nice and solid, but once
17 you let it sit for a while it will slowly decay and then
18 the oils will come off and that's what -- appears to be
19 what happened with this package.

20 Q. Okay. Thank you. You can place it back in the
21 envelope now.

22 A. (Witness complies.)

23 **MS. DANIELS:** Your Honor, I'd now like to show the
24 witness what's been marked as State's Exhibit 3. May I
25 approach?

1 **THE COURT:** Yes, ma'am.

2 BY MS. DANIELS:

3 Q. Can you tell me what this is?

4 A. Yes, ma'am. This is a chain of custody provided by
5 SLED for the case L11-07259.

6 Q. And what's the purpose of that document?

7 A. It's an internal business document that we use to keep
8 track of any and all evidence that's submitted to SLED
9 for the time that it actually spends in our particular
10 laboratory.

11 Q. And what case was that document for?

12 A. It's for L11-07259.

13 Q. What's the Defendant's name on that case?

14 A. Normally we do not have the Defendant's name
15 electronically on the case. Cedric Shaw is actually
16 written -- handwritten on the case.

17 Q. Okay. Back in September of 2013, did you testify at
18 the trial of Cedric Shaw?

19 A. I do not recall that. No, ma'am.

20 **MS. DANIELS:** Okay. No further questions at this
21 time, Your Honor.

22 **MR. McBRATNEY:** No questions.

23 **THE COURT:** All right. Thank you very much, sir.
24 You may step down.

25 **MS. DANIELS:** Your Honor, may I ask that -- or just

1 ensure that Mr. Zivkovich returned all of the exhibits.

2 I'm not sure if he has any. I'm just double-checking.

3 **THE COURT:** Yeah, make sure.

4 **MS. DANIELS:** Do you have any exhibits with you?

5 **THE WITNESS:** I do.

6 **MS. DANIELS:** Thank you.

7 **THE WITNESS:** I apologize.

8 **THE COURT:** That's not a problem. Thank you, sir.

9 (Witness excused.)

10 **MS. DANIELS:** The State calls Investigator Brad
11 McDowell.

12 **THE CLERK:** Place your left hand on the Bible and
13 raise your right hand.

14 (Whereupon, Brad Steven McDowell was duly sworn by the
15 Clerk of Court.)

16 **THE CLERK:** Take a seat in the witness box and please
17 state your name for the record.

18 **THE WITNESS:** Brad Steven McDowell.

19 BRAD STEVEN McDOWELL,
20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. DANIEL:

23 Q. Where are you employed, Investigator McDowell?

24 A. The Florence County Sheriff's Office.

25 Q. And what's your official position there?

- 1 A. I investigate narcotics.
- 2 Q. How long have you been a narcotics investigator?
- 3 A. Since 2009.
- 4 Q. Were you a narcotics investigator in June of 2011?
- 5 A. I was.
- 6 Q. I'd like to draw your attention back to June 7, 2011.
- 7 Were you working on that day?
- 8 A. I was not.
- 9 Q. What were you doing on that day?
- 10 A. I was -- actually had some colleagues of mine that
- 11 worked with me and we were going to the lake.
- 12 Q. What were you gonna do at the lake?
- 13 A. We were just gonna go boating.
- 14 Q. It was your day off?
- 15 A. Yes.
- 16 Q. Did you -- about what time of day were you headed to
- 17 the lake?
- 18 A. It was around 10 or 11 that morning.
- 19 Q. And which way were you headed to the lake?
- 20 A. West. I was heading west on West Palmetto Street.
- 21 Q. Is that in Florence County?
- 22 A. Yes, ma'am.
- 23 Q. Did you notice anything unusual when you were heading
- 24 west on Palmetto Street?
- 25 A. Yeah, as we were stopped at the light at West

1 Palmetto and Ebenezer, Investigator Price, who was one
2 of my colleagues was riding passenger, I was driving, and
3 he kind of chuckled a bit and then hit my arm and got my
4 attention and says look at this guy.

5 **MR. McBRATNEY:** Objection to anything that Mr. Price
6 may have said to him, Your Honor, as being hearsay.

7 **THE COURT:** Sustained as to hearsay.

8 **MS. DANIELS:** Sure.

9 BY MS. DANIELS:

10 Q. Without saying what Investigator Price said, did you
11 notice anything unusual when you were stopped?

12 A. Yes. As I looked over, the driver of the vehicle
13 beside us appeared to be smoking marijuana.

14 Q. And why did you find that unusual?

15 A. Well, it was actually kind of comical that it was --
16 he pulled aside, you know, a bunch of cops in a car and he
17 was -- he looked over at us as we were looking at him and
18 he smiled and -- but we were in an unmarked car at this
19 point, so, I mean, it was a regular car, so.

20 Q. Sure. So since it was your day off, what did you do?

21 A. There was actually a unit that was in the direction
22 that his vehicle was heading and I made a call to Deputy
23 Keith and advised him of what we -- what we saw.

24 Q. How close approximately was Deputy Keith to where you
25 were at that time?

1 A. At that point approximately a mile.

2 Q. Were you able to follow the vehicle where you saw the
3 individual smoking marijuana?

4 A. We did not. We pulled off as we -- as I made that
5 call, we pulled off at the gas station at West Palmetto
6 Street and Interstate 95.

7 Q. Was there ever a point where you saw Deputy Keith?

8 A. I don't remember ever seeing Deputy Keith.

9 Q. Okay. After you made the call to Deputy Keith, did
10 you find out whatever happened as far as if he followed
11 that vehicle?

12 A. Yes, ma'am. Later on in the day, he advised me that
13 he had -- the vehicle had led him on a pursuit and ended
14 up in a cornfield and he never saw the driver, but he
15 recovered narcotics from the vehicle.

16 Q. And were you assigned to be the investigator to that
17 particular case?

18 A. I took the case over from Deputy Keith.

19 Q. And as part of your investigation after you took the
20 case over, what did you do?

21 A. The vehicle had a bill of sale in it that contained
22 the name Cedric Shaw. I went to our DMV database and I
23 printed off Cedric Shaw's driver's licence photo and
24 identified him as being the driver of the vehicle.

25 Q. Did it look very similar to you, the DMV photo,

1 similar to the individual that you saw smoking the blunt?

2 A. Yes.

3 Q. What day, if you remember, did you pull that DMV
4 photo?

5 A. It was shortly after. Either the next day or the day
6 after.

7 Q. As part of your investigation, did you search the
8 vehicle later that day that the incident happened or
9 shortly thereafter?

10 A. I don't recall searching the car.

11 Q. Okay. Were you aware of what was inventoried in the
12 car?

13 A. I was.

14 Q. And what was found in the vehicle?

15 A. In the vehicle, there were sandwich bags that's
16 commonly used to distribute the narcotics as packaging.
17 There was a digital scale in there that's commonly used
18 to -- they would use to weigh out the quantity of the
19 narcotics. And I believe that the actual narcotics, other
20 than -- I think marijuana was found in there, but the
21 cocaine base was actually found on the outside of the
22 vehicle as if someone was running from the vehicle and
23 dropped it.

24 Q. Can you describe the car?

25 A. It was a silver-ish color Crown Victoria. Like an old

1 police-style vehicle.

2 Q. What happened to the car after it crashed into the
3 cornfield?

4 A. The vehicle was towed by Deputy Keith to our impound
5 at the sheriff's office.

6 Q. How long did it stay in the impound?

7 A. I'm not actually sure. It's still there I'm -- I'm
8 assuming.

9 Q. Okay. Did anyone come to try and retrieve the car
10 from the impound?

11 A. Yes, Cedric Shaw actually ended up showing up;
12 however, beforehand there was several attempts by females
13 to get the vehicle, but the vehicle was not gonna be
14 released to just anyone, it was gonna be released to the
15 owner of the vehicle, which was Cedric Shaw.

16 Q. As far as your investigation, what specifically did
17 you do after the car was impounded?

18 A. After -- after printing the photo of Mr. Shaw, I
19 showed the photo to Deputy Price who concurred with me
20 that that was, in fact, the driver of the vehicle.

21 Q. Did you -- did you send anything off for testing?

22 A. Yes, I did. I -- the narcotics and every bit of
23 evidence was actually placed in evidence by Deputy Keith
24 and I retrieved the narcotics and did an analysis kit and
25 sent it to SLED. At the time they were doing all of our

1 analysis..

2 Q. Where did you retrieve the narcotics from?

3 A. In our evidence room.

4 **MS. DANIELS:** Your Honor, I'm now showing the
5 witness what's has been marked as State's Exhibit 4 for
6 identification purposes. May I approach?

7 **THE COURT:** Yes, ma'am.

8 BY MS. DANIELS:

9 Q. If you could open up that envelope and tell me if you
10 recognize what that is.

11 A. Yes, ma'am.

12 Q. And what is that?

13 A. This is the analysis kit. It's commonly referred to
14 as a BEST kit.

15 Q. Can you explain for the jury what a BEST kit is?

16 A. A BEST kit is just an analysis form that is sealed by
17 the person that's -- that's wanting the analysis. In this
18 particular one, I asked for the analysis to be done so the
19 narcotics, which was the cocaine base, was put in this bag
20 and the analysis request was sealed and sent to SLED for
21 their analysis.

22 Q. And do you recognize that as the same BEST kit that
23 you put the drugs into?

24 A. Yes, I do. It has the date that it was sealed as
25 well as my signature on it.

1 **MS. DANIELS:** Okay. Your Honor, at this time the
2 State would move what's been marked as State's Exhibit 4
3 into evidence.

4 **MR. McBRATNEY:** No objection.

5 **THE COURT:** All right. State's Exhibit 4 is in
6 evidence without objection.

7 (State's Exhibit Number 4, a BEST kit, was admitted
8 into evidence.)

9 **MS. DANIELS:** Your Honor, I'm now showing the witness
10 what's been marked for identification purposes as State's
11 5. May I approach?

12 **THE COURT:** Yes, ma'am.

13 BY MS. DANIELS:

14 Q. Do you recognize this?

15 A. I do.

16 Q. What is it?

17 A. This is an analysis request that has the information
18 as far as the case number, what is being submitted, where
19 it was obtained and the subject identifier as Cedric Shaw.

20 Q. Thank you.

21 **MS. DANIELS:** Your Honor, the State now moves what's
22 been marked as Exhibit 5 into evidence.

23 **MR. McBRATNEY:** No objection.

24 **THE COURT:** Without objection, State's 5 is in
25 evidence.

1 (State's Exhibit Number 5, a SLED Drug Analysis
2 Request form, was admitted into evidence.)

3 **MS. DANIELS:** I'm now showing Investigator McDowell
4 what's been marked for identification purposes as State's
5 Exhibit 6. May I approach?

6 **THE COURT:** Yes, ma'am.

7 BY MS. DANIELS:

8 Q. Do you recognize this?

9 A. I do.

10 Q. What is that?

11 A. This is the chain of custody form. After I submit
12 the analysis, it goes back to our evidence technician who
13 transports it to SLED.

14 **MS. DANIELS:** Your Honor, at the time the State moves
15 what's been marked as Exhibit 6 into evidence.

16 **MR. McBRATNEY:** No objection.

17 **THE COURT:** Without objection State's 6 is in
18 evidence.

19 (State's Exhibit Number 6, a SLED Drug Analysis form,
20 was admitted into evidence.)

21 BY MS. DANIELS:

22 Q. After you sent the drugs off for analysis, what
23 happened next as far as your investigation?

24 A. The subject had already been -- Cedric Shaw had
25 already been arrested at that point, so these -- all of

1 this after the analysis they get sent back to our evidence
2 room.

3 Q. Okay. Were you present and did you attend the trial
4 when the Cedric Shaw case went to trial in September of
5 2013?

6 A. I did.

7 Q. Were you present throughout the entire trial?

8 A. Yes.

9 Q. What happened as far as the result of that trial?

10 A. It was a not guilty verdict.

11 Q. What testimony do you remember hearing at that trial?

12 A. I remember every -- every testimony that -- from all
13 of the witnesses that testified. I was here for the whole
14 thing.

15 Q. Specifically the testimony from Major Donnard Dubose,
16 what --

17 A. Major Dubose took the stand and stated that he was
18 the one driving the vehicle that day and that the drugs
19 belonged to him and not Cedric Shaw.

20 Q. After hearing that testimony, as an investigator, what
21 did you do next after that trial, the Cedric Shaw trial,
22 was over?

23 A. Mr. Dubose was taken to a holding cell here and he
24 was transported to our detention facility and I obtained
25 warrants later that afternoon for his admission of owning

1 the drugs.

2 Q. Did you conduct any further investigation at that
3 point on Mr. Dubose?

4 A. No, ma'am.

5 Q. And did you send anything else off for any type of
6 analysis at that point?

7 A. No, ma'am.

8 Q. Okay. How long did you say earlier that you'd been a
9 narcotics officer?

10 A. At that point, approximately two years. At this point
11 I've been one since 2009.

12 Q. And as part of being a narcotics officer, do you
13 conduct undercover buys?

14 A. Yes.

15 Q. And as a part of conducting those undercover buys,
16 what type of idea do you have of the value -- the street
17 values of drugs?

18 A. The street value for cocaine base would be
19 approximately \$100 a gram and with this being, you know,
20 39 grams, you're looking approximately 3900 bucks.

21 Q. As part of your training and your experience of being
22 a narcotics investigator as far as drug trafficking goes,
23 what's typical as far as how many individuals are involved
24 in drug trafficking?

25 A. It depends on -- it really depends on how secure the

1 network is, but there's always two or three that you're
2 gonna get depending on how high you are up in the chain.

3 Q. After hearing the testimony at the trial of Major
4 Dubose, what did you conclude as far as the trafficking?

5 **MR. McBRATNEY:** Your Honor, I think we're getting
6 into an area where they're asking an opinion that I don't
7 think he's qualified to give.

8 **MS. DANIELS:** Should we approach, Your Honor?

9 **THE COURT:** Yes.

10 (Proceedings held at bench; not reported.)

11 **MS. DANIELS:** Thank you, Investigator McDowell.
12 Please answer any questions that Mr. McBratney has.

13 **THE COURT:** Cross?

14 **MR. McBRATNEY:** Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. McBRATNEY:

17 Q. Mr. McDowell, you're the lead investigator on this
18 case; are you not?

19 A. Yes, sir.

20 Q. And as lead investigator, you're responsible for
21 everything that goes on in the case, correct?

22 A. Yes, sir.

23 Q. And the investigation being led by you, you direct
24 others within the Florence County Sheriff's Office to do
25 whatever needs to be done to make a case, correct?

1 A. This particular case is a little different, but, yes,
2 typically.

3 Q. Okay. Now you testified that on the day this incident
4 occurred, which was in -- on June 7, 2011, I believe it was
5 you and Ben Price and -- was it Mr. Dyun? Is that the way
6 you pronounce it?

7 A. It's pronounced "dine". Yes, sir.

8 Q. How do you --

9 A. Dyun.

10 Q. -- Dyun were together in your Tahoe --

11 A. Yes.

12 Q. -- pulling your boat going down West Palmetto headed
13 to Lake Robinson --

14 A. Yes, sir.

15 Q. -- for some relaxation?

16 A. Yes, sir.

17 Q. You pull up to the intersection and you look over and
18 both you and Ben Price have testified you see Cedric Shaw
19 sitting in the car smoking a joint?

20 A. Yes, sir.

21 Q. And there's no question in your mind that Cedric Shaw
22 was in the car?

23 A. No question.

24 Q. And you didn't see anybody else in the car, did you?

25 A. No, sir.

1 Q. Okay. And was Cedric Shaw known to you from prior
2 investigations?

3 A. He was not known to me, no.

4 Q. He was not?

5 A. (Shakes head.)

6 Q. Did you ever run his rap sheet prior to his trial?

7 A. Yes.

8 Q. And did he have a criminal record?

9 A. I think it was a simple possession on there if I
10 remember correctly. I haven't seen it lately.

11 Q. Okay. But there's no question in your mind that he
12 was the only one in that silver Crown Vic?

13 A. That's correct.

14 Q. And that's where the drugs were found?

15 A. Correct.

16 Q. And he was smoking a blunt?

17 A. Yes.

18 Q. Prior to this trial -- or prior to his trial, did you
19 get a DNA sample to determine if he, in fact, was the one
20 smoking that blunt compared to the DNA on the end of the
21 blunt?

22 A. I did not. And the reason -- one of the reasons was
23 because just because there was a roach found, a roach, a
24 marijuana cigarette, found in the ashtray of the vehicle
25 when nobody was around doesn't mean it would have actually

1 came back to him anyway.

2 Q. Okay. Did you -- now the vehicle's been in impound
3 for quite a while?

4 A. It may be still there. I haven't --

5 Q. Okay. Did you ever dust the vehicle for prints to
6 see if anybody other than Cedric Shaw's prints were in the
7 vehicle?

8 A. No, sir.

9 Q. Did you find anything in the vehicle to link Major
10 Dubose to being in the vehicle?

11 A. I did not.

12 Q. You didn't find any information, any -- any driver's
13 license, any documents --

14 A. (Shakes head.)

15 Q. -- no fingerprints, no DNA, nothing in the vehicle to
16 indicate that my client was ever in the vehicle, did you?

17 A. No, sir.

18 Q. And you didn't see him in the vehicle, did you?

19 A. I did not.

20 Q. And Ben Price didn't see him in the vehicle, did he?

21 A. No, sir.

22 Q. In fact, the reason -- the only reason that you
23 brought this case is because you were sitting in the
24 courtroom prosecuting Cedric Shaw and Major Dubose came
25 in and blew your whole case, didn't he?

1 A. He admitted that the stuff belonged to him, yes.

2 Q. And he blew up your case?

3 A. Absolutely.

4 Q. And you were angry?

5 A. I wasn't angry.

6 Q. You weren't? You went out immediately and got an
7 arrest warrant charging him with trafficking.

8 A. I mean, that wasn't done out of anger. It was done
9 out of him admitting that the stuff was his.

10 Q. Okay. But you didn't have any other evidence, did
11 you?

12 A. Other than him getting up and admitting under oath
13 that it was him, no, sir.

14 Q. But you knew it wasn't him, didn't you?

15 A. I identified Cedric Shaw as -- as the person driving
16 that vehicle.

17 Q. So you knew it wasn't Major Dubose that had those
18 drugs, didn't you?

19 A. He admitted it was his.

20 Q. I know he admitted it, but you knew it wasn't him?

21 A. Absolutely.

22 Q. So you knew he was lying when he took the witness
23 stand, didn't you?

24 A. Yes.

25 Q. But you didn't charge him with perjury, did you?

- 1 A. I did not.
- 2 Q. Why not?
- 3 A. He admitted that the stuff was his.
- 4 Q. So you picked the more serious charge?
- 5 A. I picked what he admitted to.
- 6 Q. Okay. But you knew he was lying?
- 7 A. I figured he was lying, yes.
- 8 Q. You knew he perjured himself?
- 9 A. Yes.
- 10 Q. And you didn't charge him with perjury?
- 11 A. No.
- 12 Q. Okay. And you didn't do any further investigation to
- 13 try to verify that Major Dubose was in that vehicle, did
- 14 you?
- 15 A. I honestly don't know what else could have been done,
- 16 but, no, I did not.
- 17 Q. Okay. Because in your mind you were satisfied that
- 18 Major Dubose wasn't in the vehicle, weren't you?
- 19 A. Yes.
- 20 Q. So you knew he didn't have possession, either actual
- 21 possession or constructive possession, of the drugs that
- 22 were found in that vehicle or near that vehicle, did you?
- 23 A. Other than his testimony, no.
- 24 Q. Okay. And you knew he lied?
- 25 A. I knew he was lying.

1 Q. Okay. In fact, during his testimony he said that he
2 had borrowed Cedric's car prior to that occasion, didn't
3 he?

4 A. Yes, he did.

5 Q. But that couldn't have been possible, could it?

6 A. It is possible he could have borrowed it, but I don't
7 think -- that definitely wasn't him in the vehicle at the
8 time.

9 Q. Well, did you look at the bill of sale?

10 A. To Cedric Shaw?

11 Q. Yes.

12 A. Yes.

13 Q. And it says that Cedric Shaw acquired the vehicle on
14 June 6, 2011, the day before?

15 A. Uh-huh.

16 Q. So when Major said I'd borrowed that car before, you
17 knew he was lying?

18 A. Before that day? I mean, it's possible he could have
19 borrowed the car, but he wasn't driving it that day or
20 during that time.

21 Q. You knew he wasn't driving it on June 7th?

22 A. Yes.

23 Q. And Cedric just got the car the day before, so he
24 couldn't have driven it any other time, could he? Because
25 he testified he had driven it before June the 7th.

- 1 A. I'm really not sure where you're going with that, but
2 all I'm saying is during that time Cedric Shaw was driving
3 that car when he pulled up beside me.
- 4 Q. Okay. No question in your mind?
- 5 A. No.
- 6 Q. Okay. But you swore out a warrant, signed an
7 affidavit, saying that it was Major Dubose?
- 8 A. Yes.
- 9 Q. And that wasn't true either, was it?
- 10 A. That it wasn't him?
- 11 Q. Yeah.
- 12 A. If he's saying it's his, then --
- 13 Q. You signed an affidavit with this arrest warrant --
- 14 A. Yes.
- 15 Q. -- saying it was Major Dubose?
- 16 A. Correct.
- 17 Q. But you knew, it wasn't?
- 18 A. In my mind, it was 100 percent Cedric Shaw.
- 19 Q. Okay. And you also signed a warrant for him for
20 failure to stop for a blue light?
- 21 A. Correct.
- 22 Q. And you're not going forward with that charge though,
23 are you?
- 24 A. Am I not going forward with it?
- 25 Q. Yes.

1 A. If the solicitor's office is not going forward with
2 it, then I wouldn't.

3 Q. And the reason is because y'all didn't see him
4 driving, did you?

5 A. Correct.

6 Q. How big a fellow is Cedric Shaw?

7 A. He's a small guy.

8 Q. How small?

9 A. I would say five-seven, maybe a 130 pounds.

10 Q. Okay. Did you take any fingerprints off the package
11 that the crack cocaine was in to determine if Major Dubose
12 had ever handled it?

13 A. No, sir. The only analysis done in this case was
14 the analysis for the drugs. No DNA or fingerprints were
15 submitted.

16 Q. Okay. Did you ever question Major Dubose after you
17 arrested him to determine if Cedric Shaw had threatened,
18 coerced or promised him anything to get him to testify?

19 A. I did not.

20 Q. Why not?

21 A. I just -- I didn't. I mean -- my only dealings with
22 Major Dubose was during the testimony that day and then he
23 was transported and the warrants were obtained.

24 Q. Well, you're the lead investigator on this case?

25 A. Correct.

1 Q. But you didn't try to interview him while he was in
2 custody?

3 A. I did not.

4 Q. And yet you knew he had lied on the witness stand?

5 A. Yes.

6 Q. You didn't want to get to the bottom of why he lied?

7 A. No, I did not.

8 Q. You were angry?

9 A. I was not angry.

10 Q. You weren't angry?

11 A. I was not.

12 Q. Well, how can you explain not charging him with
13 perjury instead of charging him with the more serious
14 charge of the drugs?

15 A. I charged him with what he admitted under oath.

16 Q. You weren't being vindictive?

17 A. No, this is a job to me. It's not -- it's not gonna
18 make my paycheck any higher or any lower.

19 Q. Okay.

20 **MR. McBRATNEY:** That's all the questions I have of
21 this witness.

22 **THE COURT:** Redirect?

23 **MS. DANIELS:** Briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. DANIELS:

1 Q. Why during your investigation did you decide not to
2 dust the vehicle for prints after you heard the testimony
3 of Major Dubose?

4 A. Because I was 100 percent sure at that point that
5 Cedric Shaw was driving that car. I don't think that
6 Major Dubose's fingerprints would be on the vehicle.

7 Q. As far as Major Dubose borrowing Cedric's car, would
8 you have any knowledge if Major Dubose borrowed a prior
9 car of Cedric's?

10 A. No. Up until that day, I'd never even -- up until
11 the trial date I never even knew Major Dubose.

12 Q. As part of your investigation, did you find out if
13 Cedric Shaw and Major Dubose knew each other?

14 A. Yes.

15 Q. And what did you find out?

16 A. Prior to Cedric's trial date?

17 Q. Prior to -- or after. Once you started the
18 investigation of Major Dubose.

19 A. I did not know anything about Major Dubose until
20 Cedric Shaw's trial.

21 Q. And after that when you began your investigation
22 into the charge that we're here today for for Major
23 Dubose, did you find out if Cedric Shaw and Major Dubose
24 knew each other?

25 A. Yes, through another witness's testimony.

1 Q. Do you see Major Donnard Dubose in the courtroom
2 today?

3 A. I do.

4 Q. And can you describe him and describe the article of
5 clothing he's wearing to the Court?

6 A. He's at the defense table with an orange-ish, pink-ish
7 -- he's standing up -- with silver stripes on his shirt.

8 **MS. DANIELS:** Your Honor, let the record reflect that
9 the witness has identified the Defendant.

10 No further questions at this time.

11 **THE COURT:** All right. Anything further of this
12 witness?

13 **MR. McBRATNEY:** Thank you, sir.

14 **THE COURT:** You may step down. Thank you.

15 **THE WITNESS:** Thank you, Judge.

16 (Witness excused.)

17 **THE COURT:** Go ahead.

18 **MS. DANIELS:** Your Honor, at this time the State
19 would like to publish what's been marked as State's
20 Exhibit 7, which is the prior trial transcript of Major
21 Donnard Dubose.

22 **THE COURT:** All right. Before we do that, I think
23 we're gonna take a short break.

24 **MS. DANIELS:** Okay.

25 **THE COURT:** I think that might be a little bit

1 lengthy and let me let the jury have a short break and
2 then we'll do that.

3 **MS. DANIELS:** Sure.

4 **THE COURT:** Folks, please have no conversation about
5 the case. We're gonna just take a few minutes and let
6 you get something to drink. I mean, I don't think this
7 is gonna be terribly lengthy, but I just want to go ahead
8 since this is a good breaking point and then we'll get set
9 up for the reading of that transcript, okay?

10 (Whereupon, the jury retires to the jury room at
11 12:32 PM.)

12 **THE COURT:** All right. We'll take just a short break
13 and when we get back we'll have Emily over there and we'll
14 be ready to go, okay?

15 (Recess taken.)

16 **THE COURT:** All right. Let's bring the jury in,
17 please.

18 (Whereupon, the jury return to the jury room at
19 12:46 PM.)

20 **THE COURT:** All right. Ladies and gentlemen, we're
21 gonna pick up now and you heard Ms. Daniels indicate
22 that the State's next witness was gonna be by way of a
23 transcript. A transcript is a -- and you'll hear it,
24 it's testimony that was taken at an earlier trial in the
25 exact same way that testimony is taken during this trial.

1 There are attorneys that are asking the witness questions.

2 In this case, the transcript is the previous
3 testimony of Mr. Dubose at that earlier trial and my law
4 clerk, Ms. Nellermoe, is going to read the parts of
5 Mr. Dubose during that transcript and Ms. Daniels is gonna
6 read the parts of the other folks, and she'll identify
7 who's speaking as she reads her parts. But this is
8 testimony and you would -- just as if it was being done
9 -- well, it is being done here live, but instead of being
10 read, if it was done live, and you -- you give it whatever
11 credibility and believability that you think it deserves
12 just as you would any witness who's testifying, okay?

13 So, Ms. Daniels, if you'd like to begin with that.

14 **MS. DANIELS:** Thank you, Your Honor. And for the
15 record, I'll begin at Line 20 on the first page, which is
16 Page 93.

17 **THE COURT:** All right.

18 (Whereupon, the following portion of State's Exhibit
19 Number 7, Defendant's prior testimony, was read into the
20 record by Ms. Daniels and Ms. Nellermoe.)

21 "THE COURT: All right. We're still on the record --
22 we're on the record with regard to the State versus Cedric
23 Antoine Shaw. It's been brought to the Court's attention
24 that -- by Mr. Ervin and Mr. Swerling this morning prior to
25 us selecting a jury in this case that Mr. Cedric Dubose was

1 a potential witness for Mr. Shaw -- I'm sorry, as a witness
2 for Cedric Shaw. Mr. Dubose is a witness for Cedric Shaw.
3 Excuse me. And it was further brought to the Court's
4 attention that Mr. Dubose was going to claim ownership of
5 the drugs for which Mr. Shaw stands trial -- is on -- on
6 trial for right now. After having been advised of this by
7 counsel for the defense, as well as the State, felt that
8 it was imperative that Mr. Dubose be advised of his
9 constitutional rights.

10 Come up here, Mr. Dubose. Place him under oath,
11 Madam Clerk.

12 THE CLERK: Please raise your right hand. Do you
13 swear to tell the truth, the whole truth and nothing but
14 the truth so help you God?

15 MR. DUBOSE: I do.

16 THE COURT: Mr. Shaw, you under -- excuse me --
17 Mr. Dubose, you understand your constitutional rights that
18 your lawyer's gone over them with you?

19 MR. DUBOSE: Yes, sir.

20 THE COURT: Sir?

21 MR. DUBOSE: Yes, sir.

22 THE COURT: And you are Major Dubose?

23 MR. DUBOSE: Yes, sir.

24 THE COURT: And you understand that as a result of
25 taking the stand and testifying, I don't know what you're

1 going to say other than what I've been advised you're going
2 to say, but certainly if you take the stand, and you have a
3 constitutional right against self-incrimination, you don't
4 have to testify and say anything that would incriminate
5 you. Do you understand that?

6 MR. DUBOSE: Yes, sir.

7 THE COURT: If you take the stand and do testify,
8 after having been advised by your lawyer, if you do take
9 the stand and testify as to facts that would warrant
10 prosecution, the State could certainly prosecute you based
11 upon your testimony, and you understand that?

12 MR. DUBOSE: Yes, sir.

13 THE COURT: Let me ask you this. Based upon what
14 Mr. Shaw's on trial for here today, I don't know if your
15 lawyer advised you of this, of the potential penalty for
16 this particular offense. Do you understand that?

17 MR. DUBOSE: Yes, sir.

18 THE COURT: Well, I'm confident based upon what your
19 lawyer has stated on the record here today that he has
20 advised his client of his constitutional rights against
21 self-incrimination, that Mr. Dubose is fully aware of the
22 potential consequences of testifying to his detriment on
23 this thing and he is fully aware of potential penalties
24 of such and if he so choose to testify in the trial of
25 this case, he's doing so freely.

1 Now let me ask you this. Anybody threaten you,
2 forcing you to come in here and testify?

3 MR. DUBOSE: No, sir.

4 THE COURT: Okay. That he's making this decision
5 freely and voluntarily after consultation with his lawyer
6 and it's his decision knowing -- fully knowing the
7 consequences of such and if he takes the stand it is
8 certainly against his lawyer's advice.

9 All right. Anything else, Mr. Ozment?

10 MR. OZMENT: Your Honor, I would ask that he also be
11 asked if he's given any kind of reward or incentive for
12 testifying.

13 THE COURT: All right. You've given any kind of
14 reward or incentive to testify?

15 MR. DUBOSE: No, sir.

16 THE COURT: All right. And anything else, Mr. Ozment?

17 MR. OZMENT: Nothing from the State, Your Honor.

18 THE COURT: Defense counsel, Mr. Ervin, Mr. Swerling?

19 MR. SWERLING: No, Your Honor."

20 **MS. DANIELS:** Your Honor, let the record reflect that
21 I'm beginning on Line 9 on Page 176.

22 **THE COURT:** All right.

23 **MS. DANIELS:** Direct examination by Mr. Swerling.

24 (Whereupon, the following portion of State's Exhibit
25 Number 7, Defendant's prior testimony, was read into the

1 record by Ms. Daniels and Ms. Nellermoe.)

2 "BY MR. SWERLING:

3 Q. Would you introduce yourself to the jury, Mr. Dubose?

4 A. How you doing? My name is Major Dubose.

5 Q. All right. You need to speak into that mic and you

6 have a soft voice.

7 A. How you doing? My name is Major Dubose.

8 THE COURT: Is it on? Fine sound system we have here,

9 Mr. Swerling. Please speak up --

10 THE WITNESS: Yes, sir.

11 THE COURT: -- if you would, please, sir.

12 BY MR. SWERLING:

13 Q. Okay. Major Dubose?

14 A. Yes, sir.

15 Q. And where do you live, Major?

16 A. In Lamar, South Carolina.

17 Q. Lamar?

18 A. Yes, sir.

19 Q. And how old are you?

20 A. Twenty-five.

21 THE COURT: All right. Hold on one minute. Can you

22 hear him in the back corner over there? Okay. I'm sorry,

23 Mr. Swerling.

24 BY MR. SWERLING:

25 Q. And keep -- I'm going to try and keep you to keep your

1 voice elevated, too, so everybody in the jury can hear you,
2 okay?

3 A. Yes, sir.

4 Q. All right. Now how long have you been living in
5 Lamar?

6 A. I've been living in Lamar about -- all my life
7 besides when I move back and forth to New York with my
8 mother.

9 Q. Okay. And tell me what the family situation is. How
10 do you -- you say you go back and forth to New York?

11 A. Yes, sir.

12 Q. Who lives in New York?

13 A. My momma.

14 Q. Okay. And have there been times over your lifetime
15 that you've actually stayed and lived the -- in New York
16 City?

17 A. Yes, sir.

18 Q. But your home is in Lamar, South Carolina?

19 A. Yes, sir.

20 Q. And who lives in Lamar, South Carolina?

21 A. Just me. My sister was staying there, but she moved.

22 Q. Okay. Where did you go to school?

23 A. I went to school in Darlington, I went to school in
24 Hartsville, I went to school in Lamar, I went to school in
25 Baltimore for a year, and I went to school in New York.

- 1 Q. So you've gone to school down here?
- 2 A. Yes, sir.
- 3 Q. But you've also attended schools in New York; is that
- 4 right?
- 5 A. Yes, sir.
- 6 Q. How far did you get in school?
- 7 A. About tenth grade, eleventh.
- 8 Q. Now do you know Cedric Shaw --
- 9 A. Yes, sir.
- 10 Q. -- the person in trial -- on trial today?
- 11 A. Yes, sir.
- 12 Q. And is there a relationship between the two of you,
- 13 a familial relationship?
- 14 A. That's my cousin.
- 15 Q. Okay. Do you know what degree of cousins you are?
- 16 A. Probably about third or fourth.
- 17 Q. And does he hail out of Lamar as well?
- 18 A. Yes. Yes, sir.
- 19 Q. In that area?
- 20 A. Yes, sir.
- 21 Q. When did you -- now you're cousins, I mean, so when
- 22 did you and he become what I would say as friends?
- 23 A. Say about when I was like fourteen, fifteen, around
- 24 that area.
- 25 Q. Prior to that time, did you know who he was?

1 A. No, just a regular person just walking around.

2 Q. Okay. When did you discover you were cousins? Around
3 the age of fifteen?

4 A. Yes, sir.

5 Q. Now did you from time to time -- did you and he hang
6 out together or was it just kind of a say hello from time
7 to time?

8 A. Just say hello and -- I mean, you know, we, you know,
9 meet here and there. I might see him chill for a second.
10 Nothing too big.

11 Q. Okay. Now where did -- what kind of work were you
12 doing?

13 A. I don't work. I just go to school.

14 Q. Pardon?

15 A. I say I go to school. Basically go to school. I
16 didn't work during that time.

17 Q. So you're -- are you unemployed now?

18 A. Yes, sir.

19 Q. All right. When you worked, what did you do?

20 A. I had a job in Baltimore for like a year at the gym
21 called Spunk Fitness.

22 Q. And what -- called what?

23 A. Spunk Fitness.

24 Q. Spunk Fitness?

25 A. Yes, sir.

- 1 Q. Okay. All right. Now do you own your own car?
- 2 A. No, sir.
- 3 Q. When you need a car, whose car do you borrow?
- 4 A. Borrow my cousin car once in a while.
- 5 Q. Your cousin Cedric?
- 6 A. Cedric, yes, sir.
- 7 Q. Do you borrow anybody else's car?
- 8 A. I don't really have anybody in my family like --
- 9 like --
- 10 Q. Pardon?
- 11 A. Nobody in my family really has, you know what I mean,
- 12 no car like that around.
- 13 Q. Are you going with someone or --
- 14 A. A girlfriend.
- 15 Q. -- dating someone?
- 16 A. Yes, sir.
- 17 Q. Okay. And where does she live?
- 18 A. She lives in Darlington, but she be at my house, so
- 19 she stay with me most of the time.
- 20 Q. Okay. And going back to June of 2011, were y'all
- 21 staying together?
- 22 A. Yes, sir.
- 23 Q. All right. Now I want to take you back to June 2011.
- 24 Do you recall June 2011?
- 25 A. Yes, sir.

- 1 Q. Okay. Now would you tell the jury, were you -- from
2 time to time were you selling drugs?
- 3 A. Every once in a while, yes, sir.
- 4 Q. What kind of drugs were you selling?
- 5 A. Crack.
- 6 Q. Okay. And where were you selling crack?
- 7 A. In Lamar in my neighborhood.
- 8 Q. And over what period of time were you selling crack?
9 How long?
- 10 A. I'm not gonna say for too long. Probably like a
11 couple of months or something like that.
- 12 Q. And why were you selling crack?
- 13 A. Because I just needed money.
- 14 Q. Would -- would you tell the jury like in what
15 quantities were you selling crack?
- 16 A. Probably between --
- 17 Q. You understand what I mean, gram --
- 18 A. Yes, sir. I mean, like --
- 19 Q. -- or a fourth of a gram, a twenty dollar bag?
- 20 A. About twenty, ten. Like that.
- 21 Q. All right. Well, explain to the jury what those
22 numbers mean. What do those numbers mean?
- 23 A. In like twenty, like normally like a piece of a gram.
24 Like a point four of a gram; twenty dollars, ten dollars,
25 stuff like that. And fifty dollars for a whole gram

1 basically.

2 Q. Okay. And when some -- so when someone would buy
3 crack cocaine, would they tell you how much they had,
4 amount of money, and you decided how much crack you could
5 sell them?

6 A. No, I just walk around and try and get it off.

7 Q. Pardon?

8 A. I just walk around trying and get it off.

9 Q. Right. But what I'm saying is how would the number
10 come? How would you come about to the number of grams or
11 parts of a gram you were going to sell?

12 A. I just --

13 Q. It's based on money?

14 A. Yeah, it's based on money.

15 Q. And how much somebody wanted?

16 A. Yes, sir.

17 Q. Okay. What's the most you've ever sold at one time
18 to an individual?

19 A. I don't really do big things. I just do --

20 Q. Pardon? Speak up.

21 A. I just do a couple of twenties here, just twenties
22 and dimes. I don't do big things like that.

23 Q. All right. And a twenty is how much again?

24 A. Point four of a gram.

25 Q. Point four grams?

1 A. Yeah.

2 Q. Okay. And a dime is?

3 A. Like a point two.

4 Q. A point two grams? Okay.

5 A. Yes, sir.

6 Q. So for purposes of our discussion, if the jury could
7 pay attention to that, that's basically where you were
8 selling; is that right?

9 A. Yes, sir.

10 Q. And where would you sell the crack cocaine?

11 A. In my neighborhood.

12 Q. Now when you sell crack cocaine, do you have to have
13 scales to go ahead and measure out the grams or the fourth
14 of a gram or the half of a gram?

15 A. Yes, sir. I might have had a scale around there once
16 in a while.

17 Q. Okay. And -- and once you cut out from the quantity
18 that you have to sell that particular twenty dollar piece
19 or a ten dollar piece, what do you put it in?

20 A. Bags.

21 Q. Plastic baggies?

22 A. Yes, sir.

23 Q. So are plastic baggies part of the trade of when you
24 go ahead and sell drugs; is that correct?

25 A. Yes, sir.

1 Q. So you have a scale, you have -- you have the crack
2 cocaine itself and you have baggies; is that correct?

3 A. Yes, sir.

4 Q. Okay. And is that the kind of thing that you normally
5 would carry with you?

6 A. Yes, sir.

7 Q. And do you carry a lighter?

8 A. Yes, sir.

9 Q. And what's the purpose of that?

10 A. Smoking Black & Milds or might smoke my blunt.

11 Q. Now let's talk about that for a second. A blunt is
12 -- explain to the jury what a blunt is. Because they may
13 never have had any --

14 A. A blunt --

15 Q. -- experience of even hearing --

16 A. It's a cigar.

17 Q. -- what a blunt is.

18 A. Yes, sir. A cigar you can open up and you put the
19 weed in it and wrap it back up and call it a blunt.

20 Q. All right. And you saying you put the weed in it,
21 you're not talking about weeds from the yard, are you?

22 A. No, sir.

23 Q. What kind of weed are you talking about?

24 A. Marijuana.

25 Q. Okay. So you take a regular cigar, open it up and

1 put marijuana in it?

2 A. Yes, sir.

3 Q. And they call that a blunt?

4 A. Yes, sir.

5 Q. Is that right?

6 A. Yes, sir.

7 Q. And back on June 7th of 2011, did you have a blunt in
8 a vehicle?

9 A. Yes, sir.

10 Q. And did you have that blunt in Cedric's vehicle?

11 A. I was smoking it. Yes, sir.

12 Q. And did you have marijuana also in Cedric's vehicle?

13 A. Yes, sir.

14 Q. Now let's talk about how you got his vehicle that day.
15 What happened early in the morning?

16 A. I's supposed to take my girlfriend to work.

17 Q. And where does she work?

18 A. She work at -- at McDonald's.

19 COURT REPORTER: I'm sorry, I didn't hear you.

20 BY MR. SWERLING:

21 Q. Over here in Florence?

22 A. McDonald's on 76.

23 Q. Is that in Florence County?

24 A. Yes, sir.

25 Q. It's over near the Starbucks and the --

- 1 A. Yes, sir.
- 2 Q. Near the mall over there?
- 3 A. Yes, sir.
- 4 Q. Okay. And so what did you do to go ahead and get her
- 5 to work?
- 6 A. I asked can I borrow a car.
- 7 Q. And how did you ask to borrow a car?
- 8 A. I called and asked my cousin can I borrow his car to
- 9 take my girlfriend to work.
- 10 Q. And who called who?
- 11 A. I called Cedric.
- 12 Q. Cedric --
- 13 A. Yes, sir.
- 14 Q. -- your cousin?
- 15 A. Yes, sir.
- 16 Q. -- to borrow a car? What car was it that you wanted
- 17 to borrow?
- 18 A. A Crown Vic.
- 19 Q. And did you tell them why you wanted to borrow it?
- 20 A. Yes, sir.
- 21 Q. Okay. That you will take -- run your girlfriend into
- 22 Florence?
- 23 A. Yes, sir.
- 24 Q. And then what were you -- your plans to come home?
- 25 A. Yes, sir.

1 Q. Okay. Now did you put any of that, what we just
2 discussed, the drugs and the drug, what we call
3 paraphernalia, did you put any of that in the vehicle?

4 A. Yes, sir.

5 Q. Okay. Now what -- for the jury's information, what's
6 paraphernalia?

7 A. That's paraphernalia, bag and my scale. Yes, sir.

8 Q. The things that are necessary to --

9 A. Do what I do.

10 Q. -- break down crack for selling, right?

11 A. Yes, sir.

12 Q. And actually any drug; is that right?

13 A. Yes, sir.

14 Q. Did you take the paraphernalia we just discussed and
15 did you put it in the Crown Vic?

16 A. Yes, sir. I took it with me.

17 Q. Took it with you. Now did you tell Cedric you were
18 putting the drugs in the Crown Vic?

19 A. No, sir.

20 Q. You told him you were taking your girlfriend to work?

21 A. Yes, sir.

22 Q. But you're telling the jury now that you never
23 mentioned to Cedric that you were take -- putting any
24 drugs in that vehicle whatsoever?

25 A. No, sir.

1 Q. All right. Now you dropped your girlfriend off?

2 A. Yes, sir.

3 Q. And then tell the jury what happened.

4 A. I dropped my girlfriend off, I stopped by Sonic to
5 get me something to eat and when I got to Sonic I ate my
6 food. I smoked my blunt on my way to Sonic.

7 Q. Speak a little louder now. I'm having a hard time
8 hearing you.

9 A. I was smoking my blunt on the way to Sonic. When I
10 got to Sonic, I ate my food. After I dropped her off,
11 then I went coming back towards Lamar. When I got through
12 Timmonsville and -- I mean, like by a strip and there's a
13 road called Hibiscus, I bust a right on Hibiscus. It's a
14 little curve that you go through. So I went through my
15 first curve, I look in my rearview, I see the blue lights
16 so I don't got no license or nothing so now, I mean, in my
17 head I ain't thinking about stop and I had my -- I mean, my
18 work, my dope, in my lap when I saw him.

19 Q. All right. So let's stop for one moment. You're
20 driving back and you're near where, Timmonsville?

21 A. Yes, sir.

22 Q. Okay. And you see a blue light and a siren -- you
23 hear a siren behind you?

24 A. I didn't hear a siren.

25 Q. You saw the blue light?

1 A. I saw that blue light.

2 Q. And did you figure the blue light was for you?

3 A. I was the only car on the road.

4 COURT REPORTER: I didn't hear him. I'm sorry.

5 THE WITNESS: I was the only car on the road.

6 BY MR. SWERLING:

7 Q. Speak up. It's hard. You've got to say it loud
8 enough so the court reporter can get it, okay?

9 So you believe that the vehicle, the police vehicle,
10 was trying to stop you?

11 A. Yes, sir.

12 Q. Why didn't you stop?

13 A. 'Cause I ain't had no license and I had -- and then
14 the crack in my lap, so I already knew I was going to jail
15 anyway and why not try and get in -- I mean, get loose and
16 get light and shake him, so I was just -- keep going.

17 Q. So you were trying to get away?

18 A. Yes, sir.

19 Q. Is that what you're telling the jury?

20 A. Yes, sir.

21 Q. Okay. You didn't want to get arrested --

22 A. Yes, sir.

23 Q. -- for the drugs?

24 A. Yes, sir.

25 Q. Now so you're being followed. You make a decision

1 not to stop. Tell us what happened then.

2 A. I passed a couple of roads and -- I mean, so I didn't
3 know -- like Timmons ville is not where I'm from, know what
4 I mean, so I'm not gonna jump out and run in Timmons ville.
5 So I kept going about fifty, forty-five and then I -- he
6 wasn't moving fast behind me like he was gonna ram me, so
7 I just kept creeping and then --

8 Q. So you were going about how fast?

9 A. About fifty, forty-five.

10 Q. So you never really were going at a high speed?

11 A. I didn't, no, speed. I didn't speed at all. I just
12 kept going. So when I got next to St. Paul, like that's
13 right there in Lamar, that's the road, so I made the left
14 and I mash it. When I mash it, I gun it. I pass another
15 road called Cobbley (ph.) and a little bridge. When I got
16 to the bridge, I slowed down, you know what I mean? It
17 went through the curve. When I got to the curve, I seen
18 that dirt road called Quietude. Like I know that road
19 that's -- so --

20 Q. So you know this area over there where you're talking
21 about right now?

22 A. That's Lamar. I was in Lamar then.

23 Q. Uh-huh.

24 A. So when I got onto Quietude and I seen a cornfield,
25 I slowed up a little bit, but I mash through it. When I

1 mash through it, I just jump out and haul ass and they
2 had --

3 Q. So when you say -- you say "mash", you saw the
4 cornfield and you mash into it?

5 A. Yes, sir.

6 Q. Tell us what that means.

7 A. I ran into the cornfield. Like I didn't dodge the
8 cornfield or nothing. I just ran the car into the
9 cornfield.

10 Q. Okay. Let me show you what's been marked as State's
11 Exhibit Numbers 5, 6, 7, 8. Can you tell us what are --
12 what that is? Do you recognize what that is?

13 A. Yes, sir. That's the cornfield.

14 Q. It's the cornfield?

15 A. Yes, sir.

16 Q. And the area that appears to be run down, run over,
17 is that what you did?

18 A. Yes, sir.

19 Q. That's what we're talking about?

20 A. Yes, sir.

21 Q. I'm going to show the jury where -- show the jury
22 where the path -- where your car went. Just point it out.

23 A. Straight through there.

24 Q. Okay. All right. And is this the vehicle, State's
25 Exhibit 9, that you were driving?

- 1 A. Yes, sir.
- 2 Q. That's the tag that was on the car?
- 3 A. Yes, sir.
- 4 Q. And is this the scale you had?
- 5 A. Yes, sir.
- 6 Q. Okay. So you jumped out of the car. Did you see
- 7 the deputy at that time?
- 8 A. No, sir.
- 9 Q. Okay. What time of the day was this?
- 10 A. Probably is about -- I'll say around ten. I'll say
- 11 around ten, eleven. Probably about going on eleven.
- 12 Q. Right. It was in the morning?
- 13 A. Yeah, it was the morning time.
- 14 Q. The morning?
- 15 A. The morning time. She worked on mornings.
- 16 Q. All right. So when you jumped out, what did you take
- 17 with you or try to take with you?
- 18 A. I tried to take my crack with me, but me going through
- 19 there and -- I mean, that junk in my lap, I wasn't gonna
- 20 turn back around 'cause, shit, you know, what I mean by
- 21 turning.
- 22 THE COURT: Sir --
- 23 THE WITNESS: Oh, I'm sorry.
- 24 THE COURT: I don't want you using profanity in here.
- 25 You understand?

1 THE WITNESS: Oh, sir, I'm sorry about that. I'm
2 just --

3 THE COURT: I want you to answer his question without
4 the use of profanity.

5 THE WITNESS: All right.

6 THE COURT: Thank you.

7 THE WITNESS: All right.

8 MR. SWERLING: Now when it dropped, I wasn't thinking
9 about -- "

10 **MS. DANIELS:** Oh, I apologize. I was reading yours.

11 A. "Now when it dropped, I wasn't thinking about, you
12 know, I'm going back and get it because what if I go back,
13 then I would be, you know, I mean, gone. That would be it
14 right there, so I kept going. It's best just to get home.

15 Q. Okay. And so you dropped the crack?

16 A. Yes, sir.

17 Q. And the scales?

18 A. Yes, sir. I don't -- I probably fall out 'cause I
19 though I had the scale in my pocket and I ain't even know
20 I didn't --

21 Q. Speak up.

22 A. -- drop it on the floor. Like the scale, I thought
23 it was in my pocket. I ain't know I dropped it on the
24 floor. My whole thing was to get everything in my lap
25 mostly to go, but when it dropped I wasn't thinking about

1 turning back around.

2 Q. You left a blunt and the marijuana in the car?

3 A. Yes, sir.

4 Q. And you took off?

5 A. Yes, sir.

6 Q. Now the blunt and the other marijuana that was found
7 in the car, who's was that?

8 A. It was mine's.

9 Q. The crack cocaine that was found and the scales that
10 were found and the bags that were found, whose were those?

11 A. That was mine's.

12 Q. Okay. You claim sole ownership and possession of
13 that?

14 A. Yes, sir. I was driving the car and that's why I
15 dip out and jump off and ran 'cause I had that on me and
16 I knew if I was to pull over what time it was, so why not
17 run.

18 Q. Okay. Now you ran into a cornfield?

19 A. Yes, sir.

20 Q. All right. And tell us how far you ran into the
21 cornfield.

22 A. I kept going. I ain't stopped. I made it all the
23 way home. I ran straight. The cornfield probably looked
24 like a block radius, so I kept going straight through like
25 this towards the road.

1 Q. So you were just running through the cornfield?

2 A. Just running.

3 Q. Okay.

4 A. Just run.

5 Q. And did you eventually get to a major road or a
6 secondary road?

7 A. Oh, yes, sir. I got to the road so I'd get back
8 home. I walked dead along beside the road and walked on
9 to the house.

10 Q. Okay. Now how -- about how far were you from where
11 you were staying when you came out of the cornfield?

12 A. Oh, I was like -- that cornfield, let's say about a
13 forty-five minute walk from my house out of the cornfield.

14 Q. Okay. And did you walk --

15 A. Yes, sir.

16 Q. -- through the cornfield?

17 A. Yes, sir.

18 Q. And from -- through the cornfield and then you walked
19 home after?

20 A. I ran through the cornfield. After I got through the
21 cornfield and got to a place where I really know people
22 was at and then I be on my way and I walked, but I ran
23 through the cornfield. I didn't walk through the
24 cornfield.

25 Q. (Now that was on June 7, 2011, correct?

- 1 A. Yes, sir.
- 2 Q. Did you -- when you got home, did you call your
3 cousin, Cedric, and tell him that -- what had happened?
- 4 A. No, sir.
- 5 Q. You didn't call him and tell him that the car -- in
6 the cornfield?
- 7 A. No, sir.
- 8 Q. You didn't call him and tell him that there were
9 drugs in the car?
- 10 A. No, sir.
- 11 Q. That you had dropped some drugs?
- 12 A. No, sir.
- 13 Q. When did you have a conversation with Cedric about
14 the car?
- 15 A. The next day 'cause I know I had to have the car back.
- 16 Q. That's June 8th?
- 17 A. Yes, sir.
- 18 Q. And what did you tell Cedric about the car?
- 19 A. That I had -- that the car was in the pound. I ain't
20 really give him no explanation.
- 21 Q. That the car was in the --
- 22 A. The pound.
- 23 Q. Okay. You talking about the law enforcement pound?
- 24 A. Yes, sir.
- 25 Q. Is that right?

- 1 A. Yes, sir.
- 2 Q. And what else?
- 3 A. And that he asked me for what reason. I really ain't
- 4 give him a real reason. I just said that they had towed
- 5 the car. They pounded the car.
- 6 Q. They what?
- 7 A. That they pounded the car.
- 8 Q. Okay. So you didn't tell him about -- or did you --
- 9 him about the cornfield and how you --
- 10 A. I didn't really.
- 11 Q. -- the car got there?
- 12 A. I didn't tell him all that.
- 13 Q. Okay. Did you tell him at that time that you had
- 14 drugs on you --
- 15 A. No, sir.
- 16 Q. -- on June 7th?
- 17 A. No, sir.
- 18 Q. Did you tell him that you dropped drugs, cocaine and
- 19 marijuana, in his car and outside the car on June 7th?
- 20 A. No, sir.
- 21 Q. What you -- what you told him was -- was his car was
- 22 at the pound?
- 23 A. Yes, sir.
- 24 Q. And he said he was going to go get the car?
- 25 A. Yes, sir.

1 Q. Is that right?

2 A. Yes, sir.

3 Q. Okay. Now it appears it was several days later that
4 he went and got the car.

5 A. Yes, sir.

6 Q. What happened as far as you know?

7 MR. OZMENT: Your Honor, that question calls for
8 speculation.

9 MR. SWERLING: Oh, on his own knowledge I'm asking
10 him.

11 THE COURT: He can testify as to his own knowledge.
12 I'll allow it.

13 BY MR. SWERLING:

14 Q. On your own -- of your own knowledge, do you know
15 what happened to Cedric on the day he went to get the car?

16 A. He got locked up.

17 Q. And after he got locked up and he got out, was that
18 the first time that you had a discussion with him about
19 the drugs?

20 A. Yes, sir.

21 Q. So when he went to get the car, he didn't have
22 knowledge about the drugs that you had in the vehicle and
23 that you left in the vehicle?

24 A. No, sir, 'cause I didn't think that they was gonna
25 find it, so that's why I really didn't tell him.

1 Q. And after he got arrested, he asked you some questions
2 about the drugs?

3 A. Yes, sir.

4 Q. What was his attitude at that time? Was he -- well,
5 let me ask you this. Was he upset --

6 A. Yes, sir.

7 Q. -- that he had been arrested and it had been drugs
8 that you had in the vehicle?

9 A. Yes, sir.

10 Q. And that's the first time you discussed it?

11 A. Yes, sir.

12 Q. Did you apologize to him?

13 A. Yes, sir.

14 Q. Do you think you should have told him on Saturday or
15 Friday night or Saturday, the next day, the 6th -- or the
16 7th --

17 A. Yes, sir.

18 Q. -- that you had drugs in the car and left drugs in
19 the car?

20 A. Yes, sir.

21 Q. Did you feel bad about the way he got arrested
22 following -- I guess it was on the 14th or the 15th when
23 he went to claim the car?

24 A. Yes, sir.

25 Q. All right. He -- he went to claim the car without

- 1 having knowledge from you that there were drugs there?
- 2 A. Yes, sir.
- 3 Q. Is that correct?
- 4 A. Yes, sir.
- 5 Q. Now this case is almost two years old. Well, it's
- 6 over two years old. Did you say anything to anybody
- 7 during this period of time as to the fact that you were
- 8 the driver of the car and it was your dope that was in the
- 9 car and outside the car?
- 10 A. No, sir. I thought it was over with.
- 11 Q. Okay. When you say you thought it was over with,
- 12 what do you mean? Why did you think that?
- 13 A. I didn't hear anything else about the case or
- 14 anything, so I just thought it was just --
- 15 Q. Pardon?
- 16 A. I hear nothing else about the case or anything, so I
- 17 just thought it was water under the bridge. They didn't
- 18 find it in the car, so that was it.
- 19 Q. So you didn't hear anything more about the case?
- 20 A. No, sir.
- 21 Q. And when was the first time that you heard that the
- 22 case against Cedric was going to be called for trial?
- 23 A. I'll say about -- like about a week ago, yeah.
- 24 Q. And as a result of that, did you go to Mr. Ervin's
- 25 office?

1 A. Yes, sir.

2 Q. And did you tell him the story or the testimony, the
3 version of your event -- of the events that you're telling
4 the jury today?

5 A. Yes, sir.

6 Q. Cedric {sic}, let me ask you this. You understand --
7 or do you understand that you're admitting to a crime?

8 A. Yes, sir.

9 Q. Do you understand that you didn't have to get up here
10 to testify?

11 A. Yes, sir.

12 Q. You've been advised by your lawyer and that you don't
13 have to -- you didn't have to testify even if we called you
14 as a witness?

15 A. Yes, sir.

16 Q. And you understand by getting up there you waive that
17 right not to testify, but you're doing it voluntarily; is
18 that right?

19 A. Yes, sir.

20 Q. All right. You knew what you're doing here today?

21 A. Yes, sir.

22 Q. And you know that by admitting to trafficking in
23 drugs, specifically crack cocaine, and the marijuana, the
24 -- and failing to stop and admitting selling drugs, that
25 you're putting yourself in a position where the State could

1 prosecute you for the same things that they're prosecuting

2 Mr. Shaw for today?

3 A. Yes, sir.

4 Q. Is that correct?

5 A. Yes, sir.

6 Q. And knowing that you could be prosecuted and you can
7 suffer the consequences of the conviction for those because
8 you've admitted it --

9 A. Yes, sir.

10 Q. -- you are still up there testifying freely and
11 voluntarily?

12 A. Yes, sir.

13 Q. You want -- you want to tell the truth about what
14 happened that day?

15 A. Yes, sir.

16 Q. Are you telling the truth about what happened that
17 day?

18 A. Yes, sir.

19 Q. Was Cedric Shaw anywhere around that day?

20 A. No, sir.

21 Q. Cedric Shaw know what you had on you that day?

22 A. No, sir.

23 MR. SWERLING: Excuse me one minute.

24 Judge, I would just ask -- I'd like to have the

25 witness step down and have my client step up so the jury

1 could see the two of them together for identification
2 issues.

3 THE COURT: Mr. Ozment?

4 MR. OZMENT: Your Honor, they're both right here in
5 front of the jury.

6 THE COURT: And I think they're -- where they're
7 seated they're fine and the jury can compare them where
8 they're seated.

9 MR. SWERLING: All right. Thank you, Judge. Answer
10 any questions that the solicitor has.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. OZMENT:

14 Q. Now, Mr. Dubose, you stated that back in 2011 you
15 dealt a little crack here and there; is that correct?

16 A. Yes, sir.

17 Q. How long had you been dealing crack at that point?

18 A. Not long. Probably a couple of months.

19 Q. Okay. Where did you get your crack?

20 A. Well, there ain't no certain place. Wherever I can.

21 Q. Did you buy it already cooked as crack or did you
22 buy powder and cook it yourself?

23 A. Buy it already.

24 Q. I didn't hear you.

25 A. Buy it already cooked.

1 Q. Okay. How -- how often would you borrow Cedric's
2 car?

3 A. Only when I'm doing a favor for my girlfriend or
4 something like that, something simple.

5 Q. Like every day, once a week, once a month?

6 A. No, when I need a ride. Like something simple. Like
7 if my aunt couldn't give me her car, then I might call him
8 for my girlfriend to take her somewhere or to go up to the
9 road.

10 Q. Okay. But, I mean, about -- about how often?

11 A. I ain't know. It's just -- it's like just -- just
12 let me explain like this. Anytime or not no anytime, when
13 I needed to go somewhere, you know what I mean?

14 Q. Okay. On this day, what -- about what time did you
15 take your girlfriend to work?

16 A. She had to be at work at 8:30.

17 Q. 8:30. Did you get her to work on time?

18 A. No, probably thirty minutes late.

19 Q. Okay. And when you left McDonald's on Palmetto
20 Street, you went to Sonic next; is that right?

21 A. Yes.

22 Q. What did you get a Sonic that day?

23 A. I got me the Toaster with the sausage, egg and cheese
24 on it.

25 Q. Okay. And did you get a drink?

1 A. Yes, sir.

2 Q. Okay. After you left the Sonic, where did you go
3 next?

4 A. I went home. I was going home.

5 Q. All right. If -- was the crack and the paraphernalia
6 we talked about, was it already in the car or was it on
7 you when you got in the car?

8 A. It was on me. I got it from the house. I bring it
9 out with me.

10 Q. Why were you bringing crack to bring your girlfriend
11 to work?

12 A. 'Cause I was gonna drop her off and I was gonna ride
13 around.

14 Q. So after you were going to drop your girlfriend off,
15 you were going to go --

16 A. I was going to hang around Lamar.

17 Q. Deal drugs?

18 A. Not to deal drugs. Just ride around Lamar. Just
19 have it with me.

20 Q. So you were just going to ride around Lamar with
21 crack, but you weren't going to sell any of it?

22 A. Whenever I -- if somebody wanted it, I would have
23 sold it to them.

24 Q. So you were going to sell drugs?

25 A. Yeah.

1 Q. You weren't going home, you were going to go around
2 and try to sell your crack?

3 A. Yeah.

4 Q. How often did you borrow Cedric's car and sell crack
5 out of it?

6 A. I don't sell crack out of cars. I go walk around and
7 sell crack. I just had the car that day.

8 Q. Okay. Had you ever sold out of Cedric's car before?

9 A. No.

10 Q. Have you since?

11 A. No.

12 Q. Okay. But you were going to this day?

13 A. No, I was just driving, but I had it with me, so I
14 was gonna park somewhere and get the car and go ride
15 around just to sell crack.

16 Q. Okay. So you were going to drive from Lamar to
17 McDonald's and then drive back home and get out and walk
18 around and sell it? That was your plan?

19 A. Yeah. You never know what could happen.

20 Q. Okay. Because it just seems to me -- I don't know
21 -- you obviously know possessing crack is illegal, right?

22 A. I know that.

23 Q. And possessing 38 grams of it's very illegal. You
24 know that?

25 THE COURT: Yes or no.

1 A. Yes, sir.

2 Q. Okay. So why would you take it to take your
3 girlfriend to work at 8:30 in the morning if you were
4 going to drive back home?

5 A. Because I wasn't going -- I'm coming back to Lamar,
6 but you never know, I might bump into somebody on the way.

7 Q. Okay. So you might sell it out of the car?

8 A. Yeah.

9 Q. Okay.

10 A. No, I ain't said it was just to sell it out of the
11 car. I'm just saying if somebody wanted it, they can get
12 it.

13 Q. Okay. So you left Sonic and you're driving down
14 Palmetto Street; is that right?

15 A. Yeah.

16 Q. Do you remember -- when is the first time you remember
17 seeing a cop behind you?

18 A. Was when I got to Hibiscus.

19 Q. Hibiscus?

20 A. Yes, sir.

21 Q. And did you turn onto Hibiscus?

22 A. Yeah, I turned on Hibiscus.

23 Q. All right. How far did you go down Hibiscus?

24 A. There's like the first little sharp curve.

25 Q. Okay. How many other cars were on the road around

- 1 you?
- 2 A. I didn't see no other cars around me.
- 3 Q. All right. Was the cop right behind you when you --
- 4 A. No. When I look in my rearview, probably like two
- 5 cars in between us.
- 6 Q. Okay. Okay. And then so once the blue lights go on,
- 7 that's when you take off?
- 8 A. When them blue lights and I started to look and to
- 9 find me a spot to duck off at, a spot to run.
- 10 Q. Okay. And you did -- did you hear a siren?
- 11 A. I didn't hear no siren.
- 12 Q. All right. And you made a couple of turns; is that
- 13 right?
- 14 A. No, I tried to find me someplace to dip off at when
- 15 he got behind me. I kept going forty-five or fifty.
- 16 Q. All right. When did you turn off of Hibiscus?
- 17 A. I turned off Hibiscus onto St. Paul.
- 18 Q. Okay. So you -- and then from St. Paul, did you take
- 19 anymore turns?
- 20 A. I went on and turned into the cornfields.
- 21 Q. Okay. We talked about this. When you -- when you
- 22 ditched the car in the cornfield, did you take the Sonic
- 23 with you?
- 24 A. No, I ate the Sonic at the -- at Sonic.
- 25 Q. Okay.

1 A. When I dropped -- I drop her off and she got there
2 about 9:00.

3 Q. Okay.

4 A. That's whenever I say I went to Sonic. I sat and ate
5 for a minute.

6 Q. Okay. And then you -- did you hear, did you, the
7 cops or anything when you were running through the
8 cornfield or you were just gone at that point?

9 A. I was just gone.

10 Q. Okay. And it took you about forty-five minutes to
11 get home?

12 A. No, it took me forty-five minutes till I got through
13 the cornfield to get home.

14 Q. How long from the time you left the cornfield, from
15 the cornfield to your house?

16 A. Let's see. With all of it, probably been like an
17 hour.

18 Q. When --

19 A. You know, I wasn't looking at no watch. I was trying
20 to get home.

21 Q. But for forty-five minutes you were in the cornfield?

22 A. I know I was in there for a good hour, so probably
23 fifteen minutes -- forty-five minutes from the country to
24 my house. I stay uptown.

25 Q. Okay. Okay. Now you talked about that you spoke

1 to Cedric Shaw after this and told him that his car was
2 impounded, right?

3 A. Yeah.

4 Q. Did he ask you why it was impounded?

5 A. I just told him the car had got pounded. He towed
6 the car. He ain't asked, you know. I mean -- you know
7 what I mean, he was already mad about the car, so he was
8 like where to go get it then. That was that.

9 Q. So you told him that the car was impounded, but he
10 didn't want to know why it was impounded?

11 A. No, I didn't really give him a reason. I just said
12 they towed the car, the car was impounded, and he really
13 -- he didn't really ask for no reason. Just like he was
14 mad and hung up, so I was like all right.

15 Q. Okay. Did you tell him where it was impounded?

16 A. No, he had to find it. I told him they impounded the
17 car. I didn't say it was in the police impound or nothing
18 because I didn't know what pound they took it to.

19 Q. Okay. You just knew it was impounded?

20 A. I knew it was pounded.

21 Q. Okay. And then obviously you talked about that he
22 got locked up --

23 A. Yeah.

24 Q. -- when he went to get it? After that, what did you
25 tell him?

1 A. I mean, I told him that -- I mean, it was mine's, but
2 I didn't know if they was going -- if they found it and
3 will try to put it on him or anything, so I just sat back
4 wait. And it's been about a minute before the thing even
5 came back up, so that's why I sat back on it to try to see
6 what happens.

7 Q. Well, you knew he had been arrested for possessing
8 the crack though?

9 A. No, I knew that after he got out, after he arrested
10 for that.

11 Q. Okay. You didn't feel the need to try to do anything
12 to help him with that situation?

13 A. Right then at that time I couldn't do anything.

14 Q. Okay. Well, you could have gone to the police, say,
15 and said hey, you got the wrong guy. You could have done
16 that, couldn't you?

17 A. Uh-huh.

18 Q. Well, that's what you're doing now, right?

19 A. But I'm saying but like the case basically was blue,
20 it was old, so nobody ain't said nothing about it. I
21 thought it was gone.

22 Q. And, I mean, it wasn't old though when Cedric came to
23 you and said hey, man, I got arrested --

24 A. Yeah.

25 Q. -- for your crack. It wasn't old then, was it?

1 A. What I'm saying, I don't know they was gonna put it
2 on him and I mean to say prosecute him about it.

3 Q. Well, I mean, you knew he was arrested for it, right?

4 A. Yeah.

5 Q. I mean, you knew he had to get a bond to get out of
6 jail for it, right?

7 A. Yeah.

8 Q. You knew he had to hire two attorneys to try him with
9 it, right?

10 A. Yes, sir.

11 Q. I mean, that's a lot of money, isn't it?

12 A. Yes.

13 Q. You didn't think hey, maybe I should go to the police
14 and then you won't have to pay this bond, he won't have to
15 pay two attorneys and he won't have to have a trial that'll
16 go on two days because it's mine and I'll admit to it? You
17 could have done that, right?

18 A. Yeah.

19 Q. But you waited two years; is that right?

20 A. Yeah.

21 Q. In fact, have you ever given a statement to the
22 police about these drugs?

23 A. No.

24 Q. Have you ever tried to contact anybody until Mr. Ervin
25 on Friday to try to say hey, whoa, you've got the wrong

1 guy?

2 A. 'Cause trial -- it was going to trial, so right now
3 I'm sitting up here to admit to it because I didn't think
4 it would go this far and I thought it was gonna be some ho
5 driving the car and then they threw everything else away.
6 That's what I thought it was. That's why I didn't admit
7 to it.

8 Q. But you knew just a week after this happened that he
9 was charged with this trafficking, right?

10 A. Yeah.

11 Q. Okay. Now Cedric's your third cousin, is -- right?
12 Right?

13 A. Yeah.

14 Q. Okay. And how often do you see Cedric these days?

15 A. Not too often. Every once in a while.

16 Q. How -- give me an idea.

17 A. We might cut a little grass together and besides that
18 not really too much.

19 Q. Do you still borrow his car ever?

20 A. No.

21 Q. You said that you get your crack from here and there.
22 Where did you get the crack you had that day?

23 A. There ain't no telling. That's about two years ago,
24 man. I can't -- ain't no telling who I got that drug from.

25 Q. How many different people were you getting crack from

- 1 back then?
- 2 A. A lot of people.
- 3 Q. How many?
- 4 A. A lot.
- 5 Q. And give me -- you mean a lot meaning two or a lot
- 6 meaning three?
- 7 A. It can be a lot. It can change every day and I'm
- 8 just saying it's a lot.
- 9 Q. How much crack were you moving?
- 10 A. I don't move it like that. I'm just saying it's a
- 11 lot.
- 12 Q. You saying you move a lot?
- 13 A. No, I said it's a lot of people. I can go spend
- 14 twenty dollars, you know what I mean? It just don't
- 15 matter like --
- 16 Q. How much would you usually buy back then at one time?
- 17 A. I don't know. Probably about twenty-eight.
- 18 Q. 28 grams?
- 19 A. Grams, yeah.
- 20 Q. And then you'd move that a dime and a twenty at a
- 21 time?
- 22 A. Yeah.
- 23 Q. All right. How long would it take you to move much
- 24 weight?
- 25 A. Probably about two weeks.

1 Q. Two weeks. Did you ever buy crack from the same guy
2 more than once?

3 A. Not really. Probably about once or twice I might go
4 over to the same person, but not really.

5 Q. But pretty much every two weeks you'd find a new guy
6 to buy 28 grams from?

7 A. Yeah, and that's when they -- somebody get less than
8 that.

9 Q. I got you. I got you. How long did you stay in that
10 trade?

11 A. I told you probably like a couple of months in there.
12 I never liked it too much. Too much came behind that shit
13 -- came behind me that -- I'm sorry, sir.

14 THE COURT: All right.

15 MR. OZMENT: I beg the Court's indulgence.

16 (Whereupon, a pause in the proceedings.)

17 BY MR. OZMENT:

18 Q. Do you remember when you got the crack you had that
19 day?

20 A. No.

21 Q. I mean, had you just gotten it? Had you had it a
22 week?

23 A. No, I already had it.

24 Q. But, I mean, do you remember how long you'd had it?
25 Had you been selling off of that?

- 1 A. Yeah.
- 2 Q. How long had you been selling off of it?
- 3 A. Well, I can't tell you. I don't remember.
- 4 Q. All right. The crack business is about money, isn't
- 5 it?
- 6 A. Yeah.
- 7 Q. So when you buy something, you usually just give
- 8 somebody what they paid for. You don't give them a
- 9 freebie, do you?
- 10 A. No.
- 11 Q. All right. You said 28 grams is how much you normally
- 12 would get from somebody. Is that an ounce? Is that kind
- 13 of --
- 14 A. Yeah.
- 15 Q. Is that the -- why it's 28 grams? Because that seems
- 16 like a weird number. Is it 'cause you buying an ounce?
- 17 A. Yeah.
- 18 Q. So if you were to buy an ounce from somebody, would
- 19 they usually give you 40 grams or 28 grams?
- 20 A. An ounce is 28 grams.
- 21 Q. I'm saying but when you buy an ounce, they're not just
- 22 giving you just a little for free on top, are they?
- 23 A. No.
- 24 Q. All right.
- 25 MR. OZMENT: I beg the Court's indulgence.

1 (Whereupon, a pause in the proceedings.)

2 BY MR. OZMENT:

3 Q. How much weed did you have with you that day?

4 A. I don't know. I was smoking out of it. No telling
5 how much it was. I don't sell weed.

6 Q. All right. Other than the blunt, did you have any
7 more?

8 A. Yeah, a little bit.

9 MR. OZMENT: No further questions at this time.

10 THE COURT: Redirect?

11 MR. SWERLING: No, Your Honor. No, sir.

12 THE COURT: You may step down.

13 (Whereupon, the witness leaves the witness stand.)"

14 **MS. DANIELS:** Your Honor, that concludes the
15 testimony.

16 **THE COURT:** All right. Thank you, Ms. Nellermoe.
17 You may step down.

18 Anything further from the State?

19 **MS. DANIELS:** Nothing further from the State. At
20 this time the State rests.

21 **THE COURT:** All right.

22 Ladies and gentlemen, I apologize. I didn't know
23 how long that would take. It went a little longer than
24 I thought, but we're gonna break for lunch now, which
25 we're way beyond and I know you're hungry. Let's see.

1 I'm gonna ask you if you would be back here at 3:00.

2 That gives you an hour and a half.

3 Please continue to do everything in your power to
4 protect your ability to remain fair and impartial. Do not
5 allow anyone to talk with you -- with you about the case,
6 do not talk with anyone about the case, and we'll start
7 back at 3:00 or whenever you reconvene.

8 So everyone else remain seated while the members of
9 the jury are excused.

10 (Whereupon, the jury was excused for lunch at
11 1:31 PM.)

12 **THE COURT:** All right. At this time I'll take up
13 any motions at the close of the State's case.

14 **MR. McBRATNEY:** Your Honor, at this time we'd move
15 for a directed verdict of acquittal. Your Honor, the
16 Defendant is charged with trafficking in crack cocaine.
17 It's my understanding there are three elements of the
18 offense of trafficking that the State must prove. Number
19 one, the substance is crack cocaine, the Defendant had
20 possession of the crack cocaine, either actual or
21 constructive, and that there were, in fact, 10 grams or
22 more of crack cocaine.

23 I'll concede number one and number three, but number
24 two, is the possession of -- actual or constructive
25 possession. By the State's own witnesses, they know that

1 Major Dubose was not driving that vehicle on the date of
2 this incident, which I believe was June the 7th of 2011.
3 And by their own admission they know that the testimony
4 that was just read into the record is perjured testimony
5 that they've offered into evidence, Your Honor.

6 I think that this is a situation where the case is
7 overcharged. My client may be guilty of perjury, but he's
8 not guilty and there's no evidence to prove he's guilty of
9 trafficking in crack cocaine, especially when the State is
10 -- by its own witnesses knows that the testimony they're
11 offering to prove their case is perjured testimony.

12 **THE COURT:** Okay.

13 **MR. McBRATNEY:** Investigator McDowell, the lead
14 officer, the lead investigator on this case, testified
15 that he knows that Major Dubose lied on the witness stand
16 in that testimony that was just presented.

17 Now, Your Honor, justice demands fairness and equity
18 under the law and, you know, I think this is a case where
19 the Defendant is overcharged with a crime he did not commit
20 and I don't think the testimony proves it even in the light
21 most favorable to the State when they proffer testimony
22 that they on their own admission knows is perjured.

23 **THE COURT:** Okay. I'm gonna respectfully deny the
24 motion for directed verdict. Mr. McBratney, I clearly
25 understand, the testimony was surprising to me, but as I

1 will charge the jury during the Court's charge the jury has
2 the discretion to accept the evidence, believe testimony,
3 not believe testimony, and I think it's a jury question.
4 I think it's a question of what testimony the jury gives
5 credence to and what testimony they discard and I think
6 it's a jury issue, so I'm gonna respectfully deny the
7 motion.

8 Have you had a chance to -- obviously you've talked
9 with Mr. Dubose as to the defense's position and whatever
10 case the defense may or may not put up.

11 **MR. McBRATNEY:** Yes, sir.

12 **THE COURT:** Will you have any witnesses after the
13 lunch break?

14 **MR. McBRATNEY:** Yes, sir.

15 **THE COURT:** Okay. Is it anyone other than Mr. Dubose?

16 **MR. McBRATNEY:** Well, it may be. I had one short
17 witness, but she has a conflict with a job that she has
18 in Columbia that she has to be there at 5:00 and with us
19 resuming at 3:00, I don't believe -- I'm gonna have to
20 consult with her and see whether or not she's gonna be
21 able to testify or not.

22 **THE COURT:** Yes, sir. Okay.

23 Mr. Dubose -- have you talked with him about his
24 rights regarding testifying, not testifying?

25 **MR. McBRATNEY:** Yes, sir.

1 **THE COURT:** Has he made the -- have y'all discussed
2 that and has he made a decision regarding that?

3 **MR. McBRATNEY:** At this point it's his desire to
4 testify.

5 **THE COURT:** Okay. Do we need to -- is there any
6 impeaching record that he would have that the State could
7 possibly go into?

8 **MS. DANIELS:** No, Your Honor. He doesn't have any
9 convictions on his record that would be --

10 **THE COURT:** Okay.

11 All right. Well, Mr. Dubose, let me have -- having
12 heard that, I just wanted to make sure because you have
13 the right to testify, you have the right to remain silent.
14 You understand that, sir?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Okay. And I'll discuss first the right
17 to remain silent. Every person that's charged with a
18 criminal offense has the right to remain silent because
19 the premise of law in this country is that -- that the
20 burden of proof rests on the State. You don't have to
21 prove anything. The State is the one that carries the
22 burden of proof. And so you could remain silent if you
23 chose to do that and if you did choose to do that, I would
24 tell the jury when I give them the charge on the law that
25 that is your constitutional right. I would tell them that

1 the fact that you chose to remain silent could not even be
2 considered in any way in their deliberations as to your
3 guilt or innocence. As a matter of fact, I would tell
4 them that the fact that you chose to remain silent could
5 not even be discussed in the jury room at all. They're
6 not to consider it in any fashion. You understand that if
7 you chose to remain silent, I would tell -- I would order
8 or instruct the jury in that way? You understand that?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. Now the other side of that coin
11 is that you have the right to testify as well. And if
12 you do choose to testify, then you would obviously answer
13 questions that Mr. McBratney would ask of you, but you
14 understand you would also be required to answer any
15 questions that the State's attorney would ask. You
16 understand that?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Okay. And I've already discussed with
19 the State whether or not you have any prior convictions
20 that could be -- that you could be questioned on and there
21 apparently are none, so you would just have to answer the
22 questions of the attorneys as they present those questions
23 to you. You understand that?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Okay. Understanding -- now and the other

1 thing -- well, understanding that you have these rights,
2 have you decided whether or not you wish to testify or
3 not?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** And what's your decision?

6 **THE DEFENDANT:** I wish to testify.

7 **THE COURT:** Okay. Now has anyone forced you or
8 coerced you in any way to get you to make that decision?

9 **THE DEFENDANT:** No, sir.

10 **THE COURT:** Has that been a decision that you've
11 made of your own free will after discussing it with your
12 attorney?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** All right, sir. Well, we'll certainly
15 honor that request, Mr. Dubose, and we'll -- we'll take
16 that up after the lunch break then, okay?

17 So -- and, Mr. McBratney, other than the other
18 possible witness, those would be the only two?

19 **MR. McBRATNEY:** That's correct, Your Honor.

20 **THE COURT:** All right. Well, we'll -- what we'll
21 do is we'll take the lunch break, but if you-all would
22 come back just a -- and not very long, but just a little
23 bit before 3:00, we will have put together a charge and
24 I'll let you look at it. If you have any specific requests
25 to charge that you would like us to consider, it would --

1 we would appreciate it if you'd get that to us either by
2 hard copy or by way of e-mail and we'll look at that over
3 the lunch break, okay?

4 **MR. McBRATNEY:** I have one I'll hand up.

5 **THE COURT:** Okay. That sounds good.

6 **MR. McBRATNEY:** (Handing.)

7 **THE COURT:** Thank you, sir.

8 All right. Well, if there's nothing further, then
9 we'll be at ease then and we'll reconvene at 3:00.

10 (Whereupon, a luncheon recess was taken.)

11 **BAILIFF:** Order in the court. All rise.

12 **THE COURT:** Thank you, folks. Please have a seat.

13 All right. Anything from the State before we proceed?

14 **MS. DANIELS:** No, Your Honor, not right this second.

15 **THE COURT:** Anything from the defense?

16 **MR. McBRATNEY:** My client and I have consulted over
17 lunch and he has decided he does not wish to testify.

18 **THE COURT:** All right.

19 **MR. McBRATNEY:** Therefore, the defense will be
20 resting.

21 **THE COURT:** Okay. Mr. Dubose, let me just -- again,
22 just go over with you -- I'm not gonna go back over
23 everything we talked about, but earlier you indicated you
24 wished to and now you don't want to, and that's fine. I
25 told you earlier we would be happy to honor whatever

1 decision you make. I just want to make sure though that
2 your decision -- that it's your decision. In other words,
3 it's not the decision of someone else or that someone else
4 has put any pressure or threats on you. Mr. McBratney just
5 indicated that you've decided that you will not testify in
6 this case; is that correct?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Has that been your decision, sir?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Has there been anyone or anybody who has
11 forced you to make that decision or coerced you in any way
12 to make that decision?

13 **THE DEFENDANT:** No, sir.

14 **THE COURT:** Is that a decision that you've made of
15 your own free will and accord, sir?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** All right, sir. We certainly will respect
18 that. Thank you. You may have a seat, Mr. Dubose.

19 In light of that then, I'm gonna go ahead, if it's
20 all right, I'm gonna take up any matters of law at the
21 close -- does the State -- well, we'll talk about that in
22 a minute when we get to the charge, but I'm gonna take up
23 the matters at the close of the evidence.

24 Mr. McBratney?

25 **MR. McBRATNEY:** Your Honor, I would just renew the

1 motion for directed verdict that I made at the close of
2 the State's case. The same argument.

3 **THE COURT:** All right. And I'll certainly note that
4 and respectfully would deny it based on the same grounds
5 as before. I think it's a jury issue. I think it's a
6 jury question, so.

7 So because we're at that stage then, the jury charge.
8 I haven't received any specific requests from the State,
9 but do you have any position as to Mr. McBratney's request
10 that he made?

11 **MS. DANIELS:** Yes, Judge. I feel that Mr. McBratney's
12 request is not appropriate or applicable in this situation,
13 especially considering that in the prior trial Mr. Dubose
14 was given fair notice of the consequences of his action in
15 taking the stand and testifying that the drugs belonged to
16 him. He was instructed by the Court as well as by his
17 attorney that there could be consequences of prosecution
18 if he were to testify in such a manner, he stated that he
19 understood that and he accepted that. Based on that,
20 Judge, it's not vindictive or retaliatory. Furthermore,
21 Judge, it's -- I'm a different solicitor who's handling
22 this case than was handling the last case, so I have no,
23 you know, personal vindictive motivation.

24 **THE COURT:** You weren't involved in the first case?

25 **MS. DANIELS:** That's correct. I wasn't involved in

1 the first case, so I don't feel like it would apply, the
2 request to charge.

3 **THE COURT:** Mr. McBratney, do you want to be heard on
4 that?

5 **MR. McBRATNEY:** Your Honor, I don't think it matters
6 what representative of the solicitor's office is trying the
7 case here today. The decision was made by the solicitor's
8 office and I think it's clearly a case of overcharging.

9 **THE COURT:** How so? You made that reference to the
10 witness and I'm curious as to how -- if you -- if someone
11 admits that they did X and you charge them with X how
12 that's overcharging.

13 **MR. McBRATNEY:** Well, and I think it goes to the
14 fact that Investigator McDowell and Investigator Ben Price
15 both identified the individual in the automobile as Cedric
16 Shaw and said my client was not in the automobile and
17 Mr. McDowell admitted during his testimony today that my
18 client lied when he took the witness stand and he knew he
19 was lying, which, Your Honor, and that -- and that, in
20 effect, brings into the issue of they should have charged
21 him with perjury instead of trafficking in crack cocaine.

22 **THE COURT:** Well, why would they charge him with
23 perjury if their position is, i.e., Ms. Daniels' position
24 is he was being truthful in that first case?

25 **MR. McBRATNEY:** Brad McDowell knows he wasn't being

1 truthful. He testified today he wasn't being truthful.

2 **THE COURT:** But law enforcement, they don't make the
3 decision on what case to prosecute or not, that comes from
4 the prosecuting agency, and that would be the solicitor's
5 office. I was looking -- I did a little research. I've
6 never had this charge request, so I did a little research
7 and State v. Odom talks about this charge and that -- that
8 the defendant -- if the defendant creates a presumption of
9 vindictiveness, then the burden shifts to the Government
10 to show a legitimate reason for the prosecution and it
11 goes further to basically discuss what that -- how that
12 presumption can be met and it talks about after a
13 defendant's prior exercise of a procedural or substantive
14 legal right or his having succeeded in reversing a
15 conviction on appeal, the prosecution acts arguably to
16 punish the exercise of such right by increasing the measure
17 of jeopardy or by bringing additional and more severe
18 charges or where a judge assesses a larger penalty upon a
19 subsequent conviction for the same offense filed in an
20 earlier reversal.

21 And here, you know, of course, obviously they
22 charged him with trafficking, which in the previous
23 trial he admitted he did, but I think the fact that they
24 didn't charge him with perjury, they did proceed on the
25 trafficking case and they didn't bring a charge -- I

1 mean, I'm assuming they could have brought a charge for
2 obstruction of justice, but they simply just brought the
3 one case against him that he admitted on the stand back
4 in that other trial that he did. And so I don't -- I
5 don't think that presumption of vindictiveness has been
6 met and so I'm -- based on that I'm not gonna charge the
7 vindictiveness charge. I don't think that presumption has
8 been met.

9 I have put together -- Emily and I have put together
10 this charge. I discuss the presumption of innocence and
11 reasonable doubt using the language -- the firmly convinced
12 language. I discuss the evidence and that the arguments
13 of counsel although are beneficial they're not evidence.
14 I talk to the jury about their role as the judges of the
15 facts and the credibility and believability of witnesses,
16 it's in their discretion. I have a charge for expert
17 witness because we had the SLED agent who testified as
18 to the drugs. I have a charge as I indicated to you,
19 Mr. Dubose, that I would charge the jury with regards to
20 your exercising your right to remain silent and I have a
21 charge that addresses that and instructs them that they
22 are in no way to consider that in their deliberations.
23 I have a charge on direct evidence and circumstantial
24 evidence. The trafficking charge is simply the charge.
25 I mean, the statute that I have. And then I have a charge

1 defining actual and constructive possession. That's
2 essentially what I've got.

3 Is there anything -- other than obviously noting your
4 exception, Mr. McBratney, to the vindictive charge, other
5 than that, is there anything else that I need to cover or
6 that -- I think that covers everything that was addressed
7 by the evidence in this case. I'm not sure that there's
8 anything else that was addressed.

9 Anything further from the State on that?

10 **MS. DANIELS:** Nothing further from the State.

11 **THE COURT:** Mr. McBratney?

12 **MR. McBRATNEY:** Nothing from the defense, Your Honor.

13 **THE COURT:** Now I assume we're under the new --

14 **MR. McBRATNEY:** State v. Beatty?

15 **THE COURT:** Yeah, and so you have the burden of
16 proof, ma'am, you must open in full, then Mr. McBratney.
17 And then if you do reserve any time to respond, it must
18 be -- your response must be directed to Mr. McBratney's
19 argument, not anything new. In other words, you can't
20 raise anything new on your response if you choose to do a
21 response, okay?

22 **MS. DANIELS:** Okay.

23 **THE COURT:** All right. So what I'll do then is
24 we'll bring the jury in. Tam, I'll recognize you for the
25 defense, let you rest on the record. I'll explain to the

1 jury that we've taken care of all the matters and that
2 we're gonna be moving into closing arguments, okay?

3 **MR. McBRATNEY:** Yes, sir.

4 **THE COURT:** All right. So bring the jury in, please.

5 (Whereupon, the jury returns to the courtroom at
6 3:22 PM.)

7 **THE COURT:** Ladies and gentlemen, I thank you for
8 everybody getting back in a timely fashion and I hope
9 everybody is ready to proceed. I'll share something with
10 you as we proceed so I can give you -- catch you up on
11 where we're at in just a minute, but before I do that if
12 you recall when we ended before lunch the State had rested
13 their case and so now -- and I -- at the end of the
14 State's case I'm required to take up matters of law with
15 the lawyers, which I've done during the lunch break, and
16 so now we're ready to proceed.

17 We'll recognize Mr. McBratney for the defense.

18 **MR. McBRATNEY:** Thank you, Your Honor. The defense
19 rests, Your Honor.

20 **THE COURT:** All right. Thank you, sir.

21 Folks, Mr. McBratney was kind enough to inform the
22 Court during the break that the defense would be resting
23 their case, and I appreciate that because normally if the
24 defense -- like at the close of the State's case, I'm
25 required to take up matters of law, and we did that. If

1 the defense puts up a case, then at the close of the
2 evidence I have to then send you out and take up matters
3 of law at the close of the evidence. But Mr. McBratney
4 was kind enough to let me know that the State -- that the
5 defense would be resting, so we went ahead and did that.
6 We took up those matters so I don't have to send you back
7 out to do that.

8 And so now we've reached the portion of this trial
9 that we typically refer to as closing arguments or final
10 summation. This is the attorneys' opportunity to argue
11 to you what they believe the evidence in this case has
12 shown. As I told you with regards to their opening
13 statements, what they share with you in their closing
14 arguments is not evidence. The evidence in this case is
15 closed. It is the testimony from the witness stand and
16 any exhibits that came in during the course of the trial,
17 but it's very important that you listen carefully as they
18 address you with their closing remarks.

19 Because the State has the burden of proof, Ms. Daniels
20 will open with her closing argument. Mr. McBratney will
21 have an opportunity to then respond, and then if she
22 chooses to, Ms. Daniels may reserve some time to make a
23 final argument at the end.

24 Once they've concluded their arguments, I will then
25 give you the law that is applicable to this case and then

1 you will be in a position to finally discuss the case and
2 talk about it, all right?

3 So, if you would, please give the attorneys your
4 close and undivided attention as they address you with
5 their closing arguments.

6 **MS. DANIELS:** Thank you, Your Honor. May it please
7 the Court, Mr. McBratney?

8 **THE COURT:** Yes, ma'am.

9 **MS. DANIELS:** Good afternoon, ladies and gentlemen of
10 the jury. As thick as thieves, as tight as drug dealers.
11 I told you that in the beginning of this case and now
12 you've had a chance to hear from all the witnesses, you've
13 heard all the evidence and you'll have the opportunity to
14 take all of the evidence back in the jury room with you
15 when you go back there for your deliberations.

16 You heard about the trial of Cedric Shaw. Cedric Shaw
17 and Major Donnard Dubose were working together, they were
18 buddies, they were conspiring to traffic a large amount of
19 crack cocaine into the County of Florence and into the
20 state of South Carolina.

21 The issues in this case that you have to determine,
22 you have to determine that Major Donnard Dubose is guilty
23 beyond a reasonable doubt of trafficking crack cocaine
24 between 28 grams and 100 grams into the State of South
25 Carolina.

1 So let's go through some of the evidence that we heard
2 in the trial and I just want to take this opportunity to
3 explain to you what it means and to show you exactly how
4 Major Donnard Dubose is guilty of trafficking. You heard
5 from Investigator Ben Price, as well as Investigator Brad
6 McDowell, and they told you that they were going to the
7 lake on June 7, 2011, is when they saw Cedric Shaw pull up
8 in the Crown Victoria and they were stopped at a stoplight
9 and they had a moment where they looked at him and they
10 made contact with him and they saw that he was smoking a
11 blunt. At that point they didn't see Cedric Shaw again.
12 Ben Price never actually saw Cedric Shaw again until the
13 trial of Cedric Shaw and Investigator McDowell didn't see
14 Cedric Shaw again until about a week later when Cedric came
15 to pick up his car from the impound at the Florence County
16 Sheriff's Office. Now you also heard from Deputy Shane
17 Keith and he was the one that made the traffic stop on the
18 Crown Victoria that ran into the cornfield and Deputy Keith
19 also he told you that he never saw Cedric Shaw because by
20 the time he got to the vehicle in the cornfield Cedric
21 Shaw, the driver of the car, whoever the driver of the car
22 actually was, was gone. So we've got Investigator McDowell
23 who told you he saw Cedric Shaw and that he pulled a DMV
24 photo of him later to identify him and that when Cedric
25 Shaw came to pick up the car from the impound is when he

1 realized -- when he was certain that it actually was Cedric
2 Shaw that was driving the car. But we heard testimony from
3 Major Donnard Dubose himself who testified in the trial of
4 Cedric Shaw that it wasn't Cedric driving the car, that it
5 was actually him, Major Dubose, who was driving that car
6 who said those drugs were his. I mean, the gravity of what
7 he did by going into the trial, he took that stand and in
8 front of a jury very similar to yourselves he testified
9 under oath, he raised his right hand, he swore to tell the
10 truth, the whole truth, nothing but the truth so help him
11 God, and he said that those drugs were his; that he was
12 driving the car, that the drugs he was going to sell, that
13 Cedric Shaw didn't know about those drugs. He took
14 complete responsibility for trafficking that amount of
15 crack cocaine into Florence County and into the State of
16 South Carolina.

17 Now you also heard testimony from Major Dubose and
18 what he told you was that he and Cedric saw were friends,
19 they were buddies. In fact, they were actually even ,
20 family members. He told us that they were third cousins.
21 So they had a history of being friends, of hanging out
22 together. And the other thing I really want you to keep
23 in mind when you go back there and in your deliberations
24 is that Major Dubose, who's on trial today, didn't say
25 anything to anybody about the fact that those drugs were

1 his until Cedric Shaw was on trial, until he was right
2 here in this position and then out of the blue Major
3 Donnard Dubose took the stand, swore under oath, that
4 those drugs belonged to him, and based on that, that is
5 the basis of Major Donnard Dubose's -- of his guilt. And
6 also keep this in mind, too, that a jury very similar to
7 yourself they found Cedric Shaw not guilty. They believed
8 Major Donnard Dubose when he took the stand and said those
9 drugs are mine.

10 Now I also want to bring back your attention to the
11 fact of the relationship between Cedric and Major because
12 that's important because -- and keep that in mind because
13 I want to move into and talk to you a little bit about the
14 law and about what the judge is about to instruct you on
15 in a little while. He's gonna give you a charge and he's
16 gonna explain to you what trafficking is and what he's
17 gonna tell you is that trafficking in the state of South
18 Carolina consists of a person who knowingly sells,
19 manufacturers, delivers, purchases or brings into the
20 State, or who provides financial assistance, and this is
21 key, or otherwise aids, abets, attempts or conspires to
22 sell, manufacture, deliver, purchase or bring into this
23 state crack cocaine.

24 Now that's important the language about aiding or
25 abetting or conspiring to sell because when you think about

1 the fact that Cedric and Major were friends, were family,
2 knew each other, and that Major didn't come in until the
3 twelfth hour, the last minute, to testify. In the very
4 least, even if we take into account, well, maybe Major
5 wasn't telling the truth when he took that stand, certainly
6 Cedric and Major were conspiring to participate in this
7 illegal drug trade in Florence County in South Carolina.
8 They were conspiring to keep drugs in this county so that
9 it was essentially, and it worked for Cedric Shaw, a get
10 out of jail free card for him.

11 But now I want you to look at the testimony of Major
12 Dubose and I think it's important when you go back and
13 deliberate to also look at the facts of the way in which
14 Major was advised of his rights. The Court in the trial
15 told him that if he took the stand and testified that those
16 drugs were his, that he absolutely could face prosecution
17 from the State. He was advised of these rights, he stated
18 he understood them, and he decided to take the stand and
19 testify those drug belonged to me. He also testified that
20 he deals crack cocaine in Lamar and that that was his
21 business during that time, and that's significant evidence
22 that he is a participant in trafficking cocaine and he
23 certainly was aiding and abetting at the very least Cedric
24 Shaw in selling these drugs.

25 So I will say to you again, as I have pointed out to

1 you before, as thick as thieves, as tight as drug dealers.
2 I just ask you to listen carefully and to think closely
3 about the evidence when you go back in the jury room to
4 deliberate and when you do I feel confident that you will
5 find Major Donnard Dubose guilty of trafficking crack
6 cocaine between 28 and 100 grams.

7 And, Your Honor, I do reserve the right to respond to
8 Mr. Dubose's closing. Thank you.

9 **THE COURT:** All right. Thank you, ma'am.

10 Mr. McBratney.

11 **MR. McBRATNEY:** Thank you.

12 Reasonable doubt. The State has the burden of proof
13 of proving the case beyond a reasonable doubt and the judge
14 is gonna charge you when we conclude our remarks with the
15 law and he's gonna tell you that reasonable doubt is a
16 doubt for which you can give a reason. If you have a doubt
17 that you can give a reason for, then you have an obligation
18 under the law to find the Defendant not guilty.

19 Now as much as I don't like the fact that Major Dubose
20 took the witness stand in Cedric Shaw's case and told a
21 lie, I don't think it's correct and just for him to be
22 found guilty of trafficking. He may be guilty of perjury.
23 He lied. Even Brad McDowell acknowledges that when he was
24 in the courtroom that Major Dubose was lying. And the
25 reason we know that is because -- and I'm gonna have to

1 hand it to the Florence County Sheriff's Office. They are
2 honest and truthful law enforcement agents. Because Ben
3 Price got on the witness stand and he said we pulled up
4 beside a silver Crown Vic, I looked over and there was a
5 young man smoking a marijuana blunt. Who was it? I
6 identified him from his DMV picture as Cedric Shaw. I
7 came into the courtroom during Cedric Shaw's testimony --
8 I mean, trial, I looked Cedric Shaw in the eye and I
9 identified him as the one that was driving that Crown Vic.
10 He didn't have to say that, but he was honest.

11 Brad McDowell got on the witness stand today and he
12 was honest and truthful. He said I looked over there and
13 later I identified that individual, the same one who was
14 in the courtroom at his trial, as Cedric Shaw. I looked
15 at his DMV picture and it was Cedric Shaw.

16 It wasn't Major Dubose. It wasn't Major Dubose that
17 was in that Crown Vic. Major Dubose did not have actual
18 or constructive possession of the drugs in that car,
19 Cedric Shaw did. We know from the two investigators that
20 testified that there's reasonable doubt as to whether or
21 not Major Dubose was even in that car. Now he may be
22 stupid and he may be impressionable and he may have been
23 talked into taking the rap for his cousin, but that's no
24 reason to punish him excessively. Punish him for what he
25 did. He perjured himself. Is there reasonable doubt?

1 Absolutely.

2 Now Major Dubose has no burden of proof in this trial.
3 That's the way our constitution was written. You are
4 innocent until proven guilty beyond a reasonable doubt.
5 Now the State has all kinds of facilities to use to prove a
6 person guilty beyond a reasonable doubt. They could have
7 established that Major Dubose was in that car by dusting it
8 for fingerprints. They didn't do that. They could have
9 taken that marijuana blunt and had it -- the DNA taken off
10 of it and gotten Major Dubose's DNA, compared them to see
11 if Major Dubose was the one that was in the car smoking the
12 cigarette, but they didn't do that. They didn't take any
13 fingerprints off any of the drug packaging to determine if
14 Major Dubose had ever touched that -- those drugs. They
15 didn't test the scale to see if his fingerprints were on
16 the scale. They could have done that. They didn't. They
17 didn't do a lot of things that could have confirmed what
18 they want you to believe here today, but they didn't do
19 that. That's reasonable doubt. Why didn't they do it? I
20 don't know. But there is reasonable doubt, so you have no
21 alternative. You may not like the fact that Major Dubose
22 is friends with his cousin, you may not like the fact that
23 he lied in this courtroom. I certainly don't. I don't
24 condone it. I'm an officer of the court. We're told not
25 to submit perjured testimony. There can be no other reason

1 for there to have been a two-year delay before Major Dubose
2 got on that witness stand and took responsibility other
3 than he was coerced into doing it.

4 Now Cedric Shaw had two fine expensive lawyers
5 representing him; Jack Swerling and Jay Ervin from
6 Darlington. He had spent a lot of money in his defense
7 over that two-year period. That can only lead to one
8 conclusion; that he talked his cousin into taking the rap
9 for him.

10 This case is full of reasonable doubt. Don't buy into
11 the State overcharging my client because they're mad that
12 Cedric Shaw got a pass. Make the State charge him for what
13 he really did; that he lied on the witness stand. The only
14 thing I ask you to do is go back and consider the testimony
15 that's presented with a view of is there a doubt that I can
16 give a reason for. I think you will have to agree that
17 there is.

18 **THE COURT:** Thank you, sir.

19 Ms. Daniels.

20 **MS. DANIELS:** I'd just like to talk briefly with you
21 about reasonable doubt and it's not reasonable doubt when
22 you take the witness stand and you swear under oath to tell
23 the truth, the whole truth and nothing but the truth that
24 those drugs were yours, that you're a drug dealer and that
25 they belong to you. That is not reasonable doubt. Taking

1 this witness stand after being advised that you absolutely
2 have a constitutional right not to incriminate yourself but
3 you still take the witness stand and say those drugs are
4 mine, that is not reasonable doubt. And I want you to
5 think about that and I invite you to read the testimony
6 that you will take back there into the jury deliberation
7 room and when you look at it I want you to pay attention
8 to the level of detail that the Defendant gives in that
9 testimony. He goes into great detail about the drug trade,
10 about the value of drugs. He's well-versed in it and he
11 willingly took the stand and he gave the jury that
12 information, and that's not reasonable doubt.

13 And one other thing I want to address for you, too.
14 You may be asking yourself why did the Defendant wait until
15 the eve of trial, actually the trial itself, to come to
16 court and say that those drugs are mine. Because he had a
17 guilty conscious. That was his cousin who was up on trial
18 and he had a guilty conscience because he knew that he was
19 also involved.

20 And I'll just leave you with this. If you do find
21 that there's reasonable doubt in this case, that's one heck
22 of a get-out-of-jail-free card.

23 **THE COURT:** Thank you, ma'am.

24 Folks, when we started this trial, I told you that
25 you were the judges of the facts and I was the judge of

1 the law and so during the course of the trial the attorneys
2 have been providing you with the evidence in the case, the
3 facts in the case, and so it's been appropriate for me to
4 be out of the way and let that process unfold. But we've
5 now reached the portion of this trial where you and I are
6 in this together; you as the judges of the facts and me as
7 the judge of the law. So I think it appropriate that I
8 come down and be with you as I give you the charge on the
9 law.

10 Now I'm going to read this to you verbatim. I don't
11 want to miss anything or to misquote anything or leave
12 anything out, so please listen carefully as I go through
13 the charge on the law.

14 Mr. Foreman and Members of the Jury, you've heard the
15 evidence and the arguments of both parties. I will now
16 explain to you the rules of law that you must follow and
17 apply in deciding this case. When I have finished, you
18 will go into your jury room and begin your deliberations.
19 Your decision must be based solely on the evidence
20 presented here during the course of this trial. You must
21 not be influenced in any way by either sympathy for or
22 prejudice against anyone.

23 The indictment in this case charges the Defendant,
24 Major Donnard Dubose, the Third, with trafficking in
25 cocaine base, 28 grams to 100 grams. An indictment, as I

1 told you earlier, is simply the formal written instrument
2 which contains the charge made against the Defendant. I
3 remind you that the fact that the Defendant was arrested,
4 charged and indicted in this case is not evidence. It
5 cannot be considered by you as evidence of guilt in this
6 case, nor does it create any presumption or inference of
7 guilt. The Defendant has pled not guilty to the charge of
8 trafficking in cocaine base, 28 to 100 grams, and that plea
9 puts the burden on the State to prove him guilty beyond a
10 reasonable doubt.

11 A person charged with committing a criminal offense
12 in South Carolina is never required to prove him or herself
13 innocent. I charge you that it is an important rule of law
14 that the defendant in a criminal trial no matter what the
15 seriousness of the charge may be will always be presumed
16 to be innocent of the crime for which the indictment was
17 issued unless guilt has been proven by evidence satisfying
18 of you of that guilt beyond a reasonable doubt. This
19 presumption of innocence does not end when you begin your
20 deliberations, but it accompanies the Defendant throughout
21 the trial until you've reached a verdict. The presumption
22 of innocence is not a mere legal theory, it's not just a
23 legal phrase, but it is a substantial right to which every
24 defendant is entitled unless you, the jury, are satisfied
25 from the evidence of the Defendant's guilt beyond a

7

1 reasonable doubt.

2 So what is a reasonable doubt in the law? Some of
3 you may have served as jurors in a civil case where you
4 were told that it is only necessary to prove that a fact
5 is more likely true than not true, such as by the greater
6 weight or the preponderance of the evidence. In criminal
7 cases, the State's proof must be more powerful than that.
8 It must be beyond a reasonable doubt. Proof beyond a
9 reasonable doubt is proof that leaves you firmly convinced
10 of the Defendant's guilt. There are very few things in
11 this world that we know with absolute certainty and so in
12 criminal cases the State does not require proof that
13 overcomes every possible doubt. If, based on your
14 consideration of the evidence, you are firmly convinced
15 that the Defendant is guilty of the crime charged, you must
16 find the Defendant guilty. If, on the other hand, you
17 think there's a real possibility that the Defendant is not
18 guilty, then you must give the Defendant the benefit of
19 that doubt and find him not guilty.

20 As I said before, you must consider only the evidence
21 that I have admitted into this case. The evidence
22 includes the testimony of the witnesses and the exhibits
23 that have come in during the course of the trial, and you
24 will have those back in your jury room when you go back
25 to deliberate. You shouldn't assume from anything that I

1 have said that I have any opinion about any factual issue
2 in this case. Except for my instructions to you on the
3 law, you should disregard anything that I may have said
4 during this trial in arriving at your own decision about
5 the facts in this case. Your own recollection and
6 interpretation of the evidence is what matters. In
7 considering the evidence, you may use reasoning and common
8 sense to make deductions and to reach conclusions.

9 Now while the arguments of counsel are beneficial
10 and a very real part of this trial, you should remember
11 that the statements made by counsel are not evidence. In
12 presenting arguments, counsel often refers to the evidence;
13 however, you should base your verdict on the evidence as
14 you remember it. Therefore, if there are any conflicts
15 between the recollection of counsel about the evidence
16 and your own recollection, you should rely upon your own
17 understanding of the evidence.

18 Now when I say you must consider all of the evidence,
19 I don't mean that you must accept all of the evidence as
20 true or accurate. You should decide whether you believe
21 what each witness has had to say and how important that
22 testimony was. In making those decisions, you may believe
23 or disbelieve any witness in whole or in part. The number
24 of witnesses testifying concerning a particular point
25 does not necessarily matter. To decide whether or not to

1 believe any witness, I suggest that you ask yourself a few
2 questions. Did the witness impress you as one who was
3 telling the truth? Did the witness have any particular
4 reason not to tell the truth or have a personal interest
5 in the outcome of the case? Did the witness have the
6 opportunity and the ability to accurately observe the
7 things he or she has testified about? Did the witness
8 appear to understand the questions clearly and answer them
9 directly? Did the witness's testimony differ from that of
10 other testimony or evidence? However, keep in mind that a
11 simple mistake does not mean that a witness was not telling
12 the truth as he or she remembers it. People oftentimes
13 naturally tend to forget some things over time or remember
14 them inaccurately. So if a witness did misstate something,
15 you must decide whether it was because of an innocent lapse
16 of memory or an intentional deception. The significance of
17 your decision may depend on whether the misstatement is an
18 about an important fact or an unimportant detail.

19 Now in cases tried before this Court, the rules of
20 evidence ordinarily do not permit witnesses to testify
21 to opinions or conclusions. There's an exception to
22 this rule that exists for witnesses that we call expert
23 witnesses. A witness who by education and experience has
24 become an expert in some art, science, profession or
25 calling may state an opinion as to relevant and material

1 matters in which that witness claims to be an expert and
2 may also state the reasons given for that opinion. You
3 should consider any expert opinion given in this case and
4 like any other evidence give it the weight that you think
5 it deserves. If you decide that the opinion of an expert
6 witness is not based on sufficient education or experience
7 or if you conclude that the reasons given in support of
8 the opinion are not sound or that the opinion is outweighed
9 by other evidence, you may disregard that opinion in its
10 entirety. An expert witness's testimony is given no
11 greater weight than that of any other witness simply
12 because that witness is an expert. Furthermore, you are
13 not required to accept an expert's opinion even though
14 it's not contradicted.

15 Now I instruct you, and I emphasize, that the fact
16 that the Defendant in this case did not testify is not
17 a factor to be considered by you in any way in your
18 deliberations and in your consideration on the question
19 of the guilt or the innocence of the Defendant. It must
20 not be considered by you in any manner whatsoever. A
21 defendant has a constitutional right to remain silent and
22 the assertion of this right must not be considered by you
23 in your deliberations. I repeat that under your oath you
24 are to draw no conclusion whatsoever from the fact that
25 the Defendant in this case did not testify. The fact that

1 Mr. Dubose did not testify should not even be discussed in
2 the jury room.

3 Now there are two types of evidence which are
4 generally presented during the trial. There's direct
5 evidence and there's circumstantial evidence. Direct
6 evidence is the testimony of a person who claims to have
7 actual knowledge of a fact, such as an eyewitness.
8 Circumstantial evidence is proof of a chain of facts or
9 circumstances that lead to the existence of a fact. Crimes
10 may be proven by circumstantial evidence. To the extent
11 that the State relies on circumstantial evidence, all of
12 the circumstances must be consistent with each other and
13 when taken together point conclusively to the guilt of the
14 accused beyond a reasonable doubt. If the circumstances
15 merely portray the Defendant's behavior as suspicious,
16 then that proof has failed. The State has the burden of
17 proving Defendant guilty beyond a reasonable doubt and
18 this burden rests with the State regardless of whether the
19 State relies on direct evidence, circumstantial evidence or
20 some combination of the two. The law makes absolutely no
21 distinction between the weight or the value to be given to
22 direct or circumstantial evidence, nor is there any greater
23 degree of certainty required of circumstantial evidence
24 than of direct evidence. You should consider all of the
25 evidence in this case and weigh all of the evidence in

1 arriving at your verdict.

2 Now Mr. Dubose is charged with trafficking in cocaine
3 base in an amount between 28 and 100 grams. The State must
4 prove beyond a reasonable doubt that the Defendant did
5 knowingly sell, manufacture, cultivate, deliver, purchase,
6 brought into this state, or, provided financial assistance
7 or otherwise aided, abetted, attempted or conspired to
8 sell, manufacture, cultivate, deliver, purchase or bring
9 into the State, or, was knowingly in actual or constructive
10 possession or knowingly attempted to become being in actual
11 or constructive possession of cocaine base. The State
12 must also prove beyond a reasonable doubt that the amount
13 of the cocaine base, or what is commonly referred to as
14 crack cocaine, had to have been between 28 grams or more,
15 but less than 100 grams.

16 Now to prove possession, the State must prove beyond
17 a reasonable doubt that the Defendant had both the power
18 and the intent to control the disposition or use of the
19 item. Possession may either be actual or constructive.
20 Possession can be established by circumstantial as well
21 as direct evidence. Two or more persons may have joint
22 possession of a drug. Actual possession means that the
23 item was in the actual physical custody of the Defendant.
24 Constructive possession means that the Defendant had
25 dominion and control or the right to exercise dominion and

1 control over either the item itself or the property upon
2 which the item was found.

3 Mere presence at the scene where drugs were found is
4 not enough to prove possession. The Defendant's knowledge
5 and possession may be inferred when a substance is found on
6 the property under the Defendant's control. However, this
7 inference is simply an evidentiary fact to be taken into
8 consideration by you along with all of the other evidence
9 in this case and to be given whatever weight that you feel
10 it should be given.

11 Now, ladies and gentlemen, your verdict in this case,
12 as I told you earlier, must be unanimous. In other words,
13 you must all agree on the verdict whatever it may be. Your
14 deliberations are secret. You will never have to explain
15 your verdict to anyone. Each of you must decide this case
16 for yourself, but only after fully considering the evidence
17 along with your other jurors or your fellow jurors. So
18 you must discuss the case with one another and try to reach
19 an agreement. While you're discussing the case, don't
20 hesitate to reexamine your own opinion and change your
21 mind if you become convinced that you are wrong, but don't
22 give up your honest or firmly held beliefs just to be in
23 agreement with others.

24 A verdict form has been prepared for you and I have
25 that here. It looks -- Mr. Greenwood, I'll have that back

1 in the jury room. I'll send it back with the evidence
2 when we send that back. It has the caption of the case --
3 it's very self-explanatory. It has the caption of the case
4 and then it has as to this indictment and this charge of
5 trafficking, we, the jury, either find the Defendant either
6 guilty or not guilty. Whatever the decision of the jury
7 is, you'll just mark the appropriate spot and then sign it
8 as the foreperson.

9 Folks, I'm going to ask you to step back into your
10 jury room. Don't begin your deliberations quite yet.
11 I'm gonna ask you to step back. I'm going to talk with
12 the attorneys briefly to make that sure I've covered
13 everything. If there's anything that I need to bring you
14 back out and recharge you on or add or subtract, I'll do
15 that. If the charge is good as I've given it, we'll then
16 collect these exhibits and when you get the exhibits, that
17 will be your cue to begin your deliberations, okay?

18 **JUROR:** Your Honor?

19 **THE COURT:** Yes, ma'am.

20 **JUROR:** I'm the alternate. Do I stay here or do I go
21 back there?

22 **THE COURT:** I'm gonna deal with you in just a moment.
23 You go back there for right now, okay, but we'll -- I'll
24 have you out in just a little bit.

25 **JUROR:** Okay.

1 **THE COURT:** Okay. If you would, just step back and
2 don't begin your deliberations yet.

3 (Whereupon, the jury retires to the jury room at
4 4:01 PM.)

5 **THE COURT:** Are there any objections or exceptions to
6 the Court's charge from the State?

7 **MS. DANIELS:** No, Your Honor.

8 **THE COURT:** From the defense? ,

9 **MR. McBRATNEY:** Just preserve the exception to my
10 request to charge on retroactive or vindictive prosecution.

11 **THE COURT:** Yes. All right. We'll certainly note
12 that exception.

13 Folks, if y'all would get with Stacy just to make sure
14 that everything that has been marked that's supposed to go
15 back is here.

16 **MR. McBRATNEY:** Your Honor, I have a question
17 regarding the transcript. This was read into the record,
18 this testimony --

19 **THE COURT:** Yes, sir.

20 **MR. McBRATNEY:** -- and I object to it going back to
21 the jury room because it gives undue weight to testimony
22 -- to this testimony as opposed to other testimony that
23 was given from the witness stand. The transcript was read
24 into the record and if it goes back, then this has more
25 greater weight than the testimony of other witnesses that

1 testified.

2 **THE COURT:** Solicitor?

3 **MS. DANIELS:** Judge, I don't know why it would have
4 any greater weight. The -- the reading of it in court was
5 certainly just an approximation. It couldn't have possibly
6 been exactly like what it was in the original trial, so I
7 think it would absolutely be necessary to go back. I mean,
8 it's been moved into evidence already at this point.

9 **THE COURT:** Well, I know it was moved into evidence
10 without objection. That's a concern that I've got.

11 **MR. McBRATNEY:** But, Your Honor, that was for the
12 purposes of reading the transcript into the record. I
13 didn't -- didn't anticipate it going back into the jury
14 room.

15 **THE COURT:** I think Mr. McBratney is correct,
16 Solicitor. It think -- because here's -- what you're doing
17 there is you're putting -- you're putting a transcript of
18 a witness's testimony and allowing the jury to take it back
19 there and read over it and study it; whereas, they don't
20 have that opportunity with any of the other witnesses that
21 testified during the course of this trial, and so I think
22 that would give undue weight to that testimony. I think
23 they're -- as I told them in the charge, they're to give
24 the witnesses' testimony whatever weight they think it
25 deserves.

1 **MS. DANIELS:** Of course, it wasn't live testimony,
2 so it was just --

3 **THE COURT:** Well, it was. I mean, it was the reading
4 of live testimony.

5 **MS. DANIELS:** Right.

6 **THE COURT:** But then it -- the other concern that I've
7 got is it wouldn't be any different than if you had a --

8 **MR. McBRATNEY:** A deposition --

9 **MS. DANIELS:** You're right.

10 **THE COURT:** -- well, in a -- a deposition a civil
11 case.

12 **MR. McBRATNEY:** -- that was read into the record. The
13 deposition doesn't go back into the jury room.

14 **THE COURT:** Right. But the --

15 **MS. DANIELS:** A confession would go back. A written
16 confession would go back to the jury room though.

17 **THE COURT:** But that's not what this. This isn't
18 that.

19 I'm gonna sustain your objection to that to go back.

20 **MR. McBRATNEY:** For the record, this is State's
21 Exhibit 7.

22 **THE COURT:** State's Exhibit 7, even though it is in
23 evidence for purposes of the reading of it, I'm not gonna
24 allow it to go back into the jury room.

25 **MS. DANIELS:** I think maybe then, Your Honor, if we

1 could instruct the jury to that effect or just if you could
2 give them an instruction explaining that.

3 **THE COURT:** Well, if you want to help me out with an
4 instruction:

5 **MS. DANIELS:** Or just a --

6 **THE COURT:** I mean, I --

7 **MS. DANIELS:** And I ask for that just because it
8 was my assumption that it would go back since it was in
9 evidence at that point without objection.

10 **MR. McBRATNEY:** Well, in his original charge, the
11 Court charged about testimony, about the weight of
12 testimony that --

13 **THE COURT:** Well, I know you in your argument. --

14 **MS. DANIELS:** It's not live testimony though.

15 **THE COURT:** Well, you keep referring to it as live
16 testimony, but --

17 **MS. DANIELS:** It was published to the jury. Right,
18 yeah.

19 **THE COURT:** I understand.

20 **MS. DANIELS:** I guess actual testimony may be even a
21 better word. It's not like a video deposition or something
22 where the jury actually could observe for themselves the
23 way in which the witness answered the questions. It was
24 an approximation.

25 **THE COURT:** But Mr. McBratney makes a valid point.

1 I tell you what. I'm gonna -- I'm gonna let you give
2 me a minute.

3 **MS. DANIELS:** Sure.

4 **THE COURT:** I need to look at -- because it's not the
5 same as a deposition either. Just let me -- I'm gonna step
6 back and maybe look at some things.

7 **MS. DANIELS:** Okay.

8 (Recess taken.)

9 **BAILIFF:** Order in the court. All rise.

10 **THE COURT:** Thank you. Please have a seat.

11 Okay. I'm gonna overrule the objection and I'm -- and
12 I'll explain. This -- this is a transcript of testimony
13 from another trial, but it's not the testimony of a witness
14 in this case, it's evidence. It's like -- I liken it to a
15 videotape where someone is on videotape selling drugs. The
16 videotape is shown, it goes back for the jury to watch it
17 if they choose to. It's -- well, here's another example.
18 I don't think it's any different than State's Exhibit 2,
19 which is the drug report. They had a witness that came in
20 and testified as to the drugs and the report comes in and
21 it's a piece of evidence. In this case, the transcript
22 is a piece of evidence. It's not testimony of a witness.
23 The jury gives whatever weight they want to give to the
24 evidence in the case, but I think it is appropriate. I
25 don't -- I don't see it being any different than -- it's

1 different from a deposition because a deposition is
2 testimony of a witness in this trial just taken outside of
3 this court. A videotaped deposition is the same situation.
4 That's not what this is. This is not the testimony of a
5 witness in this trial. Mr. Dubose has rightfully exercised
6 his right to not testify, so this is not his testimony in
7 this case. It is evidence from another case, and I think
8 it's different. And I liken it more to a video of a drug
9 buy or something similar to that.

10 **MR. McBRATNEY:** Just for the record, Your Honor,
11 please note my exception.

12 **THE COURT:** Yes, sir.

13 **MR. McBRATNEY:** I see no difference between that
14 testimony and the deposition of, say, a medical doctor
15 that's read into the record. That deposition does not go
16 back to the jury room. To me, it's -- it's the same.
17 It's testimony from a prior trial. It could be testimony
18 from a -- from a deposition. It's been reduced to writing.
19 It has been read into the record and published to the jury.
20 To send it back I think, again, as I said before, gives it
21 greater weight than the testimony of other witnesses.

22 **THE COURT:** You do the same thing with a video. I
23 mean, it's published to the jury and it goes back and the
24 jury can watch it as much as they want. I think -- and
25 I certainly note your exception and your objection,

1 Mr. McBratney, but I think it goes back.

2 So if you will just gather those items.

3 (Pause in proceedings.)

4 **THE COURT:** Would you bring the alternate out, please.

5 (Whereupon, the evidence and the verdict form was
6 submitted to the jury at 4:14 PM.)

7 (Whereupon, the alternate juror enters the courtroom.)

8 **THE COURT:** Thank you for your service in this matter.
9 I'd like to tell you that you're done for the week, but
10 you're not. But I would need you back at 9:30 in the
11 morning, okay?

12 **JUROR:** Okay.

13 **THE COURT:** Thank you so much, ma'am. We appreciate
14 your service.

15 **JUROR:** You're welcome.

16 (Whereupon, the alternate juror was excused at
17 4:16 PM.)

18 **THE COURT:** All right. And we'll just remain at ease
19 then while the jury deliberates.

20 (Recess taken.)

21 **THE COURT:** We have a question, Tam. I'm gonna need
22 y'all to put on your thinking caps and help me formulate a
23 response. It's -- oh, I'm sorry. Stacy, are you ready?

24 **THE COURT REPORTER:** Yes.

25 **THE COURT:** It says: Can Mr. Dubose's testimony,

1 specifically his admission of guilt, be considered as a
2 form of aiding and abetting drug trafficking?

3 I can't -- I don't think I can give them a yes or no
4 on that. I don't think I can do anything other than give
5 them --

6 **MR. McBRATNEY:** I say no.

7 **THE COURT:** I don't think -- I mean, I don't think I
8 can do anything but recharge them the statute, and the
9 statute is one of the worst written statutes I've ever seen
10 in my life. I don't know why our Legislature feels the
11 need to chain things together. When I'm reading it, I feel
12 lost because I've got to go through this entire chain of
13 things before I can get to "of crack cocaine", you know,
14 it's so poorly written. But I don't know -- because this
15 question isn't very clear either.

16 **MR. McBRATNEY:** A suggestion. Perhaps a charge on
17 aiding and abetting.

18 **MS. DANIELS:** Your Honor, I think probably just
19 charging the drug statute again would be sufficient.

20 **MR. McBRATNEY:** I think they're asking --

21 **THE COURT:** I can't tell from their --

22 **MR. McBRATNEY:** -- what aiding and abetting mean.

23 **THE COURT:** Well, I can't tell from their question
24 exactly what they mean. I'm assuming -- and that's where
25 you run into trouble when you start assuming what people

1 mean, but if it says "Can Mr. Dubose's testimony,
2 specifically his admission of guilt, be considered as a
3 form of aiding and abetting?", I'm assuming what they
4 mean is his willingness to admit guilt was helping the
5 co-defendant. I don't know. I don't know what they mean
6 and -- let me look at something.

7 I'm just looking at Judge Anderson in his charge
8 book defines aiding and abetting as to help, assist or
9 facilitate the commission of a crime, promote the
10 accomplishment thereof, help in advancing or bringing it
11 about or encourage, counsel or incite as to its commission.

12 That's how Judge Anderson's book defines aid and abet.
13 The statute doesn't define it, it just says it, and I'm
14 afraid just recharging the statute doesn't really answer
15 the question.

16 Okay. I think maybe the appropriate way to respond
17 may be to give this definition of aid and abet.

18 **MS. DANIELS:** Sure. Will you read the -- will you
19 read the question one more time.

20 **THE COURT:** It says aid and abet -- oh, I'm sorry.
21 The question is: Can Mr. Dubose's testimony comma
22 specifically his admission of guilt comma be considered
23 as a form of aiding and abetting drug trafficking? And
24 then what I would propose, if I charge them the definition
25 of aid and abet, it would be to help, assist or facilitate

1 the commission of a crime, promote the accomplishment
2 thereof, help in advancing or bringing it about or
3 encourage, counsel or incite as to its commission.

4 And my thought process is by giving them the
5 definition of aid and abet they can then apply that
6 definition to the question.

7 **MS. DANIELS:** Sure. Your Honor, if you give that
8 definition, I think it might be helpful to read the
9 statute again -- the charge on the statute as well because
10 they ask about drug trafficking, so I think that that
11 would be helpful as well.

12 **THE COURT:** Right.

13 **MR. McBRATNEY:** I think I agree, Your Honor.

14 **THE COURT:** I'm sorry?

15 **MR. McBRATNEY:** I think I agree with the solicitor;
16 reading both, the aiding and abetting --

17 **THE COURT:** Read the statute and then that definition?

18 **MR. McBRATNEY:** -- and maybe read the charge on
19 trafficking.

20 **THE COURT:** No, that's what I'm saying. Because the
21 charge on trafficking is short.

22 **MR. McBRATNEY:** Yes, sir.

23 **THE COURT:** So read the charge and then define aid and
24 abet as I just did from Judge Anderson's book?

25 **MR. McBRATNEY:** Yes, sir.

1 **MS. DANIELS:** That's good, Your Honor.

2 **THE COURT:** All right. Let's mark this as a Court's
3 exhibit, please. And ask the jury to come in.

4 (Court's Exhibit Number 1 was marked for
5 identification.)

6 (Whereupon, the jury return to the courtroom at
7 5:06 PM.)

8 **THE COURT:** All right. Ladies and gentlemen, I got
9 your question and I'll read it and then I'll respond.

10 Can Mr. Dubose's testimony, specifically his admission
11 of guilt, be considered as a form of aiding and abetting
12 drug trafficking?

13 And the way I'm gonna respond is I'm going to give you
14 the charge again on trafficking, but I'm going to then also
15 add a definition of aid and abet, okay?

16 And so the South Carolina law regarding trafficking is
17 the Defendant is charged with trafficking in cocaine base.
18 The State must prove beyond a reasonable doubt that the
19 Defendant did knowingly sold, manufactured, cultivated,
20 delivered, purchased, brought into this state, or, provide
21 financial assistance or otherwise aid, abet, attempt, or,
22 conspire to sell manufacture, cultivate, deliver, purchase,
23 or bring into this state, or, was knowingly in actual or
24 constructive possession of, or, knowingly attempted to
25 become in actual or constructive possession of cocaine

1 base.

2 The law has defined aid and abet as to help, assist
3 or facilitate the commission of a crime, promote the
4 accomplishment thereof, help in advancing or bringing it
5 about, or, encourage, counsel or incite as to its
6 commission. That's the definition of aid and abet.

7 So I'm gonna send you back into the jury room with
8 that charge and ask you to continue your deliberations.

9 (Whereupon, the jury retires to the jury room at
10 5:08 PM.)

11 **THE COURT:** All right. Any objections or exceptions
12 to the Court's response to the jury's question from the
13 State?

14 **MS. DANIELS:** None from the State.

15 **THE COURT:** Anything from the defense?

16 **MR. McBRATNEY:** Your Honor, the only thing I would
17 request is Judge Anderson's charge on aiding and abetting
18 found in Section 2-30 of his criminal charge book goes
19 into greater detail on aiding and abetting. I'm not gonna
20 read the whole thing, but I would ask the Court to charge
21 that.

22 **THE COURT:** Well, I read that and that was very
23 confusing and so that's why I thought -- well, what
24 they're asking is about aiding and abetting and so he has
25 a paragraph where he defines -- he says aid and abet has

1 been defined as, and that's why I read that.

2 **MR. McBRATNEY:** Well, what I'm concerned about,
3 Your Honor, is that the jury becoming confused about an
4 accessory after the fact in someone that aids and abets in
5 the commission of a crime and I think -- I think there's a
6 difference. In my mind there is anyway.

7 **THE COURT:** Well, what would you propose I charge
8 them in this charge?

9 **MR. McBRATNEY:** Well, the second paragraph of Judge
10 Anderson's charge states: Aiding and abetting means to
11 assist the perpetrator of the crime and state's the rule
12 of criminal responsibility for acts which one assists
13 another in performing. The actual perpetrator is
14 regarded as the agent or instrument by which the crime
15 is perpetrated, not as the chief criminal or more guilty
16 than his associates. Aiding and abetting comprehends all
17 assistance required by acts of words of encouragement,
18 support or presence, actual or constructive, to render
19 assistance should it be necessary. It contemplates
20 conduct calculated to incite, encourage or assist the
21 perpetration of a crime. I would request that the Court
22 charge that.

23 **THE COURT:** If you pull out that section individually
24 without the rest of it, it seems to indicate that to aid
25 and abet someone you actually have to be present, and I

1 don't think that's the law in South Carolina, that you
2 actually have to be present during the commission of the
3 crime, and that's the concern I have with reading that
4 portion. Specifically where it talks about words of
5 encouragement and support or presence, actual or
6 constructive, to render assistance should it become
7 necessary.

8 I'm going to -- I'm gonna deny reading anything
9 further at this point. I'll note your exception,
10 Mr. McBratney, for the record, but I think defining aiding
11 and abetting and allowing them to apply that definition to
12 their question was the appropriate response without going
13 into a whole other charge that I think would cause greater
14 confusion.

15 (Recess taken.)

16 **BAILIFF:** All rise. Order in the court.

17 **THE COURT:** All right. Ladies and gentlemen, have
18 a seat. Thank you.

19 My understanding is that the jury has reached a
20 verdict. Is the State ready to receive the verdict?

21 **MS. DANIELS:** Yes, Your Honor.

22 **THE COURT:** Is the defense ready?

23 **MR. McBRATNEY:** Yes, sir.

24 **THE COURT:** All right. Bring the jury in, please.

25 (Whereupon, the jury returns to the courtroom at

1 5:58 PM.)

2 **THE COURT:** All right. Mr. Greenwood, have the
3 members of the jury reached a unanimous verdict, sir?

4 **FOREPERSON:** We have, sir.

5 **THE COURT:** All right. If you would just pass that
6 to Madam Clerk for me.

7 **FOREPERSON:** (Handing.)

8 **THE CLERK:** (Handing.)

9 **THE COURT:** Thank you. All right.
10 Madam Clerk, if you would publish the verdict of the
11 jury for me, please.

12 **THE CLERK:** State of South Carolina, County of
13 Florence, in the Court of General Sessions, Indictment
14 Number 2014-GS-21-00148, the State of South Carolina
15 versus Major Donnard Dubose, the Third. As to Indictment
16 Number 2014-GS-21-00148, trafficking in cocaine base,
17 28 to 100 grams, we, the jury, find the Defendant, Major
18 Donnard Dubose, the Third, guilty of trafficking cocaine
19 base, 28 to 100 grams. September the 13th, 2017, Steven G.
20 Greenwood, Foreperson.

21 **THE COURT:** All right. Mr. Foreman, and members of
22 the jury, if this is your verdict, please signify by
23 raising your right hand.

24 All right. Thank you very much.

25 Ladies and gentlemen, I want to thank you for your

1 service. I'd like to tell you that you're done for the
2 week, but I can't do that. We are gonna ask that you be
3 back tomorrow morning at 9:30 and just report back out
4 into the jury -- into the audience as you have done this
5 week. We do have another matter that at this time we
6 believe we're gonna be pulling a jury on and so we're
7 gonna need your assistance with regard to that as well.

8 So I want to thank you for your service in this case
9 and we'll see you back here at 9:30 in the morning, okay?
10 Make sure -- everyone else please remain seated while the
11 members of the jury is excused. Thank you.

12 (Whereupon, the jury was excused at 6:01 PM.)

13 **THE COURT:** All right. At this time I'll take up any
14 motions there may be after the reading of the verdict.

15 **MR. McBRATNEY:** Your Honor, I would make a motion
16 notwithstanding the verdict or for judgment of acquittal.
17 I believe the jury found the Defendant guilty based on the
18 aiding and abetting, and it's my understanding -- and I
19 may be wrong, but it's always been my understanding that
20 aiding and abetting in the commission or perpetration of
21 the crime ended once the crime had been committed and,
22 therefore, I don't think the verdict is correct.

23 **THE COURT:** Okay. I'm gonna respectfully deny the
24 motion, Mr. McBratney. I don't know what the basis was
25 for their decision, but I think it came down to a matter

1 of credibility and believability of the witnesses and how
2 the jury viewed the evidence, and so I'm gonna respectfully
3 deny that motion.

4 Solicitor, have you got a sentencing sheet?

5 **MS. DANIELS:** If you will give me just one moment,
6 I'll get one, Your Honor.

7 (Pause in the proceedings.)

8 **THE COURT:** Are we ready to proceed?

9 **MS. DANIELS:** Yes, Your Honor.

10 **THE COURT:** I'll be happy to hear from the State with
11 regards to sentencing.

12 **MS. DANIELS:** Yes, Your Honor.

13 The Defendant's prior record consists of a simple
14 possession of marijuana in 2005 and simple possession of
15 marijuana in 2006 and I believe he is out on bond on
16 pending murder charges in Darlington County.

17 **THE COURT:** Okay. All right.

18 Yes, sir.

19 **MR. McBRATNEY:** Thank you, Your Honor.

20 Major Dubose is 29 years old. He lives in here in
21 Florence now with his girlfriend of two years, Brittany
22 McCants. They have a child that's about a year old.
23 He's been working at a car wash for the last two years
24 helping to support his family. He actually grew up, part
25 of his youth, in New York City with his mother. When he

1 was eight years old, a security guard in the building
2 where he and his mother lived sexually abused him. That
3 security guard subsequently went to prison for not only
4 abusing him, but other children that were living in that
5 same building. As a result of that, Major was in
6 counseling for four years. That episode in his life has
7 haunted him throughout and has had a profound effect on
8 him. He came down here I think around 2011 or 2012,
9 sometime around that time.

10 Even though the jury found him guilty of trafficking,
11 and he testified in an earlier trial that he was guilty
12 of trafficking, I believe that what he's guilty of is
13 perjury; that Cedric Shaw, his third or fourth cousin,
14 had an influence on him to get him to take the rap for
15 him. It was clear from the evidence that was presented
16 at trial that he was not the driver of the automobile.
17 He was identified by both Brad McDowell -- or not
18 identified by Brad McDowell and Ben Price, both of whom
19 identified Cedric Shaw as the driver of the automobile
20 where the drugs were found after the chase.

21 Your Honor, perjury carries a five-year maximum
22 sentence. This carries a seven-year minimum mandatory
23 sentence. I would ask the Court to consider giving him
24 the minimum mandatory sentence of seven years. That
25 still would result in a substantial amount of time for

1 him to serve. I think it's a fair and just sentence under
2 the circumstances and ask the Court to take that into
3 consideration.

4 **THE COURT:** Mr. Dubose, did you serve any time in
5 jail awaiting this trial like when you were first arrested?

6 **THE DEFENDANT:** No, sir.

7 **THE COURT:** Were you in jail?

8 **THE DEFENDANT:** No.

9 **MR. McBRATNEY:** Not longer than twenty-four years,
10 sir.

11 **THE COURT:** Okay. So probably overnight?

12 **MR. McBRATNEY:** Yes, sir.

13 **THE COURT:** Okay. I just want to make sure he gets
14 credit for any time that he has served.

15 Mr. Dubose, you're not required to address the Court,
16 but if there's anything you would like to tell me, I'll
17 be happy to hear from you, sir.

18 **THE DEFENDANT:** There's nothing really that I can
19 say, sir, besides that I made a mistake by -- I had
20 someone treating me wrong and making promises and knowing
21 that's how I ended up, so I understand that that's how
22 things go.

23 **THE COURT:** You're 29 years of age, sir?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** I'm gonna take into consideration

1 obviously the lack of a prior record of this type of
2 conduct. There's some marijuana use, but -- I don't
3 mean to minimize that, but that's certainly not to this
4 level, so I'm certainly gonna take that into consideration.

5 All right. On Indictment 2014-GS-21-148, the
6 sentence of the Court is that you be committed to the
7 State Department of Corrections for period of ten years.
8 I'll give you credit for the two days that you have
9 served.

10 Good luck to you, sir.

11 **MR. McBRATNEY:** Thank you, Your Honor.

12 **THE DEFENDANT:** Thank you, Your Honor.

13 (Whereupon, the proceedings were concluded at
14 6:17 PM.)

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1 C E R T I F I C A T E

2

3 I, Stacy S. Johnson, Official Court Reporter for
4 the Eleventh Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a true,
6 accurate and complete transcript of record of all the
7 proceedings had and the evidence introduced in the trial
8 of the captioned case in Circuit Court on the 13th day of
9 September, 2017.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14

15

March 23, 2018

16

17

ISI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

18

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231

WITNESSES

Brad McDowell

Florence County Sheriff

John C Jepertering

ARREST WARRANT NUMBER

2013A2110201311

2013A2110201313

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-21-00148

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY

TERM

2014

THE STATE

vs.

MAJOR DONNARD DUBOSE III

Indictment for

TRAFFICKING IN COCAINE BASE
AND
FAILURE TO STOP FOR A BLUE LIGHT

CERTIFIED: A TRUE COPY
Donna Harris O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2014 JAN -9 PM 2:00
CLERK OF COURT
C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
TRAFFICKING IN COCAINE BASE
AND
FAILURE TO STOP FOR A BLUE LIGHT

At a Court of General Sessions, convened on JANUARY 9, 2014 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- TRAFFICKING IN COCAINE BASE

That MAJOR DONNARD DUBOSE III did in Florence County on or about June 7, 2011, knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of more than twenty-eight grams but less than one-hundred grams, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(c), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

COUNT TWO- FAILURE TO STOP FOR A BLUE LIGHT

That MAJOR DONNARD DUBOSE III did in Florence County on or about June 7, 2011, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his/her motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, in violation of Section 56-05-0750, S. C. Code of Laws, 1976, as amended.

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

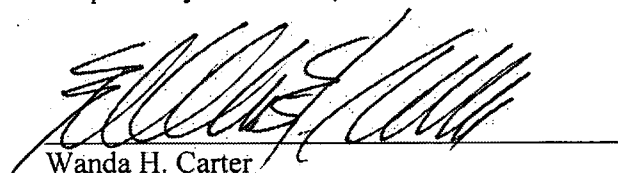


E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

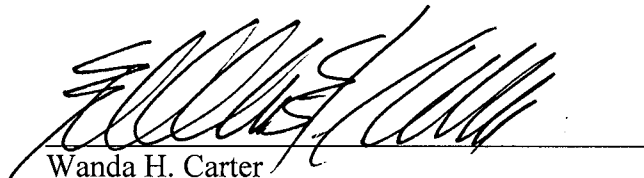
ATTORNEY FOR APPELLANT

This 29th day of August, 2018.

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."

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 29th day of August, 2018.

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